TOWN COUNCIL MINUTES OF DECEMBER 8, 1992

I. CALL TO ORDER AND ROLL CALL: A meeting of the Town Council was called to order by President Heeke at 9:30 AM on Dec. 8, 1992 in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilwoman Douthit, Councilman Ilyinsky and Councilwoman Wiener. Also in attendance for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Chief Terlizzese, Mr. Elwell, Mr. Jakubiak, Mrs. Crozier, Mr. Bitzer, Mr. Zimmerman, Mr. Moore, Mr. Bowser and Mr. Dusey. Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Invocation was given by Rev. Ralph Warren. Pledge of Allegiance was led by President Pro Tem Weinberg. Invocation

III. PRESENTATIONS: Presentations

A. Retirement of J. Raymond Edmond, General Maintenance Foreman, Public Works Department - Mr. Edmond was presented by Mayor Marix with a plaque for his 11 years and 5 months of service.

B. Retirement of William L. Shetron, Major, Police Department - Major Shetron was presented with a plaque by Mayor Marix in recognition of his 27 years 11 months of service.

IV. COMMENTS OF THE MAYOR - Mayor Marix stated she will have items to bring up during the meeting but wanted to make a statement about the stories floating about that she has an understanding about the forthcoming mayoral election and wished to assure everyone this is not the case. She reported she has no plans to run for re-election as Mayor. Comments of Mayor

V. PUBLIC HEARING Public Hearing

A. Request for Abandonment of a Public Utility Easement at 2 La Costa Way - Consideration of Resolution No. 46-92 - Attorney Kenneth Treadwell of the law firm of Lewis, Vegosen and Rosenback addressed the Council on behalf of Dr. Rosenberg, seeking the abandonment of a five foot portion of a ten foot easement. He advised all of the utility companies have signed off on this as having no need for this particular easement, as this property is serviced by a five foot easement located on the southerly boundary of the property and they are dealing with a ten foot easement that ends at this property, , so there is no need to service this property through this particular easement for which they requesting abandonment. He noted in addition to the ten foot easement, there is a four foot strip of land which has currently approximately a twenty-five foot ficus hedge on the property, which abuts the right-of-way of the adjacent public road. He noted the road is a 30' road to the north and there is a 25' setback on the house to the north, so there is 64' from the front of the house to the north to the easement which they are seeking to have the Town abandon. He stated the reason for the request is to enhance the buffer area to provide landscaping and planting within the 5' area which is being abandoned. He noted there are utilities located in the remaining five foot area of this easement and no anticipated plans for any of the utilities to utilize any of that five foot area. Res. 46-92

He recalled the staff's recommendation was to approve this with two conditions and the conditions are acceptable to the owner of the property.

Mrs. Douthit advised she could not go along with the abandonment as the property involved is almost an acre in size and there is a utility building with the roof hanging over, without setbacks, and she noted this was all new construction so there should be no problem, and she would move to deny the request. Seconded by Mr. Ilyinsky.

Attorney Treadwell responded that all of the existing buildings are within the appropriate setbacks and there are no overhangs on any of the buildings which encroach into the proposed easement. He noted there is a pool pad to be located in the five foot area to be abandoned.

Mr. Moore clarified that all of the buildings under construction meet the Town's Zoning Ordinance with regards to setbacks, although there is a desire for a cabana in that area to have a one foot overhang into the area being discussed today, the five foot area, but other than that, it does meet all of the Zoning requirements. Mr. Heeke asked if there would be an encroachment into the existing easement, as he thought he heard said that the overhang is contemplated as being over the existing easement. Mr. Moore responded that would be their desire, but that is not necessarily the case, as the roof construction with the overhang can be altered to omit the one foot overhang .

Mr. Heeke asked Mr. Treadwell about the four foot spite strip and asked whose spite it would be. Mr. Treadwell stated he was not sure the spite term should be used, and he would like to withdraw that designation as the term "buffer" may be a more appropriate term with respect to the four feet of area which has been maintained by the residents adjacent to this property for a long time.

Mrs. Wiener asked if there were any members of the public who wished to address this matter? Mr. Heeke called for public comment.

Attorney Treadwell clarified there were no overhangs of any roof in the ten foot easement area.

Alvin Hirschberg, 253 South Woods Road addressed the Council noting his neighbors, Cpt. Perry Jackson and Susan Polan are here and they are all against allowing this easement to be abandoned, as he believed the ultimate goal is to place pool heaters and pumps and air conditioners in this area and so close to the street that the noise and service will be detrimental to the peace and quiet of the neighborhood. He stated there were two other neighbors on the street who were not in attendance. He noted there were other estate type homes in this area and they did not make a request for anything like this when they built their homes. He felt it equated to $45,000 and those people paid $45 per foot for their land and now the applicant wants a strip of approximately 850 square feet to be given to him, so he may use it in addition to the three-quarter acre he already occupies and he would be able to use it at no cost and he didn't think that should be at the detriment of the neighbors.

Mr. Ilyinsky thought this area was going to be strictly a green space with landscaping.

Mr. Doney pointed out there were two letters of objection from Mrs. Polan and Cpt. Jackson.

Mrs. Wiener asked if the applicant or his attorney could explain where they planned to put all the equipment. Dr. Marvin Rosenberg responded the fact is the five foot strip which they are requesting be abandoned will essentially become a landscaped buffer which will enhance the beautification of South Woods Road. He wished to install a planter wall as part of the landscaping plan and that wall would be between his property and the 20' hedge line. He stated the only concern he has heard that will have some legitimacy would be the pool pad on which they intend to place pool equipment. He stated there would be no air conditioning equipment or machinery or sheds, but just a cabana which would be within the property line and if it is the suggestion that the pool equipment be relocated to the east setback to accommodate the concerns of the neighbors, he would be willing to consider that if that is the recommendation of staff and Council. He
Res. 46-92 commented it is his intent to make this five foot strip exclusively a landscaped strip which would beautify South Woods Road and he doesn't understand why they are objecting. He stated there are no utilities going through that part of the property so this easement is not necessary for utility use and he would prefer to landscape the entire ten foot strip, but staff has recommended five feet not be landscaped and he is willing to limit it to five feet. He wished to bring out another thing and that is the Site Plan for this property is undersized for the site. He stated the coverage is far below what is allowed by the Code. He wishes to install a tennis court and a formal garden, so the building is undersized for the property to allow for the beautification of that area.

Mr. Heeke asked Dr. Rosenberg if he was willing to compromise and have no construction in the abandoned area and asked if that would also include the concrete pad to which Dr. Rosenberg responded if that would be the request of Council, he would move that pad on which they anticipated putting the pool equipment to the setback to the east, which would leave the planter walls and the landscaping within that five foot strip.

Mayor Marix noted he could build a much bigger house and he wanted a formal garden and wondered why he would not locate the house five feet closer to the formal garden? Dr. Rosenberg believed they were well within the setbacks. Mrs. Douthit thought that with brand new construction, she finds this a precedent setting item, and even though there would be no equipment located there, she would still have to say "no" as it will set a precedent. Dr. Rosenberg appreciated her concern but he didn't believe there were ten feet easements in the Town of Palm Beach like this as the average easement is five feet and this one is excessive. Mrs. Douthit thought it could set a precedent as it has existed for a long time. Dr. Rosenberg responded it has only existed since the subdivision was created which was about one year ago. Mr. Moore clarified the reason for the ten foot strip is it was sub-divided about five years ago by Mr. Maddock, and the reason for the ten foot strip is in the event there is no easement on the abutting property and in this case, it was a nuisance strip on the north side. Mr. Heeke asked him to define "nuisance strip". Mr. Moore responded originally it was for yard trash.

Mr. Heeke asked what was located immediately to the west of the applicant's property to which Mr. Moore responded there is another lot. Mr. Heeke asked if it could use utilities to which Mr. Moore responded it already has utilities. He noted Dr. Rosenberg's utilities are serviced from the street where there is another easement at the cul de sac.

Dr. Rosenberg noted there ware two easements to the properties, one is a five foot easement to the south and a ten foot easement to the north.

Mr. Moore explained when this was sub-divided, the theory was that the south side of Woods Road would be a trash collection area. Mayor Marix did not recall that that was the case, stating it would be unattractive to use the side of the road to store their trash.

Mrs. Wiener asked Dr. Rosenberg if he had spoken to the neighbors about what he planned as it seemed to her the nicest thing in the world to have would be lots of green space, however, it could be that the neighbors feel that if the house was sold, this green space would change and that is a major concern. She suggested perhaps there could be some type of an agreement recorded in the Court House which would keep this area as green space, and she thought in that way, everyone would have the best of both worlds. Dr. Rosenberg stated he had no problem with that at all, but he believed there would be a problem of denying him the ability to beautify South Woods Road with a landscaped strip, to which the Council did not agree. Mrs. Wiener wondered if the neighbors would have a problem with a recordable agreement denoting this area as perpetual green space.

Attorney Treadwell believed the Town Council could impose a condition that the five foot area being abandoned be maintained as green space and continue to be landscaped.

Mr. Heeke asked Mr. Hirschberg to comment on this suggestion. Mr. Hirschberg responded he would have no objection with it as long as there was nothing there that would create noise and distraction and as long as the pool cleaning people would not break through the hedge and transit the green space. He noted it already is a beautiful green space and he sees no reason why the Town should give precedence to this developer to keep five feet of valuable land.

Susan Polan, a neighbor, addressed the Council indicating she had no objection to the maintenance of this as a green space buffer but she did object to the possibility that the setback would change. She advised she has a ten foot easement in her backyard which houses all the service for Wood's Landing with cable television, the transformer for electricity is on her property, and she maintains a green space which is between the tennis court and the main house. She stated she has to setback ten foot from that ten foot easement, which is a utility easement buried beneath the ground. She commented that upon owning and selling 900 N. Lake Way to Mr. Levy, she owned a ten foot easement which she shared with the Town and an agreement was drawn up and they share the maintenance of this particular easement and nothing was ever built on it. She asked if there is no setback accommodation, she would like the neighbors to support Dr. Rosenberg in adding the beautification and a filed comment in the record that a satellite dish could not be put there.

Attorney Treadwell advised the would like to erect some planter walls. Mr. Heeke responded that is construction. Dr. Rosenberg stated he is willing to accept what the Council will give him and he has no problem with the neighbor's concerns. He hears what they are saying and he is sensitive to the remarks made about the wall. He stated the landscape architect which he is using he used in his prior home and he won an award as his architect was named number one in the whole state, and it is his intent to provide a top quality design and green area for the projects he is involved in. He believed the landscape architect contemplated that behind the wall there would be a featured element for beautification. He stated that would be the sole function and purpose of this particular landscaped element and this would be located between a twenty foot hedge and the cabana and would not be visible. Res.46-92

Tom Keller of Worth Builders addressed the Mayor and Council explained the plans which showed a planter wall with tiers and landscaping inside it to give them privacy. Mrs. Wiener asked if it could be moved off the easement. Mr. Keller advised the cabana has already been built with the pad for which he had a permit to build same and he already had moved it south to keep the overhang out of the setback. Mr. Heeke pointed out this is new construction. Mrs. Wiener noted the neighbors are quite agreeable so she would like to recommend a motion. Mrs. Douthit recalled there was a motion on the floor. Mrs. Wiener noted the neighbors are agreeable and there would be a recorded green space agreement. She noted the neighbors were totally opposed to having any sort of construction in that area and they are trying to get a meeting of the minds, and perhaps there was another way of having a lovely landscaping situation such as a trellis there and going in that direction, rather than getting into a situation where they say no to the five feet.

Dr. Rosenberg pointed out that any kind of a structure would require a foundation. Mr. Heeke advised the problem of construction is to vote for the motion the way it is. Dr. Rosenberg responded he has a fallback position and asked if this is going to be a landscaped strip, could he landscape the entire ten feet, which would be a further enhancement for South Woods Road, to which the Council did not agree.

Mr. Moore explained for the record the conditions as contained in the memorandum sent by the Public Works Department state: (1) That all costs associated in preparation of the easement documents and the recording of same will be paid by the owner requesting the abandonment; and (2) That there shall be no trees, hedges, walls, fences or other structures placed over the remaining utility easement. He advised this would be the five feet that is to the north of the five feet they are talking about and pointed out that the applicant would not be able to plant that five feet, or ten feet as it now exists, as plantings in this area are prohibited, however, fences are permitted with a removable agreement. Mr. Moore asked if the applicant would be permitted to apply for a fence removal agreement? Mr. Heeke responded he didn't wish to get into that at this time and that should come back to the Council after this issue is resolved.

Mrs. Douthit explained her reason for the motion to deny was due to the fact that this is new construction and it will set a precedent, as he is requesting the Town to give up easement property for new construction in a R-B District which is almost one acre in size.

Mrs. Wiener stated she was confused due to the fact that she has an easement on her property and taxes are paid on the easement and it is a right that utility companies have, and she believed the neighbors would profit by having a green space there and if they are in agreement, she doesn't understand why the maker of the motion is insisting it be denied. Mrs. Douthit stated because Mr. Moore has just advised us that he couldn't have this green space. Mayor Marix believed what she heard was Mr. Moore suggested they could come back for a permit to put a fence on it and that is part of what is troubling the neighbors. She stated she despised allowing having a fence on an easement as she does have that in her neighborhood and everyone using the easement comes onto her property and she would like the Council to seriously look at the allowance of fences on the easements. She thought if this were a lovely green area, she didn't believe the neighbors would mind.

Mr. Heeke asked about Lot 1, immediately to the east of Dr. Rosenberg's Lot 2, and asked if there was a ten foot easement going across that also? Mr. Moore believed there was to which Attorney Treadwell agreed. Mr. Heeke asked what was the proposal for that particular easement? Mr. Moore pointed out Dr. Rosenberg does not own that Lot. Mr. Heeke believed they were talking about an easement which runs along these properties, to which Mr. Moore agreed. Mr. Heeke asked if this easement went all the length of South Woods Road to which Mr. Moore responded it was his thought that it terminated at the west property line. Attorney Treadwell pointed out it does run from east to west across both these lots. Mr. Heeke asked if it extended to the west of Lot 2, to which Mr. Treadwell responded negatively. Mrs. Polan did not agree. Mr. Moore stated it does run across the property to the west to North Lake Way into the Lake. Mr. Moore explained the one to the west of North Lake Way is a separate subdivision and that is the Matthews property and this is a different easement, a public access easement. Mr. Heeke noted the flow of the easements is interrupted when a strip is taken out of the middle.

Attorney Treadwell explained the easement does terminate here at this particular lot on the east end. He commented there is nothing to the east that it services and it would not impact in any way the property to the west.

Mrs. Wiener asked if this is not granted, what is now existing on the property? Mr. Treadwell responded there have been trees planted on the property. Mrs. Wiener asked what was there before the trees? Mr. Treadwell responded only grass. Mrs. Wiener asked what they would prefer - the privacy or what - as this is a case of having bad communication as it seemed to her the green space would protect everyone and it would be recorded, and she would only accept this under that circumstance so they would be fully protected. She thought that was better than having nothing or just grass as it would prevent noise from the property as there is a tennis court there.

Attorney Treadwell advised they are willing to accept the abandonment conditioned upon no construction within the five feet. Mr. Heeke asked again about the continuity of the easement across all of the lots in that area west and east of the Rosenberg property.

Mr. Moore explained the lot to the east is the Peltz Estate and there would not be an easement on the Peltz Estate, so the easement crosses from the South Woods Road and North Lake Way corner on Lot 1 to Dr. Rosenberg's property on Lot 2. Mr. Ilyinsky believed the person who would purchase Lot 1 could also ask for an abandonment to which Mrs. Douthit agreed, and that is why she viewed it as precedent setting.

Mayor Marix asked Dr. Rosenberg if he had been told there could be a problem with him installing the trees in that easement area? Mr. Treadwell advised there has been no planting at the present time in the easement area. Mr. Moore advised they could not plant in the easement.

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Mr. Treadwell believed Mr. Hirschberg related there were trees planted in the easement area, but it was Mr. Treadwell's belief these trees were planted in the buffer area. Mayor Marix asked if there was any planting done in the easement?

Perry Jackson addressed the Council, noting there are trees there and the trees planted there were transferred to this area from their lot. He pointed out another thing and that is when the property was surveyed originally and he checked out that survey and he had no problem with it, however, a week later they came back and resurveyed it and moved a peg eleven inches closer to South Woods Road and when he questioned the surveyor, he was told in no uncertain terms, that the surveyors knew what they were doing. He believed what they were trying to do is get extra property and what has happened is they built their building on the line and now wish to put in a planter and he thought it was a bad precedent. He recalled there was a ten foot strip for public utilities which runs all along that area. He stated he is not against having this area be green space, but it is already green space and he doesn't know what they are here for. He thought they should abide by the Codes.

Mrs. Wiener asked Mr. Jackson if he had any objections to having green space in that five foot area to which Mr. Jackson responded if it is going to be used for landscaping only, he had no problem, but he had a feeling they wanted to use this area for a planter or for the roof overhang, and once they get in there, it will grow over the years.

Mr. Weinberg commented they have been talking about this for a long time and he believed if nothing is placed therein, the entire five foot easement can be green space. Mr. Heeke pointed out there was a question raised about a fence and other work going in there. Mr. Jackson believed they would try to not only get something on the ground, but also above the ground as the roof overhang is over the easement already. Mr. Moore verified that was not the case.

Mr. Heeke recalled there was a motion on the floor to deny. Mrs. Douthit stated her reason was that it would set a precedent as this is new construction and she believed it was being built to sell. Mr. Heeke recalled they had heard from the three property owners across the street from this property and they all would be willing to accept the green space with no construction whatsoever in it, which would probably include fences.

