

MINUTES OF THE TOWN COUNCIL MEETING HELD ON NOVEMBER 14, 1995

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order by President Smith at 9:30 a.m. on November 14, 1995, in the Town Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald, Councilmen Leslie Shaw, Sam McLendon, and Allen Wyett. Also attending were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director Marie Crozier, Director of Public Works Albert Dusey, Town Engineer James Bowser, Director of Planning, Zoning and Building Robert Moore, Fire-Rescue Chief Vincent Elmore, Police Chief Joseph Terlizzese, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: The invocation was given by Arnold Rotenberg, Assistant to Rabbi Feldman from Temple Emanu-El. The Pledge of Allegiance was led by President Smith.

III. PRESENTATIONS

A. Recognition of Bailey B. Sory, III, Code Enforcement Board - From 1986 to 1995. A plaque was presented to Mr. Sory by Mayor Ilyinsky.

IV. COMMENTS OF THE MAYOR: The Mayor commended Representative Clay Shaw for the early implementation of the seasonal drawbridge schedules for the middle bridge when the Flagler Memorial bridge was recently closed to traffic due to the DOT construction. Mayor Ilyinsky said Congressman Shaw brought needed relief to residents and visitors alike. The Mayor requested an agenda item be added to authorize a request for an extension of these drawbridge regulations to be in effect for the entire year for all four bridges serving Palm Beach. Mayor Ilyinsky cited the increased year round population activity on the island that require permanent restrictions on the frequency of bridge openings. Mayor Ilyinsky offered to contact Congressman Shaw or whomever necessary to secure permission for the permanent drawbridge opening schedule.

V. APPROVAL OF AGENDA: The following changes were made to the Regular Agenda:

Add item XII.D. Other 9., page 6, Consider requesting the opening of the four bridges serving the Town of Palm Beach to remain on a winter schedule permanently.

Motion made by Mr. Shaw to add item XII.D. Other 9, page 6 to the agenda. Motion seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Add item XII.D. 10. Other, Page 6, Consideration of authorizing the Finance & Taxation Committee, at its late November, 1995 meeting to receive a report from First Union Capital Management Group.

Motion made by Mr. Shaw to add item XII.D.10. Other, Page 6 to the agenda. Motion seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith advised the Town Council members that the Finance & Taxation Committee will meet on Tuesday, November 28, at 10:00 a.m. to consider the fund balances from the FY95 preliminary audit.

Add item XII.D. 11. Other, Page 6, Consideration of a ban on fishing after dark along the public shoreline, to be sent to the Ordinance, Rules & Standards Committee.

Motion made by Mr. Wyett to add item XII.D.11. Other, Page 6 to the agenda. Motion seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Add item XII.D.12. Other, Page 6, Consideration of an appeal by Southern Bell concerning overhead distribution lines.

Motion made by Mr. McLendon to add item XII.D.12. Other, Page 6 to the agenda. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Defer item XV. Development Reviews, C. 4., Page 7, Special Exception No. 39-95, to the December 12, 1995, Town Council meeting.

Motion made by Mr. Shaw to defer item XV. C.4, Special Exception No. 39-95 to the December 12, 1995, Town Council meeting. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Defer item XV. Development Reviews, C.7, Page 7, Special Exception No. 22-95, to the December 12, 1995, Town Council meeting.

Motion made by Mr. Shaw to defer item XV. C.7, Special Exception Nol 22-95, to the December 12, 1995, Town Council meeting. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Defer item XV. Development Reviews, D. Other, 1., Page 9, Consideration of Request for Waiver, Bulkhead, 1840 South Ocean Boulevard, to the December 12, 1995, Town Council meeting.

Motion made Mr. Shaw to defer item XV. D.1. Consideration of Request for Waiver, Bulkhead, 1840 South Ocean Boulevard, to the December 12, 1995, Town Council meeting. Motion seconded Mr. McLendon. On roll call, the motion carried unanimously.

Add item XII.D. 13. Other, Page 6, Consideration of Enforcement of Collection of Fines and Fees.

Motion made by Mr. McDonald to add item XII.D. 13. Consideration of Enforcement of Collection of Fines and Fees. Motion seconded by Mr. McLendon. On roll call, the motion carried unanimously.

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

VI. PUBLIC HEARINGS

A. Consideration of Request for De-designation of a Canary Island Date Palm and Removal from the Historic and Specimen Tree List at The Breakers Property by Flagler Systems, Inc. -

Mr. Doney introduced Mr. Danny Miller, Director of Golf and Grounds for the Breakers, who explained the request for de-designation.

Mr. Miller reported that this particular Canary Island Date Palm suffers from an incurable root rot disease, Ganoderina Butt Rot. Mr. Miller noted that letters dating back to March, 1994, from the Town confirmed that problem. Mr. Miller presented photographs taken November 10, 1995, showing the stunted growth of the head of the palm. He noted that not only is the tree unsightly but extends over a golf tee, adjacent to a croquet lawn, which could be a safety hazard. Mr. Miller reported that the tree is dying and requested that it be removed from the Historic and Specimen Tree List so it may be removed.

Mrs. Smith said this is a self evident condition, but asked for any discussion by the Council members. There was none.

Motion made by Mr. Wyett to approve a request for de-designation of a Canary Island Date Palm and removal from the Historic and Specimen Tree List at The Breakers property by Flagler Systems, Inc. The motion was seconded by Mr. McDonald. On roll call, the vote was unanimous.

B. Consideration of Request for Abandonment and Re-dedication of Storm Drainage Easement at 185 Woodbridge Road by Property Owner Nancy DeMoss - Resolution No. 44-95

Jim Bowser, Town Engineer, reported the Town received an application from Nancy DeMoss to relocate a storm water utility easement at 185 Woodbridge Road for the purpose of making additions to the existing property. Mr. Bowser reported this is only a storm drainage easement, and no other utilities are involved. He continued that all costs and re-routing of the line will be paid for by the proponents. The alignment of the existing pipe will be smoothed and no detrimental impacts will result in the change. Mr. Bowser said that Staff recommended approval of the abandonment and re-dedication, contingent upon the following conditions:

1. The property owner will pay for all construction costs to relocate and properly abandon the old line.
2. No structures or plantings be placed upon the newly dedicated storm drainage easement.
3. The property owners shall acquire all necessary permits required for the construction of the new line.
4. The property owners shall pay for all fees related to implementing the abandonment and re-dedication including, but not limited to, document preparation and recording fees.

Mr. Bowser explained a privilege fee was not applicable for this project because the project deals with an easement.

Mr. Francis X.J. Lynch, attorney for Mrs. DeMoss, said he had nothing to add to Mr. Bowser's comments.

Mr. McLendon asked Mr. Bowser if a standard procedure could be adopted to fill the abandoned pipe with concrete or some impervious material to block the intrusion of salt water into the shallow aquifer.

Mr. Bowser said that would be a requirement, and they would either grout the pipe with material or the pipe would

be removed. He continued that, at a minimum, they would block the opening through the sea wall which would block the sea water.

Motion made by Mr. McDonald to approve Resolution 44-95 with Mr. Bowser's recommendations. The motion was seconded by Mr. McLendon.

There were no comments from the general public.

Mr. Randolph read the resolution:

RESOLUTION NO. 44-95

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A FIVE FOOT WIDE DRAINAGE EASEMENT ON PROPERTY COMMONLY KNOWN AS 185 WOODBRIDGE ROAD, PALM BEACH, FLORIDA, AND DEDICATING A NEW DRAINAGE EASEMENT ON SAID PROPERTY.

On roll call, the motion carried unanimously.

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

APPROVED AGENDA (ITEMS VII. THROUGH VIII.)

VII. APPROVAL OF MINUTES OF OCTOBER 10, 1995

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Peggy Adams Animal Rescue League of the Palm Beaches, Inc.; No. 7-96
2. Anti-Defamation League of B'nai B'rith; No. 83-96
3. The Schepens Eye Research Institute; No. 107-96
4. The Garden Club of Palm Beach, Inc.; No. 123-96
5. Mental Health Association of Palm Beach County; No. 145-96
6. The Salvation Army; No. 197-96
7. Palm Beach Par 3; No. 227-96
8. Juvenile Diabetes Foundation/Palm Beach Chapter; No. 240-96
9. Adopt-A-Family of the Palm Beaches, Inc.; No. 254-96
10. Friends of Akim, Palm Beach Chapter; No. 280-96
11. Israel Cancer Association, U.S.A.; No. 379-96
12. Gratitude Guild, Inc.; No. 384-96
13. American Committee for Shaare Zedek Medical Center; No. 396-96
14. Miami City Ballet; No. 397-96
15. New Hope Foundation, Inc.; No. 398-96

Other

- Failure to File Prior Results Forms or Within Prescribed Time

16. Palm Beach Opera, Inc.; No. 68-96
17. The Greater Palm Beach Symphony; No. 124-96 - Failure to File Results Within Prescribed Time - Paid \$25 Administrative Processing Fee
18. Children's Home Society of Florida; No. 60-96
19. Gulf Stream Council, Boys Scouts of America; No. 304-96
20. St. Ann School; No. 306-96
21. International Childrens' Museum; No. 373-96

B. Beverage Licenses

1. Application for a 2COP Alcoholic Beverage License by Mr. Dario Zagar for Garden Club Restaurant at 140 Sunrise Avenue

Motion made by Mr. McDonald to approve the Approved Agenda. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

REGULAR AGENDA

IX. LICENSES AND PERMITS - None

X. COMMITTEE REPORTS

A. Report of the Water Committee Meeting of October 11, 1995

**REPORT OF THE WATER COMMITTEE MEETING
HELD ON OCTOBER 11, 1995**

I. CALL TO ORDER AND ROLL CALL: A meeting of the Water Committee was called to order by Chairman Samuel McLendon at 2:00 p.m. on October 11, 1995, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Allen Wyett were found to be in attendance. Other Elected Officials attending for all or part of the meeting were Mayor Paul Ilyinsky, Town Council President Lesly Smith, and Councilman Leslie Shaw. Members of the Town Staff attending the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Director of Public Works Albert Dusey, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

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

III. FURTHER CONSIDERATION OF PROPOSED WATER FRANCHISE AGREEMENT WITH THE CITY OF WEST PALM BEACH: Mr. McLendon reported this was the first Water Committee meeting since he, the Town Attorney and Town Staff met with Mayor Graham and other representatives of the City of West Palm Beach on September 11, 1995, although a short report was given at the September 12, 1995, Town Council meeting. Mr. McLendon noted that highlights of the meeting with West Palm Beach included Mr. McLendon's reminder to the City that it has not sufficiently invested in maintaining the distribution system in the Town of Palm Beach and Palm Beach would probably not be happy until it controlled its own destiny regarding the distribution system. For that reason, Mr. Olsen was asked to determine the value of the distribution system based on a fifty year life for the system, reproduction costs less depreciation using an index-cost basis, either Engineering News Record or the Handy-Whitman method, which is more specific for water systems. No response has been received to date; however, the City of West Palm Beach has reportedly hired an engineering firm to determine a value of the system.

Mr. McLendon reported the City of West Palm Beach informed him that they are negotiating to sell wholesale water to the City of Royal Palm Beach by the first of the year. He continued that West Palm Beach made it very clear that any wholesale rate the City established would be what the tariff would bear, and the rate would be set just below the alternative the applicant would have otherwise. The City of West Palm Beach does not anticipate having a problem selling any water the Town of Palm Beach would release or any sources of water the City might develop additionally.

Mr. McLendon said the City of West Palm Beach emphasized the liability of the City's taxpayers for any shortfall of water revenue since the first day the City of West Palm Beach owned the system. Mr. McLendon pointed out the Palm Beach consumers have probably contributed more than their share per customer toward establishing the existing system. Mr. McLendon added that the City of West Palm Beach claimed the City owns all of the pipes in the Town of Palm Beach regardless of who paid for them despite the previous agreement between the Town and West Palm Beach. Mr. McLendon said this could become a legal problem that would have to be investigated to see if the old contracts that provided for ownership expired with the franchise agreement.

Mr. McLendon reported that Mike Brenner, Assistant City Attorney, reviewed the contract that had been submitted by the Town to the City last June or July. Mr. McLendon commented that he had made many notes regarding different points of the contract; however, West Palm Beach had not returned a copy with their notations and/or proposed changes at this time. Mr. McLendon said that Mr. Brenner and the City stated they would not oppose the Town's non potable water lines through the West Palm Beach for access.

Mr. McLendon expressed his disappointment for the lack of progress with the negotiations, and the City's reiteration that the 25% surcharge is not negotiable and can be spent on whatever the City determines. Mr. McLendon summarized other portions of the discussion with the City representatives at the September 11th meeting.

Mr. Wyett commented on the basis of the value of the system to be determined if the Town would buy the water distribution system; although he added he did not think the Town should buy the system. Mr. Wyett said the system is old and aging. Mr. Wyett suggested a new, dual system should be installed, if the Town were to take over the distribution, and the old system should be abandoned. Mr. Wyett suggested the City of West Palm Beach should be very aware that the Town has no intention of buying an old system.

Mr. Wyett brought up the question of the ownership of the 3.5 million gallons of untreated wastewater that is returned to the City of West Palm Beach every day that could be treated. Mr. Wyett suggested a game plan should be prepared for dealing with West Palm Beach with the consideration that the Town of Palm Beach presently provides a significant amount

of water revenue for West Palm Beach.

After discussion of alternative water methods including non potable options, tertiary treatment, purchasing water from other communities, submission of the Hutcheon Engineers' report which is currently underway regarding the aquifer storage and recovery system, water conservation, and hearing comments from Mr. Shaw, Mr. Doney, Mr. Dusey, Mr. Bowser, and Mr. Elwell, no recommendations were made at this time by the Committee to be considered by the Town Council.

Mr. McLendon said he requested the City of West Palm Beach provide the Town with a printout of a list of Palm Beach customers for at least a year for the purpose of identifying heavy irrigation users to determine if all streets would require irrigation piping.

Mr. McLendon and Mr. Wyett discussed the possibility of pursuing a friendly or unfriendly lawsuit between the Town of Palm Beach and the City of West Palm Beach.

Mr. Doney suggested that Mr. McLendon may wish to send a reminder letter to Mayor Graham since no written response from West Palm Beach has been received since the last letter was sent. Mr. Doney mentioned that the Hutcheon Report will be available at the next Water Committee meeting, and hopefully comments concerning the draft agreement will have been received from West Palm Beach's attorney. Mr. McLendon advised that he will send a letter to Mayor Graham.

Mr. Shaw reviewed the needs for conservation measures and discussed the probable reduction of the estimated 3.5 million gallons per day of waste water that could be treated and reused.

Mrs. Smith commented that the City of West Palm Beach has not responded in writing in four months, and the City is currently involved in elections. Mrs. Smith said the Committee would have to take affirmative action to attract attention to the water contract.

IV. ANY OTHER MATTERS: There were none.

V. ADJOURNMENT: The meeting was adjourned at 3:10 p.m.

WATER COMMITTEE

Samuel C. McLendon, Committee Chairman

Allen S. Wyett, Committee Member

Mr. McLendon said the minutes of the Water Committee Meeting were fairly extensive in length and basically summarized the status of the Water Committee's activities with negotiations with West Palm Beach and consideration of alternatives for the future. Mr. McLendon stated the report for the shallow aquifer and storage is not yet available and should be available within the next month.

Mr. McLendon reported the Staff and the Committee presented to the City of West Palm Beach several items at the last joint meeting which included several suggestions as to how the value of the distribution system would be made; a method of establishing a wholesale water rate should the Town decide to acquire or construct a distribution system in the Town. Mr. McLendon said that the water franchise agreement that was sent to the City of West Palm Beach in June was received two weeks ago with the City of West Palm Beach's comments. He said those comments were discussed at the Water Committee's last meeting, and those comments would continue to be discussed to determine future alternatives and courses of action. Mr. McLendon said the future could look brighter; however, the Committee continues to work hard.

Mrs. Smith asked for any comments from the other Council members. There were none. Mrs. Smith thanked Mr. McLendon for the report.

B. Report of the Public Safety Committee Meeting of October 11, 1995

**REPORT OF THE PUBLIC SAFETY COMMITTEE MEETING
HELD ON OCTOBER 11, 1995**

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order at 3:10 p.m. by Chairman Allen S. Wyett. On roll call, Chairman Wyett and Committee Member Lesly S. Smith were found to be in attendance. Other Elected Officials attending were Mayor Paul R. Ilyinsky and Councilmen Leslie A. Shaw and Sam C. McLendon. Others attending the meeting were Town Manager Robert J. Doney; Police Chief Joseph L. Terlizzese; Fire-Rescue Chief Vincent K. Elmore; Assistant Town Manager Peter B. Elwell; Parking Control Manager Henry Marchman; Public Works Director Albert P. Dusey; Town Engineer James Bowser; and Town Clerk Mary A. Pollitt.

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

III. CONSIDERATION OF TRAFFIC ISSUES RELATED TO TEMPORARY CLOSURE OF FLAGLER MEMORIAL BRIDGE: Mr. Wyett stated traffic issues have developed since the closure of the north bridge which will reportedly re-open October 27th. Mr. Shaw presented a seven minute video tape showing traffic problems at various locations. Mr. Wyett asked him to elaborate on the traffic situation as described in the video tape.

Mr. Shaw stated one of the purposes of his taping the traffic congestion was to have the middle bridge put on an opening/closing schedule that would not be adverse to the needs of the Palm Beach residents during the early morning and late afternoon hours. He specifically cited the areas of Royal Palm Way/South County Road and Royal Poinciana Way/Bradley Place as problem areas.

After discussing the traffic problems connected with the closing of the north bridge, the emergency situations that could arise during this period, and hearing comments from Mr. Wyett, Mrs. Smith, Mr. Shaw, Mr. Doney, Chief Terlizzese, Chief Elmore, and Mr. Marchman, Mayor Ilyinsky offered to contact the appropriate Federal legislators who could intervene with the current schedule for the demand opening of the middle bridge and request that it be changed to the winter schedule. The Committee accepted the Mayor's offer and concurred that additional traffic issues will be handled at the discretion of Chief Terlizzese.

IV. CONSIDERATION OF PROPOSED REVIEW OF PARKING ON PUBLIC STREETS IN COMMERCIAL ZONES TO MAXIMIZE AVAILABLE PARKING SPACES: Mr. Wyett stated he would like to review the parking spaces that have been marked with yellow striping or yellow curbs over the years to determine if the spaces should remain as "no parking" areas. Mr. Wyett suggested that some of the spaces could be returned to public parking spaces. Mr. Wyett reported he calculated that approximately 8,000 people could be accommodated in restaurants at one time in Palm Beach, and additional parking spaces are needed. Chief Terlizzese advised that almost twice that number of public parking spaces exist in the Town of Palm Beach. Mr. Marchman reported that, over the years, he has determined that most of the violators of public parking spaces, especially on Worth Avenue, are the owners and employees of the retail establishments. Mr. Marchman said if the spaces occupied by those people could be utilized, almost the entire Avenue would open up. Chief Terlizzese said that Mr. Marchman conducts a yearly survey of the public parking spaces in the middle of the Town, and every year additional spaces become public parking spaces after Mr. Marchman determines some of the permit areas are underutilized.

Mr. Wyett suggested that ordinances concerning parking regulations could be obtained from other municipalities and studied in an attempt to improve the parking situation in the Town of Palm Beach.

After discussing the issues related to parking on public streets in commercial zones and hearing the comments of Mr. Wyett, Mrs. Smith, Mr. Doney, Chief Terlizzese, Mr. Marchman, and Mr. Bowser, THE COMMITTEE RECOMMENDED TO THE TOWN COUNCIL THAT THE TOWN COUNCIL REQUEST THE POLICE CHIEF TO OBTAIN PARKING ORDINANCES FROM OTHER CITIES AND THEREAFTER, AFTER STAFF REVIEW AND EVALUATION OF SAME, A WRITTEN REPORT WOULD BE SUBMITTED BY THE POLICE CHIEF.

V. ANY OTHER MATTERS: There were none.

VI. ADJOURNMENT: The meeting was adjourned at 4:07 p.m.

PUBLIC SAFETY COMMITTEE

ALLEN S. WYETT, COMMITTEE CHAIRMAN

LESLY S. SMITH, COMMITTEE MEMBER

Mr. Wyett reported that Mayor Ilyinsky had solved the problems connected with the Flagler Memorial Bridge as noted in the Mayor's Comments section earlier in the meeting. Mr. Wyett said this was one of the major issues presented at the Public Safety Committee meeting, and he thanked the Mayor for his efforts.

Mr. Wyett said the second issue concerning the recovery of parking places that are currently marked with yellow lines was discussed by the Committee. Mr. Wyett reported that he and Mr. Henry Marchman will be doing an on-site survey around the Town to determine where this may be accomplished. Mr. Wyett said the Committee will be receiving copies of other municipalities' ordinances relating to parking regulations, and the Committee will reconvene when that information is available.

Mr. Wyett said the Committee recommended to the Town Council that the Town Council request the Police Chief to obtain parking ordinances from other cities and thereafter, after Staff review and evaluation of same, a written report would be submitted by the Police Chief.

Mrs. Smith asked for any comments from the other Council members. There was none.

Motion made by Mr. McLendon to accept the recommendation of the Committee. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

XI. OLD BUSINESS

Ordinances (Second Reading)

1. Ordinance No. 17-95 - Adoption of 1994 Building Code with Amendments

The ordinance was read by Mr. Randolph:

ORDINANCE NO. 17-95

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE IA., "BUILDING CODE", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-21 ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD BUILDING CODE, INCLUDING THE ADMINISTRATION SECTION; PROVIDING FOR AMENDMENTS TO SAID 1994 CODE; AMENDING SECTION 5-9 FLOOR ELEVATIONS IN LOW AREAS; AND, AMENDING SECTION 5-11 TO PROVIDE FOR SIGHT-SCREENING OF TEMPORARY JOB FACILITIES; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Mr. McLendon to accept the motion. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

2. Ordinance No. 18-95 - Adoption of 1994 Plumbing Code with Amendments

The ordinance was read by Mr. Randolph:

ORDINANCE NO. 18-95

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE IV., "PLUMBING", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-164 ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD PLUMBING CODE EXCLUSIVE OF CHAPTER 1 ADMINISTRATION; AND AMENDING SECTION 5-165 AMENDMENTS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Mr. Shaw to approve the ordinance. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Ordinance No. 19-95 - Adoption of 1994 Gas Code with Amendments

Mr. Randolph read the ordinance:

ORDINANCE NO. 19-95

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE IV. 5., "GAS CODE", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES

SECTION 5-171 ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD GAS CODE EXCLUSIVE OF CHAPTER 1 ADMINISTRATION AND APPENDIX B PERMIT FEES; ADDING SECTION 5-172 AMENDMENTS TO SAID CODE; PROVIDING FOR ADDITIONS, DELETIONS, AND CHANGES TO SAID CODE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Mr. Shaw to approve the ordinance. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

4. Ordinance No. 20-95 - Adoption of 1994 Mechanical Code with Amendments

Mr. Randolph read the ordinance:

ORDINANCE NO. 20-95

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE V., "MECHANICAL REGULATIONS", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-175 ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD MECHANICAL CODE EXCLUSIVE OF CHAPTER 1 ADMINISTRATION AND APPENDIX B PERMIT FEES; AND AMENDING SECTION 5-176 AMENDMENTS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Mr. McLendon to approve the ordinance. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

5. Ordinance No. 21-95 - Adoption of 1993 Electrical Code with Amendments

The ordinance was read by Mr. Randolph:

ORDINANCE NO. 21-95

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE III, "ELECTRICITY", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-76 DELETING OCCUPATIONAL LICENSE REQUIREMENT; SECTION 5-101 ADOPTING BY REFERENCE THE 1993 EDITION OF THE NATIONAL ELECTRICAL CODE WITH PALM BEACH COUNTYWIDE AMENDMENTS; AND, PROVIDING FOR TOWN ADDITIONS AND DELETIONS TO SECTION 5-102 "AMENDMENTS"; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Mr. Wyett to approve the ordinance. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

6. Ordinance No. 24-95 - Adoption of 1994 Standard Fire Protection and Prevention Code with Amendments

Mr. Randolph read the ordinance:

ORDINANCE NO. 24-94.

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 7, FIRE PROTECTION AND PREVENTION, ARTICLE I., "GENERAL", ADDING SECTION 7-7, FIRE ALARM SYSTEMS, REQUIRING CENTRAL STATION MONITORING, AND AMENDING ARTICLE II., "FIRE PREVENTION", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD FIRE PREVENTION CODE AND THE 1994 EDITION OF THE NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY CODE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion made by Mr. McLendon to approve the ordinance. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

7. Ordinance No. 25-95 - Amendment to Dune Removal and Alteration Ordinance (See Item XI.B.1.)

Mr. Randolph read the ordinance:

ORDINANCE NO. 25-95

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 6, "BULKHEADS, PIERHEADS, GROINS", ARTICLE IV. DUNE REMOVAL OR ALTERATION SECTION 6-36 (d) (2) INCREASING SOME CLASS II PERMIT APPLICATION FEES; 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.

Motion made by Mr. Shaw to approve the ordinance. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

8. Ordinance No. 26-95 - Amendment to the Occupational License Ordinance Regarding Penalties

Mr. Randolph read the ordinance:

ORDINANCE NO. 26-95

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10, LICENSES AND BUSINESS REGULATIONS, AT SECTION 10-5.1, PENALTY FOR NOT OBTAINING LICENSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion made by Mr. Wyett to approve the motion. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

9. Ordinance No. 27-95 - Amendment to the Code Enforcement Board Ordinance Regarding Penalties for Occupational Licenses

Mr. Randolph read the ordinance:

ORDINANCE NO. 27 - 95

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, AT ARTICLE X, RELATING TO CODE ENFORCEMENT BOARD, AT SECTION 2-186, FEE SCHEDULE, INCREASING THE FEES FOR FIRST, SECOND, THIRD AND FOURTH OFFENSES FOR CONTRACTORS PERFORMING WORK WITHOUT A LICENSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion made by Mr. Wyett to approve the ordinance. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

C. Resolutions

1. Resolution No. 40-95 - Readoption of Routine Dune Maintenance Guidelines (See Item XI.A.7.)

Mr. Randolph read the resolution:

RESOLUTION NO. 40 - 95

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH, FLORIDA, AMENDING AND RE-ADOPTING THE TOWN'S "GUIDELINES FOR ROUTINE DUNE MAINTENANCE".

Motion made by Mr. Shaw to approve the resolution. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

D. Other

2. Consideration of Beach Erosion Issues

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

Mr. Dusey reported that the contractor at the Sand Transfer Plant has had some unusual problems, and the Town Staff met with the contractor's staff last week. The hole will be redrilled starting November 16th because the large reamer was lost in the old hole. Mr. Dusey said the contractor will have to bore out the new hole will have to be bored out with reamers.

Mr. Dusey said the new time frame includes a January 1, 1996, start-up date.

Mr. McLendon asked Mr. Dusey if the loss was strictly the contractor's responsibility?

Mr. Dusey replied affirmatively, and the loss will probably total over \$400,000 in equipment. He continued that the original hole was abandoned for various reasons, and the new, shallower hole will be moved to the north.

Responding to a question from Mr. Wyatt, Mr. Dusey said he did not think this delay will have a substantially adverse effect on the beaches. He explained that the Corps of Engineers will have a project that is scheduled for start-up in the next two months that will take all of the sand that is washed into the Inlet since last year and place it on the beach, south of the Inlet. Mr. Dusey said the sand that is to be by-passed is in one place, and a substantial adverse impact should not happen, although the Town wants to move sand as soon as possible on a steady flow rather than a once a year rush.

Mrs. Smith thanked Mr. Dusey for the report.

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

Mr. Dusey reported that the contractor has moved, with the full section, to approximately Brazilian Avenue. He said the contractor is doing well and is happy with the material, and the beach is holding slightly steeper than anticipated. Mr. Dusey said the contractor had a bad pump on a dredge but a new one is being shipped from Alabama, and a booster pump will be added to the system in the area of Palm Beach Country Club. Mr. Dusey anticipated that 9 or 10 more days will be needed for pumping sand.

Mr. McLendon noted the most annoying noise from the project is the "beeping" generated by the backing up of the machinery.

Mr. Dusey reiterated that the beach is currently larger than it will be as it is an artificially created beach that will substantially adjust during the next year.

Mr. McLendon said the fact that the beach will be adjusting over the next year should be emphasized repeatedly.

Mrs. Smith noted that many residents of Palm Beach and West Palm Beach have observed the creation of the beach and are very enthusiastic about the project. Mrs. Smith thanked Mr. Dusey for his efforts and requested he continue to monitor the progress of the beach project.

Mr. John Matich, South Ocean Boulevard, addressed the Council and asked Mr. Dusey if the amount of sand on the mid-town beach will benefit the residents south of Sloan's Curve?

Mr. Dusey responded that, over time, it definitely will, but part of the existing problem in the south part of Town presently is the result of a lack of sand going across the Inlet in recent years.

Mr. McDonald asked Mr. Dusey if he would report on the issue of the groin placement.

Mr. Dusey reported that the groin placement will not start until the mid-town restoration is completed and should begin the latter part of November. He said that the groin contractor is presently doing preparation work.

Mrs. Smith said that some private property owners are interested in pursuing the subject of groins for their properties. Mrs. Smith stated that a copy of the 1986 Coastal Management Plan is available to the general public. Additionally, fact sheets are available to private property owners with instructions for the permitting of groins on their properties. Mrs. Smith suggested interested parties should contact Mr. Dusey or Mr. Elwell if they wished to pursue the subject.

2. Consideration of Comcast Cablevision Issues

a. Town Council's Request for Rate Reductions or Similar Refunds Provided to Other Communities

Mr. Doney requested that Mrs. Christie from Comcast Cable address the Town Council initially, followed

by Mr. Jakubiak. Mr. Doney referred to a letter dated October 27, 1995, signed by Mrs. Smith that identified the Town Council's request from the October 10, 1995, Town Council meeting including the additional request for Mrs. Christie to attend the November Town Council meeting. Mr. Doney reported that a letter received a November 2, 1995, letter from Mr. Len Rozek, Area Vice President, suggested an alternative course of action from the Town Staff, including Mr. Doney and Mr. Jakubiak and the Town Attorney, Mr. Randolph. Mr. Doney said he thought the matter was a policy issue that rested with the Town Council. He continued that after Mrs. Christie addressed the Town Council, Mr. Jakubiak would provide some additional information on behalf of the Town.

Mrs. Diane Christie, Comcast Director of System Development, reviewed the issue of re-regulation. Mrs. Christie said she would like to make clear that the issue of settlements relates to rates that were in effect from September, 1993, through July, 1994, and these settlements are not about the rates that are effective presently. Mrs. Christie reported that two settlements have occurred--one was discussed at the last Town Council meeting, and the one she was talking about at this meeting concerned the Town of Lantana.

Mrs. Christie stated that Comcast serves 19 communities in Palm Beach County, and 3 communities out of the 19 filed a 329 complaint form with the FCC by February 28 complaining about the second level of service Comcast provides. Mrs. Christie said Comcast reached a settlement with the FCC which provided that two communities in Palm Beach County would receive settlements, because of the second level of service, based on 1993 rates. She said that 7 out of 19 communities chose to become certified and regulate the first level of service, and Palm Beach was one of those communities.

Mrs. Christie reported that everyone, including the Town of Palm Beach, has approved those rates--the first rates in 1993 and the second rates in 1994. She said two communities hired consultants and chose not to approve those rates--one community was the Town of Lantana and the other was the City of West Palm Beach. Mrs. Christie said Comcast totally disagreed with the consultant's reports for the Town of Lantana, and Comcast believed their rates and hourly service fees are correct. The time frame for Lantana extended from the time they filed their accounting order, January, 1994, through July, 1994. Mrs. Christie said the actual credit for that six months period is \$2,686, and for Comcast to appeal this to the FCC, it would cost \$10,000 in appeal costs plus attorneys fees. She said that Comcast's decision was a financial one not to fight that settlement. Mrs. Christie noted that Lantana paid an hourly charge of \$175 for a consultant--the total charges were not made available by Lantana--to receive the \$2,686 settlement, and the consultant's charges far exceeded the settlement.

Mrs. Christie said Comcast will make a financial decision concerning the City of West Palm Beach. Mrs. Christie said every community served by Comcast is charged the exact same amount--for service calls, connection fees, and monthly fees. Mrs. Christie used the example of the hourly service charge which the Lantana consultant stated should be \$18.17, not \$25.71; however, Comcast is charging \$25.71 at the present time in Lantana. She said that because of Comcast's discounting program, during the six month period in question, the Town of Lantana would actually have owed Comcast \$2,400. During the settlement, Comcast could not go back and collect money it did not charge customers, but could only pay back monies collected over that amount.

Mrs. Christie summarized that Comcast does not think they have done anything wrong or the rates have been incorrect, and the settlements were made to move forward.

Mr. Jakubiak addressed the Town Council and stated that Staff has the obligation and the responsibility to bring information forward to the Council. Mr. Jakubiak pointed out that various ways, including rate regulations, have been used to reach settlements. He added that one refund for \$7,000,000 was awarded to 84 communities; although Palm Beach was not included in that refund.

Mr. Jakubiak reported that Lantana did enter a rate order and received a refund, and it was important to note that the amount of growth revenue generated by Comcast in Palm Beach is higher than what is generated in Lantana. He stated that the franchise agreement process is coming up and that will entail many different issues including a request for a most favored community clause to be included in the franchise. Mr. Jakubiak said that Comcast has already indicated that will not be acceptable to them, and Council should be the ones to decide if that clause should be included in the franchise agreement. Mr. Jakubiak said the issue is on the agenda because the Council had asked if Comcast could provide refunds in good faith, similar to what was done in other communities.

Mr. McLendon asked if the Federal Communication Commission is the rate making authority regarding cable television?

Mr. Jakubiak replied the FCC has determined that since the communities collect the franchise fee and are permitted to collect up to 5% of the gross revenues that Comcast collects in Palm Beach, the community itself should be the rate making authority for the basic tier rates. He continued that the Town can challenge any rates in excess of the base tier rates to the FCC.

Mr. McLendon added that the Town Council, with all due respect, did not have the technical capability to be a rate-making organization. He added he did not have a clear cut picture as to how the basic rates are established.

Mr. Jakubiak replied that Staff had requested an audit be done of Comcast's financial records. He added that a provision in the franchise agreement states that the Town is entitled to review their financial records to make certain decisions, and that would be one of them. He agreed that he did not have the financial knowledge at this point, without the information from Comcast, to determine what the rates were.

Mr. McLendon said it was ridiculous that each community would have to go through the same procedure when it would make more sense to have a rate making organization.