Mr. Moore advised if the Council allows the planting and there are no structures in the five foot easement, there is no need to abandon the easement as Dr. Rosenberg does own the property, and suggested what could be done is deny the request for abandonment and give permission to plant the five feet in question in green area, as he cannot plant that in green space if it is part of the easement. Mr. Heeke believed that was a good solution as it would preserve the easement.

On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion to deny.

Motion was then made by Mr. Weinberg authorizing Dr. Rosenberg to have landscaping within five feet of the easement and this would be the southern five feet of the existing ten foot easement on the north side of Lot 2. Seconded by Mr. Ilyinsky. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

VI. APPROVAL OF AGENDA - Motion was made to approve the agenda with the following amendments:

1. XV.A - Remove B-38-92 Joel Martino, 109 Ocean Terrace from Major Matters considered by the Architectural Commission.

2. XV.D.4 - Consideration of Request for Waiver to hours of construction work by Sutton Group for work at the Plaza Center Buildings at 249 and 251 Royal Palm Way - this request was withdrawn.

3. XVII. Any Other Matters - Consideration of letter received from Highland Beach regarding Coastal Communities Coalition.

4. Mr. Weinberg advised he will bringing up a matter under Any Other Matters and that is correspondence from the Chairman of the County Commission.

5. Mayor Marix suggested an item be added to Old Business as she had some comments on the water situation. (Item XII.B.2.

6. Mr. Heeke noted Item XII.B.1 would be considered at 1:00 PM

Mrs. Wiener moved that the Agenda be approved as amended. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

<u>APPROVED AGENDA</u> (ITEMS VII. THROUGH IX.) Motion was made to approve the Approved Agenda as printed. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

VII. APPROVAL OF MINUTES OF OCTOBER 26, 1992

VIII. LICENSES AND PERMITS

Licenses & Permits

A. Charitable Solicitations

1. Albert Einstein College of Medicine of Yeshiva University; No. 10-93
2. City of Hope; No. 13-93
3. JFK Medical Center; No. 16-93
4. Jewish Federation of Palm Beach County, Inc.; No. 22-93
5. United Jewish Appeal of Greater New York, Inc.; No. 49-93
6. Brandeis University; No. 76-93
7. The American Jewish Committee; No. 125-93
8. Lourdes Noreen McKeen Residence Auxiliary; No. 135-93
9. Parent-Child Center of the Palm Beaches, Inc.; No. 198-93
10. Bascom Palmer Eye Institute; No. 213-93
11. Palm Beach Par 3 Golf Course; No. 227-93
12. Juvenile Diabetes Foundation International, Palm Beach Chapter; No. 240-93
13. American Ireland Fund; No. 260-93
14. Friends of Akim USA/Palm Beach Chapter; No. 280-93

15. Palm Beach Day School; No. 313-93
16. South Florida Chapter of the Susan G. Komen Breast Cancer Foundation; No. 317-93
17. United Jewish Appeal - Federation of Jewish Philanthropies of New York, Inc.; No. 346-93

IX. NEW BUSINESS | New Business

A. Bid Awards | Bid Awards

1. Sealed Bid No. 93-001 - Diesel Dump Truck | Sealed Bid 93-001

2. Sealed Bid No. 93-002 - Contract Building Inspection Services | Sealed Bid 93-002

B. Other

1. Consideration of Appointments for Voting Delegate and Alternate Voting Delegates to the Palm Beach County Municipal League | Appointments

2. Consideration of Extraordinary Longevity Pay for Eligible and Recommended Town Employees with 21 to 30 Years of Service with the Town | Longevity Pay

3. Consideration of The National Conference on Beach Preservation Technology to be Held February 10-12, 1993 in St. Petersburg, Florida | Conference on Beach Preservation

REGULAR AGENDA

X. LICENSES AND PERMITS | Licenses & Permits

A. Charitable Solicitations

1. Palm Beach Opera, Inc.; No. 68-93 - Mrs. Peters explained the Palm Beach Opera has not filed their Results form timely as required by the Ordinance. Mr. Robert Miller addressed the Council on behalf of the Palm Beach Opera apologized for the late filing of the Results form, which has now been filed. Mr. Ilyinsky moved for approval of the granting of the Permit. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

2. Simon Wiesenthal Center; No. 264-93 - Mr. Bob Novack, Regional Director, addressed the Council on behalf of Simon Wiesenthal Center noting that when the permit was requested last year, his secretary had put the ending date as Dec. 5, 1992. He noted they had only one event which was held in March of 1992. He noted the Ordinance states there must be a three month dormant period and it was a mistake on the part of the secretary and he wishes a waiver to that rule in order that they can have an event scheduled on Jan. 24, 1993.

Mr. Weinberg moved the waiver of the 90 day rule be granted and the Permit be authorized for the Simon Wiesenthal Center. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

3. Earth Action; No. 347-93 - Mrs. Peters explained a waiver to the advertising rule is needed. Mr. Weinberg moved the application be granted with a waiver to the advertising rule. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

XI. COMMITTEE REPORTS - Mr. Weinberg read the Committee Report: | Committee Reports

REPORT OF THE PUBLIC WORKS COMMITTEE OF MEETING HELD ON DECEMBER 1, 1992 | Public Works

I. CALL TO ORDER AND ROLL CALL: A meeting of the Public Works Committee was called to order at 2:30 PM on December 1, 1992 in the Town Hall Council Chambers. In attendance were Chairman of the Public Works Committee Weinberg, Committee member Ilyinsky. Also attending were Mayor Marix, Mr. Doney, Mr. Dusey, Mr. Bowser, Mrs. Peters, Mrs. Crozier, Mr. Moore, Chief Terlizzese, Mr. Marchman and Mr. Elwell.

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

III. CONSIDERATION OF PROPOSED COST APPORTIONMENT FORMULA BETWEEN THE FLAGLER SYSTEM AND TOWN OF PALM BEACH REGARDING STORM DRAINAGE IMPROVEMENTS:

After discussion and hearing the comments of the Town's staff, Attorney James Brindell and Engineer Thomas McCarthy representing the Flagler System, it is the RECOMMENDATION OF THE PUBLIC WORKS COMMITTEE that an analysis by the Flagler System's engineers be done on stormwater re-use for irrigation on the Breakers' property which may have an effect on the ultimate design of the pumping station and the storm drainage collection system and this analysis will be considered at a future meeting of this Committee. The Town's staff will write to the Florida Department of Transportation regarding the Department's cost participation in this project and the DOT's procedures for same.

IV. CONSIDERATION OF BEAUMONT PARKING LOT. After hearing the comments of Mayor Marix, Chief Terlizzese, Mr. Marchman, Mr. Doney with regard to the use of the Beaumont Parking Lot, it is the COMMITTEE'S RECOMMENDATION that consideration be given to reducing the monthly rate for leased parking spaces in this lot from $75.00 to $50.00 and installing some parking meters for the use of the public. The COMMITTEE RECOMMENDS that the Town staff be authorized to publicize this information through the media for input by residents and business to determine the number of individuals who would be interested in monthly leases of the parking spaces (at $50 per month) on a space available basis with a waiting list, but with no commitment at this time; also a survey be taken of those individuals who would be interested in parking in the Beaumont Lot if parking meters were available ($.25 per 15 minutes is current meter rate).

After this survey information is formulated, it will be submitted to the Public Works Committee for consideration and a further recommendation to the Mayor and Town Council. Mayor

Marix noted the purpose of this survey was to enhance the Town's revenue to the Parking Fund, and have parking available for the Town's residents, businesses and visitors.

V. ANY OTHER MATTERS: None.

Adjournmen VI. ADJOURNMENT. Meeting adjourned at 4:35 PM.

Signed M. William Weinberg, Chairman and Paul R. Ilyinsky, Committee Member.

Mr. Ilyinsky moved that the first Recommendation of the Public Works Committee with regards to the Flagler System be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mayor Marix addressed the recommendation on the Beaumont Lot, noting at that Committee meeting, she wrapped up her comments with the statement that the object of this entire discussion was to make better use of that parking lot and not to put employees onto the street to park their cars or to stop them from going out during the day. She suggested the Council look out the window and they will see the parking lot is not used fully and is usually one-third to two-thirds empty and 13 employees are parking on the street. She would like to make the parking spaces available for the employees who get here around 8:30 AM, long before the shops open. She believed if there were some metered spaces available on the Lot, when the employees are not utilizing the parking spaces, the public could park at the meters and the people would gain, and the employees would lose nothing and the thirteen who were currently on the street would be parking in the lot. She felt meters could be utilized by people in the area and this will make better use of the property and service the residents at the same time.

Mr. Alexander Beal addressed the Mayor and Council, stating he felt the Town must have a place where employees and visitors to the Town Hall could park their cars and if meters are installed, they would have to keep running out to fill the meters. He has never seen a community which did not provide a parking lot for the public or the employees of the Town. He recalled when the space became available for parking on the west side of the Town Hall, the Town did not take it and it may have been the costs involved as the reason. He felt it would be a mistake not to leave the Beaumont Lot as an open area for the public and for the employees of the Town.

Mayor Marix agreed noting it is not an open area right now and is strictly reserved for employees by name and when another employee is not in attendance, the other employees may use it but it is not open to the public.

Mr. Heeke asked if there was a motion on the recommendation to do a survey? Mrs. Wiener responded she did not see how a survey would make this right and wondered how the survey would be conducted? Mr. Weinberg responded they would place an advertisement noting there will be some places available, and he assumed if they were interested, they would respond. He believed at some future time it would be determined if there was interest, a decision would be made for those people who want to be involved. He pointed out this is not set in concrete but they thought it was worthwhile to explore that possibility.

Mayor Marix thought they should try it on a trial basis and they don't have the spaces assigned to particular people, and the thirteen persons would be taken off the street and they would go into the lot. Mr. Heeke stated he liked the idea of having a parking meter which would go for a few hours as this would give people ample time and they would not have to worry about feeding the meter.

Mr. Doney commented he has prepared a draft advertisement, however, he thought it was important for the Town Council to designate how many of the spaces will not be used by Town employees. He noted currently 28 employees use assigned spaces, some spaces are leased on a monthly basis to property owners in the immediate area; 13 spaces were previously leased, but the spaces were not renewed at $75 per month. He reported there are also four stacked parking spaces for the Police Department employees. He felt what needed to be clarified is there are employees who park in the lot but during the day, they leave to go to meetings and are in and out, and if the spaces were not assigned, when these people return, there would not be a parking space available, however, if the Mayor and Town Council agree, they could park on-street and a system will be developed with the Police Department to do that. Mayor Marix pointed out for whatever reason, the lot is tremendously underused so she doesn't mind if it is heavily used for employees, or the public, or visitors to the Town Hall, but the fact remains that for whatever reason, at this point in time, it is heavily underused. She would like to see the Council make a decision as to how the lot can be filled and it wouldn't be by having assigned spaces to employees, as that is a given. Mrs. Wiener asked why are employees parking on the street. Mr. Doney responded until this issue came before the Public Works Committee, the 13 spaces which were not renewed, and the Town employees have utilized those spaces, but it is those 13 that are not being used. He advised the 28 which have been assigned to employees have always been used.

Mrs. Wiener asked how many spaces would be needed for the employees in the Town Hall and in the Police Department? Mr. Doney responded approximately 15 are parking on the street and they work either in the Police facility or in the Town Hall. Mrs. Wiener did not believe there should be names on the spaces, however, she knows the Town requires employers on this island to have parking spaces for their employees and she doesn't know why Town employees are parking on the street and the Town is not following the same procedure as is required by other employers in the Town and that is to provide parking for their employees.

Mr. Heeke believed the names should come off the spaces and this area should be used as Town employees' parking and if there is an underusage of that lot, they need to bring that usage up.

Mayor Marix had no doubt there is enough parking for employees as there is an employee lot on Australian, and at the Police facility and in the Beaumont Lot and some employees park in the Royal Palm Way lot, so she felt there was ample parking and if it turns out that without the assigned spaces and no names, and it is found there are still empty spaces, then they should think about metering perhaps six spaces to start with and the employees not be ticketed. She felt rather than do a survey, they should park the employees on that lot and see how it works and if the lot is not literally full at all times, they lease some spaces or do whatever they have to do. She knew that other businesses require carpooling and she knows that is difficult for employees who come to work at different times.

Mrs. Rose Harwitz addressed the Council asking why they didn't hear the comments of the Chief of Police on this subject? Mayor Marix recalled he told them at the Public Works Committee meeting that employees had fist fights over the parking spaces. Chief Terlizzese addressed the Council indicating there was an error made in the newspaper as to exactly what he said at the Public Works Committee meeting as he said there were conflicts, arguments and some belligerency and a couple of fist fights when that lot was used for mixed use, prior to the time they regulated it and controlled it. He stated under the current system there have been no problems as it is under control with leased spaces and employee spaces.

Mr. Heeke asked if anyone would object to taking the names off of the spaces and just designating them Town Employees only to which no one had any objection. Mrs. Douthit felt they should get the employees off the street and that would allow the citizens to park on the streets. Chief Terlizzese stated to get them off the street the easiest way to do that would be to eliminate the leased parking in this lot and then it would be full most of the time. Mr. Heeke believed they should take the 13 spaces which have not renewed their lease and let the employees who park on the street park in those spaces. Mayor Marix did not want to see them take away the parking spaces which are already leased to which the Council agreed. Mr. Heeke believed they should try this method and see if this results in full utilization.

Mr. Alexander Beal asked where the people would park who attend meetings or have business in the Town Hall, as he felt the lot should be open completely as the amount of money that would be collected would be so infinitesimal. Mr. Heeke responded the problem is they needed to provide parking for the Town's employees.

Motion was made to accept the report of the Public Works Committee Report into the record by Mrs. Wiener, seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

XII. OLD BUSINESS — Old Business

A. Ordinances - Second Reading

1. Ordinance No. 10-92 - Amendments to Section 6-36 of the Town's Code of Ordinances, "Dune Removal or Alteration" Attorney Randolph read Ordinance No. 10-92 by title: — Ord. 10-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ARTICLE IV. DUNE REMOVAL OR ALTERATION, SECTION 6-36, BEACHES, SUBSECTIONS (a) PERMIT REQUIRED; (b) DEFINITIONS: (c) CLASSIFICATION OF PERMITS: (d) APPLICATION REQUIREMENTS: (g) LICENSES PROFESSIONALS; (i) SETBACK LINES: (j) WAIVERS AND VARIANCES PROCEDURES: (m) EXISTING STRUCTURES: AND ADDING A NEW SUBSECTION (n) PROVIDING FOR APPEAL PROCEDURES: PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR A REVISION DATE.

Mr. Ilyinsky moved for adoption of Ordinance No. 10-92 on second reading. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

2. Ordinance No. 11-92 - Amendment to Motor Vehicles and Traffic Ordinance - Service Charge for nonpayment of Parking Violation Penalties Attorney Randolph read Ordinance No. 11-92 by title: — Ord. 11-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 11, ARTICLE II, DIVISION 1, TO INCLUDE A NEW SECTION 11-35 PROVIDING A SERVICE CHARGE FOR NON-PAYMENT OF CIVIL PARKING PENALTIES IMPOSED UPON SECTIONS 11-32 AND 11-33 WITHIN THIRTY DAYS OF ISSUANCE OF THE VIOLATION; AMENDING CHAPTER 11, ARTICLE II, DIVISION 2, BY INCLUDING A NEW SECTION 11-49.1 TO PROVIDE A SERVICE CHARGE FOR NON-PAYMENT OF METER PARKING VIOLATIONS NOT PAID WITHIN THIRTY DAYS OF ISSUANCE OF THE NOTICE OF VIOLATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Wiener to adopt Ordinance No. 11-92 on second reading. Mrs. Douthit seconded the motion. On roll call, the motion carried unanimously.

3. Ordinance No. 13-92 - Use of Town-Owned Properties and Rights-of-Way - Attorney Randolph read the Ordinance No. 13-92 by title: — Ord. 13-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ADOPTING PROCEDURES FOR THE HOLDING OF SPECIAL EVENTS IN THE TOWN OF PALM BEACH; PROVIDING A DEFINITION: PROVIDING FOR PERMITS AND APPLICATION REQUIREMENTS: PROVIDING FOR REGULATIONS; PROVIDING FOR NOTICE OF APPROVAL OR DENIAL; PROVIDING PROCEDURES FOR APPEAL; PROVIDING FOR REVOCATION; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph noted there is a provision in the ordinance to prohibit Special Events at Memorial Fountain Park. Mr. Heeke stated he has rethought his position on this, due to the legal opinion of the Town Attorney, but he believed that staff would understand that whatever is requested to be held at Memorial Fountain Park would not interfere at all with the activities here which would require the use of Fire or Police equipment. He knew the Town Attorney felt these requests could be monitored and controlled through the approval process. He would like the discussion of the Town Council and the concern against any use of this Park attached to the original Ordinance so in the future people don't forget why it is not specifically in the Ordinance, if it is decided to remove it from the Ordinance.

Mrs. Wiener wondered if there was any way special requirements could be attached to the use of Memorial Fountain Park. Mr. Randolph responded they would have to have the Police and Fire Departments look at it and see what special requirements could be recommended. He felt if this

Item 10 was not included in this Ordinance, staff could be directed to look at any special requirements that they think might be necessary for the use of the Park. Mr. Heeke thought that was a good idea. Mrs. Douthit suggested they pass the Ordinance on second reading. Mayor Marix wondered if they should put language in the Ordinance stating that any use of Memorial Park would have to have a special review of the Police and Fire Departments. Mr. Randolph noted that special review would take place for any park. Mr. Heeke suggested this second reading be deferred until staff has an opportunity to look at it. Mr. Randolph stated they could still ask the staff, because of their concerns about this Park, to look at it and see if there are specific regulations which might be imposed on an administrative basis until they are incorporated into an Ordinance. Mrs. Wiener asked if there could be something put into this Ordinance indicating there are further restrictions for the use of Memorial Park? Mr. Randolph stated they are not known at this time and suggested the Town staff look at the use of that park, as that park is unique because of its location and the recent renovations to it and his concern is singling it out and not allowing it to be used when there may be some uses which are appropriate, so rather than have a strict prohibition in the Ordinance, he would rather see it go that way.