Mr. Jakubiak said that is the reason for establishing an ordinance and becoming certified to regulate rates.

Mrs. Christie clarified that the FCC did establish rules and regulations for cable operators based on the number of channels carried; how many are satellite; how many hours per day a program is carried; plus others. She added that it is up to the municipality to determine if Comcast has established those rates correctly.

Mr. Shaw asked Mrs. Christie if Palm Beach were successful in a rate challenge, would Palm Beach's rates be different, at the base tier, than West Palm Beach's rate?

Mrs. Christie replied the rates are all the same at the present time.

Mr. Shaw concluded that effectively any challenge made by the Town of Palm Beach, would be a challenge to the entire community.

Mrs. Christie responded the challenge is made by an individual community, but seven municipalities challenged the first tier rate; although their rates are not different from the other communities.

Mr. Shaw asked Mrs. Christie if Comcast had the ability to adjust the rate on a local basis?

Mrs. Christie replied that Comcast could charge a community less for anything, less than the amount stated by the FCC that can be charged. Comcast just cannot charge more.

Mr. Shaw said he understood that with the upcoming franchise negotiations, the Town could have rates that take into consideration the amount of revenue generated by Comcast in Palm Beach--Palm Beach could have lower rates if Comcast would give them to Palm Beach.

Mrs. Christie responded she could not say that for a fact, but that probably would not happen because Comcast will probably be consistent with all rates to all communities.

Mr. Shaw asked what were the possibilities of Comcast's rates being excessive in one community and not in another community when the same documents are being filed in all communities.

Mrs. Christie replied that is the reason Comcast thinks it is correct, and Comcast does not think that the two communities who challenged the rates were correct.

Mr. Shaw concluded that the only way the Town of Palm Beach could receive a favorable rate is for Comcast to agree to one through a franchise negotiation.

Mrs. Christie said she was not sure that rates could be considered in a franchise negotiation.

Mr. Jakubiak said the Cable Act states that Comcast sets rates per franchise authority, and the Town of Lantana challenged Comcast's rates and are still pursuing further challenges. The franchise negotiation, at this point, is not established to do rate regulation but rather to protect the Town with many issues such as the interest on deposit issue. He added that if that were in the franchise agreement, this issue could be addressed in connection with decisions on the same issues by other municipalities.

Mrs. Smith asked for other comments from the Town Council members. There were none.

B. Consideration of Proposed Meeting, Date, and Time for First Public Hearing on Draft Franchise Agreement

Mr. Jakubiak requested that the first public hearing on the Draft Franchise Agreement start in January. He reported that staff has met with Comcast and drafted a Draft Franchise Agreement which will be a working document for the Mayor and Town Council to consider. This document will be sent to Comcast by the end of the week, after consultation with the Town Attorney to resolve some minor changes to the agreement. Mr. Jakubiak said that Comcast will have another thirty days after that to review the agreement. He reported that two issues cannot be agreed on at the staff level and will be policy issues presented to the Town Council for consideration. Mr. Jakubiak stated that the Cable Act said that a ruling has to be made on a franchise agreement proposal within four months. If the agreement is received on December 20 as requested, the Mayor and Town Council will either have to approve or reject the agreement by April 20, 1996.

Mrs. Smith said the renewal of the franchise agreement has generated a great deal of interest, and Public Hearings will be scheduled. Mrs. Smith said the Civic Association and the Citizens Association South of Sloan's Curve will hopefully inform their members about the cable rates and cable service. She urged any interested persons to attend the public hearings and make their thoughts known to the Mayor and Town Council during those proceedings.

Mrs. Smith noted that Mr. Jakubiak recommended the Town request a proposal, the Draft Cable Franchise Agreement, from Comcast Cable no later than December 20 and establish a date for the Town's first public hearing in January, 1996. She asked for comments from the Town Council members and the public.

Mr. McLendon said he understood that the Franchise Agreement was non-exclusive. Mr. Jakubiak replied that was correct, and you cannot have exclusive franchises.

Mr. Shaw requested a clarification on the franchise agreement--if it were not completed by the expiration of the present agreement--what would the Town's relationship be to Comcast and Comcast's commitment to the residents regarding the providing of cable service?

Mr. Jakubiak replied that the Cable Act stated cable service could not be provided without a franchise agreement in the Town; however, if the decision is made that problems exist with the cable service, something would have to be worked out through an administrative proceeding, and that would be different from a public hearing.

Mr. Shaw asked if the Town residents would continue to receive cable service without an agreement?

Mrs. Christie replied she did not think discontinuation of service would happen.

Mrs. Smith referred to backup material that included a television cable survey for the residents of Palm Beach. Mrs. Smith requested that approval or disapproval of the survey be part of a motion, if the Council decides to take any action on the subject. Mrs. Smith said the survey would be mailed to all Town residents.

Mr. Jakubiak explained that the survey would be sent by bulk mail to all Town residents as soon as possible, establish a date for receipt of that survey, and within the time the franchise is discussed, between January and April, the Staff would prepare a report based on the results of the survey.

Mrs. Smith noted that \$2,500 was in the budget for the mailing of the survey. She suggested that Town organizations may be able to distribute the survey which would provide for more than 300 returned surveys. She asked if Mr. Wolfe would like to address the issue?

Mr. Irving Wolfe, representing the Citizens' Association, addressed the Town Council and stated this survey would be presented to the delegates of the Association at a monthly meeting to receive input from them. Mr. Wolfe asked the expiration date of the current contract and the length of the new contract?

Mr. Jakubiak replied the present franchise agreement is for 25 years and was established in 1971 and expires October 12, 1996. He said the Staff is recommending a short term franchise, a three year franchise, renewable upon the expiration after three years.

Mr. Adrian Winterfield addressed the Town Council and noted the Town Council spent twenty-five minutes discussing the Comcast subject. He respectively submitted that this subject is not of universal interest to the Town and may not merit all the time and funds expended on it. Mr. Winterfield continued that if the franchise is non-exclusive, had any thought been given to soliciting offers from other companies?

Mr. Wyett suggested the cost of the survey be eliminated. He said the residents of the Town do have alternate service available with the advent of satellite service. Mr. Wyett thought the best vote residents can make is a decision to continue the service with the present franchise provider or switch to satellite service. Mr. Wyett said that \$2,500 would be wasted sending out the survey.

Mrs. Smith requested comments from other Council members.

Responding to a question from Mr. McLendon, Mr. Jakubiak explained the survey referenced two items--the franchise agreement and information regarding the drafting of the Customer Service Standards Ordinance regulating the administrative activities of the cable company.

Mr. Shaw suggested the survey be made available at Town Hall and if either of the organizations with a large following in Town would like to assist in the distribution of the survey to their members, the survey should be available to them. Mr. Shaw said, in that manner, a sampling could be obtained that would be indicative of the feelings and sentiments of the residents.

Mrs. Smith asked Mr. Matich and Mr. Barnes if they would be willing to help with the distribution of the survey to their members? Mr. Matich and Mr. Barnes nodded their agreement.

Motion made by Mr. McDonald to approve the recommendations of Mr. Jakubiak in terms of submission dates for the report, December 20, 1995, and a selection of a meeting date after that, but not to include the \$2,500 as recommended for the survey. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Doney said the establishment of a January date for the meeting is important because this does need to be advertised; however, the Council could wait until the December meeting to establish the date if they so wished.

Mrs. Smith requested that the Council members and Staff check their calendars during the break to determine the best dates for several of the meetings that have been discussed.

3. Consideration of "Revised" Conceptual Plan for Peanut Island Park

Mr. Peter Elwell, Assistant Town Manager, addressed the Town Council and referred to a November 8, 1995, memorandum to the Mayor and Town Council, that referred to the two parts of this issue.

Mr. Elwell reported that Mrs. Smith and he attended the Port Commission meeting on November 1, and expected that the Columbus statue issue would be put to rest at that meeting. He said that the issue was not over, and during the first part of the meeting, the Commissioners were discussing a document that had not been provided to the Town of Palm Beach. The document, the Conceptual Master Plan for the Park that the Port Commission, the County Commission, and the Florida Inland Navigation District are planning, was obtained later. Mr. Elwell explained that no action is required by Town Council at this meeting; however, comments have been provided by the Mayor and Town Council on the earlier master plans that have been slightly revised. Mr. Elwell said the Staff did not have specific comments, and the planners have addressed the Town's comments from the past. He added that this is an opportunity for the Mayor and Town Council to offer additional comments.

Mrs. Smith requested comments from Town Council members. There were none.

Mrs. Smith noted that the letters concerning this plan were dated October 23, and the Town of Palm Beach was not informed nor would the Town know of the plans if Mr. Elwell and she had not attended over three hours of this meeting before it was brought up. Mrs. Smith reported that the Commissioners talked about sending the project out for bid in April, 1996, and this is an expensive project. Mrs. Smith said she questioned why the project would be put out for bid if the Commissioners were still discussing the Columbus statue? Mrs. Smith added that the plan would be drastically changed if the statue were to be placed on the east side of Peanut Island, and approximately 200 people attended this meeting and everyone was in favor of the statue. Mrs. Smith said that only 3 people attending the meeting, including Mr. Elwell and Mrs. Smith, were opposed to the statue.

Mr. McLendon questioned the spoil disposal area and asked if materials were previously deposited on that site or was it to be used in the future?

Mr. Elwell replied that both were true, and in the division of the island when the Port sold a portion of it to the Florida Inland Navigation District, spoil areas were set aside by both entities for future projects. Mr. Elwell noted that the island was originally created by spoils and was built up over the years. He added the development of the park plan included a substantial vegetation buffer around both spoil areas, and a person walking in the park will not be exposed to those spoil areas although access ways have been provided for heavy equipment.

Mr. McLendon noted that the plan was put together by at least three agencies and requested the identity of the present owner.

Mr. Elwell replied a portion of it is owned by the Navigation District and the Port. Through a tri-party agreement with the County, the County would operate the Park.

Mr. Wyett asked how much this park will cost the County and since the Town pays 9% of all County costs, he would like to know the cost to Palm Beach residents.

Mrs. Smith responded that Phase I will cost approximately \$2.5 million; Phase II to be undertaken in 1997-98 would cost approximately \$1.5 million, and the Port is in charge of the bids and has control over the project.

Mr. Wyett determined that this plan will cost the taxpayers of the Town of Palm Beach in excess of \$350,000.

Mrs. Smith stated that is the reason the Town wants to make sure that the plan is just right, and that is why the Town objected earlier to the observation tower, although the observation tower was a drop in the bucket compared to the 331 feet high statue.

Mrs. Smith said that Mr. Elwell will continue to update the Mayor and Town Council on the Peanut Island Passive Park.

XII. NEW BUSINESS

A. Resolutions

1. Resolution No. 43-95 - Commercial Solid Waste Collection Fees

Mr. Dusey reported that the cost of providing commercial garbage service is recalculated yearly based on the new budget and is presented to the Town Council in the form of a resolution. Mr. Dusey said that Resolution No. 43-95 established new fees that will be effective January 1, 1996. He requested approval of the resolution.

Mr. Wyett asked Mr. Dusey if the issue of the commercial collection of yard trash had been resolved?

Mr. Dusey replied he is continuing to work on the methodology for that issue.

Mr. Randolph read the resolution:

RESOLUTION NO. 43-95

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING COMMERCIAL SOLID WASTE COLLECTION FEES TO BECOME EFFECTIVE JANUARY 1, 1996.

Mrs. Smith requested comments from the Mayor and/or Council members and the general public. There was none.

Motion made by Mr. Shaw to approve Resolution No. 43.95. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Bid Awards

1. Request for Proposal No. 96-01 - Golf Cart Leasing Program

Mr. Russell Bitzer, Director of Recreation, addressed the Town Council and said that Staff recommends the awarding of the bid to Club Car, Inc who submitted the low proposal of \$52,486.20 for the 48 month lease program, and sufficient funding was included in FY96 approved budget to award this contract.

Mr. Bitzer reported that Club Car had the low proposal, but also received the best overall equipment evaluation rating by the contract evaluation team.

Mr. McLendon said he noticed that the leasing program is not for all units all year, and requested a cost for lease agreement figure per day per leased cart.

Mr. Bitzer responded that approximately \$13,000 per year is the actual cost but differs during the season. He added the Town's revenue is approximately \$57,000 less the expense for the lease, \$13,000, so the net profit is between \$40 -44,000 for the entire lease program.

Responding to questions from Mr. Shaw, Mr. Bitzer said the number of golf carts is the same number, and the cost will be reduced by approximately \$7,000 because of the maintenance will be handled internally, and the Town keeps 80% of the revenue and the golf pro manager retains 20%.

Mr. Shaw asked if there should be a consideration of changing the split since the Town is increasing the actual expense for maintenance for the carts?

Mr. Bitzer replied the maintenance will be minimal and is estimated at approximately \$500 but can be determined after one year's experience.

Mr. Bitzer said this contract is evaluated during the budget process time every year.

Motion made by Mr. Shaw to approve Proposal No. 96-01. The motion was seconded by Mr. McLendon.

Mr. Adrian Winterfield addressed the Town Council and asked if the \$57,000 was for the length of the contract or per year?

Mr. Bitzer responded that was income per year.

Mr. Winterfield asked if the 80-20 split was figured on the gross?

Mr. Bitzer responded the gross is approximately \$72,000 and of that the Town receives 80% or \$57,000 and the pro manager receives 20% or \$14,000.

Mrs. Smith asked for additional comments. There were none.

On roll call, the motion carried unanimously.

C. Appointments

1. Golf Commission - Two Three-Year Terms to Expire in November 1998

Mrs. Smith said the Council will follow the same procedure where the alternates are listed, as in the past.

Mr. McDonald inquired if the resignation of Danielle Hickox as an alternate member of the Commission was to be considered at this meeting?

Mrs. Smith replied it was to be considered and the Commission had two openings for regular members and one opening for an alternate member for a total of three openings.

Responding to a clarification question from Mr. Shaw, Mrs. Smith said the policy would be the same as in the past which involved acting on the moving of the alternates first.

Mr. Shaw made a motion, confirming Mr. Wyett's earlier motion, to move Mr. Max Schorr from an alternate's position to a full time member. Mr. McLendon seconded the motion.

Mr. Randolph concurred that if the Council made no further nominations, a vote could be taken on that particular item.

On roll call, the motion carried unanimously.

Mrs. Smith requested nominations for the two remaining positions on the Golf Commission.

Mr. Shaw nominated Mr. James Maddock. Mr. McDonald nominated Mr. Eugene Pollock. Mr. Wyett nominated Mr. Richard Raffo and Mr. Jay Rossbach.

Mrs. Smith asked for any additional nominations for the Golf Commission.

Mr. Wyett nominated Ms. Arlene Bruck-Thurm.

Mr. Bitzer pointed out that the two regular terms would expire in November of 1998 (three year terms) and the alternate terms would be for the balance of the terms that would expire in November, 1996.

Mrs. Smith noted that the names on the ballot would be to fill one regular term and two alternates. The nominee who received the lowest point total would be appointed to the regular term.

The members of the Town Council filled out ballots.

Mrs. Smith requested the Mayor and Council review the list of twenty names for appointment to the Shore Protection Board while waiting for the results for appointments to the Golf Commission. Mrs. Smith said the Shore Protection Board was passed by Resolution No. 24-95 adopted in July, 1995. Mrs. Smith reported that some of the applications were not complete and had to be returned for information.

Mrs. Smith reported that the appointments to the Golf Commission were:

Eugene Pollock	Full Member-3 year term
James Maddock	Alternate-fill remainder of term
Jay Rossbach	Alternate-fill remainder of term

2. Shore Protection Board - Ten Members with a Minimum of Seven Members Required to be Residents of the Town (Per Resolution No. 24-95) -

Mrs. Smith asked for nominations.

Mr. Wyett suggested that before nominations were started that the Council not vote for the any non-residents for the Board at this meeting. He said it was his original intent that the non-residents be highly qualified in knowledge of the beach, and that category had not been sufficiently filled as of this date.

Mrs. Smith recalled it was the intention of the Council not to specify that there would be three non-residents but there *could* be three members. Mrs. Smith said the entire Board could be composed of residents. She quoted, when the ordinance was passed, "...all members of the Board will have a background in some aspects relating to the maintenance, protection, and/or preservation of the beaches."

Mr. Wyett withdrew his suggestion.

Mr. McLendon said he would not like to see the Council select more than eight people to the Board in view of the last minute shuffling of interested people and would like to reserve at least two places for persons who may be very qualified and have not returned to Palm Beach at this time.

Mr. McDonald, responding to Mr. McLendon's comments, questioned the effective date of this Board--if it would be when the entire Board was selected or as of this meeting?

Mrs. Smith replied the ordinance was adopted in July, 1995, and the date of the first appointment will probably be at this meeting if the decision of the Council is to make appointments at this meeting. After discussion, the effective date of the Board was determined to be at this meeting, November 14, 1995.

Mrs. Smith explained if the Board is composed of seven residents and three non-residents, then the quorum for the Board is four; however, if the Board consists of ten residents, the quorum will be six.

Mr. Randolph said, unless stated differently, the quorum would be based upon the number present at a meeting--not the number on the Board.

Mrs. Smith replied that the three non-residents (maximum number) would not vote as determined previously.

Mr. Wyett nominated Mr. Gregory Faust, Mr. Garrison duP. Lickle, Mr. Richard Raffo, Mr. George Moffett, II, Mrs. Sandra Goldberg, Mr. Wayne Dimm, and Mrs. Eileen Curran.

Mr. McLendon nominated Mr. John Kindred, Mr. Edward Hennessy, Jr., and Mrs. Judy Schrafft.

Mr. McDonald nominated Mr. Gerald Levy and Mr. Charles Isiminger (non-resident).

Mr. Shaw nominated Ms. Sidra Oliphant.

Mrs. Pollitt read the list of nominees.

Mr. McLendon nominated Mr. Richard Rorick.

Mrs. Smith passed the gavel and nominated Mr. Joel Martino.

Mrs. Smith said the nominations for the Shore Protection Board were closed.

Mrs. Smith said that the Council would speak to Mr. Shaw's concern about a potential conflict of interest.

Mr. Shaw asked for clarification on Mr. Charles Isiminger who has performed extensive work, within the private sector, on the island. Mr. Shaw asked if Mr. Isiminger should be considered a consultant and a practicing engineer and not appropriate for the Board. Mr. Shaw reported that Mr. Lickle had been involved with the P.E.P. reef; and although he is not involved with anything currently, he wanted to make sure that the Council was not doing something that possibly they should not be doing.

Mrs. Smith said the Council is attempting to avoid any conflicts of interest in any projects that may arise, and Mr. Isiminger is a practicing engineer who works in the private sector for many clients in the Town of Palm Beach. That would appear to be a definite conflict of interest and certainly an ongoing one. Mrs. Smith said the Council was trying to avoid appointing members to the Board with potential conflicts of interest when twenty candidates have applied for the positions.

Mr. Shaw responded that, unfortunately, Mr. Isiminger is highly qualified.

Mr. McDonald said he disagreed and doing work in the Town was not a conflict. He thought the intent was that anyone doing business with the Town or providing services or products to the Town would be a conflict; however, having clients in the Town would not be a conflict.

Mrs. Smith replied the issue was discussed and a difference of opinion existed.

Mr. McDonald recalled that he did not consider that activity a conflict. He said that Mr. Lickle who served as an attorney would not be considered as having a conflict.

Mr. Randolph said he anticipated that the Council would make a decision before a vote was taken whether or not either of the two mentioned people had a conflict. Mr. Randolph said if no action was taken, then all would be considered for a vote.

Mrs. Smith replied that would be the decision of the Council if they would like to approach it in that way. Mrs. Smith asked for comments regarding the issue from each Council member.

Mr. Wyett said since thirteen or fourteen positions will be voted on, if a Council member did not think one the

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candidates was eligible for some reason, then the Council member would most likely give them the thirteenth or fourteenth vote.

Mr. McLendon stated that the mere fact that Mr. Isiminger was a consulting engineer working in the area was not an automatic conflict of interest--he could recuse himself if there was a particular situation in which he did have a conflict.

Mr. McDonald agreed with Mr. McLendon, adding that he felt Mr. Isiminger was the most qualified person, and the only non-resident that had been nominated, and that he saw no conflict.

Mr. Shaw stated that he thought that both of the gentlemen were qualified according to their resumes.

Mayor Ilyinsky stated that he was strongly opposed to having non-residents serve on a Town Board.

Mrs. Smith asked if the Council had decided on the question of voting on non-residents today, and the number of appointments to be made today?

Mr. Shaw stated that he would vote for filling the Board with the full ten appointees.

Mr. McDonald stated that he, too, agreed that the entire ten board members be appointed.

Mr. McLendon agreed.

Mr. Wyett agreed.

Mrs. Smith stated that the duties and responsibilities of the Committee would be defined by the Town Council while the results of the voting were tabulated.

Mr. Shaw recommended that the Committee come to the first meeting individually prepared to make recommendations based on their understandings of beach restoration, and conduct the election of a chairman and recording secretary. He suggested that the Committee vote on issues that should be addressed among themselves.

Mrs. Smith stated that the Town Council was appointing the Committee and they must be told what the Town Council would like them to do.

Mr. McDonald stated that the Board should serve as an advisory committee to the Town Council on all matters relating to the maintenance, protection, and preservation of the beaches within the Town of Palm Beach, as stated in the Ordinance. He suggested providing them a copy of the 1986 Coastal Management Plan would be the basis for their activity, in addition to ongoing projects. He suggested that they have a meeting and formulate some objectives they would like to submit to the Town Council.

Mrs. Smith asked Mr. McDonald if he anticipated that the Committee may change the direction of the ongoing beach renourishment project?

Mr. McDonald replied he was not suggesting that, but was trying to say that they need not be limited to the projects that were listed in the 1986 Coastal Management Plan, and since they were an advisory board they could indeed give advice.

Mrs. Smith stated that she saw the purpose of the Committee as looking at the Coastal Plan for the Town of Palm Beach, with what could be done in addition to what the Town Council had already done, and that they should not be looking at the working plans for the beach renourishment plans or the groins, since that had already been done. She commented that the Sand Transfer Plant would be up and operating within six weeks, and the Mayor and she had applied to the County and State for funds for that. She added that she would like to see this Committee look to the future as to a long range plan for the protection of the beaches.

Mr. McLendon stated that he felt it was important that the Committee hit the ground running, and meet as soon as possible.

Mr. Wyett suggested that the Committee pay attention to both long and short term aspects of maintenance restoration of beaches, as well as concerns with the seawalls.

Mrs. Smith stated that it was up to the Town Council to set a date, and she suggested that notices be sent out to elected members with a date set for Thursday, November 30, 1995, at 9:00 A.M.

Mr. Doney stated that appointment letters would be sent out, and that Mr. Randolph would be present to speak to the Sunshine Law and other matters.

Mr. Wyett asked if the report made of the contents of the meeting would need to be extensive, or could be merely a summary report?

Mrs. Smith remarked that the Committee could hopefully supply the Town with good advice, and the specifics of

recommendations would be important.

Mr. Wyett replied that there would be a verbal record of everything that went on, and a summary of the opinions would be sufficient.

Mr. Doney stated that he anticipated that staff could prepare a report that would basically include only the recommendations of the Shore Protection Board, which would be made available to the Town Council at the Council Meetings. He noted that Mr. Randolph would be available on an as needed basis. He remarked that there was a memorandum from Mr. Dusey, dated March 30, 1995, that gave an overall summary of all of the Town's coastal efforts, with which staff could acquaint the Board.

The following were appointed as members of the Shore Protection Board:

JUDY SCHRAFFT	RESIDENT
JOEL MARTINO	RESIDENT
GARRISON DUP. LICKLE	RESIDENT
RICHARD RAFFO	RESIDENT
GEORGE M. MOFFETT II	RESIDENT
CHARLES C. ISIMINGER, P.E.	NON-RESIDENT
EDWARD L. HENNESSEY, JR.	RESIDENT
GERALD H. LEVY	RESIDENT
WAYNE F. DIMM	RESIDENT
EILEEN C. CURRAN	RESIDENT

D. Other

1. Consideration of Request for Extension of Loan for Tree Project by the Seaview Park Commission -

Mr. Russell Bitzer, Director of Recreation, addressed the Town Council, stating that on September 14, 1993, the Town Council had approved a request by the Seaview Park Commission to fund a tree planting project at Seaview Park, with a total estimate of the project at \$30,000. The Seaview Park Commission had agreed to reimburse the Town 50% of the actual final cost, however the actual final cost was \$27,000 and the portion owed by the Seaview Park Commission was \$13,500. The Seaview Park Commission had reimbursed the Town a total of \$12,000, leaving a balance of \$1,500. On September 27, 1995 the Seaview Park Commission requested that a six month loan extension be given to April 1, 1996.

Mr. McDonald made a motion to approve the request of the Seaview Park Commission for an extension of time for the tree project loan.

On roll call the motion carried unanimously.

2. Consideration of Palm Beach International Airport - Potential International Fleet Mix As Identified at the October 12, 1995 CCAN Meeting -

Mayor Ilyinsky addressed the Town Council, suggesting that the airport would get bigger and bigger, and that starting in the early summer there would be straight flights to Europe. The Mayor stated that the future of the airport is written in the wind and there is little that can be done about it.

3. Consideration of Adoption of Downtown Master Plan for the City of West Palm Beach -

Mr. Tim Frank, Planning/Project Coordinator, addressed the Town Council stating that there had not been a chance to go over the plan as it had been received 30 minutes ago. He recalled that the Town had objected to the plan last year, and those objections had been sustained by the Intergovernmental Plan Amendment Review Committee, as well as DCA, who had filed an "ORC" (Objections, Recommendations, and Comments) Report with West Palm Beach, part of which said that the City of West Palm Beach must respond to the objections of the Town. He suggested that a special meeting be held to review this matter.

Mrs. Smith asked Mr. Frank to reiterate some of the problems that the Town of Palm Beach had with the plan of West Palm Beach.

Mr. Moore stated that the Town could take a position of objecting to receiving the information at such short notice, putting them on notice that the hearing should be postponed.

Mr. Randolph stated that he thought it was advisable to establish a Town meeting, and go to the first meeting of the City of West Palm Beach objecting to the short notice. He commented that it would be wise to be prepared to address the

subject at the second public hearing, should they decide not to change their public hearing process.

Mr. Frank commented on the objections that the Town would have:

The current plan of the City of West Palm Beach proposes placing over 20,000 persons in downtown West Palm Beach, and the Town had objections to traffic, as well as other affects from this. Mr. Frank stated that this type of information was normal in the planning process, but had been absent from the old plan.

The second issue was the case of the Town property located within a district that was scheduled to be significantly down zoned. Right now, the property could be developed to almost full potential, however, the new recommendations show a substantial reduction in density for this area.

Mr. Doney suggested the legal necessity of the Town making sure that the record shows the objection to the down zoning, as well as the downgrading in the Comprehensive Land Use Plan Designation, in order to protect all development rights.

Mrs. Smith stated that it would be a financial loss to the Town, and the Council could not allow it to happen.

Mr. Randolph stated that there should be an opportunity for the Town to make a full analysis of the plan, and he recommended attending the first public hearing and object to the short notice as well as be prepared to state the general objections to the amendments. In addition, Mr. Randolph suggested asking that the matter be postponed and readvertised for a public hearing down the road. He expressed that the special meeting should be held by the Town, and preparations made to attend the second public hearing with expertise relating to the zoning of the property, in order to establish a record through facts and expert testimony.

Mrs. Smith remarked that it would appear that the meeting would be quasi-judicial, and she recommended that the Town move forward accordingly.

Mr. McDonald asked if the municipality could find any relief under the new private property rights act?

Mr. Randolph responded that he would have to look at that.

Mr. Moore stated that staff would like authorization to proceed with whatever means necessary to ensure any Town rights in this matter.

Mr. McDonald made a motion to authorize staff to proceed with objections to the Downtown Master Plan, including objecting to short notice, and requesting postponement of the second meeting. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

A Special Town Council Meeting was set for November 30, 1995 at 10:00 A.M. in regard to this issue. The Shore Protection Board would then meet at 1:00 P.M. on that date.

4. Consideration of a Draft Interlocal Agreement Between the Town and Palm Beach County Regarding Tax Exemptions for Improvements to Historic Properties -

Mr. Peter Elwell, Assistant Town Manager, addressed the Town Council, stating that the recommended actions were approval of the Interlocal Agreement with some very minor wording changes, authorization for the Mayor to sign the Agreement, and staff and Town attorney to proceed with the County.

Mr. McDonald made a motion to approve the Draft Interlocal Agreement with Mr. Elwell's recommendations. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

5. Consideration of Request for Authorization for Town Manager to Execute Annual Agreement Between the Town and the School Board of Palm Beach County for the District's Health Occupations Program for Training of Emergency Medical Technician Students from the Palm Beach Community College -

Chief Ken Elmore, Fire Rescue Chief, addressed the Town Council, stating that this item as well as the following item were concerning annual agreements between the Town, the School Board, and Palm Beach Community College for training firefighters, emergency medical technicians, and paramedics. Both agreements had been reviewed by the Town Attorney and the Risk Manager.

Mr. Shaw asked how this would benefit the Town?

Chief Elmore responded that these were routine agreements covering training for firefighters, emergency medical technicians, and paramedics.

Mr. Shaw asked if there was any benefit to the School Board?

Chief Elmore replied that the benefit to the School Board was that their students were allowed to ride on Town units to gain experience. Town students go to their school to train, and some of their students ride with Town people for training purposes.

Mr. McDonald made a motion to approve authorizing the Town Manager to execute the Annual Agreement between the Town and the School Board of Palm Beach County for the District's Health Occupations Program for training of Emergency Medical Technician Students from Palm Beach Community College. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

6. Consideration of Request for Authorization for Town Manager to Execute Annual Agreement Between the Town and the School Board of Palm Beach County for the District's Health Occupations Program for Training of Paramedic Students from the Palm Beach Community College -

Mr. McLendon made a motion to authorize the Town Manager to execute the Annual Agreement between the Town and the School Board of Palm Beach County for the District's Health Occupations Program for Training of Paramedic Students from the Palm Beach Community College. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

7. Consideration of Attendance to the Florida Shore & Beach Preservation Association National Conference on Beach Preservation Technology, January 24-26, 1996, in St. Petersburg, Florida -

Mr. McDonald made a motion to authorize Mr. Sam McLendon to attend the conference, to include expenses. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

- 8 Consideration of Statewide Mutual Aid Agreement - Authorization to Provide Disaster Assistance to Impacted Communities, As Needed -

Mr. Doney addressed the Town Council, stating that the report was set forth to the Mayor and Town Council via the memorandum dated November 7, 1995, and on occasion the Town was contacted by other communities experiencing severe impacts from Tropical storms. He continued that the Statewide Mutual Aid Agreement was created after Hurricane Andrew to protect all participating local governments by establishing a state coordinated network out of Tallahassee, so that there would be a pool and data bank of resources based on a reciprocal program. Mr. Doney stated that staff recommended approval to commit Town resources to assisting disaster-impacted communities in accordance with the Statewide Mutual Aid Agreement, with the explicit understanding that the Town's commitment of resources shall not be allowed to affect the health, safety, or welfare of Town residents.

Mrs. Smith asked if there were any members of the public wishing to speak to this?

There were none.

Mrs. Smith stated that the Town of Palm Beach has always had a reputation for caring, and being the first to help their neighbors, and she recommended acceptance of staff recommendations.

Mr. Shaw made a motion to approve the Statewide Mutual Aid Agreement. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

9. Consider Requesting the Opening of the Four Bridges Serving the Town of Palm Beach to Remain on a Permanent Winter schedule -

Mayor Ilyinsky suggested that the bridges should stay on a timed basis all year long and not just during the season, and requested authorization from the Town Council to open up a dialogue with Congressman Shaw or whomever necessary to secure permission for the permanent drawbridge opening schedule.

Mr. Shaw made a motion to authorize Mayor Ilyinsky to communicate with the necessary authorities concerning the drawbridge schedule. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Shaw asked if signs with the bridge schedule could be posted so that drivers could also know what times the bridge would be opened, similar to the one posted for boat owners. Mayor Ilyinsky said that he would mention that.

10. Consideration of Authorizing the Finance & Taxation Committee to Receive a Report from First Union Capital Management Group -
Mr. Shaw made a motion to authorize the Finance and Taxation Committee to receive a report from First Union

~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON NOVEMBER 14, 1995~~

Capital Management Group at the Tuesday, November 28, 1995 Finance & Taxation Meeting.. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

11. Consideration of a Ban on Fishing, After Dark, Along the Public Shoreline, to be Sent to the Ordinance, Rules & Standards Committee -

Mr. Wyett suggested that Ordinance, Rules & Standards Committee (ORS) consider implementing a ruling prohibiting fishing after sunset in the Town of Palm Beach. The motion was seconded by Mr. McLendon.

Mr. McDonald asked for clarification. Mr. Wyett stated that he was suggesting that the ORS Committee prohibit fishing in the Town after sunset so that the police would have authority to stop it.

Mr. Doney stated that he would coordinate with Chief Terlizzese.

Mr. Doney mentioned that Mr. Randolph should be at the ORS Committee if a ruling was made in this matter.

Mr. Shaw stated that he would like to obtain information on what other municipalities were doing in this regard before ORS considered this item.

Mr. Wyett stated that there had seemed to be a concern about fishing on or near private property and where there were no facilities, and that it was also a safety factor. Department could be present at the ORS meeting also.

Mr. McDonald asked if Mr. Wyett was talking about private property only?

Mr. Wyett stated that on the Lake Trail there was a combination of public and private property.

Mr. Doney recollected that the City of West Palm Beach had some areas where fishing was prohibited along the lakefront, and that he would contact them regarding this.

On roll call the motion carried unanimously.

12. Consideration of Bell South's Appeal of Public Works Director's Decision Regarding Overhead vs. Underground Installation of Telephone Distribution Lines Between Phipps Ocean Park and the Par 3 Golf Course -

Mr. Al Dusey, Public Works Director, addressed the Town Council, summarizing the appeal of Southern Bell--they had applied for a permit to cross South Ocean Blvd. in the area of the Par III Golf Course to Phipps Ocean Park, running a cable aerially along an existing pole line for the distance between. Mr. Dusey stated that he understood that it was the desire of Town Council not to have utilities above ground, and thus Southern Bell would not be permitted to attach to that pole line. Mr. Dusey stated that the application was turned down, and that Mr. Bowser could address any particulars. Southern Bell had appealed that decision, offering a compromise agreeing to pay to go underground if all of the other utilities, such as FPL and Cable TV go underground in the same area.