Mr. Heeke agreed and asked for a motion to accept the Ordinance 13-92 but deleting Item 10. Mrs. Wiener moved the Ordinance No. 13-92 be adopted on second reading with Item 10 on Memorial Fountain Park deleted. Seconded by Mrs. Douthit.

Mr. Winterfield addressed the Council, noting he has difficulty in why they wish to be in such a hurry to adopt this Ordinance, which purpose is to regularize the practice which has been going on for about six years and suggested they take the time and get it right. He doesn't know why they do not adopt a comprehensive Ordinance which covers all special uses. He believed there was language in this ordinance which he would find difficult to administer, such as "substantial inhibition of the usual flow of pedestrian or vehicular traffic", for instance, and if there is not substantial inhibition, does this mean that the person who is going to be holding the Special Event need not apply?

He referred to Section 6, Paragraph 6, which excludes a number of uses, such as private profit or fund raising. Mr. Heeke recalled they discussed this about a half hour last time this Ordinance was considered at first reading. Mr. Winterfield asked if it was for advertising purposes, could he take a camera crew of two and use the sidewalks without any regulation? Mr. Heeke stated that he would have to read the overall Ordinance and the way it is being administered. Mr. Winterfield commented if he wanted to have a fashion shoot, he would have to come in and get a Special Event Permit, and now with the exclusion of that activity from this procedure, what would be the procedure? Mr. Randolph responded that in the event it is determined that someone is proposing a lawful use of a right-of-way and not impeding the normal use of that right-of-way, they will not be precluded from conducting that activity. Mr. Winterfield noted any use of the right-of-way requires submission of an application and if it is determined it is found the provisions of the new Ordinance are not applicable, then permission would be granted without the application of these provisions. He thought there could easily be several categories of an event included in the Ordinance.

On roll call, the motion carried unanimously.

B. Other

1. Consideration of PEP Reef Project at Mid-Town

PEP Reef Project

Mr. Heeke commented on the fact that Mr. Kirby Green of the Department of Natural Resources has flown from Tallahassee for this meeting and is under a time restraint with flight scheduling.

Attorney Lickle distributed a list to the Mayor and Council of the performance expectations of the PEP Reef which compares with the DNR Test Plan and introduced Harvey Sasso, Engineer.

Mr. Harvey Sasso, Coastal Engineer, addressed the Council noting his part in this is to provide a coastal engineering analysis of the most recent data which has been provided by American Coastal and summarize the performance of the Reef over the past three and one half months. He focused on the three elements of the performance of the reef:

(1) The question of settlement of the modules.
(2) The question of volumetric changes which have occurred behind the reef and along the adjacent shorelines.
(3) The shoreline changes behind the structure.

Mr. Sasso addressed the question of settlement, noting there continues to be an overall tendency of the individual units to be moving towards an equilibrium. On October 11, 1992 there was data taken and again on December 1, 1992, which is about a fifty day spread since the last data was taken by the surveyors on top of the reef units.

He advised there has been a maximum settlement within the southern quarter of .2 feet, which represents 2.4' of settlement in the last fifty days of the southern quarter.

He noted in the center portion, the center half of the Reef structure has essentially had no measurable settlement since October 11, 1992.

He reported on the northern quarter of the Reef which has experienced additional settlement of .5' which translates to six inches of settlement. He indicated the average total settlement of the northerly quarter is three feet; the average total settlement of the center half is 2.3'; and the average total settlement of the southerly quarter is 3.0'.

Mr. Sasso addressed the volumetric changes, stating the average accretion behind the 57 units on the north end, there has been approximately 20.9 cubic yards of accretion per foot of structure. He viewed this as to having achieved, since the pre-installation survey, a total of approximately fourteen thousand cubic yards of accretion immediately behind the structure and also there is some accretion further to the south, transitioning from 18 to 24 cubic yards per foot, transitioning to 11, 5 and 8 cubic yards per foot to the south. He advised to the north of the installation, they are seeing there is stability and as they proceed further north to the north end of the project, the data shows there is somewhere in the order of 21 cubic yards per foot of erosion in this region.

He cautioned that the data is limited, but indications show there is accretion behind the structure and to the south and some stability and erosion to the north.

Mr. Sasso referred to the shore line changes, noting the exhibit shows the three profile lines which were taken across the structure, with the profile going across the beach, through the center of the structure and then off shore and this is the southerly portion of the structure. He noted there is accretion behind the structure, with the greatest accretion being behind the center of the structure and less accretion at the south and north ends.

PEP Reef Project

Mr. Sasso compared the pre-installation shore line location and it showed at the north end there has been approximately forty feet of seaward shore line movement or sixty feet of accretion of the shore line. He noted at the south end of the structure, there has been approximately sixty or seventy feet off shore of accretion. He believed there was a deepening landward of the structure in every case and the present data shows that the deepening has filled in, which is consistent with their anticipation of what would happen as during the storms, the waves break over the top of the structure, scour it out and there is dishpan scouring on either side, but after the storm, there is recovery and a movement of the berm that has built up and that migrates seaward and fills in the scour.

Mr. Sasso commented on some of the interesting things happening, and that is the structure is contributing to some accretion of the shore line, however, there are a lot more things which could be learned form this if they had the opportunity to collect more data. He summarized that the settlement does seem to be tending towards an equilibrium and there seems to be approximately 20.9 cubic yards of accretion behind the structure or shore line seaward migration.

Mrs. Douthit asked about the sixty foot increase in shoreline and whether this was a high tide measure? Mr. Sasso stated that was the zero mean sea level measure, but it would be comparable to the mean high water measure as well. Mrs. Douthit believed it was considerably more at low tide to which Mr. Sasso agreed, noting that what the comparison is as to the mean sea level location before the installation to the mean sea level location after the installation as of Dec. 1st.

Mr. Weinberg asked if there were any comparable values for areas of the Town where there is no artificial reef? Mr. Sasso responded the data was also obtained at a total of fifteen profile lines extending from the north end of the project, or approximately 3000' north to approximately 800' south of the project. He stated north of the AT&T cables, there was erosion in the order of 21 cubic yards per foot and a comparable shore line erosion in the order of twenty to forty feet.

Mayor Marix asked where there was erosion there was no reef to which Mr. Sasso responded affirmatively, noting this was within the originally designated 4000' of project area.

Mrs. Wiener wanted to know if there was any controlled beach for this entire project to which they could compare such as an area that would be similar but has no artificial reef. Mr. Sasso stated there has not been a controlled area designated to the north or to the south. Mrs. Wiener asked if in this type of work, would they normally have a controlled area? Mr. Sasso responded he would like to finish his last answer as although they have not designated a controlled area, they have taken fifteen cross-sections along the entire beach and behind the structure itself, and only three of those cross sections were taken across the structure. He noted to the north of the AT&T area, there are a couple of cross sections which were obtained and that data could give them an indication and he has been cautious in this presentation to say that this is based on fifteen profile lines over a 5000' area. He thought that data was enough to give them information for a qualitative feel of what is happening and giving them an indication of whether or not the structure is doing anything. He stated he was confident based on the present data accumulated and the quasi-control sections that there is a clear indication that behind the structure and adjacent to the structure what is happening there is due to the structure and he would be able to conclude that quantitatively as opposed to qualitatively as to exactly what is happened would be stretching the science too far.

He stated he was confident that based on the data he now has, the structure is having an influence on the beach and is clearly retaining the quantities of sand which is being seen behind the structure, however, more data should be secured.

Mr. Weinberg asked about the time scheduling of the data collected and if it included the several weeks of heavy seas we have recently experienced to which Mr. Sasso responded this data presented today was based on data collected on Dec. 1st, which was compared to the pre-installation data so it shows the combined effect of the July data accumulated earlier this year and included what has happened from July to December 1st, which included the five to ten day period of substantial north east activity. He stated on October 11, the data showed nine to twelve cubic yards of build-up behind the structure and the December 1st data showed there was now 20 to 21 cubic yards per feet, however, that figure will fluctuate as this structure would not perform like an emergent breakwater, as it will progress and build up and when the storms come, it will erode, but then it will come back and there is an average width of beach which will be maintained.

Mr. Heeke stated there is a letter from the DNR dated December 2nd, and for the benefit of the public, he called for a summary of the recommendations stated in that letter from Mr. Green.

Mr. Green addressed the Council indicating the letter was in response to a series of submittals which were presented to the Department by American Coastal Engineering. He stated in those submittals a series of alternatives were discussed and these were reviewed both by phone and in person with American Coastal and the letter is in response to those letters and the meetings.

Mr. Green summarized the letter indicates there are three possible alternatives to approach the settlement issue:

1. Put in the rock mound foundation, which is the most certain foundation fix as far as settlement is concerned but is the most expensive solution and it was his understanding the Town was not interested in this particular solution.

2. Put the units in as they were originally designed and account for the amount of settlement which has occurred, and possibly will continue to occur, until some equilibrium is reached. He stated it would be necessary to redesign the test plan, with the settlement in mind, and begin the earnest monitoring of the project, so a good look can be taken as to how this reef is actually performing.

3. The third alternative would be to do some insitu testing of a proposed foundation modification which involves the placement of a mat fabric under the structure and some realignment of the structure using an insert to bring the units into alignment.

Mr. Green advised that if they want to do the insitu testing that would be fine but they should ensure that it is measured against the full range of wave climate that it may encounter. He stated they will have to do some physical modeling in conjunction with the insitu testing, to ensure they measure the full range of wave climate and they could get results from that and allow the structure to be installed next spring.

PEP Reef Project

He stated the end of this letter asked the Town to tell the DNR what they want to do and they will move forward.

Mr. Heeke stated he thought what they wanted to do is get the reef into the water, lined up, at the least cost to the Town as possible, to which Mr. Lickle agreed stating that is what American Coastal also wants to do.

Mr. Lickle stated they have heard from Mr. Sasso who reported on the reef which has had a kind of test period over the last four months with the data being developed indicating something very positive is happening.

Mr. Lickle recapped what has happened, noting American Coastal installed the Reef as quickly as possible, with the aid of Murphy Construction when Hurricane Andrew hit and after that, when they went back to continue the installation, it was American Coastal who discovered the reef segments were beginning to settle at that point. He stated they came to the Council with that concern and stopped the project and in conjunction with that approached DNR and the Council to initiate some kind of a fix. He advised as a result of the subsequent meetings with the Council, the project continued to be stopped and American Coastal went to DNR with proposed solutions to the settling issue.

He stated all of this happened in September and here four months later, American Coastal has been diligently pursuing the alternatives and are delighted to hear that DNR has agreed the reef can go in as is and during that period of time, enough survey data has been gathered to indicate that perhaps the settlement issue is not as important as once thought.

Mr. Lickle referred to the performance statistics and took a comparison of what the DNR expectations are, and compared it with the actual performance over the past few months, they will note that the Wave Height Reduction - under the test plan it was expected to have a ten to twenty per cent wave reduction, and although there are no wave meters, they have determined that at the sea wall, there is a wave reduction of approximately 40%, based on the build-up of the beach and the inability of the waves to continue to hit the seawall.

Mr. Lickle referred to Sediment Accumulation - the test plan stated it would be 20,000 cubic yard per year over the 4000' reef section - and at this point, there is 14,000 cubic yards which have been accreted with only 672' of the reef in place.

Mr. Lickle noted the Test Plan predicted five cubic yards per foot would be produced and right now, it is producing 29 cubic yards per feet of reef.

Mr. Lickle advised the shore line change expected after a year of testing was ten feet and it is already sixty feet.

Mr. Lickle commented on the Test plan's source of accumulation was expected to be 70 to 90 percent offshore and at this point, nobody knows what it is because the Test Plan is in place.

Mr. Lickle referred to the scour with the expectations one to two feet in the area of the reef, and there is about three feet of scour during the storm periods, and then it fills up after the storm period is over, so there is zero scour as the sand continues to rebuild next to the reef.

Mr. Lickle indicated on the settling of the units - the area in which the reef performance has not lived up to the expectations is the settlement issue. He recalled Mr. Sasso's statement that in the center section the reef began to settle in the middle and has now reached its equilibrium. He stated in the last fifty days since the last survey out of which there has been 30 days of northeastern weather with the waves over three feet and the center section has not settled any further, but the end sections have basically come down to meet the center sections and there is much data to indicate that perhaps the reef will soon reach its equilibrium.

Mr. Lickle advised there has been no alignment of the units during this period of time as the increase in the rip currents data is not available because the Test Plan is not in place.

He advised they expect an enhancement on the biological impact and there are fish and everything else accumulated around the Reef.

He felt if they needed to modify the Test Plan it would be in the area of the settlement issue and because of the results which appear to be happening, it may not be significant as once was thought, so they are prepared to move forward to install the Reef as quickly as possible. He noted Mr. Murphy of Murphy Construction is here today and they are ready to go if the nod of approval is granted by Town Council so they can get the Test Plan in place and they can all find out what is actually happening. He believed it was clear that the Town is receiving a benefit at this point in time and it is prudent to do the monitoring and the testing.

Mr. Heeke called for discussion by the Council. Mrs. Douthit believed they should move ahead as the units are already installed and they should be lined up and the Test Plan instituted, and she would recommend they get the units lined up as soon as possible.

Mayor Marix agreed the sooner, the better and the quicker it should be done because it is phenomenal what is happening and if this can be done with six hundred and some feet, imagine what will be done with 4000'.

Mr. Heeke believed this was the least cost also as they are not getting involved in any additional expenditure of funds to carry out the installation. He thought that if in the next several years of testing there will have to be an adjustment made to the height because of the

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settling, there are other options which can be considered later. He too would like to see this lined up as soon as possible.

PEP Reef Projett

Mr. Weinberg asked if this was the most economical way at this point in time by putting it all in rather than doing the testing? Mr. Lickle responded American Coastal wanted to do infield testing, but DNR has requested there not just be infield testing, but also model testing, which is expensive, and DNR has not offered to pick up that expense nor does American Coastal wish to pick up this expense which will be in the area of $15,000.

Mrs. Douthit did not see what the point was in having the model test when they have the modules sitting out there ready to go. Mr. Lickle advised tank testing is an indication or prediction of what might happen in the field and he has discussed this with some of the engineers and has found that in order to create an environment duplicating what may happen out there, they must recreate grain sizes, the reef, the mat, all of which would not be happening in the field. He stated there are certain predictions which will occur but there will be arguments about those predictions when the tank test is completed.

Mrs. Douthit believed the units needed to be aligned and she would like to see them aligned and then they will know as they will have a positive answer as opposed to a theoretical answer.

Mr. Green asked to be heard on the issue of where the DNR is standing on this matter. He advised the alternatives given to DNR which American Coastal was willing to move forward with were the mat foundation correction and the estimates of settlement that went along with that recommendation were that the units would settle, even with the foundation up to 2.5'. He commented if they were talking about equilibrium, DNR felt there was little reason to put the Town through the cost of doing insitu testing and physical model testing that would show there was some settlement and maybe that would not be as much as the current units, but still there was settlement going on. He felt they could go ahead and put the existing units in with the existing configuration and move forward with the testing and perhaps the Test Plan needed to be changed somewhat and they would look at the way sand is being built up and see if there is some benefit with the sand build-up versus the height reduction with the settlement and see if they would off-set each other. He felt that would be a legitimate test which they could move forward with at the least cost and the DNR was more than willing to do that and get into the Test Plan and start measuring the controlled beach outside of the influence of these units and behind it and on the seaward side, so they could tell what is happening and how it was happening.

Mr. Green volunteered the information that if it was him putting the reef in, he would move forward with the original design foundation and start monitoring it. Mr. Heeke felt this was a common sense logical response to a practical problem.

Mayor Marix asked Mr. Green if he had any idea when they would be in a position to move ahead to which Mr. Green responded the seas have to be relatively calm and perhaps they wish to work on those few days during the winter when the seas are calm after a front moves through or they can wait until early Spring.

Mrs. Douthit moved to proceed to line up the unaligned units to get the underwater PEP Reef lined up in order and functioning at the first weather-permitting date so that the monitoring system can then proceed. Seconded by Mr. Ilyinsky.

Mr. Philip Engelhardt addressed the Mayor and Council, indicating he believes this was the first sign of something positive happening. He has listened to the statistics of the measures that were taken and asked if he heard correctly when they stated there was less beach build-up in the center half and greater build-up at the northern and southern quarters? Mrs. Douthit stated he had it backwards. Mr. Engelhardt asked if he was correct in assuming that when the two ends settle, they would be more capable of generating greater build-up to which Mr. Heeke responded, they all hope so.

On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion. Mrs. Wiener commented on her vote stating "because I fundamentally do not believe governmental funds should be spent at a time like this especially on experimental products, that is something that the private sector should do, even though I am happy to hear what I am hearing, I must continue to vote no."

Mr. Weinberg commented on his vote by stating: "I am surprised at the performance of the Reef at this time and I hope it continues. I have been in opposition on this up until now and despite the fact that I continue to feel in opposition, I am going to vote yes, because I know you are going to win by three votes."

Mr. Heeke asked Mr. Lickle what his prognostication was for getting the Reef lined up? Mr. Lickle responded it is subject to the weather and visibility as if they are good, they can immediately proceed, and if the weather has been as it has for the past week with calm seas, there is no hindrance to installation. He stated if there is a northeaster, they can't install and there is a period of time after that until the visibility becomes good before they could start up again.

Mr. Heeke commented the plan at the north end is to create the 216' gap for the AT&T cables to which Mr. Lickle agreed. He stated the proposal is to move the units which would have been installed in the 216' gap, down to the 332' section on the south which is available before private property is reached, which is still Town public area, so there is room there to install the units.

Mr. Heeke asked if the end pieces at the gap will be anchored to which Mr. Lickle agreed. Mr. Weinberg asked if it would be possible to get comparative data on the beaches in other parts of Town? Mr. Lickle responded that Mr. Sasso has indicated there is data available on the north and south ends where there is no reef, and he believed that everyone agreed, Mr. Green and Mr. Sasso that they wished to expand that.

Mr. Weinberg indicated in the south end of the Town where he lives there has been accretion from time to time with no reef in front of the areas that have the accretion and he wondered if it is known at the Mid-Town beach if the accretion is due to the waves being reduced or hitting at the right time, or the littoral drift or whatever. Mr. Lickle responded that is what the Test Plan will be showing. He stated they have talked about survey lines where they stand on the seawall and shoot the lines out to the sea to determine the height of the reef and the build-up and right now there are 63 survey lines and what they are showing is there is a bulge in the beach at the one area and it is within the shadow of the reef area and the Test Plan is designed to analyze that.

PEP Reef Project

Mr. Weinberg knew that sand does move in mysterious ways as he lives in an area where the public beach meets the private beach and the public beach has a certain amount of sand but in front of his apartment building, there is more sand and he wondered if there were just being lucky or whether there was something scientific about that.

Mrs. Douthit recalled at the last meeting, Mr. Green did not seem adverse about the installation of the units on the south and in the correspondence from DNR since that meeting, they are even less enthusiastic over this possibility and asked what his stand was on that at this point in time? Mr. Green responded his Department has no problem with those units going to the south, but it will require a modification of the Test Plan and in this area the number of survey lines will have to be increased, which may slightly increase the cost of monitoring. He wished the Council to know that the criteria for the survey will have to be changed to take into account the additional units on the south.

Mr. Green reported that when the request is received for the modification, they will amend the permit to allow for the placement to the south.

Mr. Heeke thanked Mr. Green for putting up with his sharp comments over the phone and he apologized if he got a little sharp at times stating he appreciated the constraints under which Mr. Green was working and all of the efforts of Mr. Green and his staff are greatly appreciated by the Town.

Mayor Marix asked Mr. Green if he would not be proud a few years from now when everyone believes he was farsighted to work with something of this kind. Mr. Green's response was "We'll see."

Mr. Doney stated he did not want from a contract administration perspective to get hung up with DNR and asked Mr. Green since there will be a modification of the Test Plan which will evidently mean increased costs and wondered who will pay for it. Mr. Green responded the costs of DNR are fixed as an appropriation of a lump sum has been made for this project and they don't have any leeway to add any funding to that lump sum figure. He stated if there are increased costs associated with the monitoring plan changes, those costs will have to be born either by the Town or American Coastal as the DNR's budget is fixed for this project.

Mr. Lickle reminded a Notice to Proceed will be needed from DNR to continue with the installation and Mr. Green has addressed that privately with him and he would like him to speak to the Council about that. Mr. Green advised the work has been stopped so they will have to start it again officially and that means there will be a letter generated from DNR which does that and they will probably go ahead tomorrow with the issuance of the letter, which will be conditioned on DNR getting back with the consultant and working out the modifications to the Test Plan and if that cannot be worked out within a reasonable time or if they feel there is some foot-dragging on that, the DNR will again stop the project. Mr. Heeke asked if he meant they could proceed with the project, under those conditions to which Mr. Green agreed.

Mrs. Douthit asked if Mr. Green was putting a time constraint on this because of weather? Mr. Heeke did not believe that was what he was saying but what Mr. Green was saying was that on the modification of the Plan, he doesn't want any dillydallying and that coming back to his folks and he is letting us proceed with the installation but he can stop the work again if he feels there is too much delay in the plan modification coming through, to which Mr. Green agreed.

Mrs. Douthit stated her question was that because they are dealing with the ocean and the weather, they are not putting a time constraint on this to which Mr. Green responded negatively that he was not.

Mayor Marix asked Mr. Lickle if he had any problem with the fact that Mr. Green wants to get this done in a hurry to which Mr. Lickle responded he did not, as American Coastal has continually responded in record time. Mayor Marix asked if they would be working with DNR on the Town's behalf to which Mr. Lickle responded affirmatively. Mayor Marix stated the question is "who pays?"

Mr. Heeke asked if anyone had any further questions for Mr. Green as he must catch a plane. Mr. Doney asked if anything further was needed in writing as far as the materials submitted on the AT&T proposed solution by American Coastal to DNR? Mr. Green recalled there were a number of proposals given to DNR and whether there would be small gaps or a large one and he has not had any official notification that there would be a large gap. He stated as soon as that comes to him, he will modify the permit.

Mr. Heeke advised the consultant will be getting that information to DNR, as he understood one large gap is what Council is anticipating will be occurring.

Mrs. Douthit recalled a letter was to be written to AT&T about the armoring. Mr. Doney stated he would need Town Council authorization to sign that letter. Mayor Marix asked if they have not yet been notified to which Mr. Doney responded he was waiting for the decision of today's meeting before he sent the letter. Mr. Heeke believed the decision was now known and now it is a question of Mr. Randolph and the staff to work this out and implement the proper letter to AT&T.

Mr. Doney asked Mr. Randolph if the contract needed to be modified based upon the Council's actions of today?. Mr. Heeke responded he would anticipate this and there probably needs to be a few refinements and staff and Mr. Randolph should work that out. Mr. Heeke asked Mr. Randolph if he needed anything further from the Council on the letter that will be written to AT&T to which Mr. Randolph responded he did not believe so, unless staff had something they wished to have addressed.

Mr. Randolph stated the other issue is a clarification on a motion made at the last meeting as the motion that was made stated that if the additional units did not go in "for any reason" that the Town would not be responsible for paying for those units. He advised he has discussed this with Mr. Lickle who interprets this as if they were prevented from installing the units by a third party action, the Town would not have to pay for those units. He commented that because there is a dispute as to what staff thought was a clear meaning of the motion and what American Coastal thought was the intent of the Council, this needs to be clarified as to what was intended.

Mr. Heeke stated this may now be semi-moot to which Mrs. Douthit agreed. Mr. Heeke asked how many units were they talking about to which Mr. Lickle responded 39 units that would have been placed in the gap where the AT&T cables are located and which will be placed on the south end.

PEP Reef Project

Mr. Heeke recalled when he voted on the motion, he did want it as broad as possible as he did not want to get into an arbitration as to not being able to use those units. He didn't have a problem with the caveat Mr. Lickle is suggesting that if it is "third-party induced" that the Town would not have to pay for it. He clarified his objection was that he did not want these units to benefit private property and those 39 units moved to the south will not benefit private property and he has no problem with it.

Mrs. Douthit recalled her feeling was a third party action would be unheard of as the units could not be placed anywhere without the DNR's approval. Mayor Marix commented she has a copy of the verbatim transcript of that whole discussion and she had no doubt that the "any" was not referring to something that could just come out as there was discussion on such things that the DNR wouldn't allow it, that it would not be private property, etc., so to clarify and ensure this doesn't come back to them again one day, it would be a good idea for someone to explain what their understanding was of it so this is on the record that it is not "any" as that could be anything, such as they wanted a pink one, and if one reads the transcript, there is no doubt whatsoever that Mr. Heeke didn't mean "any" to be "any" as interpreted.

Mr. Lickle recalled prior to that motion, there was discussion on this and he read from the minutes of the October 26, 1992 which stated one of the reasons could be for environmental reasons. He stated Mayor Marix made the comment that she did not want to see the word "any" but would rather they stated the technical reasons and that's when Mr. Heeke pointed out if the Town was unable to use these modules, the Town would get its' money back. Mr. Lickle read his statement from the minutes "Mr. Lickle stated this would be for reasons of installation problems or other things such as that, but not because of the decision of Council to simply not use them."

Mr. Lickle stated American Coastal has no problem with the refund of money if the units are not able to be installed because of some other reason other than Council wants to cut back on the size of the contract.

Mr. Heeke had no problem with that as assurances have been received that they do not have to cut back on the size of the project as they are relocating the 39 units.

Mr. Randolph was asked by Mr. Heeke as to what the Council needed to do on this matter to which Mr. Randolph responded a motion to clarify the intent that the only reason the units would not be paid for by the Town would be if the Town were prevented from placing them by a third party but it wouldn't be upon the Council's unilateral decision to not place the units and Mrs. Douthit so moved. Seconded by Mr. Ilyinsky.

Mr. Doney believed this authorization would include the incorporation of an addendum to the contract to embody everything that was directed today by the Council to which Mr. Heeke agreed.

On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion.

Water Resources Committee

Transcript of remarks

C. WATER RESOURCES COMMITTEE:

THE FOLLOWING IS A TRANSCRIPT OF REMARKS MADE AT THE TOWN COUNCIL MEETING OF DECEMBER 8, 1992 WITH REGARDS TO APPOINTMENT OF A WATER RESOURCES COMMITTEE.

PRESIDENT BERNARD A HEEKE: Madam Mayor, we are at the point, we can back up now for comments on water - which I wished you wanted to make under Old Business.

MAYOR YVELYNE MARIX: Okay. Mr. Heeke, I did want to bring up a couple of thoughts about this and I am very, very serious about it. We have now spent, as we all know, a great deal of money on many matters connected with water and we are very very close, I am glad to say - to an agreement on our future water supply - and that is the way it is. I am deeply concerned with the long run problem that we are going to have, as will West Palm and the whole area, about genuine lack of water. Water we don't have. When I heard figures the other day which I know were heard before, that every year we get another Town the size of the City of Lake Worth in our County just by sheer additional population - it's absolutely certain whether I am still alive or not - in the relatively near run, we are all going to be very, very short of water. And I realize a lot runs out through the canals. Maybe somebody will make a bubble - but the bubble has to come from somewhere - it's not new - there are a great many items I would like to have reviewed and I have spoken to a lot of people who feel the way I do. I believe it would be possible, under certain constraints, I know - sunshine and things like that - that we should have a Ad Hoc Committee to do the leg work - I don't mean donkey work - but do some leg work on some of these other possibilities. It would be local residents. They would not be paid. Obviously, they would have to have the back-up of our Town in any way possible, to look into and discuss with other entities matters like the amount of water that does go out into the ocean constantly. Whether larger retaining basins or systems or additional desal units, which are now being changed a great deal. There are quite a lot of turnkey operations. There are units which you don't need a great big building for - there's a great many ifs and buts that I think if we could get a good Water Committee of four or five people working together - that they could sort out and get all the basic information on, which would they would then turn over - excuse me - to qualified water engineers, be it Montgomery or somebody else, whoever. But the main thing is, I think there's - out of all of this - there's so many different concepts - long-term concepts - which we should be working with West Palm on - with our Committee - or whatever - maybe they'd like to have their own - on trying to find long-term possibilities that we could then pay people to look at. It takes a lot of time - a lot of effort. If we don't, we are going to end up either by not having any - or spending a great deal of money on one source or another. So I would like, really, I have spoken to a couple of people within our administration on this subject. I've certainly spoken to several residents who feel just like we used to have the - which I wish we still did - the Long Range Financial Planning Committee - to have something working on our future with West Palm Beach. Not our saving our money. Not did my sprinkler go on last night. But serious creation of water. That is my comment about the water.

PRESIDENT HEEKE: Madam Mayor, you opened up a subject that's near and dear to a lot of our hearts and I'd like to bring the Council up to date on my activities with the City of West Palm Beach and with the Water Management District. I've met with both organizations since our last Council meeting - trying to implement and outline what kind of efforts the Town of Palm Beach could undertake to effect some water conservation, not necessarily restricting ourselves unnecessarily, but being careful about how we use water. And South Florida Water Management District is very, Water Resources Committee (transcript)

very serious about the amounts of money that will be furnished to other that. So we need to be mindful that this is the other shoe that is about to drop - or will be dropping. I think that we need to have an ongoing coordinator - whether it's an existing - and I think it should be an existing staff person, of course, not someone new - to shepherd this thing with objectives of reduction and usage with continuing education along the lines that the Water Management District and the City have suggested. I want to say to you the City of West Palm Beach is really very, very helpful to us on this educational process. They have enabled us to put the stuffers in the water bills that you receive - we are actually having a special mailing going out shortly - again notifying our customers and in this particular mailing, we are pointing out we are going to make appointments with the people who have the greatest usage of water, to see if there are any recommendations that we can make to assist them in reduction, including audits - and that would be with landscape architects. The City of West Palm Beach is going to pay for those landscape architects - to render this assistance to our citizens. They are going to start with first, the folks who do have the larger usage and see if there is any effort there - and then gradually move down the scale.

MAYOR MARIX: Mr. Heeke, I agree entirely. That is a must be - and should be the first step but the new - the new sources of water are going to be much longer to get hold of - to sort out and to think about and when I call a "new source" that is like what goes into the ocean or what we don't get out of the sky - so I think it should be well coordinated between what we do now to save - and we'll get to an optimum and then what can we do to get more - which is much longer down the road. It has to be started - really basically at the same time.

COUNCILWOMAN NANCY S. DOUTHIT: I do think that South Florida Water Management is helping with the education and asking us all to be exceedingly careful - but it is they that let the C-51 Canal disgorge into Lake Worth. I think that we need to make every preparation in the world - but I think it is incumbent upon ourselves to ask the South Florida Water Management District to straighten out its' own act. They are the major wasters of....

MAYOR MARIX: But that's part of what I'm talking about..

COUNCILWOMAN DOUTHIT: ...the county and I don't have figures at the moment, but these figures are being gathered because it is rather appalling and they're the ones who are telling us to save and they're the major waste. And the C-51 Canal is only one of nine or thereabouts in the State that is just disgorging in a wasteful fashion.

PRESIDENT HEEKE: Well, I think we are all of a similar mind. I appreciate the Council's time on this subject.

MAYOR MARIX: Well, should I try and line up some people? Or rather would the Council be interested in trying to line up some interested parties?

COUNCILMAN PAUL R. ILYINSKY: We should give it to the Civic Association - that would keep them out of trouble.

MAYOR MARIX: Well, they might be an interested party themselves.

COUNCILMAN M. WILLIAN WEINBERG: Maybe they can't swim.

PRESIDENT HEEKE: Well, I think it's something that...

COUNCILWOMAN HERMINE WIENER: Actually, they've got a very active Committee. They've been going to the South Florida Water Management District and - you know, I would hate to just have one appointed who knows something about water - and has no background here in what's been going on. But I think this is a natural - certainly partially.....I don't think this requires action today - it's an initial thought....but some of the -- I know the Chairman there has done a lot of visiting to a lot of areas and he really knows his business. Has been following it for some period of time. That would maybe - but I think before we get into something like that I think we ought to - you know - consider it a little further - maybe even have a workshop on it. That's just my basic thought.

COUNCILMAN WEINBERG: We should have a Water Resource Committee.

MAYOR MARIX: Exactly. Just right.

PRESIDENT HEEKE: I think maybe even the Town Council might consider a separate Committee of the Council members to implement this - whether you put it under the Public Works or as a - I think - I feel it should be a separate Committee because we are getting into the monitoring of the results of our water effort and have some reporting requirement of staff to the Committee. I hate bureaucracy but it would still be the same individuals involved - being members of the Town Council. I ask if there's a consensus of Council that we have the Town Attorney prepare the - I guess it would be an Ordinance - Skip - setting up that as a separate committee?

ATTORNEY JOHN C. RANDOLPH: I don't think so. I think you can do it by Resolution.

PRESIDENT HEEKE: Alright. Would you mind preparing one and then let's....

ATTORNEY RANDOLPH: Actually, I think you could do it without that - if you decided to do it by motion establishing a Committee - I think you could.

PRESIDENT HEEKE: Well, why don't we do that. And then let that Committee being a part of this Council - work and come back to Council with recommendations and specifics and then we would just set out the overall purpose of the Committee - a Water Commission Committee.

MAYOR MARIX: Well, I would think that those same - whomever is on those Committees - it would be incumbent upon them - so it would be effective - to run their meetings more like Workshops so that they can have a great many - a great deal of input by other people. That is the idea. To draw the input from our highly intelligent people of this Town.

PRESIDENT HEEKE: May I have a motion?

Water Resources Committee (transcript)

COUNCILWOMAN WIENER: An Ad Hoc Committee? Because I think our committees are established in the Charter. They are established in the Charter, so it would have to be Ad Hoc. Can't change the Charter because we woke up in the morning and had an idea.

ATTORNEY RANDOLPH: It would be an Ad - you've had established certain committees - those committees operate pursuant to your Town Ordinances and your Charter - but that doesn't preclude you from setting up any kind of an Ad Hoc Committee from time to time if you wanted to look into a particular issue.

PRESIDENT HEEKE: Well, that's what I would suggest now and I think the Town Council could always expand its Committee functions of its members. I don't think we're limited by the Charter in doing that. I think we are certainly free to do so. Why don't we then have a motion that the Town Council establish a Water Resources Committee consisting of its members - two of its members - to study the problem and make recommendations to the Council?

COUNCILMAN ILYINSKY: We've got the right to do that?

PRESIDENT HEEKE: Oh, yes.

MAYOR MARIX: And they'd invite people to....

COUNCILMAN WEINBERG: So moved.

PRESIDENT HEEKE: I think I heard a motion from Mr. Weinberg. Is there a second? Is there a second?

COUNCILMAN ILYINSKY: Am I contributing to the bureaucracy here? I'll second.

COUNCILWOMAN WIENER: Is there a problem with Public Works taking under their wing?

PRESIDENT HEEKE: I think you need a direct reporting back to the....