Mr. Randolph stated that he had conversations with Southern Bell representatives, and the compromise had been discussed. It was his understanding that Town Staff recommended the compromise with the lines being above ground with the understanding that they would be placed underground at the expense of Southern Bell in the event the Town Council would ever require FPL to go underground with their lines.

Mr. Dusey confirmed that if the Town Council had no objections to having the above ground line, then staff would approve it, as staff felt the compromise was reasonable.

Mr. Randolph stated that the reason that staff did not initially allow this was twofold: the Franchise Agreement said that lines shall go underground where practical; additionally, it had always been the direction of the Town Council that these lines be put underground where practical. Mr. Randolph continued that there was also an issue on the part of Southern Bell as to whether or not it was practical for the Town to require them to go underground where there are already above ground lines in existence; therefore the compromise was one that they deemed as being practical, while staff would also recommend the compromise.

Mr. Buck Passmore, Regional Manager for Bell South (Southern Bell), addressed the Town Council, stating that the Public Service Commission mandates that telephone service be provided in the most economical way possible. One way that is accomplished is by seeking an economical route in which to place cable. The cable in question was a fiber optic cable, the latest in technology, and it was desired that it be placed separate as the old cable was deteriorating. Mr. Passmore stated that in this particular instance, in this particular location Bell South would handle the expense of going underground if, in the future, the other companies using cable lines went underground.

Mr. McLendon made a motion to approve the recommendation of staff to allow the overhead cable lines, with the condition that should FPL and other cable line operators be required to go underground, the same should apply to Bell South,

at their expense. Seconded by Mr. McDonald. On roll call the motion carried 4/1 with Mr. Shaw casting a negative vote.

Mr. Dusey asked if the same conditions could be applied in similar circumstances, in order to avoid Bell South coming back before the Town Council in the future?

Mr. McLendon stated that he did not think that was a good idea at this time.

13. Consider Enforcement Procedure for Collection of Fines and Fees Imposed by the Town

Mr. McDonald said he would like to know what the enforcement procedures are in terms of collecting fines and fees. He remembered during the budget meetings, there were several reported instances of the Town incurring costs because of prospective seawall repairs where Mr. Dusey and Mr. Randolph were going to work out the collection of outstanding fees. Mr. McDonald recalled that the Code Enforcement Board had one homeowner who owed \$10,000+ in fines. He would like to know what the Town's policy will be in terms of collecting these penalties and fines.

Mrs. Smith added that if the item is added to the agenda for the December Town Council meeting, a list of property owners who have outstanding liens/fines against their properties could be prepared by Mr. Dusey.

Mr. Dusey responded that he could prepare that list for the property owners that Public Works is involved with.

Mrs. Smith said a list that would be made public would be interesting. Mrs. Smith said that Mr. McDonald made a motion to have this item considered at the December 12, 1995, Town Council meeting. The motion was seconded by Mr. Shaw.

Mr. Shaw suggested a letter be sent first to the list of property owners before the list is made public to provide them an opportunity to pay the liens or fines.

Mrs. Smith said the Council was not talking about making the list public.

On roll call, the motion carried unanimously.

Mrs. Smith referred to an earlier morning discussion to set a date for the public hearing for the Comcast Television hearings that would be in January. Mrs. Smith asked Mr. Doney for the January date.

Mr. Doney responded that Mr. Randolph suggested a date late in the month of January.

Mr. Randolph replied that the reason for the later date in January was because the response to the Town will be due on December 20th and Staff should have an opportunity to work with Comcast to work out any differences at the staff level before a public meeting is scheduled.

Mr. Doney reminded the Mayor and Council of the first public zoning hearing on the Zoning Ordinance scheduled for January 22, 1996, at 5:01 p.m. Mr. Doney said January 23, 24, 25, and 26 are available in addition to January 30 and 31.

Mr. Randolph pointed out the Architectural Commission will meet on January 24.

Mr. Doney suggested the meeting should not be held on the same day as the 5:01 p.m. Zoning Meeting due to the length and number of zoning issues and items.

Mr. Randolph, responding to a question from Mr. Wyett, said the Town has four months to resolve the matter after the response is received on December 20, 1995.

Mrs. Smith requested the Council members to decide on a date.

After discussion, the date was set for Tuesday, January 23, 1996, at 10:00 a.m., Comcast Franchise Agreement - Public Hearing.

XIII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR OCTOBER 1995

Motion made by Mr. McDonald to approve the warrant registers and funds expenditures report. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Comments were made by Adrian Winterfield who questioned the agreement between Adley, Brisson, Engman, Inc.

and the Town and suggested Council members should read this before the next Town Council meeting.

Mr. Winterfield also raised the subject of the Lake Trail bulkhead. He said he understood from Mr. Dusey that the Town has a capital improvement program for that section of the wall opposite property owned by the Town but not for that portion of the bulkhead opposite private property. Mr. Winterfield suggested that is something that should be looked into as there are certain portions of the Trail, between the Four Arts and Flagler, that are continually under water--sometimes just from high tide. Mr. Winterfield submitted that whether or not this is on private property, the Bicycle Trail is at least a public easement and action should be taken, by Council, to insure that the Trail is always passable.

Hugh Pierce, 445 Australian Ave., questioned the situation regarding permit parking on Australian Avenue and the use of parking spaces by delivery trucks. Mr. Pierce said he thought it was unfair for the Town to collect permit fees from those persons who live in the designated block area, to find that no places are available to park because it is filled up with service vehicles. Mr. Pierce requested a position statement from the Town Council since the Police Department informed him that it has no jurisdiction over the situation.

Mr. Doney suggested that Chief Terlizzese, under the resident parking program with the Gainesville and Arlington plans, is familiar with the provisions that allow service vehicles to have temporary parking permission. Mr. Doney said the contractual agreement with the Building Department is independent of that.

Mrs. Smith requested the definition of a service vehicle.

Chief Terlizzese replied service vehicles are delivery trucks, moving vans and items of that nature. Mr. Moore added vans for gardening services, electrical repair, air conditioning repair and generally the grace period extends to one hour.

Chief Terlizzese said the service vehicles notify the traffic division in the Police Department if they have a job at a certain address, and the Police Department generally cooperates to allow the service for the residents.

Mrs. Smith asked if these service vehicles have to notify the Police Department every time they come to the address if, like gardeners, they come on a routine basis?

Chief Terlizzese replied most of them have temporary permits. He added that none of the resident blocks are filled to capacity according to the resident permits. Chief Terlizzese said he would re-survey the area if there is a block he did not know about that was being fully utilized.

Mr. Doney suggested that Chief Terlizzese meet with Mr. Pierce in an attempt to resolve the issue. Mr. Pierce agreed to do that.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of October 25, 1995 - Minutes Available in Town Manager's Office -
The Major Matters were:

- B66-95 Demolition of Existing Residence at 740 Hi-Mount Road, requested by Mr. Bartlett Burnap - approved.
- B67-95 Demolition of Existing Residence at 100 Casa Bendita, requested by Eberleing Holdings, Inc. - approved.
- B68-95 Demolition of Existing 2-Story Garage at 5 Lagomar Road, requested by Donald J. Freeman, Trustee - deferred.
- B69-95 Demolition of Existing Residence at 207 Merrain Road, requested by Mr. and Mrs. Paul Van Der Grift - approved.
- B70-95 Porch Additions at 641 North County Road, requested by Oceanic Holding Estatic Ltd. - approved.
- B71-95 Addition at 241 Bahama Lane, requested by James E. Elder - deferred.
- B77-95 Minor Driveway Changes at 250 Jungle Road, requested by Mr. and Mrs. John Berkley - approved.
- B73-95 New Residence at Boca Ratone Co. Lake Front Add.Lt.#74.1 (Caribbean Rd.), requested by Ashleigh Enterprises, Ltd. - deferred.
- B74-95 New Residence at 1076 North Ocean Blvd., requested by Vivian M. Lopata - deferred.
- B75-95 Addition at 234 Eden Road, requested by Saleh M. Al-Sharqi - deferred.

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- B76-95 Demolition of Existing 2-Story Residence at 320 Barton Avenue, requested by Lore M. Dodge and Lise J. Moran - approved.
- B78-95 Addition at 1305 North Ocean Way, requested by William and Rosalie Deitz - approved.
- C46-95 2nd Story Addition at 234 Queens Lane, requested by Donald and Susan Leas - approved.
- C51-95 Addition at 221 Ocean Terrace, requested by Bruce Helander - deferred.
- B63-95 New Two Story Residence at 200 El Vedado, requested by Whittmann Building Corporation - approved.
- B65-93 Revisions to Previously Approved Residence at 230 Clarke Avenue, requested by Dr. & Mrs. Stone - approved.
- C28-95 Gates at 7 LaCosta Way, requested by Mr. & Mrs. Lewis Rudin, - deferred.
- B33-95 Addition at 209 Wells Road, requested by Mr. Gregory Holloway - deferred.
- B43-95 New Residence at 180 Atlantic Avenue, requested by Mr. & Mrs. Paul Pellitieri - deferred.
- B44-95 Remodel at 127 Ocean View Road, requested by Palm Beach Development Group Ltd., III, Inc. - approved.
- B54-95 New Two Story Residence at Emerald Lane, Lot 36, requested by Mr. & Mrs. Mark Katzenberg - deferred.
- B59-95 Landscape at 755 Slope Trail, requested by Darlyne Koss - deferred.

Mr. Shaw made a motion to approve the Major Matters Previously Considered by the Architectural Commission at Its Meeting of October 25, 1995. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

B. Time Extensions - None

C. Variances, Special Exceptions, and Site Plan Reviews

Old Business

1. Consideration of the Order of Review of Variances and Special Exceptions by the Architectural Commission (Deferred from October 10, 1995 Meeting) -

Mrs. Smith explained that this item had been approved by mistake at the October Town Council Meeting, and was thus on the Agenda again today. Mr. McDonald made a motion to approve the review of Variances and Special Exceptions first by the Town Council before being reviewed by the Architectural Commission. Seconded by Mr. Wyett.

Mr. Moore commented that the Planning, Zoning & Building Department arrangement with the Town Attorney's office was such that if there was a problem, Mr. Randolph was advised and would then come to the meeting to discuss the problem. At the meeting in the past month there were several problems that needed the attention of Mr. Randolph and discussions of those matters and relaying some of the opinions of Mr. Randolph that had been given in the past to the Architectural Commission it was not as effective. Mr. Moore explained that Mr. Randolph would be needed at and would be asked to attend the meetings regarding Major Matters, the "B" projects, which were the morning projects. Mr. Moore stated that spending the money for the services of Mr. Randolph now would potentially save the Town a great deal of money in the future.

Mrs. Smith agreed that the services of Mr. Randolph were certainly worth the expense of what could possibly be a multi-million dollar lawsuit.

Mr. McDonald amended his motion to include the approval the attendance of Mr. Randolph at the Major Matters section of the Architectural Commission.

Mr. Wyett suggested that the Major Matters be organized according to complexity and the need for the input of Mr. Randolph. Mr. McDonald agreed with that.

Mr. Adrian Winterfield addressed the Town Council, stating that he did not understand exactly what the Town Council was voting on.

Mrs. Smith explained that was because Mr. Winterfield had not attended the last meeting.

On roll call the motion carried unanimously.

2. Re-consideration of Special Exception No. 13-94 With Variance - The Poinciana Club, Poinciana Plaza, Royal Poinciana Way; clarification of representations made regarding expansion of a special exception use and related variance by adding an awning covered deck for dining and allowing setback encroachment. C-PC District -

Mrs. Pollitt swore in anyone giving testimony during the Town Council Meeting.

Mr. Randolph stated that the proper way to agenda this item would be "clarification of representations made regarding expansion of a Special Exception use and related Variance". He explained that this was not technically a reconsideration, as a reconsideration would only take place in the event that the Town Council had made a decision to open a matter up again from the beginning. It had been intended for the applicant to have the opportunity to clarify some representations that had been made during the application. Mr. Randolph continued that notice had been sent out to the applicant and affected property owners so that everyone would have the opportunity to speak to this matter. Mr. Randolph reiterated his advice that discussions not take place at the last Council meeting because the applicant had not had the opportunity to be present to hear what statements might be made. Since that time, two letters had been received from an attorney representing the Poinciana Club. The first letter was in the form of a motion to dismiss, stating that a reconsideration of this matter was improper, both under Roberts Rules of Order and under the idea of due process--that the client ought to have the right to be advised as to what misrepresentations there may have been so that they would have the opportunity to prepare for the matter. The letter also stated that Mr. Beck and the Poinciana Club had acted upon reliance of the Town's granting of the Special Exception and were moving forward, scheduled to open on November 16, 1995. Mr. Randolph pointed out that it had been made very clear by the Town Council at the last meeting that nothing that would happen in the interim between that meeting and the present meeting would have any effect on the opening of the Club.

Mr. Randolph continued that the second letter received had been addressed to him, and hand delivered to him just before the lunch break today. This letter indicated that the attorney had reviewed various transcripts, including the transcript of the last meeting of the Town Council, a transcript of September 12, 1995, and that Mr. Beck, upon Mr. Montgomery's urging, had answered every question addressed by the Town Council, and that those answers were honest and forthright. The letter further indicated that there had been an allegation of misrepresentations and the specifics of those misrepresentations had not been conveyed to the applicant, and that due process had not been given. Mr. Randolph stated that the attorney advised that neither the Poinciana Club nor any representative would appear today, and that they wished to stand on the correspondence and pleadings which had been previously directed to the Town Council and to Mr. Randolph.

Mrs. Smith asked if there was a representative of the Poinciana Club present today? There was not.

Mr. Wyett proposed that the Town Council re-open the question concerning the Poinciana Club today.

Mr. Wyett explained that the Poinciana Club had stated in the 1994 Town Council Minutes, wherein the Special Exception had been granted, that there would be no intensity of use, and that did not now seem to be the case. He urged the Town Council to conduct a review.

Mrs. Smith asked if the Town Council would like to hear the specifics of the charges made by Mr. Wyett?

Mr. Randolph stated that the Town Council would not really be re-opening the matter, because a motion could not be made to reconsider. It would be up to the Town Council to make a determination as to whether to address the matter today.

Mrs. Smith again asked the members of the Town Council if they wished to re-open the matter?

Mr. Wyett stated that he wished to re-open the matter. Mr. McLendon declined to re-open the matter. Mr. McDonald asked if the alleged misrepresentations were regarding the intensity of use? Mr. Wyett responded affirmatively. Mr. McDonald stated that he did not know how the intensity of use could be resolved without the Club being opened.

Mr. Wyett responded that could be done on the basis of what the Club had announced, but that he was open to deferring the matter until the Club had opened and operated as long as the ability to review it was not lost. He explained that the reason that he had brought it up at the last meeting was that Mr. Randolph had advised him that if he was aware of a possible violation and did not bring it up to the Town Council, the Town Council would be precluded from bringing it up at a later date.

Mr. McDonald asked Mr. Randolph if Mr. Wyett's estoppel argument was convincing?

Mr. Randolph stated that he had indicated that the Town Council would be somewhat estopped from acting if a member learned of a misrepresentation and did not act upon it. The more time that would go by without action, the more estoppel might act against the Town Council. Mr. Randolph stated that he could not guarantee that once the Club was opened for a year or two that it would be possible to go back and readdress this specific issue. There were other ways of addressing it, for example, through the Code Enforcement Board or proper legal action.

Mr. Shaw stated that he was not in favor of reopening the matter.

Mr. McLendon stated that the Variance was approved by a previous Town Council, before any change in the master plan parking for the Royal Poinciana Plaza area, and that should have helped any reservation anyone had about the situation.

Mr. Randolph stated that if the decision was not to discuss the matter today, then he did not feel any further discussion was appropriate.

Mrs. Smith asked Mr. Wyett if he was disposed to putting it off until the Club opened?

Mr. Wyett stated that he would put it off until after the Club had opened and operated, and that if they operated in conformity with the no intensity of use statement, then there would be no concern. However, he added, if they operate much beyond reason of intensity of use, then the Town Council would have a concern about the integrity of the decision. Mr. Wyett stated that his concern was the preservation of the right to review by the Town Council. He did not want to stop it from opening, however, he did not look forward to some of the things that he was hearing about the intensity of use.

Mr. Randolph stated that on the basis of the vote taken today, it was his understanding that the Town Council did not wish to hear the matter today. Mrs. Smith agreed.

Mr. Wyett stated that for three consecutive Town Council Meetings, the Town Council had attempted to find out what the intended use of the Poinciana Club was, and through legal counsel maneuvering, every question asked had been avoided.

Mr. Randolph stated that it must be kept in mind that this matter had not been placed in reconsideration by the Town Council, so it was not opened to the public to discuss. Public Notice had been given, just as the applicant had been given notice, so that in the event it was heard there would be an opportunity for everyone to have a say. Mr. Randolph continued that in light of the fact that the applicant was not present, moving forward in regard to allegations of misrepresentation would not be possible.

Mrs. Smith stated that some action must be taken today on this matter.

Mr. Randolph stated that this would not be a formal motion for reconsideration. The applicant had been invited back to answer any allegations of misrepresentation, however, they were not present today and were claiming that if they had to defend allegations of misrepresentation they would like to know what those allegations were.

Mr. McLendon asked Mr. Randolph how Code Enforcement would enter into the picture?

Mr. Randolph responded that Code Enforcement would handle any violations relating to intensity of use, or any number of things. He added that legal action for mandatory injunction could be filed if it was found that the Club was operating in violation of representations. He stated that the matter was being approached in a rather unusual way. Usually when a matter had been passed and there was an agreement or conditions relating to the granting, when those conditions were violated the Zoning Department would usually become involved.

Mr. Wyett asked Mr. Randolph if he was recommending that the matter would be more efficiently handled through the Zoning Department rather than through Town Council action?

Mr. Randolph stated that there were other mechanisms available to the Town Council, in the event that imposed conditions were not met. He added that he was not quite sure what conditions had been imposed, and that there was an allegation that misrepresentations were made in the presentation and that those misrepresentations had been relied upon. He suggested that the applicant should be faced with what those misrepresentations were so that they would have the opportunity to respond.

Mrs. Smith asked the members of the Town Council what they would like to do with this item?

Mr. Shaw asked Mr. Randolph the definition of intensity of use?

Mr. Randolph responded that intensity of use related to traffic, seating, number of patrons, and many other issues relating to the use that was actually made of the Club.

Mr. Wyett made a motion to allow the Club to open and operate in order to ascertain if there was any violation of the intensity of use.

Mr. Randolph stated that absent any motion at all on this, then the matter would simply go forward and there was really no need to take a motion as there was nothing pending on the floor at this point.

Mrs. Smith asked if the members of the Town Council would like to go along with the suggestion of Mr. Wyett?

Mr. Wyett stated that he would make a motion to defer this item until after the Poinciana Club had opened and operated so that the Town Council could determine conformity with representations.

Mayor Ilyinsky stated that when the building was originally built it was the Poinciana Playhouse and the Poinciana Club. The intensity of use in those days was quite intense. He commented that mention had been made of the fear of the word "nightclub". Mayor Ilyinsky reminded everyone that in the 1950s and early 1960s Palm Beach was famous for having seven of the loveliest nightclubs in the United States. When Mr. Albin Holder had taken over, the Poinciana Club had been separated from the theater operation. He stated that although he did not entirely disagree with Mr. Wyett, he did not think there was any question that when Mr. Holder was in charge, it was a much gentler place and much slower paced than it was now. The Mayor said that to wait and see what happened and then try to do something about it was not the proper way to handle it. He explained that he was a member of the Poinciana Club, and suggested that even though he did not disagree with Mr. Wyett he was disappointed in the answers of Mr. Wearn at the last meeting. Mayor Ilyinsky stated that it must decided what an acceptable intensity of use would be,.

Mr. Wyett added that he would motion to defer this item until the upcoming season was over and the Club had operated.

Mr. Randolph asked what was being deferred?

Mrs. Smith replied that she believed that any thought of the Poinciana Club was being deferred to the end of the season.

Mr. Randolph responded that if this item was deferred to another time it must be defined as to what was being deferred, and he questioned if it was appropriate for the Town Council to defer at this time. He added that he believed that the Town Council had indicated that they did not wish to reopen this matter, and now he was hearing a motion to defer this matter.

Mr. McLendon stated that he would like to withdraw his second of the motion and stated that nothing should be done at the present time.

Mrs. Smith stated that the motion died for lack of a second, and no action was taken. Mrs. Smith asked if there were any public comments?

Mr. Robert Deziel, 333 Crescent, addressed the Town Council, stating that he heard Mr. Randolph say that there was a letter saying that the applicant did not want to come before the Town Council until they knew what the misrepresentations were about so that they could prepare a response. He said that he also heard Mr. Randolph say that the matter could not be opened up for discussion because the applicant was not present. He stated that he thought comments should be heard regarding this matter so that the Town Council would have enough information to make a decision to reopen this matter. He stated that the basis for his comments were as follows: It appeared to him that a misrepresentation was made based on the entire application, not a small part of the application. Now, that Club had been approved and would be opening up. He said that he felt it set a precedent for future applicants to do the same thing.

Mrs. Smith suggested that Mr. Deziel could give the Town Council any information he had in writing.

Mr. Deziel stated that he had written his comments and would now submit them for the record. He added that he strongly disagreed with waiting until the end of the season, as he thought that the Town had an estoppel problem.

Mr. John Grosskopf, Manager of the Palm Beach Towers, which borders the Poinciana Club to the south, addressed the Town Council.. He stated that some of the units were within 50 ft. of this parking lot and within 200 ft. of their back patio, which was a concern. He asked what the seating capacity of the patio was, and if dancing was going to be permitted until early morning hours on the patio?

Mayor Ilyinsky stated that the Town would have a great deal of control over that situation.

Mr. Grosskopf stated that quite a few of the owners in the Palm Beach Towers had become members of the Poinciana Club, under the belief that the Club would be very similar to the way the Club used to be, and questioned whether any problem could be stopped once the Club opened? In addition, Mr. Grosskopf stated that the owners in the Palm Beach Towers had brought up the reddish/orange awning of the Poinciana Club.

Attorney Collette Meyer of the Law Firm of Donovan, Leisure, Newton, & Irvine, representing one of the owners of a unit which would be adversely impacted by the opening of the Poinciana Club, addressed the Town Council stating that the notice dated April of 1994 stated that there would be no change in intensity of use, and the Mayor had just said that there would definitely be a change in intensity of use. She commented that implied false representation and to say that the applicant had been denied due process was not correct, as due process required only notice and an opportunity to be heard. Ms. Meyer stated that the decision on the part of the applicant not to appear at the meeting today should not impact the decision of the Town Council to hear citizens' comments or the arguments that go to the heart of whether misrepresentations had been made. She asked that the Town Council reconsider their decision not to hear Mr. Deziel's concerns, as well as any other concerns of the residents of the Town. Ms. Meyer stated that she believed it was a mistake for the Town Council to close its eyes and ears at this point. She added that her client would probably suffer the most if misrepresentations had been made, as she had the unit which was very close to the Club.

Mayor Ilyinsky stated that he had said that the Club and Playhouse combination were going through two major

phases, and when he mentioned intensity of use perhaps increasing he was referring to the old days of the Poinciana Club and the Playhouse.

Ms. Meyer stated that she believed that the basic representation that there would be no change in use could not be ignored from a legal or practical standpoint.

Mr. Wyett asked Ms. Meyer if there was concern with the noise and the disturbance that could occur by patrons leaving the Poinciana Club between the hours of 1:00 - 3:00 A.M., which had not occurred in the past?

Ms. Meyer replied affirmatively, stating that everyone knew that in the past the Club had been very quiet.

Mr. Shaw stated that he did not think it was fair to impose upon a club what may have caused their demise, that in their heyday the Club had been active to 1:00-2:00 A.M., and, unfortunately, in the latter years the use of the Club had been minimized.

Mr. Randolph asked how it could be known if there was a change in intensity of use, and how it could be proven today? He stated that he would like to correct some comments made in regard to what he had said. He continued that he had indicated that the applicant was not present by his own choosing, but that did not prevent discussion from taking place today. He added that he had indicated that it seemed it would be difficult to prove any misrepresentation without having the opportunity to question the applicant. He clarified that he had advised the Town Council that discussion could take place, but the applicant was not present to address it.

Ms. Meyer asked if the Town Council did reconsider this matter at a later date that attention is specifically given to the contents of the notice to the public and how it functioned with the reality of the operations of the Club. She added that she would have been at the earlier meetings if a very different notice had been sent out last April.

Mrs. Smith asked if there were any other members of the public wishing to speak to this matter? There were none.

3. Variance No. 28-95 - Mr. & Mrs. Lewis Rudin, 7 La Costa Way; to allow installation of two driveway gates in the front yard, setback 6' from the pavement, in lieu of 15' required per Section 5.36(b) of the Town Code. R-B District (Deferred from July 11, 1995, August 8, 1995, September 12, 1995, and October 10, 1995 Meetings) -

Attorney Robert Deziel, representing Mr. and Mrs. Lewis Rudin, addressed the Town Council, displaying exhibits of elevations and site plans of the property. In addition, he passed out drawings to the members of the Town Council. He continued that the original application submitted requested front yard setbacks for each gate at 9 1/2 ft. in lieu of the 15 ft. required, therefore the variance was 6 1/2 ft. Mr. Deziel stated that several months ago there had been a hearing by the Town Council, and pursuant to discussion he had gone back to his client to see if the variance could be minimized. Mr. Deziel stated that the request had been modified so that a variance would not be needed at the east gate, however, on the west gate they were now requesting a 10 ft. setback in lieu of the 15 ft. required. Mr. Deziel set forth the reasons for the variance as two hardships: first, the lot was surrounded by three thoroughfares; second, the frontage on the west side of the property tailed off in a northwesterly direction, creating the smaller setback on the gates on the west side of the property; the hardships were the irregularly shaped lot and the situation of the home itself regarding the thoroughfares.

Mr. Moore stated that Mr. Deziel had identified the irregularly shaped lot, and the variance had been modified. Original comments from the Building Department had been that there was short, low volume traffic on the cul de sac. The low volume still existed, the house was under construction, and this variance was complying with 50% of the regulations.

Mr. McLendon asked if a 15 ft. requirement was from the pavement or property line?

Mr. Moore responded that it was from the pavement.

Mr. Wyett stated that the exit was very close the entrance of the street and could cause a traffic hazard at times. He suggested that a swinging gate be used for exiting purposes only, which would be less of a traffic problem.

Mrs. Smith asked what side of the house the service entrance was on?

Mr. Deziel replied that it was on the east side. Mr. Deziel stated that there were two signs proposed, one indicating entrance and one indicating exit and he would be willing to have that read into the record as a condition of approval.

Mr. Wyett stated that he would also like to have a pad key, or buzzer system, used for entrance on the east entrance but not on the west entrance.

Mr. Deziel responded that would be acceptable.

Mrs. Smith clarified that the box to enter would be on the east side, and commented that she would rather see sliding gates on the west side.

Mr. Shaw made a motion that the variance be approved with the stipulation that the signage be such that it met code, was visible, and include a communication/access system on the entrance on the east side. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

4. Variance No. 39-95 - David Gilmour, 5 Golfview Road; to allow installation of a backup generator on a 4' x 4' pad, with enclosure, providing a front yard setback of 15.5' of 35' required. R-A District (Deferred from September 12, 1995 Meeting) - DEFERRED TO THE DECEMBER 12, 1995, TOWN COUNCIL MEETING.
5. Variance No. 41-95 - Fred Keller, 225 Dunbar Road; to allow construction of a second story addition over a one-story that provides a 9.5' side yard setback in lieu of 15' required. R-B District (Deferred from September 12, 1995 Meeting) - DEFERRED TO THE DECEMBER 12, 1995, TOWN COUNCIL MEETING.

Attorney Robert Deziel addressed the Town Council stating that Mr. Keller had intended to submit his case on his own behalf today, however, he was not able to attend and had asked Mr. Deziel if he would request to have the matter deferred until next month.

Mr. McDonald made a motion to defer Variance 41-95 until the December Town Council Meeting. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

6. Variance No. 42-95 - Bankers Trust Co. Of Florida, 350 Royal Palm Way; to allow a business sign to be located on a side wall of the building (the western facade) which is not the main wall (facing a right-of-way) as required. C-OPI District (Deferred from September 12, 1995 and October 10, 1995 Meetings) -

Attorney Jim Brindell, on behalf of Bankers Trust Co. Of Florida, addressed the Town Council, stating that the building at 350 Royal Palm Way had undergone substantial renovations, and Bankers Trust was occupying that building. The request today was for a variance from the sign code provision, which limited wall signs to the facades of buildings with street frontage. He added that the only street frontage on this building was Royal Palm Way, and Bankers Trust was asking for a sign on the western face of the building because the buildings on Royal Palm Way were clumped tightly together, with little distance between the faces of the buildings and the street, making it difficult to see the faces of the buildings. Mr. Brindell exhibited photographs showing other signs on the west faces of buildings on Royal Palm Way, submitting them as Exhibit 2. Mr. Brindell also submitted a sworn affidavit from Kim Anderson, a professional planner, as Exhibit 1.

Mr. Moore stated that the Variance was requesting the sign to be located on the side of a building as an aid to visually locate the business within the building. It was before the Town Council because there was no street frontage in order to qualify for the elevation. The staff was taking the position that there was no hardship attached to this Variance.

Mr. Brindell stated that it would be somewhat difficult to determine the status of some of the other signs, but he believed some of them were post-code.

Mr. Moore stated that was correct, the buildings were post-code and some had permits, however, this application must stand on its own merits.

Mr. McDonald offered either a deferral for one month in order to give time to investigate the other signs, or a denial at the present time.

Mr. Brindell stated that he was not at the meeting to cause difficulty going back and looking at files, but that the point was that the building was difficult to see, and therefore unsafe for people trying to locate it.

Mr. Shaw stated that he found it difficult to find out what numbers of buildings were, and perhaps a numbering system should be used to make the buildings more accessible to the public.

Mr. Brindell stated that the sign proposed would include letters 15 inches high with the name of the company and the building in 5 inch letters.

Mr. McLendon asked if Bankers Trust was the only occupant of the building?

Mr. Brindell responded negatively.

Mr. Wyett stated that once Bankers Trust was granted a sign, and then moved out that sign could potentially be replaced with a new sign, with each tenant asking for a sign also. He added that he did not think it was difficult to find the

building, and thought that the sign was too high and resembled a billboard.

Mr. McDonald made a motion to deny Variance 42-95 on the basis there was no hardship. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

7. Special Exception No. 22-95 with Variance - James Brindell, 241 Royal Palm Way; to allow the addition of a third story to an existing two-story building pursuant to Section 5.48 of the Town Zoning Code at a lot coverage as it presently exists which exceeds the 25% maximum lot coverage requirement. C-OPI District (Deferred from October 10, 1995 Meeting) - Request Deferral to December 12, 1995, per letter dated November 3, 1995, from Ms. Kimberly M. Anderson - DEFERRED TO THE DECEMBER 12, 1995, TOWN COUNCIL MEETING.

New Business

8. Variance No. 52-95 - Patricia M. Lorello, 201 Debra Lane; to allow construction of a swimming pool in a street side yard, prohibited by Section 6.12 of the Town Zoning Code, providing a street side yard setback of 10' in lieu of 25' required. R-B District -

Mr. & Mrs. Charles Lorello, 201 Debra Lane addressed the Town Council, stating that they were requesting a Variance in order to put a pool on the side of their home, since this was the only place it would fit, as the lot was small and shaped irregularly.

Mr. Moore replied that the hardship concerning this Variance was that the lot was double frontage, as well as irregularly shaped, small, and the only area in which a pool could be built was in the side yard.

Mrs. Smith asked how much space there was on the side yard in which to place a pool?

Mr. Moore responded that there was 31 feet between the house and the property line. The pool would be 30 feet in length and 16 feet in width. He added that a condition of granting the Variance would be a wall or hedge 6 feet in height be maintained and deed restricted with the property.

Mr. Wyett made a motion to approve Variance 52-95 based on the hardship of double frontage and an irregularly shaped, small lot. He included the hedge or wall as suggested by Mr. Moore. Mr. McDonald seconded the motion.

Mr. Shaw questioned whether this Variance should be deferred until the zoning issues were resolved, since then a variance may not be needed. In addition, he commented that perhaps the pool size could be minimized.

Mr. Moore responded that this would still need a variance, even with zoning in progress, and the width of the pool was one foot larger than what the standard pool would be.

Mrs. Smith said that she believed a 16 foot wide pool was too wide.

Mr. Wyett suggested that the pool be 14 feet in width and amended his motion to include that.

Mr. Moore stated that a medical hardship was not a hardship.

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

9. Variance No. 53-95 - Adele Raffo, Penthouse A, Park Place Co-op Inc., 369 S. Lake Drive; to allow installation of an awning on an open balcony, a variance from Section 5.32(c) of the Town Code. R-D(2) District - NO ONE WAS PRESENT TO REPRESENT THE APPLICANT. THE ITEM WAS DEFERRED TO THE END OF THE AGENDA, AND NO ONE WAS PRESENT AT THE END OF THE MEETING. THE VARIANCE WAS DEFERRED TO THE DECEMBER 12, 1995, TOWN COUNCIL MEETING.

Mr. Wyett made a motion to defer this item until the end of the meeting. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

10. Variance No. 54-95 - Treplika, Wirth & Trapp, Ltd., The Brazilian Court Hotel; to allow expansion of a nonconforming structure and use by permitting the construction of a roof in the north courtyard to provide weather protected passage to the hotel facilities. R-C District -

Attorney Jim Brindell, on behalf of The Brazilian Court, Inc., addressed the Town Council, introducing Mr. Abe Gosman, the new operator of the hotel, Michael Brown, the onsite manager, and Gene Lawrence, the architect on the project. Mr. Brindell continued that the property was very old, and had been land marked in 1994, and had been through a number of difficulties in recent times. Mr. Brindell stated that it was a nonconforming structure and the Variance being requested was for a lot coverage requirement--there was a need to increase the current nonconforming lot coverage by 2.7%, or 2,310 sq. ft., increasing the existing land cover from 51.7% to 54.4%. Mr. Brindell reported that the purpose of this was to provide some much needed inclement weather passage and elevator areas, as currently it is impossible to get from the north wing to the south wing through the inside of the hotel without going outside, and there was only one internal elevator in the hotel. The Variance was important in order to allow the property to function in a manner which was reasonably anticipated by guests in the hotel. Mr. Brindell stated that Gene Lawrence would address the details of the additional area of coverage.

Mr. Lawrence addressed the Town Council, exhibited a plan of the hotel as it now existed, and a proposal to link the corridors in the courtyard between the first and second stories. Mr. Lawrence stated that it would be necessary for the Landmarks Commission to approve the appearance.