GERRY MCCOY: Good afternoon, my name is Gerry McCoy. I just talked to Deedy Marix a couple of days ago on this same subject. I've been appointed by the new Commissioner, Warren Newell, of Palm Beach County on this same subject. This is a subject that is near and dear to his heart as it is mine. We need to stop wasting this water from dumping it out of the Glades into Lake Worth - polluting Lake Worth - and it will be done. We've get between five and six feet of rain water here annually and there is enough water if we manage it properly. We do - we are having this Committee - it's just in its infancy. We have two water managers on it and we have some of the environmentalists - it's not an easy thing. We need to save the water and put it in a reservoir, if you will. But the environmentalists say you can't do that - it's killing the deer - so it's got enough emphasis. It is a serious thing and it's going to come to fruition.

PRESIDENT HEEKE: Thank you. I would like to also mention to you that the South Florida Water Management District is looking towards Palm Beach to be a leader in coastal communities in this effort. Because if we are successful in our effort - we'll be - our Plan will be a model plan and that's one of the things that Dr. Adams and I have been talking about. Anyway I am going to call the motion. Mrs. Peters.

At which time the roll was called and all members of the Council voted affirmatively.

PRESIDENT HEEKE: I think that's probably one of the more important things we'll be doing in the future.

ATTORNEY RANDOLPH: This will be just a two member Committee - you're not......

PRESIDENT HEEKE: Yes sir. And they will formulate the overall plan and including an Ad Hoc or Citizen's Committee - some of the Bicentennial Committee or something like that. They'll come back with recommendations to the Council.

COUNCILMAN WEINBERG: They'll work with the Council.

MAYOR MARIX: Very much like the Bicentennial Committee.

PRESIDENT HEEKE: You all can lobby for the President to appoint you - if you want to.

XIII. NEW BUSINESS

New Business

A. Ordinances - First Reading

1. Ordinance No. 14-92 - Opting Out of Palm Beach County Physically Disabled Parking Space Ordinance - Mr. Randolph read Ordinance No. 14-92 by title: Ord. 14-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING THAT THE TOWN OF PALM BEACH SHALL OPT OUT OF THE PALM BEACH COUNTY PHYSICALLY DISABLED PARKING SPACE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.

Mr. Heeke explained the Town has its own system of fines and by opting out of this Ordinance proposed by the County, the Town will retain the revenue, rather than paying the County thirty per cent, and that is the reason for this Ordinance.

Mr. Ilyinsky moved Ordinance No. 14-92 be adopted. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

2. Ordinance No. 15-92 - Amendments to Charitable Solicitation Ordinance. Mr. Randolph read Ordinance No. 15-92 by title: Ord. 15-92

Ord. 15-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER X, ARTICLE V OF THE TOWN CODE OF ORDINANCES RELATING TO CHARITABLE SOLICITATIONS, SO AS TO INCLUDE A REQUIREMENT THEREIN TO PROVIDE AN APPROVED REGISTRATION STATEMENT REQUIRED BY THE STATE OF FLORIDA, UNLESS EXEMPT UNDER STATE LAW FROM FILING SUCH A REGISTRATION STATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Wiener to approve Ordinance No. 15-92. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Other

Letters from Palm Beach Civic Assoc. re: Town Budget Process (transcript)

1. Consideration of Letters Dated November 9 and November 25, 1992 from Palm Beach Civic Association Regarding Town's Budget Process -

The following is a transcript of this portion of the meeting:

PRESIDENT BERNARD A. HEEKE: Mr. Rogers, do you want to address this? Or, Mr. Pryor? Okay. Yes Sir.

LOUIS C. PRYOR: Madam Mayor, Mr. President and members of the Council. My name is Louis Pryor and I am the Executive Vice-President of the Palm Beach Civic Association. I could repeat what we had said to each of you and what we said in other public forums about certain comparative figures that - between this year and other years in the past concerning the budget, which are arguments perhaps in favor of our proposal, but today, I would like to take a more general approach and say that our overall reasoning for such a proposal is basically this:

1. Demands on our government agencies in our country, Federal, State and Local, are out-stripping the traditional methods of dealing with those demands.

2. There are some 80,000 government agencies in the United States, plus countless businesses and to a greater or lesser extent, all of them are in a ferment of change with many trying new methods of structuring, managing, and financing the use of physical and human resources.

3. There are a handful of recognized authorities consulting in the areas of change. And we have to ask ourselves would the current knowledge of such consultants be useful to our Town.

We believe they would and that is why we respectfully suggest that you agree that one of these consultants be engaged to take a broad look at Town budget procedures, and management structure and recommend short and long term improvement if they see any.

We appreciate the fact that each of you and today is not at all untypical - devotes a major part of your time to Town affairs, likewise we think that the Town is fortunate to have a Town administration and staff who provide excellent services, but we think even here, that a look by outside professionals is the better part of valor. This would provide assurances to the citizens and taxpayers that everything possible is being done to keep abreast of modern management methods and to provide those same excellent services in the most cost effective manner.

Our hope, therefore, is that you on the Council will set up a mechanism to see that we get the benefit of such ideas for our Town. We do hope that our proposal will be considered favorably or that an alternative proposal with the same objectives be adopted in its place. One thing, though, with work on next year's budget starting in four months time, I believe I'm correct, Mr. Doney, - time is of the essence so that we can take advantage of any recommendations, consider them - you consider them - and see whether they need to be incorporated in the approach to next year's budget.

Taking up the challenge of Mr. Ilyinsky, as in the case of water, the Civic Association stands ready to help - if you wish us to do so. Thank you.

MR. HEEKE: Mr. Pryor, may I ask you - again - for the benefit of the public who may not have followed the details of your letters, to briefly outline your proposals?

MR. PRYOR: Certainly. The Civic Association believes that the budget process is the key to good management over the long-term. Budget processes that look at one year versus the other year alone, as at least one Councilman had suggested, Councilwoman Wiener, is not the only way to look at things. One should - the longer term one can look at things - the better off one is and the better off one is prepared to anticipating change and not getting people by surprise.

The Civic Association, as it did on a more targeted basis in 1988 and 1989, I believe, decided that similar to those two occasions when it offered its' help to the Council for an outside consultant to work with the Police Chief and have the Police Chief and his staff come up with proposals for that Department; and to work with the Fire Chief and have the Fire Chief and his staff come up with a proposal that we should make the same broader offer to the Town Administration, so that by generating lots of thought that could be exchanged, first private with the manager and staff - and then exposed for public consideration by you all -- that we could find, over-time, more cost effective ways of continuing to deliver the same services. We did so, looking into the future, whether it's water - whether it's shore protection, I think that any citizen of this Town has to realize taxes may not necessarily go down but the demand for additional services in those two areas may go up - so if the taxpayer wants those addressed and does not want to see their taxes escalate further, then we have to see whether we can skin the same existing cat more effectively that we have in the past.

We therefore, said that we would be prepared to make a contribution to the Town equivalent to the cost of the consultant's services, and we emphasized - we thought we had in that letter, but obviously we hadn't so we wrote another letter to emphasize that any such consultant would not be working for the Civic Association - he or she would be working for the Town and for the benefit of the Town and of course, in any event, any recommendations that might come out of that would be proposed to you and you our elected officials have the right to accept some, to deny some or to

Letters from Palm Beach Civic Assoc. re: Town budget process (transcript)

deny them all or accept them all. And we said that we would be willing to make that contribution - in other words - take the risk if there was something, we believe, would pay back manyfold - and we would be willing to take the risk with the understanding that the savings effected during the first two years be used in part to repay essentially that contribution that the Civic Association had anted up front and that was our proposal and perhaps there are further questions which you would like me to answer to further explain this to the public.

MR. HEEKE: I'd like to make a comment, sir - one of which was in your opening statement - you commented that you know, we do have an excellent administration and staff and I agree with you. I think Bob Doney is just plain outstanding - he's confronted with dealings from bazaar personalities, those of sitting up here on the Council and balancing that - and I would say to you that - and to the public at large - Bob deals fairly with every member of Council. There is no politic playing or anything like that and that to me is the reason we have a very good administration. No-one is playing games with any member of Council or any clique or anything like that. When you put everything in perspective that's a very very valuable commodity. I agree with you when you say we have an excellent Town Administration and staff and Bob is most helpful in setting that tone.

The second thing was right at the tail end and that was the reimbursement effected by savings. Mr. Pryor, you sat in on several of our Finance & Taxation Committee meetings over the last five or six years and you've seen that each year some odd thing comes up that costs us additional monies. Historically, it has been adjustments to the cost of our medical insurance for our employees - that's the main thing that keeps going up over which we have no control, but we might not have savings. Or how would we measure the savings when we have extraordinary....

MR. PRYOR: Certainly - we might not have savings - that is why we are willing to take the risk - but I would suggest there are ways, as was in the case where we could measure specifically in the case of the Police Department and in the case of the Fire-Rescue Department - compare it to what would have happened to add services in both those cases in the first case, it was to increase the street patrolling by 20%. The second case was to come down from a weekly average of 56 hours - which is completely out of sync with the rest of the County - to 50 hours. They were specific proposals as to how much those items would cost. So I think we just have to be very specific that savings would only be those that could be pinpointed to the accepted recommendations of the Town's staff as a result of the having had the help of working with an outside consultant that could perhaps bring new life into how to run a current well-run business, but could possibly could be run more cost effectively and I would like to say the major part of the savings, we believe, would over time be in people. I would like to emphasize this that unlike corporations that have to meet a quarterly deadline of profits - and declaring profits and don't like to declare losses and having to pay a dividend, they sometimes in studies of this type, carry out very (inaudible) measures - which we would insist need not be the case at all in the case of our Town. We just mention the fact that even in this year of recession, just finished, I believe I am right in saying that we had about a ten per cent turnover in personnel. If over time, all of that turnover were not replaced - not all of it were replaced - only part of it were replaced - you would have substantial savings, in fact, we estimate that the cost of a consultant be fully paid back in one years of savings of approximately of one employee. It may not an answer - may be savings elsewhere, but I think more likely that 72% of our operating expenses are personnel related - it is more likely to be in personnel numbers than in things. Putting programs off - delaying programs - not going ahead with purchases that are needed are only temporary ways of reducing a budget - long term, they are counter productive. But I think if we can legitimately believe that we can do - if I can take the example of the Fire & Rescue - with 13 less people than were originally recommended - to go down from 56 to 50 - it's that type of saving which will be significant.

We believe there's still room. If we're wrong, we are willing to run the risk, but nobody should fear that we are aiming at reducing the rate of pay for any given position. Nobody need have any fear that the recommendation will be that we need to lay people off. Attrition will more than take care of any improvement in cost effectiveness, I am sure.

MR. HEEKE: Mr. Weinberg?

PRESIDENT PRO TEM M. WILLIAM WEINBERG: Mr. Pryor, I am going to limit my remarks to your kind offer for financial assistance. And only to financial assistance. I should like to thank the Civic Association for its' gracious offer, but as for myself, I would have to say "Thanks, but no thanks." In my opinion, the Council could in the future consider the necessity or possibility of a streamline process throughout the Town organization. The essential purpose of such reorganization would be to benefit the public; to reduce management and overhead costs; expedite decision-making; enhance responsiveness and hopefully, lower budget. But this is the responsibility, fiscal and otherwise, of the Town Council and not of any group willing to subsidize such a study. The meeting of community needs is the duty and business of the Town Council and that's what budgets and taxes are for. We can afford to pay for all our needs. We cannot afford to take subsidies or handouts. That's my own personal feeling. I speak for myself and not for other members of the Council.

MR. PRYOR: May I respond to that?

MR. HEEKE: Yes, sir.

MR. PRYOR: Thank you. I said we do hope - again, I said we do hope that our proposal will be considered favorably - or that of an alternative proposal with the same objectives be adopted in its place. I believe that affords us a second category and we would equally give whatever help which you might consider we could be useful on - if that help is not needed and we would respect that decision as well.

MR. WEINBERG: That's for us to consider, of course.

MR. HEEKE: Yes. Anyone else have a comment or want to ask a question?

MAYOR YVELYNE MARIX: Well, I have a comment. I realize that we are all, without doubt, the most intelligent, well organized people in the entire world - most of the time - however, I do think there's always a possibility for improvement, especially on budget matters, and I do also realize that although some of us waste a bit of time, generally speaking, the Administration is pretty busy. And I think it's very difficult for them to take the time that would be necessary or let's say, it would be at the detriment to some of the other work that they are doing. Now, the fact that you pay for it if it doesn't work - I think's a real deal. Can't lose that one. But I think seriously there are ways that we have to investigated. I went to an exceedingly interesting seminar with Mr. Doney a few years - a year ago - more or less - on this whole subject of reducing governmental expenses. And, I - there was an excellent, excellent things in there - which for reasons I probably wouldn't go into right now - they didn't want me to bring up - so I didn't. Those things are still there. To be studied. Or to be considered. To be used. Having run and I mean personally run - really run - businesses that are marginal difficult pecuniary and petty - I know what you -- the impossible you can do or you cannot do. And to, with all due respect to Mr. Weinberg who says we can find what it is - it takes a long time - you know, a pro is a pro - a toothache - you go to the dentist - you want really good advice on money matters, if you can find a specialist, use it. That's the way I feel. Especially if it's gonna be for free. Unless we win. The - we do not have in our governmental check-up here, that I know of, any highly trained financial thinker. We've got some excellent procedural things, we don't have a financial thinker. When our budget was five million dollars, when I was first on the Council that's what it was - and now we are dealing with twenty-eight - the tiniest increase on twenty-eight is a huge amount of money. A tiny increase on six or seven isn't. And I feel it's a superb offer and if we could think of a cheaper way to accomplish the same, I'd say great. But this wouldn't use our time in finding them - wouldn't use our money in paying them. As far as I am concerned, I'd love to see it. And I appreciate the offer.

Town Budget Process (transcript)

MRS. DOUTHIT: I agree with what the Mayor has said - and I'm at sixes and sevens - I see pros and cons with the Town's doing it - and the only thing I have - well two things - it will take colossal man hours of staff time if we proceed with this - however, it might be negligent if we didn't. The pro I can see for the Civic Association doing it - and maybe I'm totally off base, but my thinking is if the Town elected to do it, we would - wouldn't we have to go out for bids? And if we...

MR. HEEKE: Well, we would have to get a request for proposal, I believe...

MR. DONEY: It would be up to the Town Council.....

MRS. DOUTHIT: Yes, we would have to solicit proposals and this means we'd have to write the recipe and all of this sort of thing.

MR. DONEY: Well. That's important. Scope of work - quite important.

MR. PRYOR: No question about it.

MRS. DOUTHIT: My difficulty with this is we do not have the God knows - I know, I don't have the wizardry to put the recipe together. The other thing is by virtue of State, County and all of this - it becomes more bureaucratic when the Town does it, and therefore, it takes God knows how much time. Whereas, if the Civic Association did it, they could get with it and whoever this genius is - can come and look - what exists now - we've won superb awards for our record keeping. If we give this wizard time to look at existing record keeping and as things are done and I think time-wise, we would get a much better picture if we elect to pursue it and that is my "pro" in favor of having the Civic Association do it - it's simply time - and I'm totally with you, Mr. Weinberg, I think it ought to be the Town, but I see confusions as I have just stated there.

MR. HEEKE: Anyone else have any thoughts?

MR. WEINBERG: If the Town does it -it doesn't mean that the Town will do it - the Town can use the same great consultant that we can find to do the job - my argument, quote, unquote, is that the Town should be able to pay to satisfy the needs of the Town and not depend on nongovernmental organizations to subsidize or give a hand-out to the Town in order to take care of its fiscal and other responsibilities. For example, if we needed a MICU, we went out and we raised money - but if there is a need for a MICU, the Town should be able to buy a MICU to take care of the needs of the Town. If we need such a survey, to reorganize our organization, and we find ourselves incapable of doing so, we ought to be able to hire the same geniuses that the Civic Association will be able to hire to do the job. I want to pay for it. I don't want to be beholden to anybody - as decent people as they are.

MAYOR MARIX: Were we beholden to the people who gave us the MICU? I'm very grateful to them. I am really beholden. And I've never ridden in one yet. So. I think there's another thing along that side, Mr. Weinberg. To find the person, to go through their qualifications. To explain the picture. To explain what goes on with the County. To try and show why our taxes have gone up. Only two, I think, of the taxing authorities in the whole County have gone up and we're one of them. To go into that. To explain the type of people who live here and how many people don't have money and I'm sure what we first gets gonna imagine everyone's got lots. That is a tremendously time consuming job that they would be doing for us.

MR. WEINBERG: Maybe the Civic Association will do it for us and send us the bill.

MR. HEEKE: Mr. Weinberg, I kind of agree with what you are saying that this really ought to be the Town's project and I'm coming back at, how do we reimburse the Civic Association? I see nothing but difficulties in definition and things of that nature. I'd rather not have that as a concern, and whether that is a proper use of taxpayer dollars.

MAYOR MARIX: Well maybe you want us to just simply say we won't repay you.

MR. HEEKE: Well.

MAYOR MARIX: Just do a big favor for the...let, let the Civic Association try and pick up crumbs from people who are the project. Say, look we want to do this for the Town, its gonna help your taxes.

MR. WEINBERG: Louis, Louis, is smiling, but he's not giving.

MAYOR MARIX: No, no but if they did that and they said look, we're doing this for the Town, its going to help gonna help your taxes, I hope, and please we have got a special fund to repay this guy. That's technical. My concern is the fact, I believe, it's something - whether they do it or we do it - it needs to be done, and in spite of the arguing I've put out in the last two or three years, I have never won my points on what I think the budget should be.

MR. WEINBERG: That's not true. You've won....

MR. HEEKE: Yes, sir.

MR. PRYOR: I would like to clarify that in either alternative - the Civic Association would not "do it" - the Civic Association would run the risk of funding and not getting their money back. We think that's a very low risk in this case. The other thing I would like to say is that the Civic Association would want to bend over backwards in showing that in no way should this be a study made to study the concerns of some Civic Association members. It should be to study the concerns of the Council and of the Town Manager and his staff, and therefore, anything that would be perceived to be something that is being done as a favor to the Civic Association, we would be against that. Let me also say......

Town Budget Process (transcript)

MAYOR MARIX: I think you misunderstood what I said.

MR PRYOR: No. I know. I am adding that - it is an add-on. We certainly would not want it to be a study for us. Either way, it has to be a study for the Town.

MAYOR MARIX: Of course.

MR. PRYOR: And for the taxpayers. Furthermore...

MAYOR MARIX: But it still takes a lot of time to find someone and to tell them about the Town. I presume you'd be willing to do that?

MR. PRYOR: Either way - we'd be willing to help - whether we were underwriting the fee or not.

MR. HEEKE: Well, I would much rather see the Town - see the Town step forward and do it as its' own thing - with respect to the RFP, I think that's something where we could be open to recommendations and suggestions on the drafting of that, but that, as Nancy Douthit says is the recipe is terribly important as to what is the commission we're charging these folks with, and I really don't - I don't have any problem with the Town paying its' way on this. You have a list of several consultants that you would make available to us when it comes time to solicit requests for proposal, and these are folks we would want to have high quality people and some that aren't doing it - simply to say that they are consultants for the Town of Palm Beach. That, of course, is a little trap sitting out there to be sprung on us at all times.

MAYOR MARIX: Mr. Heeke, I completely agree and I don't know how much it will cost and I am sure we can spend it perfectly well. What I am worried about , here we are too close to our forest to see the trees, and many of the things we think - obviously, if we thought could save money on the taxes by being more efficient or more whatever, we would have done so. I think that everyone we've got in this Town is absolutely honest in that direction and the problem that ours going up what I think is not acceptable is because we can't see where the problems are. Now, if we go off and find our own advisor, which we haven't done so far because we've decided evidently we didn't need one - and it wasn't for the shortage of a few thousand dollars, so whatever the reason is we don't have one. We don't want to make our own recipe and say, "Hey guy, do it our way and then we'll pay you if you say yes it's right." This is the trap I am afraid of falling into. I don't know how you'd think you get round that trap, but I am sure we would likely fall into it.

MR. PRYOR: Can I say something? Oh, sorry.

MRS. HERMINE WIENER: May I? May I? I think it is very simple. I don't think there's a trap that you fall into. You have a problem or you believe you have a problem and you want to solve it. There's a list of people who do this. Considered experts and you say to them "this is my problem. We would like to hear your proposal as to how we go about it" And that's how you determine who gets the job. The one whose got the in depth. The one whose got the real idea - who shows you something new. We are here to learn. We are not here to teach an expert anything, if we decide we need one. He's here. Could teach us something. I think it's a very simple procedure. I feel strongly....

MAYOR MARIX: Then why don't we have one already.

MRS. WIENER: I don't know that.

MAYOR MARIX: We sure have needed one. Why didn't we get one?

MRS. WIENER: I don't know that.

MR. HEEKE: I don't know that either. I really don't know that either.

MR. WEINBERG: We are almost as smart as the people in the Civic Association.

MRS. WIENER: I'd like to address one thing...Yeah. I"d like to address that just for a moment. We talk about we are one of two agencies which had taxes increase last year. In the County. The fact of the matter is - if you look at the record through the years - they were spending when it was going out of style - there have been increases of ten per cent, twelve per cent, and crazy increases while we were holding so that some of them were increased by sixty to seventy per cent over a period of time and we were increased by maybe twelve or fourteen per cent over the same period of time. The fact of the matter is, we sometimes find ourselves in a situation, where we suddenly have to catch up from being really restrained, but that doesn't mean that we can't do better. It doesn't mean that we've had real big discussions over whether we ought to or ought not to do this, and I think it is something we ought to sit down and talk about very seriously and make a determination as to what possibilities there are, but I believe, along with Mr. Heeke, that this is a Town matter, so that in the end, if we do pick on - we do hire someone - and his report comes to us - they'll be no fingerpointing as to this is what this group wanted - this is what the other one wanted - it's got to come from here. And that's my point of view.

MR. WEINBERG: Amen.

MR. PRYOR: Mr. President?

MR. HEEKE: Yes sir.

Town Budget Process (transcript)

MR. PRYOR: May I support the remarks and at the same time, Madam Mayor, if I may - not to take issue but I'd rather change one word you used - there are problems - the problems were not big big or as evident in the process as they were this year for the very reasons that Councilwoman Wiener has stated. In the past, the main reason our taxes went up has been because of all the other taxing agencies - not ourselves. This year was different. I think rather than saying there's a problem, we would rather say there's an opportunity for improvement through the decade of the nineties, particularly in view of the likelihood of added services in the way of increased shore protection - increased, perhaps, monies required for water - those two things alone, if something else is not made more cost effective, we will see a significant increase in taxes, so let's look at it as an opportunity rather than solving harsh problems, if we may.

MRS. WIENER: Absolutely, because I don't really there are any.

MR. HEEKE: Mrs. Wiener, I do like what you are suggesting and that is we go to the experts and say "give us a proposal of how you would go about this problem -

MR. WEINBERG: A scenario.

MR. ILYINSKY: That's right.

MR. HEEKE: ...scenario - rather than outlining everything else. Kal? Excuse me, Mr. Druck?

MR. KALMON DRUCK: May I ask something? Madam Mayor and Mr. President, members of the Council - may I just put a different perspective on this discussion? I come out of fifty years of management consulting. And my perception is right now, we are in a particularly turbulent period in terms of how enterprises are managed - now we are fortunate in Palm Beach that we are not bedeviled by life and death problems. The problems that come before you - the problems that come before the citizens of this Town are not like the problems that the County faces - or the State - or the Federal government that have to literally do with life and death. And so you might say "well, things are going very well here and we have no big problems that we are aware of - so why do we need a consultant?" Business Week brought out a special issue a couple of weeks ago called "Reinventing America". And this year the current watch word in Management Consulting is "reinventing". They're talking about reinventing how we run the schools and how to rebuild the infrastructure and, you know, how all of the various programs of government should be studied from a zero base approach. In other words, you sit back and you say "suppose we were building anew - would we have the same staff - would we have the same structure - would we have the same policies - how would we do it?" Now I think the point that I want would like to expand on that Mr. Pryor has made is that somewhere around this country in the hundred and hundreds of municipalities and State and County government, every week somebody is coming up with some new ideas and better ideas. I counted at least three stories in the last week that I saw about Newark privatizing part of its garbage collection. And there was a city out West, I think it was Cleveland or Cincinnati that is experimenting. Gary has a private company running its Gary, Ind. school systems. And I think the virtue of the proposal that is being made here is that if you said to the taxpayers and citizens of this Town, "we as a Council just want to make sure that we're doing the best - we are utilizing the best ideas that the country provides to do the job that you've elected us to do. And if every couple of years you've capped in to the best thinking on how to manager a twenty eight--thirty million dollar municipal enterprise. I think it would be greatly reassuring to the people of the Town. You would be saying that you've done everything possible in the way we're doing it - we're taking advantage of the latest techniques and technologies. The Country is spending - I saw a figure the other day - something like forty billion dollars a year on consultants. It's a big business and having been in that business I can tell you, it's very interesting being a consultant because you travel around the country dealing with the major, latest problems, so somebody that has a problem anew talks to a consultant who has seen it ten times, in ten different versions in the past year. So I think there's a two level consideration here - one is are their particular problems of organization or staffing or whatever that could be improved with a well informed outside viewpoint. But second and equally important, reassurance to the people of the Town that the Council is just making a - just checking. I was thinking before - suppose that you were going to pick a doctor and here is Dr. A who has been in the business a long time. He's a busy person - he is concerned with his daily patients. He doesn't read Medical Journals. He doesn't go go meetings and seminar and discussions. But he's got a good track record - he's just doing the same thing - you know it's a question of whether this is a person with twenty years experience or one year's experience repeated twenty times. And here's Dr. B who is up with all the latest technology, reads the journals, he talks to the detail people that come around and he goes to conventions, he really is up on all the latest development and technology. Which doctor would you want to go to? And I think that's the question really in this kind of a consideration - are we looking - are we really tapping in to the best thinking whatever it is, and are we checking what we are doing against it - if what we are doing is fine - fine - don't change it, but I think it's just the appearance of keeping up to the highest standards of efficiency particularly in a period of great change and turbulence in the way things are done.

MR. ILYINSKY: Very well said.

MR. HEEKE: Thank you.

MR. WEINBERG: There's nobody here to tell you they would work with the Town.

MR. HEEKE: Mr. Englehardt?

MR. PHILIP ENGELHARDT: In listening to your words and watching your faces, it seems that the suggestion of the Civic Association is well received in substance and the concern is whether or not a nongovernmental organization should be involved in the funding of this particular type of project. So maybe the way to consider an action on the part of the Council is to say to the Civic Association a very sincere and heartfelt thank you for a wonderful idea, and we think it's something that we ought to do and will begin the process of finding the appropriate person to carry it out - but we would like to pay for it ourselves, because we think it's important enough for the Town, and I think the recognition of the idea will be delivered where it belongs and at the same time, you can eliminate the concerns for how it is going to be paid for and if everyone is, in fact, in agreement it will probably result in a savings, then the financial result will be very much the same than the original proposal.

MAYOR MARIX: Well, Mr. Englehardt, that's perfectly true, but I would like to point out that we thanked the Civic Association, with no qualms at all, when they paid for the - Professor Shanahan when he came for the Police Department and we didn't seem to accepting their money for the Fire Department, which was equally successful, so I don't know we are suddenly feeling we don't want gifts anymore.

MR.HEEKE: Well, Mrs. Marix, my problem with that is the tail end of it and that is - it isn't a gift - it's like - it's in the nature of a loan.

MAYOR MARIX: Well, they might just try and give it to us if we (inaudible) hard enough.

Town Budget Process (transcript)

MR. HEEKE: Mr. Winterfield?

MR. ADRIAN WINTERFIELD: My name is Adrian Winterfield. If I recall correctly - something over $50,000 was spent on a personnel study several years ago. That was, I assume, by everyone considered well worth the expenditure. The problem with any overall study is the Town - if the Town is going to protect certain sacred cows and say "well, our electorate wants it this way" then at the outset, one is diminishing the likelihood of the consultant providing full benefit. My ears perked up when I heard "zero base". If the Town says or strike that - if a zero base approach can be adopted, certainly a consultant can be helpful, but of course, there is always the danger of being overconsulting. As remarked, the Town is a relatively simple operation - techniques that might be valid for cities of a half million, might not be applicable here and that is a decision only elected officials can make. Even if a brilliant consultant says "look, what we did in City X, try it here" it might not be right for here. I would be very happy to write a half dozen suggestions on a piece of paper and put it in an envelope today. No charge. And I would guess that more than one would be proposed by the person with a brief case from out of town. Thank you.

MR. HEEKE: Thank you, Mr. Winterfield.

MR. ILYINSKY: Well, Mr. President, we've got to move along.

MR. HEEKE: Yes, sir, we do.

MR. DONEY: Mr. Heeke?

MR. HEEKE: Yes, Mr. Doney?

MR. DONEY: Just for clarification purposes, I think that if the Town Council intends to direct any action today, I have comments. If not, I have no comments.

MR.HEEKE: Give us your comments.

MR. DONEY: First of all, I think, it was my understanding when I received a copy of the November 25th letter from the Civic Association - it indicates that a consultant be engaged for the purpose of examining and making recommendations with respect to Town budget systems and procedures. Based upon the discussion today from Mr. Pryor and Mr. Druck, I heard, unless I heard wrong, that what they are intending would be a larger organizational and operational improvement study of the entire organization. Perhaps they could clarify that?

MR. PRYOR: Certainly. The original intent was the budget because this came - we did write a letter in 1992, but we don't want to go with that one again. The budget process went through and we think there are - the budget is at the heart - analysis of any budget is at the heart of what possibly could be done and a more cost-effective matter - so the heart of any study for budget we suspect, as a result of that study, questions would be asked that would inevitably end up with recommendations being made about the corporate structure as it were - of how the Town does business.

MR. HEEKE: Well, what would the pleasure of Council - at this point. Anyone want to make a decision today?

MAYOR MARIX: I don't know if you can make a decision today. I think the real thing is really, do any of us think there is a serious improvement which could be made? If none of us do, then I think the decision can be made today. Very easily. To do nothing. But I am concerned about some of the aspects. I do not believe the Town has the time really to analyze or maybe just doesn't have the know how. You will recall at the meeting you and I both attended, they were pointing out two of the areas where normally speaking, one could save the most money. In privatization - data processing and recreation. And I realize that was sort of like a bad word when I brought that subject up at that meeting that they had. Maybe that would be very suitable for us and maybe it wouldn't at all, but to think we have to decide whether we are really interested, but maybe there is room to prove. If the Council feels there is no way really to improve too much, whatever it is it will be somewhat time consuming, so if we're not going to get much out of it. Maybe not worry about it. I personally believe there are ways - we always blame it on inflation or something - but I believe there are ways we could be - let's say at least not going up a million or so every year - I mean, I really do but I mean if Council doesn't think so - then there's no point to worry about it.

MRS. WIENER: Mr. President. I heard a term - Mr. Druck used it - I don't want to get into a major conversation now about possible improvements, whether there are improvement possibility now or not, but there was a term used "reassurance"....

MR. DRUCK: Reinvent was the word.

MRS. WIENER: No, you said reassure -you used that term and I think that's probably the basis with which I would go with. I think the people in this Town need to know that everything possible is being done. I think 90 chances out of a hundred it is being done. But the people in the Town need to be reassured and they have to know that we are doing the best we can. I would say that we ought to discuss this again on the basis of the Town hiring the expert, with no instruction of any kind - with whoever gives us the best list of things and then perhaps from all the people we've heard from, the very best list we can with no it starts from zero base and then perhaps but with no instructions, totally open, and someone who comes with an immaculate record who has worked with small towns. There is a major difference in the amount of fat that is in a large, half a million or a million or two million dollar Town, than there is a small Town like this and I for one would like personally to see somebody who has worked and made very favorably differences in Towns of a million or less or 500,000 or less.

MR. HEEKE: Thank you, Mr. Pryor:

Town Budget Process (transcript)

MR. PRYOR: I personally feel strongly that there will be opportunities that we can take advantage of and I, in saying so I believe those opportunities for greater cost effectiveness will be there even without entertaining the thought of privatization, although I think we should entertain it, but before we move in that direction, we really better be sure it is the right thing. I think the opportunity for improvement is even without privatization. Perhaps additionally with it, but even without.

MRS. DOUTHIT: My only comment is that after all this bit, I think it behooves us to look at the possibilities. I personally think we've done an awfully good job - that our department heads - two of them - police and fire-rescue - asked for less money this year than they have in the past - the tax rate went up because of unanticipated expenses beyond our control, but I think we are now in a position we might be considered negligent and indeed might be negligent, to not look into the possibility and I think our Town administrators - everybody's done a super job, however, I think it would behoove us to look at some different methods that possibly they and/or us dreamt up and I think Mrs. Wiener's suggestion as to the methodology and how to go about this sounds quite good.

MR. HEEKE: I concur. I think it's something we should do. No-one's perfect and it certainly not us.

MRS. WIENER: How you speak.

MR. HEEKE: I thought that would get a rise out of somebody. But I do think we ought to look into trying to solicit recommendations from various consultants as to how they would approach the problem and I would also like to have an estimate from them as to the amount of time it's going to involve our staff.

MRS. DOUTHIT: That is going to be heroic and I would love a response.

MR. HEEKE: Because we are going to have to be very very careful of picking and choosing our time.

MRS. WIENER: Yes.

MR. HEEKE: At that point, we certainly - there are times when we just cannot load our staff.

MR. WEINBERG: We might be able to get some guidance from the Florida League of Cities.

MAYOR MARIX: Maybe we could get some guidance in that direction for free from the Civic Association, so at least they can get us a good list together.

MR. DONEY: Mr. Heeke, in addition to that clarification which I appreciate from Mr. Pryor, I believe from a study design perspective and planning scope of work, the ultimate expectations of what this study will do, need to be reviewed by the Mayor and Town Council, together with the administration before we get into defining the full project. I think what we need to do, if the Town Council so desires, is to - as we would do under the Consultant's Competitive Negotiation Act is send out a notice for RFP asking for letters of interest, statement of qualifications, and I would say that it would be an overall organizational and operational improvement study with emphasis on improving the Town's budgeting system and procedures and emphasis on having experience with Florida law and a municipality this size, and I think that we will get a number of letters of interest and consultants who will come. The Town Council needs to decide who is going to be on the selection team - just like under CCNA, is the respective chairman of the involved committee, the Town Manager, the Public Works Director, the Town Engineer, certain designees, so those ground rules need to be defined by the Council up front, so there's no misapprehension about expectations.

MR. HEEKE: Bob, why don't you submit to us something very similar to what you've just said. I think if you transcribe the minutes, you'll have a memo all set on what you've just commented. Come back to us with what a RFP would say and then let's find out - it'll be a learning process anyway.

MR. DONEY: A study design for this whole exercise for the Jan. 12th meeting.

MR. HEEKE: Okay. Is that the consensus of Council?

MR. WEINBERG: Yes.

MRS. WIENER: Yes.

MR. ILYINSKY: More or less.

Meeting adjourned for lunch.

Meeting was reconvened after the lunch hour.

Old Business

XII. OLD BUSINESS

Right-of-way permit for pressure cleaning of Worth Ave. sidewalks

2. Appeal of Public Works Director's Decision to Town Council by W. Gerrit Blydenstein Regarding Denial of Right-of-Way Permit for Pressure Cleaning of Worth Avenue Sidewalks - Mr. Wayne Herman on behalf of W. Gerrit Blydenstein addressed the Council requesting more time to do pressure cleaning on Worth Avenue and suggested they be allowed to work until 3 AM. Mr. Heeke noted this is a mixed-use area and this would be quite a problem as there people who have apartments in that area and he was not going to vote for it. Mr. Herman responded the noise would be minimal as it is in an insulated box inside of a van and the estimated time would be two to five days.