Mr. Moore stated that the issue of the hotel being of nonconforming use in a residential zoning district, had been addressed, and that in order to maintain the hotel the existence of the hotel must be considered in its future use. He noted that the application was a minimum application, and for that reason staff had no objections.

Mr. McDonald made a motion to approve Variance 54-95. Seconded by Mr. McLendon.

Mrs. Smith asked if the hotel would be opened to the public after it had been converted.

Mr. Gosman replied that when it was converted as a home for the elderly it would be available only to the children and relatives of the inhabitants, and the restaurant would not be used for people not living in the hotel.

On roll call the motion carried unanimously.

11. Variance No. 55-95 - Jean Kilborne, 417 Peruvian Avenue (4 Major Alley); to allow construction of a pool/spa providing a 4' north side yard setback in lieu of 10' required, and providing a 2' west rear yard setback in lieu of 10' required. R-C District -

Attorney Peter Broberg, on behalf of Jean Kilborne, addressed the Town Council, stating that the request was to put a pool/spa on the property, and he exhibited photos of the property and the area proposed for placement of the spa. Mr. Broberg pointed out that the property was not in conformity with any of the requirements of the R-C Zoning District, was undersized, was very small, and the hardship was with the land--the size of the property, and if the applicant could not have the pool/spa it would deny her the rights that people in similarly situated properties had.

Mr. Moore stated that the entire property was nonconforming and suggested that it would be wise to have some type of acceptance from the neighbors. Other than that, staff had no objections.

Mr. Broberg displayed a drawing of the planned pool/spa, commenting that the property was grossly undersized, and it was impossible to place the pool/spa 15 ft. from either lot line as required in the Zoning Ordinance.

Mr. Moore stated that since this would be a permanent, in ground installation which would be difficult to remove, it may be a good idea to notify neighbors of the specifics.

Mr. Wyett made a motion to approve Variance 55-95, with the provision that neighbors be re-notified before the approval was finalized, with the approval then becoming automatic. Mr. McDonald seconded the motion for purposes of discussion.

Mr. McLendon asked the square footage of the house?

Mr. Moore replied that it was a small group of homes that comprised what was known as Major Alley, a small development put together by Howard Majors, and the house was approximately 900 sq. ft.

Ms. Bettina Anthony, 211 Dunbar Rd., addressed the Town Council, stating that she had received a notice from the Town about this in ground pool/spa, and she approved of it.

Mr. Robert Grace, 126 Seagrape Circle, stated that Major Alley was one of the true treasures of the Town, and he begged that the Town Council go slowly with anything that might destroy it and to bend over backwards to let every other resident in Major Alley know what was happening.

On roll call the motion was approved 3/2, with Mr. Shaw and Mrs. Smith casting negative votes.

12. Variance No. 56-95 - Oceanic Holding Estates, Ltd., 641 N. County Road; to allow construction of

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additions and modifications to the existing residence and to add a new accessory structure permitting the building height to be measured from elevation 10.28' in lieu of 7.5', as required. R-AA District -

Mr. Moore stated that when notices were sent to residents within 200 ft. of this property there was an error made by the Town in putting postage on the envelope, and renote was being sent to the one person who did not receive a notice, advising them that the matter was before the Town Council with the condition that if there was an objection the matter would return to the Town Council.

Mr. Randolph stated that Mr. Moore had consulted with him regarding the deficiency in notice, and he had suggested the alternative as stated by Mr. Moore. The other alternative would be to defer the item until all neighbors were notified, however, that would be postponing the applicant as a result of a mistake on the part of the Town.

It was decided by the members of the Town Council to hear Variance 56-95 today.

Mr. Gene Pandula, representing the owners of 641 N. County Road, addressed the Town Council, stating that the Variance request was to expand an existing structure that was built in 1960-61, and he exhibited drawings of the area, explaining that the hardship was in the lay of the land.

Mr. Moore stated that there would be no need for a variance if the ceiling heights were modified, and he asked Mr. Pandula to explain why the variance and the stairs were needed?

Mr. Pandula responded that the design would match the existing floor elevation.

Mr. Moore stated that walkways and outbuildings could be built lower and to Code, and that was the position of the staff--even though the Variance was minimum it was an architectural desire rather than a Code desire.

Mr. Wyett stated that he found a hardship with the land, and made a motion for approval. Seconded by Mr. McLendon. On roll call the motion failed 2/3 with Mr. Shaw, Mc. McDonald, and Mrs. Smith casting negative votes.

Mr. Randolph stated that some sort of affirmative motion should be made, either to disapprove or some type of substitute motion.

Mrs. Smith stated that a member of the prevailing side could make a motion either to deny, or to split the project into the separate buildings.

Mr. McDonald made a motion that the project be split and approved so that a variance would be required only on the "L" shaped segment and walkway on the rear, with the remaining structures built to Code. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

13. Variance No. 57-95 - American Continental Properties, 249 & 251 Royal Palm Way; to allow the addition of a roofed walkway connecting the two structures to the parking garage increasing the nonconforming lot coverage from 55% to 58% in lieu of 25% maximum allowed. C-OPI District -

Mr. Gordon Mock, an architect representing the owners of the Plaza Center Office Buildings, addressed the Town Council, stating that it was desired to provide a covered walkway connecting the parking garage to both buildings. Mr. Mock displayed exhibits of the proposal. He addressed the hardship as the weather, and inconvenience for patrons entering the buildings.

Mr. Moore advised that Mr. Mock had been advised by the Town to prepare an alternate plan, which he asked be shown to the Town Council at this time.

Mr. Mock explained that the staff had proposed the idea that the existing fountain between the two buildings should be left undisturbed, and a design had been implemented (Plan B) that would leave the fountain in place, the view from the street would be less impacted, and the design would be less objectionable.

Mr. Moore responded that on the basis of reviewing Plan B, the staff did find that there was a problem with getting patrons from the garage to the building, and there was no objection to this plan.

Mrs. Smith asked how many feet back the covered walkway would be from the sidewalk on the north side?

Mr. Mock replied approximately 75 ft.

Mr. Shaw made a motion to approve Variance 57-95, Plan "B", with walkways on both sides of the fountain area, and the fountain not covered, based on the hardship of design of the building and adequate access from the garage to the building.

Mr. McLendon asked what material would be used to construct the walkway?

Mr. Mock replied that the intention was to match the existing architecture, which was concrete block, white stucco, with a flat roof.

Mr. Moore stated that the buildings were built in the 1960s and were conforming at the time, and subsequent zoning had rendered them nonconforming, and those would be reasons for consideration of approval.

Mr. McDonald seconded the motion. On roll call the motion carried unanimously.

14. Special Exception No. 23-95 - Nations Bank of Florida, N.A., as Trustee, 203 S. Lake Trail; to allow continuation of a kitchen facility in an accessory building previously approved (Var. 27-78). R-A District -

Attorney David Shaw, representing the current owner of the property, addressed the Town Council, stating that the owner had purchased the property subject to an agreement made between the prior owner and the Town on December 12, 1978, and recorded in the Public Records of Palm Beach County, providing for the construction of certain kitchen facilities provided the owner agreed to certain terms and conditions. The agreement also provided that any subsequent owner must appear before the Town to obtain the benefit of the agreement and also agree to the same terms and conditions. The provision of the agreement specifically said that should the purchaser agree to be bound by the terms and conditions contained in this agreement, said renewal shall not be unreasonably withheld by the Town.

Mr. Moore stated that this was now a Special Exception, rather than a Variance, however as long as the applicant was willing to continue with the agreement, and have it passed on to the new ownership, staff had no objections to this item.

Mr. Wyett made a motion to approve Special Exception 23-95. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

15. Special Exception No. 24-95 - The Mar-a-Lago Club, Inc., 1100 S. Ocean Blvd.; to allow construction of five tennis courts and a tennis cabana at the southwest corner of the property, and allow conversion of existing tennis court (at north side of property) into parking, all are accessory uses to a permitted Special Exception. R-AA District -

Attorney Paul Rampell, representing the Mar-A-Lago Club, addressed the Town Council, stating that at the initiation and request of the membership of the Club an application for a Special Exception had been submitted. The Special Exception would include the removal of one tennis court, the construction of four new tennis courts, and the reconfiguration of existing parking. The Mar-A-Lago Club tennis professional could verify that over 125 members of the Mar-A-Lago Club had expressed interest in and a desire for more tennis courts, as well as 35 members requesting private tennis lessons. The Executive Director of the Mar-A-Lago Club could verify that many prospective members of the Club desire to join when these courts were completed. The tennis facilities make the Mar-A-Lago Club a more well-rounded, and a more attractive Club in relationship to the other social clubs in the area. Mr. Rampell continued that the request was to relocate the one tennis court along the northern boundary of the property, and construct four additional tennis courts on the most remote section of the estate possible, the corner of Southern Blvd., and Lake Worth--no residents whatsoever would be affected in any way by this location. A total of five tennis courts, and a very small 667 sq. ft. tennis pro shop would be the end results.

Mr. Rampell displayed a site plan, and a sketch showing the proposed project, pointing out that the present tennis court caused noise, as does the basketball hoop and backstop. All of the noise would stop by virtue of the application requested today. The newly reconfigured parking area would be consistent with the existing parking arrangement in many respects--aesthetically satisfying to the National Trust for Historic Preservation. Mr. Rampell stated that travel on the estate would decline; valet drivers would be moving cars less frequently. In addition, Mr. Rampell stated that most of the valet traffic would no longer be along the northern boundary wall of the estate, but would relocate to a point approximately 50 ft. west and 50 ft. north of the existing relay point. Mr. Rampell pointed out specifics concerning the valet parking procedure on the display he was exhibiting. Mr. Rampell emphasized that the new arrangement should cut down on the flow of traffic along Woodbridge Road.

Mr. Wes Blackman, project coordinator of construction at Mar-A-Lago, addressed the Town Council (Mr. Blackman was sworn in by Mrs. Pollitt) stating that the relocation of the tennis courts offers opportunity to solve some onsite circulation conflicts, and reduce the impact to adjacent properties. He noted the new parking configuration on the display, and explained the traffic situations on the estate to the Town Council.

Mr. Rampell stated that the applicant was seeking a Special Exception, and were not seeking to amend the Declaration of Use Agreement, dated August 10, 1993. This Agreement specifically anticipated certain changes to the physical condition of Mar-A-Lago. Article II, "Club Use" stated that existing usages may be modified by "new application to and approval by the Town Council." Mr. Rampell continued that the desire for new tennis courts should not come as a surprise, since in the Public Hearings preceding the approval of the Mar-A-Lago Club he had explicitly stated that at some future point there probably would be a request to construct additional tennis courts at Mar-A-Lago. He stated that he had been asked, at the time, if any specific location had been proposed for such future courts, and he had replied that there were no proposed

locations. He added that the average daily number of automobile trips, 313, was unchanged by this application, and that at any given time no more than 20 people could play tennis on five tennis courts. Mr. Rampell distributed a series of photographs showing traffic flow in Mar-A-Lago conveying his point that the Declaration of Use Agreement was being complied with. He stated that the traffic issue at Mar-A-Lago had been extremely and thoroughly addressed, and since the Club had been approved in 1993 there had been no complaints about back up of traffic. In fact, he added, a very nice letter had been received from St. Edward Church, who recently had a function, which he would like to make part of the record, as well as acknowledgment of letters of objection made by Floyd L. Wideman and Mrs. DeMoss. Mr. Rampell noted that he would also make the many different complaints made by Mr. Wideman, a nearby resident, part of the record. Mr. Rampell reminded the Town Council that the Mar-A-Lago Club had expended an enormous amount of money constructing the northern boundary wall and vegetation along it, which had been required by the Town in order to protect residents of Woodbridge Road from noise and light. Mr. Rampell reminded the Town Council of the multitudinous requirements that the Club had met prior to the issuance of the Certificate of Occupancy.

Mr. Moore stated that one of the requirements that the Town Staff had asked the Club to fulfill was the submission of the project to the National Trust, who have easements on the property as a prerequisite before coming before the Town Council. Staff felt the location of the tennis court and the addition of four more courts could not be added in a better place than in the southwest corner of the property. Mr. Moore questioned whether the additional 30 parking spaces were not required spaces, but additional spaces?

Mr. Rampell stated that they were additional spaces.

Mr. Moore clarified that the Club did have its required parking, so these would be additional spaces, and not required. He added that staff did have concerns over the Woodbridge Road side, and had voiced those concerns to the applicant, and that staff had no objections to the Special Exception for the four tennis courts and relocation of the other tennis court.

Mr. Robert Grace addressed the Town Council, questioning whether members of the Club who are members of the Town Council may wish to recuse themselves. He stated his concern with the use of the tennis courts; that somewhere down the road the courts may be put to use as tennis camps, etc. He noted that he had heard nothing from Mr. Rampell stating that the courts would be used only by bonafide members of the Mar-A-Lago Club. He urged that the Town Council take the opportunity to take action to ensure that the tennis courts would be used only by the members and guests, and that tennis instruction be limited to members only. He mentioned that advertising of these courts should be closely watched as well.

Mr. Frank Lynch, on behalf of Mrs. DeMoss, addressed the Town Council, stating that Mr. Rampell spoke of being a good neighbor and cooperating with his neighbors, however, after reviewing the plan, Mrs. DeMoss was very reluctant to have the plan approved. He added that Mrs. DeMoss would be directly affected by the tennis courts as the nearest neighboring property. He commented that he understood that there had been a problem with the existing tennis courts as far as noise, and as far as use, and that it is expected that by relocating them the problem would not get better. He noted that he had not heard Mr. Rampell give any idea of the volume of sound which 20 people on five tennis courts would generate, nor of the impact of tennis ball machines and the typical noises that come from the use of a tennis court. There was also a concern with a request for lights on these courts, and there had been no evidence of what affect the glare from these lights would have on the property of Mrs. DeMoss. Mr. Lynch stated that he did not know if Mr. Rampell was prepared to speak to that today, and suggested that this portion of the Special Exception be deferred until a study could be undertaken to reflect the impact on the DeMoss property.

Mr. Lynch addressed the parking lot portion of the Special Exception. He understood that the valets were loud now, and this was disturbing to the nearby residents. Mr. Lynch stated that there is ample area in which to locate a parking lot on the property adjacent to Southern Blvd. in the southeast corner, which would have the least affect on Woodbridge Road residents. Mr. Lynch commented that the expansion of the parking lot would merely expand the problem. Mr. Lynch stated that his client was concerned about the fact that this matter had not been brought up at the time the Club was originally seeking approval, and was concerned that a piecemeal type of approval was being sought. Mr. Lynch noted that, with regard to the parking lot, 112 additional spaces were being created, and since valet parkers were used that number could mean substantially more than that. He summarized that Mrs. DeMoss had a substantial investment in her property, intending to make it her home, and this type of project would have a substantial economic impact, increase noise and glare, and he asked that the request be denied.

Mr. McDonald asked Mr. Lynch if the DeMoss bedroom would look over the new courts?

Mr. Lynch replied affirmatively.

Mr. McDonald asked how far the DeMoss house was from both the existing and proposed tennis courts?

Mr. Lynch replied 200 ft. and 300 ft. respectively.

Mr. Ronald Adams, addressed the Town Council, stating that he had recently moved to Palm Beach and was, in fact, the closest property to the existing courts and was quite amazed at some of the things that had been said about the noise at Mar-A-Lago. He stated that he had no complaints about the operation of the Club, and he declared it was incredible to him that when a person lives in the landing pattern of Palm Beach International Airport that there would be concern about the noise of occasional tennis balls. He stated that there was no reason from a neighbor's standpoint to deny the application.

Mrs. Smith asked Mr. Adams if, as a resident of Woodbridge, he had guest privileges at the Mar-A-Lago Club?

Mr. Adams agreed with that.

Mrs. Smith asked how many parking spaces were currently in the parking area?

Mr. Blackman replied about 75, and about 30 would be added with the approval of this application.

Mrs. Smith asked if the National Trust had approved the tennis court and landscaping?

Mr. Blackman replied affirmatively.

Mr. Blackman replied that he wished to clarify some points about dimensions--the distance of the tennis courts from the house of Mrs. DeMoss was probably about 400 ft. because the width of Mar-A-Lago was approximately 600 ft. and the distance from the DeMoss house to the new parking area was about 300 ft.

Mr. Shaw stated that there seemed to be concern about the traffic that would now be headed westbound along the perimeter road, and he suggested that road be completely abandoned and be used for entrances and exits into the parking area.

Mr. Rampell replied that he did not think that would have much of an effect, and the better location was in the southeast corner.

Attorney Ron Collins of the Law Firm of Moyle, Flanagan, 625 North Flagler Drive, addressed the Town Council, stating that he represented Mrs. Alyne Massey at the time consideration was being given to the use of the Mar-A-Lago property as a private club. He stated that he was here today again representing Mrs. Massey, who had the house immediately across South Ocean Dr. from Mar-A-Lago, and who had objected very strenuously to the use of the property as a private club. Mr. Collins remarked that as a private club, there were certain uses inherent in a club which one must expect to happen, therefore, the objection today was not toward the Special Exception itself, however, the issue was that the Town Council must be certain that the increase of the available facilities of the Club would not increase the impact of the Club on the surrounding area over and above the original impact. He specified that there were two conditions that he was urging be placed on the granting of this Special Exception:

1. Traffic. A major issue of approval for the Club was a traffic issue, and the Town Council had imposed a certain average daily traffic limitation on the Club. Mr. Collins suggested that the Town Council impose a condition on the granting of the Special Exception that not only would the average daily traffic not increase, but that it never be used as a rationale to increase that traffic later.
2. Lighting. Mr. Collins stated that Mr. Rampell had given the example of a mock army traffic as a nuisance, and he suggested that there were other nuisances besides that, such as lighting of the tennis courts. He noted that there would be a 500% increase in the number of people that could play tennis at the Club. He suggested that lights not be allowed, because they would impact the surrounding area.