Mr. Dusey addressed the Council indicating his recommendation on this is not to allow this work to be done at this time, due to the noise factor and ideally, they should wait until May 1st. Mr. Heeke agreed as did the remainder of the Council. Mrs. Wiener made a motion that the Council stand behind Mr. Dusey's decision concerning the pressure cleaning of Worth Avenue and recommend to the Company they think about doing this after May 1st. Seconded by Mrs. Douthit. Mr. Heeke noted this is to sustain the decision of the Public Works Director. On roll call, the motion carried unanimously.

3. Appeal of Public Works Department's Issuance of Violation Notice Fine to Bickford Construction Company for Violation of Right-of-Way Permit - Mr. Bob Bickford, Owner and President of Bickford Construction Corp. addressed the Council appealing a parking violation that was levied against his company in the amount of $500 on December 1, 1992, for parking construction related vehicles on Miraflores Drive. He is building a house at 230 Miraflores for Mr. & Mrs. Allan Ryan with a scheduled completion date around the end of the month. He had parking permits for the construction vehicles through November 30, 1992 to park on the street and was informed by Mr. Etergenio of the Public Works Department that whatever work that had to be done in the right-of-way would have to be completed prior to Dec. 1, 1992. He stated this was the first time he learned of this regulation but before the time, Mr. Etergenio had informed his foreman that there was a Dec. 1 restriction. He was able to complete the curbing on November 30, but because of the fresh concrete pour, he was not able to remove the equipment that afternoon or pull out the dumpster or make any preparation for the on site parking. He stated on Dec. 1, they built lumber ramps over the concrete cuts so they could make room for parking and because they were in the completion stages of the construction, they have a lot of subcontractors, and there were ten vehicles parked on Miraflores that particular day and the fine was imposed ten vehicles at $50 a piece which added up to $500.00. He stated this is the fifth project he has done in the Town and this is the first he knew there was a parking restriction as of December 1st. He advised he was informed by Mr. Etergenio that his company's record with the Town of Palm Beach would reflect this violation and that any future potential clients would be informed of this violation. He thought the fine was excessive and requested the Council waive the fine.

Appeal - Public Works Dept. - violation fine to Bickford Construction

Mr. Heeke asked when the construction work was started to which Mr. Bickford responded six months ago. Mr. Heeke recalled there are complaints throughout the Town of parking on the residential streets when construction is underway and that is why they have these regulations. He stated he does disagree with the fact that he has been cited for something which would be reflected in his record and he hoped the people who hear these comments would remember that.

Mr. Dusey reported he talked with Mr. Etergenio about this and he denies having threatened Mr. Bickford with having this reflected in his record and he resents the implication that this did happen. He believed they made a special effort to notify the sites under construction that held permits for minor on-street parking prior to December 1st, that the day was coming when there would be no parking permits issued for parking on the residential streets.

Mayor Marix asked if as a result of Council's actions, a notice was prepared which is supposed to be handed out to all of those companies that come in for a permit with regards to parking, and perhaps Mr. Bickford didn't get one. She thought another strange thing is that the Town is selling these permits. Mr. Dusey responded he believed the notice was given to Mr. Bickford and Mr. Moore can speak as to the date. He noted the guidelines do state that onstreet parking will be permitted if there absolutely is no parking available on the construction site. Mayor Marix read from the notice which states only extreme circumstances would allow the parking to be on the street and they would have to apply for a right-of-way permit. Mayor Marix asked if he paid to park on the street there for six month to which Mr. Dusey responded he did not. Mrs. Douthit thought that on street parking around a construction site was simply not allowed. Mr. Dusey responded the fee is approximately $100 per month as there are circumstances under which there is no site to park on, for example on Worth Avenue. Mayor Marix believed that would be extenuating circumstances.

Mr. Dusey explained there are times during the construction process when there are many sub-contractors and parking is just not available on the construction site for all of the vehicles. Mayor Marix realized that but she is not upset with the contractor but is upset as there is a notice given out saying we don't allow parking on the street, and meanwhile we are charging them to park on the street. Mr. Heeke suggested they stay on the subject. Mayor Marix thought this was the point. Mr. Dusey advised as a matter of policy,if they wished there be no construction vehicles parked on the street under any circumstances, it would make his job very easy, however, he wished to point out there are circumstances when there will have to be some parking on the streets. Mayor Marix believed if that was the extenuating circumstances, then so be it, but if they have to park on the street, she didn't think they should be charging for it. Mr. Dusey explained the intent of this is to cover the costs of administering this, such as the inspections of the right-of-way, etc.

Mrs. Wiener believed if the sub-contractors are not permitted to come in all at the same time to do their work, the construction time is extended and the noise and what have you continues on for a longer time and annoys the neighbors. She believed they should be able to get in and get out as quickly as possible.

Mr. Ilyinsky moved the fine be waived, as he believed there were extenuating circumstances here. Seconded by Mrs. Wiener.

Dr. Sten Lilja addressed the Council noting the philosophy behind this parking on site is something very close to his heart as he had a similar situation in his particular neighborhood. He strongly supported the parking ordinances that are on the books and encouraged the Council to have them enforced to the fullest extent.

On roll call, the motion carried 3-2 with Mrs. Douthit and Mr. Heeke voting against the motion.

XIV. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR NOVEMBER 1992 - Motion was made by Mrs. Wiener, seconded by Mr. Ilyinsky to approve the Warrant List and Fund Expenditures for November, 1992.

XV. DEVELOPMENT REVIEWS

Major Matters - Architectural Commission

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of November 18, 1992 - Excerpt Available in Town Manager's Office - Motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky to approve the Major Matters considered by the Architectural Commission with Item 38-92, Joel Martino, 109 Ocean Terrace removed from the agenda. The major matters were:

B51-92 - Demolition and new residence for J. Sirigotis, 256 Miraflores Dr. - Deferred.
B73-92 - New residence for Sidney Kimmel, 1020 N. Lake Way. - Deferred.
B75-92 - Remodeling Mondi's, 226A Worth Ave. - Removed from agenda.
B62-91 - Landscape Plan for Agi Rosos and Jacques Hava, 101 E. Bravo Way. Approved.
B84-92 - New residence for Mr. & Mrs. James Stern Zisson, 1679 N. Ocean Blvd. - Deferred.
B87-92 - Construction of new two family structure for Brazilian Dev. Co., 240 Australian Ave.
B90-92 - Addition to residence of H. Z. Rosner, 505 S. County Rd. - Approved.
B92-92 - Addition to residence of Luis and Lillian Fernandez, 246 Eden Rd. - Approved.
B8-91 - Gates and landscaping plan for Mr. & Mrs. Gerard Haryman, 230 S. Ocean Blvd. - Approved.
B40-92 - Change roof pitch of Vesenaz, Inc., 212 Sunset Ave. - Approved.
B45-92 - Driveway Revision for Mr. & Mrs. Mark Kessenich, 404 Seaspray Ave. - Approved.
B49-91 - Landscape Plan for Stuart Scharage, 210 Wells Rd., Approved conditionally.
B66-92 - Revisions to 248 Bahama Lane, (Sandy Pam Beach Property, Inc., - Approved.
B93-92 - Additions to 738 South County Road - (Sunship, Inc.)
B94-92 - New residence for Janina Radtke, 125 Seminole Ave. - Deferred.
B96-92 - New Balcony Trellis for D. Mead Johnson, 1550 S. Ocean Blvd., - Approved.
B97-92 - Partial demolition on 220 Eden Rd. (S. Alfred) - Approved.

On roll call, the motion carried unanimously.

Appeal- re:Lakefront Bulkhead at 1741 So. Ocean Blvd

B. Appeal

1. Appeal by Ron Dixon, Dixon and Associates Engineers, Inc., of Building Official's Decision Regarding Section 6.34(b) Regarding Lakefront Bulkhead at 1741 South Ocean Boulevard - Mr. Moore explained this is the bulkhead on the west side. He pointed out the Ordinance created in 1958 transposed in the various sections the word "east face" and "west face". He advised the application and appeal has been provided to the Mayor and Council. He advised it is his belief the intent of the Ordinance was that there shall be no projections on the lakeside, however, Mr. Dixon will point out that when conditions dictated it, the Town has granted a batter type piling installation for seawalls in the past. He noted the batter pilings are acceptable from an engineering concept but the Mayor and Town Council may not want to permit them and there are other engineering solutions which do exist that may cost more but are feasible.

Mrs. Douthit indicated she has discussed this with Mr. Moore and was told the normal "dead man" system wouldn't work in this case.

Mr. Ron Dixon addressed the Council advising the present bulkhead is failing and must be replaced. He stated it is in close proximity to a high retaining wall which holds back the fill around a pool and patio, and they would not like to disrupt that. He advised the normal bulkhead would have a vertical piling with dead men type anchors. He advised the batter pile arrangement they would not have the dead men type anchors and put in a piling which is driven at an angle in front of that, which replaces the traditional type of wall. He believed the batter piling would be the most efficient way to go for this bulkhead.

James Bowser, Town Engineer, addressed the Council stating he believed there were other alternatives, such as a cantilevered wall construction or some sort of a dead man system which would utilizing the piling. He was not sure the technique presented were feasible at this location. He stated if they wish to do any pile driving, they would need a waiver if they wanted to proceed with this project. Mr. Heeke asked Mr. Dixon if there were other alternatives?

Mr. Dixon responded there are systems whereby construction can be had of batter piles upland of the bulkhead, however, in this situation, he is very concerned about doing anything upland of the retaining wall due to the height of the existing wall, being some ten feet beyond the present bulkhead and then too, there is extremely poor soil conditions in front of the bulkhead, as there is a foot of sand and seven foot of silt and muck so they don't' have the soil to be able to construct the alternate type systems.

Mr. Bowser noted there would be a problem in getting the equipment back there that they needed as there is no access from the roadway. He knew that they could auger into the rock epoxied in pilings into the rock, substrate, and that is an expensive proposition but it may be an alternative to the poor soil as rock does exist and they could permanently imbed a pile that could support the wall with a dead man type system. Mr. Dixon responded if this is tried, they would still need an anchorage system back of the present wall, and they are restricted here because of the existing bulkhead very close to the existing wall. He stated they are taking off the cap of the existing wall and leaving the panels there, replacing the new wall and panels immediately adjacent and in front of it, so having to make some sort of cantilever wall by drilling into the rock. He thought it would be quite expensive and it may not work.

Mrs. Douthit asked if this wall went the full length of the property line to which Mr. Dixon responded affirmatively, which is approximately 125'.

Mr. Moore pointed out the wording of the Ordinance states there shall not be any projections from the east face, and he knows the intent of the Ordinance, but would need direction from the Council to change that language.

Mr. Heeke knew these have been granted in the past and circumstances similar to this where there were bad soil conditions, and the height of the wall is a serious problem for any work to be performed in front of that wall as if there was work done in front of the wall, it might create a failing of the wall.

Mrs. Douthit moved for approval of the appeal. Seconded by Mrs. Wiener. On roll call. the motion carried unanimously.

C. Variances, Special Exceptions and Site Plan Reviews

New Business

New Business

1. Variance No. 68-92 - Martin Mochorowski, 260 El Bravo Way; to allow construction of a new residence which will not comply with the 70' building height plane. To allow construction of an 8' high cabana and garden wall, in lieu of 6' maximum allowed, providing no west side yard setback. R-A District. - Mr. Thomas Kurchow, Architect, addressed the Council on behalf of the applicant. He pointed out the site has unusual constraints, as there is a sharp dip in the front of the property and they would like relief from the front building height plane, due to the concave shape of the street and the height plane not be calculated from the center point. Var. 68-92

Mr. Moore explained they are talking about the angle of vision and the hardship is the roadway has a jog in it and he is forced to use the center point of the road, which is the hardship and staff has no objection to the request.

Mrs. Douthit moved approval of the variance with regards to the angle of vision, allowing the applicant to use the calculation he requested and not from the center point of the roadway, due to the fact there is a jog in the roadway. Seconded by Mrs. Wiener. On roll call, the motion carried 4-1 with Mr. Ilyinsky voting against the motion.

Mr. Kurchow advised the portion of the back of the lot has been cut away and retained by the neighbor to the west and in that portion there are six air conditioning units, and they are basically in the backyard of this house, and they would like to block them out with a wall which would the same height as the wall behind the problem, which is eight feet in height.

Mrs. Douthit moved for approval of the eight foot wall. Seconded by Mr. Ilyinsky. Mr. Moore advised he has no problem with the eight foot wall as there already is an eight foot wall in the neighborhood, however, he does take exception to the comment that an eight foot wall was necessary to reduce and block the noise of the air conditioning systems as they wouldn't want anyone else to use that as a hardship in the future, as six feet has been sufficient in the past to accomplish that. On roll call, the motion carried unanimously.

Mr. Kurchow then addressed the item of a cabana bath house which his client would like to have with the swimming pool and they would like to make it part of the wall in order to not take up green space, and therefore need a waiver of the sideyard setback.

Mrs. Douthit did not approve as this is new construction. Mr. Heeke agreed. Mayor Marix agreed as she thought the house was quite large for the lot.

Mrs. Douthit moved to deny the request to allow the pool bath to be erected at the west wall site. Seconded by Mr. Heeke who passed the gavel to the President Pro Tem to chair the meeting. On roll call, the motion to deny carried with a 4-1 vote with Mr. Weinberg voting against the motion.

2. Variance No. 69-92 - Liliane LeTourneur, 237 Miraflores Drive; to allow construction of a roof extension providing a 5'2" side yard setback in lieu of 12'6" required. R-B District. Attorney Collette Meyer addressed the Council on behalf of the applicant. She introduced Mr. Hubbard, the architectural planning consultant who noted this is very small house on a 50' lot and they are remodeling the entire house, and have relocated the front door by putting on a front porch and they would like a 5'1 setback in lieu of the 12'6 which is required. Var. 69-92

Mr. Moore advised he had no objection. Mrs. Douthit moved for approval of Variance No. 69-92 at 237 Miraflores Road, as what they are doing is a vast improvement. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Var. 70-92

3. Variance No. 70-92 - Ocean Bay, Inc., 151 Via Bellaria; to allow construction of second floor additions at a 44.03' ceiling height, in lieu of 40.3' maximum allowed; and to allow a first and second story addition providing a 30.8' front yard setback in lieu of 35' required; construction would not comply with the 70' building height plane distance. R-A District. Attorney Robert Deziel addressed the Council. He stated this parcel of property is approximately eight acres of land and its perimeter consists of Clarendon Avenue, Via Bellaria, South Ocean Boulevard and Lake Worth. He stated the purpose of the variance is to allow the construction of a second story addition to an existing nonconforming first story. He stated they are here before Council for the variance before they can go on to Architectural Commission and get the project approved to obtain a building permit. He stated the variances requested are a ceiling height variance, which he would like to refer to as a "rafter" variance; and second, the side-yard variance. He stated it was submitted to the Town as a front yard variance and the distance of the setback is the same and is a matter of terminology. He stated the side yard variance consists of the request for a 20.8' setback in lieu of the required 35' for the second story addition, above the existing first story which is already at 30.8'. He stated the other part of the second variance is dealing with the building height plane. He asked to address the yard variance first to which Mr. Heeke agreed. Mr. Deziel amended his application by striking the reference to the necessity of a variance to a building height plane, as he interprets the Code that the building height plane test would not apply to this application, as he views this as a project which consists of the originally acquired Clarendon property and the subsequently acquired Via Bellaria property. He noted that under the Town's definition of a lot - those two properties when they are combined and are commonly owned, they would fall under the definition of a lot, and more specifically under the definition of a corner lot. He stated they have a corner lot because of the intersection of Clarendon and South Ocean Blvd., which also has frontage on Via Bellaria. He stated when or in the event this variance application is approved, the entire parcel of property will be the subject of a Unity of Title Agreement acceptable to the Town Council and the Town Attorney.

Mr. Deziel referred to Schedule of Uses, Section 8, Section 24 (c) which talks about when the Building Height Plane Test applies on a corner lot. He felt the footnotes in the Code in this section require and dictate that the Building Height Plane Test only applies to South Ocean Boulevard and to none of the other thoroughfares surrounding that lot and for that reason, he asked the Town staff to confirm that the Building Height Plane Test, providing a Unity of Title Agreement is furnished, encumbers this entire property and the Building Height Plane Test would not apply to the property fronting on Via Bellaria, because that would be a "street sideyard".

Var.70-92 Mr. Moore responded Mr. Deziel would be correct in his reading of the Ordinance, and the principal street would be South Ocean and the Building Angle would be applied to the principal street only, however, it is still a street side yard, by definition of the Code, and the setback would be required to be the same on the lineal foot measurement, the 35'. He felt the question was for the Town Attorney as Mr. Deziel wishes to amend his application by declaring this as a total piece of property. Mr. Moore viewed this would not be the case until the Unity of Title exists, as he viewed this as a separate piece of property and subject to the rules in place for a separate piece of property, without the Unity of Title.

Mr. Deziel interjected that by the definition of the word "lot", it says that once they are contiguous - and it doesn't talk about Unity of Title, and he thought that was a matter of mechanics, as they have offered today that any approval would be subject to a condition precedent, and that would be the execution of a Unity of Title Agreement.

Mr. Randolph was not sure that was a matter that needed to be addressed today as it was his understanding they are voluntarily, on the basis of their interpretation of the Ordinance, withdrawing their application for a variance and asked if he was correct? Mr. Deziel did not agree. Mr. Randolph announced he was not prepared today to go into the legalities of the issue. He thought if they were comfortable with their interpretation of the definition and they wished to withdraw their application for the Height Plane Variance, that was entirely up to them, however, if at a subsequent time, it is found there is not a Unity of Title, then they would have to come back. He disagreed with the statement made that the mere joinder of the land into a single ownership without a Unity of Title, would qualify under their proposal as even though they are joined together in single ownership, they could simply avoid the angle of vision requirement by saying they have been put together in single ownership.

Mr. Deziel rephrased his request - the two variances are the "rafter" variance and the "setback" variance. He stated the Town Code states when they are analyzing the proper setback, there are two tests and when he submitted the application, he thought that both the 35' applied and the Building Height Plane, and it wasn't until after he filed the application that he was able to get into the Code and come to the conclusion that he didn't think the Building Height Plane Test applied to this situation. He is asking for the Building Department to confirm that if this had a Unity of Title, the Building Height Plane Test would not apply on Via Bellaria, and then they could proceed.

Mr. Heeke commented he heard the Town Attorney state he is not prepared to comment on that and none of the Council or the Building Department want to act on the application until Mr. Randolph has had a chance to review this and advise.

Mr. Randolph responded he doesn't wish to throw that impediment into this, as the Building Department has stated with the Unity of Title, the Building Height Plane Test would not apply. Mr. Randolph believed the decision would then be up to Mr. Deziel if he wishes, based upon that comment, to withdraw the application for the Building Height Plane request. Mr. Deziel responded he would do so, with the understanding that their decision would be conditioned on the concept of them making the representation right now, they will tell the Town Council that a Unity of Title Agreement would be a condition and they would agree to that being a condition to the approval of the variance and assuming that is okay with the Town Council, they would withdraw it as a consideration.

Mrs. Douthit believed if they had a Unity of Title, they wouldn't need the Height Plane variance. Mr. Heeke pointed out they would still need the sideyard setback variance, but that is not the question being raised. Mr. Moore reported he has two variances left, after this one.

Mr. Deziel understood what was being said and stated they would not consider the Building Height Plane based on the opinion given now by Mr. Moore.

Mr. Moore advised in an abundance of caution, however, he would like to tell the Council if the Unity of Title does not occur, he would like it to be plain and clear to the applicant, that they could not proceed with construction without first having a Unity of Title, if they are successful with the granting of the other two variance requests. Mr. Heeke noted the Unity of Title has to be in a form satisfactory to the Town. Mr. Deziel agreed.

Mrs. Wiener asked if they were now formally withdrawing that request for the Height Plane variance? Mr. Deziel agreed to withdraw the Building Height Plane request. Mrs. Wiener announced the Building Height Plane variance is now withdrawn. Mr. Heeke asked if he was committing to the execution of the Unity of Title and the recording of same? Mr. Deziel agreed.

Mr. Deziel stated the Building Height Plane is not an issue and they would like to proceed to the Side Yard Variance. He noted the residence at 151 Via Bellaria is the proposed guest house. He stated the applicant wishes to put on a second story addition over the first floor which is an existing nonconformity. He stated the first floor existing has a setback of 30.8'. He advised the street at one time had a setback requirement of 30' and the ten houses now existing on the street are all two story elements.

Mrs. Wiener asked what the square footage would be of the proposed addition? Mr. Deziel responded it would be 200 square feet. Mrs. Wiener moved that that be granted.

Mr. Deziel explained the hardship which he thought exists is the fact that they have a piece of property here it is required on all four sides to have a 35' setback, whereas, and in addition the property has a rear yard on Lake Worth, which would have a setback of 25' in lieu of 15', so there is an additional burden on all four sides of this property because it is a corner-through lot, whereas a corner lot, as they are on the corner of Clarendon and South Ocean, and they are a through lot because it goes through from Clarendon to Via Bellaria.

Mr. Deziel pointed out this is an existing nonconformity, with a renovation and it is not new construction. He didn't think a harmful precedent would be set for the Town because of the unique nature of this property it really has three public roads and it has Lake Worth. He stated that under the Unity of Title, this structure will be an accessory building to the entire plan.

Attorney James Brindell addressed the Council on behalf of Ned Cook, Michael Kent and George Mann, who are neighbors on Via Bellaria and they object to the variance request on the basis there is no hardship shown. He thought the argument that there is a corner through lot situation which has been created by the assemblage of this property is now a problem for the owner and now is the basis for their hardship allegation. He felt it was a little hard to follow as it seems to be a benefit for avoiding some requirements and then a hardship as to others. He stated the fact is the house is there and it does function and this simply would exacerbate the existing nonconformity and on that basis, they object. Var. 70-92

Mr. Winterfield addressed the Council noting that when one looked at the published notice, without previously knowledge of the application, one would think that this affects only the property on Via Bellaria, and if indeed, the full property is under consideration, the Council should consider a Site Plan Review for the full property. He believed there was something very significant omitted, and that was the guest house, as if they are arguing Via Bellaria is accepted as a separate property, there is an acute problem with the staff quarters as it is one thing to have staff quarters for staff that serves the property on which the quarters are located but it is something quite different to have a structure housing personnel for service that is rendered on another piece of property.

Mrs. Wiener asked if this was being considered as one piece of property, wouldn't they have had to notice the owners of surrounding properties? Mr. Randolph responded they would if it is being treated as one property. He thought one of the reasons that the Height Plane variance was removed from the application was because that would apply to the whole property, so what is remaining now are variances for the structural requests on this property as a single property and he didn't believe they were here talking about the use of the property today as a guest house, and what they are looking at is structural variances to which Mr. Moore agreed. He stated what are they looking at today, one piece of property or the two pieces of property as if they are saying it is all going to be one piece of property and this will eliminate the need to withdraw the variance request, they are on their own, but what is before the Council is one piece of property with one house - not a guest house - as that is not on the application, and domestic employees quarters is also not on the application, but it is the structural change now on this house as a single piece of property. He stated if the hardship is going to be found by the Council it must be with the facts on this piece of property on its own merits and it must be looked at not as part and parcel of an overall package, which they are saying they will do, but in order for this applicant to be treated in the same even handed manner they would treat other applicants, they must look at this as one piece of property or defer it until the Unity of Title is furnished.

Mrs. Wiener recalled in the past they have asked applicants if they had plans to submit them in their entirety so the Council can have the whole story and that might be the best way to approach this. Mr. Deziel responded it is not that they don't want to do that and in fact they would like to, as it will expedite the process. He felt the problem is working with the system the Town has as they can't go to ARCOM unless the variances are in order. Mrs. Wiener did not think that concerned the Council as the actual ARCOM situation is not a Council matter, so they needed to get the bits and pieces of variances and Unity of Title and getting that altogether. Mr. Deziel advised they were in the process of drafting the Unity of Title Agreement to be submitted to the Town Attorney and they won't be coming back to the Council with a variance a month from here on out as once they get this variance, they can go to ARCOM and have their Site Plan for the entire parcel. He knows they might think they are piecemealing it, but actually they are not, as once they get this Variance they are ready to go through the entire Site Plan and front elevation process with ARCOM.

Mayor Marix noted they cannot get the Site Plan approved by ARCOM until the Variance is in hand, and they are willing to provide the Unity of Title. Mr. Deziel agreed and he wished to remind them that they didn't start the process even in terms of Via Bellaria and Clarendon as Clarendon was already in the works for about four or five months before the Via Bellaria property was purchased by the applicant, and now they are trying to catch up and once the variance issues are resolved, the next time the Council sees them, it will be for approval of the entire block.

Mr. Heeke asked if there was any problem with the issue raised by Mr. Winterfield on the Site Plan? Mr. Randolph responded they would have a problem with the notice if the Council was going to consider this as a part of another property. Mr. Heeke thought they would have to consider it as part of the other property to avoid the Building Height Plane issue. Mr. Randolph reminded that issue has been withdrawn. Mr. Heeke stated he knew that but it was contingent upon the Unity of Title being provided but now he is coming up with a Unity of Title and now we are really talking about the whole piece of property

Mayor Marix pointed out that instead of withdrawing the Height Plane issue perhaps he should simply defer it to the next meeting. Mr. Moore recalled the question asked earlier was if he did not have a front yard on Via Bellaria and if, indeed it was a street sideyard, would he be subject to the angle of vision and the answer to that question was "no", however, what is before the Council is the property on Via Bellaria only and Mr. Randolph has confirmed there is a "notice" problem and if he withdraws the Height Plane variance now and the Council attempts to deal with the other two variances, they will in effect defacto be granting him a full site plan application and agreement as they cannot have the addition without the Height Plane Variance and he cannot have the Height Variance and the encroachment variance without him violating that angle of vision, so to allow him to withdraw it and not discuss it, and if they approve the other two variances, they are in effect granting him what he is wishing and that is to tie up all of the property together by ignoring it. Mayor Marix asked if he was saying they should come back next month?

Mr. Moore responded he is saying this entire matter should be deferred until he has the Unity of Title under control one way or another as he cannot use the issue of the Unity of Title to his benefit to argue his case, without properly noticing the people to the north which would be affected on the Clarendon side.

Mr. Deziel suggested if the property on Via Bellaria, and he wanted them to know they got here today with having meetings with the Building Department and then discovered the Building Height Plane variance simply did not apply and that was just in the last few days. He asked what if there was an approval of the Variance on Via Bellaria and a condition to the approval would be the variance would only be good if this is an accessory structure to the rest of the property and that variance only applies to the Via Bellaria property and therefore he didn't believe they had to give notice to the neighbors on that, as the people who are receiving notice are the ones affected by Via Bellaria and the approval would be subject to that being an accessory structure to the rest of the project.

Var. 70-92

Attorney Randolph advised if this is going to be termed as an "accessory structure" then those people within 200' of the entire property ought to receive notice, so they may have an opportunity to come in and comment on it. He believes the Council feels they are caught between a rock and a hard place as they have to have a variance before they can go to ARCOM, however, he thought the problem the Council is having is that Mr. Deziel is asking the Council to look at this as a whole property. He thought they could go ahead and give the Unity of Title to the Town without any commitment on the fact that if they don't get what they want, they don't have to give it, however, before they deal with this item, the Unity of Title should be in hand, so when this is advertised, all of the property owners within two hundred feet of the full property will have full notice of what is going on.

Mr. Deziel recalled that the last time they worked on a Unity of Title Agreement for the Town, it was very complicated and it took almost three months, and he felt to say that they could not proceed with the Variance until they have a Unity of Title in hand, means they cannot go back to ARCOM. He felt they were the innocent party here to a certain extent as they are not the ones who decide who will be noticed and it has always been disclosed that this is going to be an accessory structure. He stated they have not had a hidden agenda since the day the property was acquired, but the process being proposed by Mr. Randolph would take two or three months to work out that agreement. Mr. Randolph did not agree. Mr. Deziel responded the concept with regards to the utilities are not resolved as yet, and just the mechanics of process, such as ingress and egress and they couldn't have a Unity of Title unless there was a Site Plan and that can't be had until there is reconciliation with their neighbors. He requested the Variance be granted with the condition that the Unity of Title will be furnished within ninety or one hundred twenty days and if it isn't furnished, the variance will evaporate.

Mrs. Douthit asked if there was someway they could go to ARCOM without the variance grant? Mr. Moore thought that since ARCOM is advisory, the Council could instruct them to review the architectural merits. Mr. Randolph did not think they even had to do that and they could simply indicate because of the problems and complexities here, the Council is not requiring the variance be had prior to going to the Architectural Commission and have ARCOM review it and subsequently, they can come back to the Council for the variance.

Mrs. Wiener did not think that was a way to do business and suggested they put their package together and come back with the whole package to the Council.

Mr. Deziel felt there was more involved here than just tying the properties together as this Unity of Title Agreement will contemplate what could happen at the end of the term of the Unity of Title. He felt with respect to the notice required, Unity of Title is nothing but tying together separate properties and once they are tied together, they do not lose their individual legal description, so he didn't believe there was a failure of notice by tying the properties together. Mr. Randolph did not agree stating it was his opinion that once the properties are tied together, they would have to give notice to all of the property owners within two hundred feet of the entire property and not just the property on Via Bellaria.

Mr. Deziel asked if the Council would think about allowing the addition with the encroachment of 4.2' by the second floor to match up with the first floor. Mrs. Wiener felt the most logical way to proceed would be for them to get their act together and furnish the Unity of title and defer this for one month.

Attorney Brindell recalled last month they heard the ARCOM report on the northern property and this same argument ensued as part of the time they were arguing it was all one property and then another part of the time, they argued that it was all stand alone. He stated this is the difficulty that neighbors have in grappling with something of this magnitude as obviously this project is larger than most Town residential projects and it presents difficulties. He stated they will probably tell the Council they are so far ahead on their Phase I and they can now address certain issues on the southern half and he viewed this as not his client's problem. He felt the more this situation is piecemealed together, the fewer alternatives they will have to deal with and the they will continue with this convoluted conversations which are not productive for either the applicant or his clients or the Council and he recommended they defer this for a month and deal with the whole project and resolve the issues. He does appreciate their desire to move along on this project, but this is a big project and it deserves some comprehensive review and thought.

Mrs. Wiener moved that Variance No. 7-92 be deferred for one month. Seconded by Mr. Weinberg. On roll call, the motion carried 4-1 with Mr. Ilyinsky voting against the motion.

Mr. Deziel requested the Building Department to give the notices required to all within two hundred feet of the entire property as had that been done, this situation could have been decided today. Mr. Heeke reminded him he also came with the appearance of treating this as one property and it will give a better approach to try and grasp this large project.

D. Other

Var. 65-91

1. Variance No. 65-91 - Request by Robert E. Diezel for a One (1) Year Time Extension - Herbert Pheeney, 101 Banyan Road; to allow construction of a swimming pool providing a rear yard setback of 3'8" in lieu of the 10' required. R-A District. Mr. Heeke noted this is a first request and historically the Council has granted these. Mrs. Wiener moved for extension on Variance No. 65-91. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Var. 2-92

2. Variance No. 2-92 - Request by Robert E. Deziel for a One (1) Year Time Extension - Herbert Pheeney, 101 Banyan Road; to allow construction of a pool pavilion providing a 1.26' rear yard setback in lieu of 15' required. R-A District. Mr. Heeke noted this is the same story as the previous matter. Mrs. Wiener moved the one year time extension be granted on Variance No. 2-92. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

3. Consideration of Request for Waiver of Zoning in Progress by Mr. Ted Colton, Trident Marine Contractors, Regarding Proposed Dock at 625 Island Drive - Mr. Heeke noted the issue here does not coincide with the Zoning In Progress as there are no other applications pending. Mr. Moore agreed, stating the applicant has requested a parallel dock and the matter is before the Council as the Zoning Commission studied this item with regards to changing docks from a Permitted Accessory Use to a Special Exception Use and for the ability to review the accessory features which would be found on the dock. He recalled the Zoning Commission has recommended this stay as a Permitted Accessory Use. He noted this dock is not a large dock which would protrude into the intracoastal and staff has no objection to the waiver request. Mrs. Douthit asked if they would be in violation of the Noise Ordinance at this time of year to which Mr. Moore responded affirmatively. Mr. Ted Colton addressed the Council noting they use a process called "chedding" and if they hit a hard surface, they use a punch which is all done underwater and there is no noise and they need the waiver for a four to five day period. Waiver - re:proposed dock at 625 Island Drive

Mr. Weinberg moved the waiver be granted. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

4. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Mr. Steven Gelb, President, Sutton Group of Palm Beach, Inc., for Work at the Plaza Center Buildings at 249 and 251 Royal Palm Way, for Seven Days a Week Until 10:00 p.m. - This matter was withdrawn. Waiver - Sect.12-51 Plaza Center Buildings

XVI. COMMUNICATIONS FROM CITIZENS:

A. Mr. Adrian Winterfield addressed the Council requesting the Council to explain those items on the Approved Agenda so the general public could know what is actually being approved. Mr. Heeke responded there are memos in the file which the public can always peruse as the idea of the Approved Agenda is to keep the agenda moving along. Communicatio from citizen

XVII. ANY OTHER MATTERS

A. Mr. Heeke noted there is a letter in the back-up material from Highland Beach who requested a meeting on the CCL, indicating he had no problem with the Town Attorney or staff members meeting with them. Mr. Doney explained they have, with the Town Attorney's efforts and Mr. Moore and Mr. Dusey followed up on this and shared information with the Coalition, but now they wish to go into greater efforts, which he sees time consuming for staff as well as expensive. Mr. Randolph believed the President has commented it might not hurt to sit down and listen to them and he didn't think the Council wished to change its direction authorized at a previous meeting.

Mr. Weinberg believed they should know what we are doing and we should know what they are doing. Mr. Randolph agreed but believed Mr. Doney's concern was not getting into any large expense of getting into the Coalition.

B. PALM BEACH COUNTY COMMISSION CHAIRMAN MARY MCCARTHY. Mr. Weinberg indicated he has received a letter from Mrs. McCarthy and he has invited her to attend a Town Council meeting and introduce herself and tell us what she expects of us. Mr. Heeke agreed they needed to have more interchange and meeting face-to-face.

C. COLLECTION OF LIENS, FINES, ETC. IMPOSED BY THE CODE ENFORCEMENT BOARD. Mr. Heeke recalled this matter was discussed some time ago and he would like to have a motion to direct the Code Enforcement Board to take action to whatever the next procedural step would be to collect these fines. Mr. Randolph explained the Code Enforcement is guided by State Statutes on this but he believed the Town Council would have the ultimate decision on this to which Mr. Heeke agreed. Motion was made by Mrs. Douthit that all fines which are outstanding should be paid to the Town and the Code Enforcement Board initiate the procedure as to whether or not to foreclose on the liens and fines imposed by their Board and then it be referred to the Town Council for the final decision as to whether or not it should be done. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Collection of liens,fines imposed by Code Enforcement Board

C. MEETING SCHEDULES. Mr. Doney called the attention of the Council to the upcoming meetings.

XVIII. ADJOURNMENT Meeting adjourned at 5:50 PM. Adjournment

Grace T. Peters
Town Clerk