Mr. Russell Balasco, 136 Woodbridge Road, addressed the Town Council, stating that he had problems with a vacant lot that Mr. Trump owned that was next to his property, and that he had made one or two calls and the problem had been remedied immediately, and he had not had any problems with the Club. He stated that he was concerned that cars may be parked in the lot next to his property, where Club workers cars are now parked. The only problem with traffic that he had recognized was with the first major party, when Woodbridge Road was very crowded, however, the situation had been remedied and there had been no problem since then.

Mr. Moore stated that the lot in question was vacant, with frontage on Woodbridge, and this could not be used as a parking lot according to Code.

Mr. Balasco relayed that he had gone through a situation when a foreign group asked to purchase his property, and they had left with the idea that the guest membership was not in any way guaranteed, and nothing had ever been received in writing saying that, even though he had attended events at Mar-A-Lago. He stated that if Woodbridge Road residents suffered with the expansion of the tennis courts, that the residents should be protected by being able to use the Club, and have it in writing. He noted that he had purchased the property to follow the growth of the Club, however, he did not want to get into a situation where residents were not even protected legally as guest members of the Club.

Mr. Rampell responded to Mr. Balasco's concerns by citing the Declaration of Use Agreement, saying that it was very explicit in providing that bonafide owners of Woodbridge residences shall have guest privileges without having to pay membership deposits, and that he believed all of the residents of Woodbridge Road were well protected. Mr Rampell stated that Mr. Balasco had been given a copy of the rules, and like all clubs, rules may change from time to time, however at this point in time the Club rules duplicate language from the Declaration of Use Agreement to confirm that Woodbridge residents did have guest privileges.

Mr. Rampell referred to a comment by Mr. Grace, stating that he would like the record to reflect that on June 11, 1985 Council Member Nancy Douthit voted on Special Exception 11-85 with respect to the Beach Club. He continued that on

October 11, 1988 Mayor Ilyinsky, who was then a Council Member, voted on Special Exception 11-88 with Variance, that related to the Bath & Tennis Club; on March 13, 1990 the late Bernie Heeke voted on Special Exception 1-90 with Variance that pertained to the Sailfish Club. Mr. Rampell reiterated that there was a 6 ft. masonry wall that was built to protect Woodbridge Road residences, and there was a 20 ft high ficus hedge which runs along that perimeter. If parking was moved from one part of the estate to another, it would simply reduce the amount of valet driving and all of the related problems.

Mrs. Smith asked Mr. Rampell if the Club presently did advertising?

Mr. Rampell responded negatively; not to his knowledge.

Mrs. Smith commented that the statement of Mr. Grace that the Club could not advertise for tennis courts would be moot, since the Club did not do advertising.

Mr. Wyett stated that the Club did advertise, as he had seen advertisements in New York magazines.

Mrs. Smith asked if anyone representing the Club knew whether the Club advertised or not?

Ms. Debra Tournavan addressed the Town Council, after first being sworn in by Mrs. Pollitt, stating that to her knowledge there had been no advertising of the Club, although interviews had taken place throughout the years, but paid commercial advertising had not been done.

Mr. Wyett stated that it may not have been paid advertising, but strong publicity had been released in the New York area.

Mrs. Smith asked Mr. Rampell if, as a condition of approval, the Club would agree not to advertise the tennis courts?

Mr. Rampell responded that the Club would subject itself to any and all ordinances applicable to all of the other clubs in the Town of Palm Beach.

Mrs. Smith asked if the tennis courts would be a separate entity from the Club--run by the pro?

Mr. Rampell responded that everything would be run by the Mar-A-Lago Club.

Mr. McLendon asked why the tennis hut was on the west end of the tennis courts, and not the east side?

Mr. Rampell stated that the intention was to make the hut as far away from residences as possible.

Mrs. Smith asked where the parking would be for the tennis courts?

Mr. Rampell stated that it was expected that most members would drive through the main entrance gate and drop their cars off there. A locker room and changing facilities were included in the spa nearby.

Mrs. Smith asked why a parking area could not be incorporated near the tennis courts, so that members could come in and park by the courts and exit on the Southern Blvd. gate.

Mr. Rampell responded that he had misunderstood the question--there was indeed parking on the south side of the property which could be used by members.

Mr. Blackman pointed out the parking on the exhibit presented.

Mrs. Smith asked if it was possible to ask people using the tennis courts to enter at the Southern Blvd. entrance?

Mr. Blackman responded affirmatively.

Mrs. Smith asked why there could not be an informal grassy area in the location of the present tennis court for parking?

Mr. Rampell stated that it would be very messy and unattractive to have cars parking on the grassy areas.

Mr. McLendon asked when the south gate would normally be opened?

Mr. Rampell stated that it was opened almost all of the time.

Mayor Ilyinsky addressed some questions to the tennis pro (Antony Boulet). He mentioned the comment of Mr. Grace pertaining to the possibility of a tennis camp at Mar-A-Lago. Mr. Boulet responded that as far as he knew there was no such thing as a tennis camp planned. Mayor Ilyinsky asked if professionals would be coming in to play advertised exhibition games? Mr. Boulet responded that as far as he knew there were no plans for that type of thing. Mr. Boulet stated that there may be charity events, where a professional would be brought in to raise money for an organization. Mayor Ilyinsky asked if that was allowed in the other clubs in Town under zoning codes? Mr. Moore responded that if they were

bona fide guests there would be no problem. Mr. Boulet stated that there would not be a touring pro tournament, or anything of that nature held at the Club.

Mr. Wyett asked if any such event would cause traffic to gather at the Club?

Mr. Rampell stated that there were any number of types of special events that could be sponsored at the Club which conceivably could cause a nuisance.

Mr. Wyett asked if any type of bleachers would be contemplated, in order for people to watch any type of match?

Mr. Moore replied that the Club was not entitled to that, as that type of arrangement would need to have approval, and staff could not give that kind of approval without the approval of the Town Council.

Mr. Wyett remarked that he was very concerned with the parking so close to Woodbridge Road, not so much during the day, but in the evening; that the starting up of cars and moving them out to two-deep parking demonstrated an increase in noise; that the parking was not needed and was in excess of the original allocation. Mr. Wyett requested that the parking arrangement item be severed from the tennis court issue, and each item be considered separately.

Mr. Rampell stated that the request was not for a net increase in parking; in fact, parking on the southeast portion of the property could be reduced.

Mr. Wyett stated that he was not asking for a reduction in parking in the remote southeast section, which was not bothering anyone, but on the Woodbridge side it could bother people.

Mr. Rampell asked if a reduction in the number of parking spaces proposed was in order?

Mr. Wyett stated that he had trouble approving the new parking spaces because of the noise factor, although he understood the convenience factor, however there was adequate parking on site already.

Mr. Rampell stated that he thought there was a difference of opinion, as he believed the present configuration required much greater activity by the valets.

Mr. Wyett remarked that a car would have to be moved three times, in an area which could disturb residents.

Mr. Rampell stated that this was explicitly discussed in the hearings; that there would be a three-leg journey that certain cars would take, and by reducing movement on the estate itself the noise would also be reduced.

Mr. Wyett commented that, at a very minimum, he would like to see the two-deep parking eliminated, as it caused additional moving of cars.

Mrs. Smith stated that, earlier in the day, it had been decided to separate the tennis court issue from the new parking area issue, and called upon Mr. Wyett to begin the discussion.

Mr. Wyett stated that he had no objection to tennis courts--he was objecting, however, to the fact that the Town Council had not had an opportunity to see how the Club was going to be run, and how it would affect the residents of the Town. Mr. Wyett stated that he had a conversation with Donald Trump in this matter, and told him that the only leverage the Town Council had was to withhold any future favors, and that by voting "yes" he believed he would be giving up leverage without seeing how things would work; the issue was not the tennis courts but was one of leverage and timing.

Mrs. Smith asked if any other Council Members had ex-parte communication in regard to this matter?

Mr. McLendon stated that he had a telephone conversation with Mr. Trump.

Mayor Ilyinsky stated that he had not had ex-parte communication in regard to this matter.

Mrs. Smith stated that she had a conversation with Mr. Rampell in regard to this matter.

Mr. McDonald stated that he had spoken to Mr. Trump, Mr. Blackman, and the tennis pro. Based on the National Trust recommendation, and based on moving the tennis court further away from the people on Woodbridge Road, Mr. McDonald made a motion to approve the five new tennis courts with a hard true red surface material substance, with water fountains on the court, to include the pavilion as presented in the exhibit. Seconded by Mr. McLendon.

Mr. McDonald reiterated that he was moving that it be approved as presented, which included wiring for lights. He added that if and when the Town removes its prohibition on lighting, then the Club could come back and request that.

Mr. Collins inquired about the traffic movement that had been agreed to in the application for Special Exception as well as verbally today; Mar-A-Lago had represented that the additional tennis courts would not in any way increase the average daily traffic for the Club, which had been limited to 313 trips per day. Mr. Collins recommended that this be made mandatory, as a condition of approval, and in addition, that the new tennis courts should not individually or collectively be

used as an excuse to increase the average daily traffic in the future.

Mr. Lynch stated that this was not a unique problem in the Town, as there were inconsistent uses that backed up to one another, and this was definitely one, and that in this instance, the Club had every ability to mitigate the parking situation by parking the cars at the southeast corner as they already did.

Mr. Lynch stated that the issue of lights was incomprehensible, that Mrs. DeMoss would receive the glare on her property.

Mr. Wyett stated that the new lighting would not result in glare.

Mr. McDonald stated that lighting was not being approved, as right now lighting was prohibited in the Town. He continued that the applicant had asked to wire for lights, and if the zoning was not changed the wiring would be at the applicant's expense for no reason.

Mr. Lynch stated that the Town Council had the opportunity to recommend that there be no lights.

Mrs. Smith asked if the Mar-A-Lago members had requested the courts?

Mr. Rampell replied that it was the Mar-A-Lago Club, not Donald Trump.

Mrs. Smith inquired if the members had a say in the Mar-A-Lago Club, or was Donald Trump still the Mar-A-Lago Club?

Mr. Rampell stated that members definitely had a say in the operations of the Mar-A-Lago Club.

Mrs. Smith inquired if members were shareholders in the Club, or if there was a Board of Directors?

Mr. Rampell responded negatively.

Mr. McLendon stated that he had also had comments from several Club members, who were tennis players, encouraging him to look favorably on the tennis courts.

Mr. McDonald stated that he had several people from the south end contact him regarding the tennis courts.

Mr. Moore stated that the proposal of the Zoning Commission was, all tennis court lighting, if permitted, and meeting minimum standards of property size would require a Special Exception with hours of operation, and noise and light mitigation for abutting property owners. Therefore the item would be well controlled, and there would be no automatic guarantees regarding lighting.

Mr. Collins urged that a condition be imposed that Mar-A-Lago could not subsequently use the expense put forth in pre-wiring as a justification for granting the lights later.

Mrs. Smith asked Mr. Moore if automatic ball machines were permitted in the Town?

Mr. Moore replied that they were permitted, but were regulated.

Mrs. Smith inquired if Mr. Rampell anticipated that setting a precedent for return visits to the Town Council asking for amendments to the Declaration of Use Agreement frequently, because the tennis courts were before the Town Council at this time?

Mr. Rampell replied that was sheer speculation, as he could not anticipate what future applications may or may not be made.

Mrs. Smith commented that she had stated last year that she had hoped that the applications that were requested would be for everything together, rather than piecemeal for the tennis courts, parking, croquet courts, etc. She continued that she did have a problem that each month would contain another request from Mar-A-Lago.

Mr. Rampell stated that he had encouraged Mr. Trump and everyone in the Club with whom he had spoken, about developing some sort of a master long-term plan, so that the Town Council could see where things fit into a grander scheme.

Mr. Wyett asked Mr. McDonald if he would accept an amendment to his motion that the Mar-A-Lago Club not come before the Town Council for any more privileges, variances, etc., until May of 1966?

Mr. McDonald replied negatively.

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

Mr. McDonald addressed the parking issue, stating that if grass crete was used, it would probably be better, and that

the exist separate from the entrance was a good idea, and recommended the proposed parking, assuming the surface was changed.

Mrs. Smith asked Mrs. Pollitt if there had been any other correspondence in regard to this matter?

Mrs. Pollitt stated that the only additional letter that she had was in support of the tennis courts, from Alan K. Docter, 100 Worth Avenue.

Mr. McLendon stated that he would like to see the parking layout readdressed, and that he shared the concern of Mr. Wyett about the double decking parking.

Mr. Rampell exhibited a display of the existing, approved parking areas, identifying them as Phases A, B, and C. He suggested that the parking area be reconfigured following the plan that had been approved by the National Trust, while alleviating some of the concerns about the quantity of cars in the area.

Mr. McLendon made a motion that the parking issue be readdressed and this portion of the request be deferred to the December Town Council meeting. Mr. Wyett seconded for purposes of discussion. He recommended, as Mr. Shaw has suggested, that the traffic be widened at the extreme right, and abandoned along the Woodbridge wall area, so that traffic would flow better, as well as eliminating the double decking.

On roll call the motion to defer the parking issue until the next Town Council meeting carried unanimously.

16. Special Exception No. 25-95 - Martha Phillips, Inc., 150 Worth Avenue; to allow applicant to occupy spaces 136 and 140 totaling 3,425 sq.ft., for retail purposes, in lieu of 2,000 sq.ft. maximum allowed; and, to allow a separate but adjacent area totaling 2,400 sq.ft. to be used temporarily for storage and alterations. Said temporary space would be abandoned by the beginning of the 96 Season. C-WA District -

Attorney Jim Brindell, on behalf of Martha Phillips, Inc., addressed the Town Council, stating that the store had been in the Town for 52 years and was one of the landmarks of the Town. The operation was being moved to the Esplanade, and a request was being made for approval of greater than 2,000 sq. ft. for retail purposes. Two spaces were involved, one permanent and one temporary, with the permanent space being remodeled over the summer and the temporary space being abandoned. A Town Serving Affidavit had been provided, and there was also an affidavit from Kim Anderson on the various Special Exception criteria.

Mr. Moore stated that the Town serving status must be shown, and that had been done.

Mr. Shaw made a motion to approve Special Exception 25-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

17. Special Exception No. 26-95 with Site Plan Review and Variances - Eberlein Holdings, Inc., 100 Casa Bendita; to allow construction of a single family residence on a 41,382 sq.ft. lot, four times the minimum lot size of 10,000 sq.ft., pursuant to Section 5.15(c) of the Town Zoning Code. Variances requested: 1) lot width required is 100'; cul-de-sac frontage is 60'; 2) allow all of the west property line to the front of the house to be considered the front yard for landscape open space requirement purposes; 3) a variance from the point of measurement to allow the measurement to begin at the finished floor of the habitable space (elevation 19.66' NGVD) in lieu of the finished floor of the garage (elevation 11.0' NGVD). R-B District -

Attorney Jim Brindell, on behalf of Sir Anthony and Lady Jacobs, addressed the Town Council, stating that he would briefly go through some of the aspects as to why the Special Exception was being requested. First, the lot was essentially 200' x 200', abutting the street at the corner of the lot. Secondly, there was a substantial grade change from the street to the predominant part of the lot of about 8'. The current house was a single story house, essentially built at the grade of the higher level, and the request was to be allowed to compute the height requirements from the point of measurement where the slab was currently. The finished floor elevation would be 19.66; the grade elevation was 18.66, so a foot was needed. The house as it was now had a garage partially underneath, and the new house would do the same thing, but because of the Building Code, relief was being requested to calculate appropriately so that the desired house could be built. The front of the house was parallel with the beach and to a wall on an adjoining property. Technically, according to Code, most of that would be counted as a side yard, when as a practical matter the house actually fronts onto the front yard. Mr. Brindell displayed an exhibit of the property.

Mr. Brindell continued that the new house site would be heavily landscaped. The FAR permitted in the district was .45, and the FAR of this building was .29, and 57.5% of the lot would be landscaped; the front yard landscaping variance being requested was a 7% variation from the required 40%.

Mr. Jeff Smith, the architect on the project, addressed the Town Council, exhibiting a display of the project and explaining structure placement, elevations, and landscaping.

Mr. Moore stated that this was a unique piece of property, in that when the plat was created for Case Bendita, it had the cul-de-sac location with the narrow lot, and staff had no objection to the frontage variance. Mr. Moore continued that the two story aspect had been honored for setbacks and related requirements, so the point of measurement variance was in order because of the contour of the land. The landscape variance request was a result of a hardship of three side yards, however, it was difficult for staff to support the amount of concrete in the landscaping plan in the front yard area.

Mr. Wyett asked for suggestions on how the amount of concrete could be reduced?

Mr. Smith responded that he would not be opposed to increasing the size of the core of the open court.

Mrs. Smith stated that since this was new construction, a change in the design may not be a problem.

Mr. Smith stated that he was sure they could work around it. He noted that the problem was that there was a driveway which required the landscaping to go into two different directions.

Mrs. Smith asked what the side yard setbacks were for the house on the property?

Mr. Moore responded 15 ft.

Mrs. Smith asked if the new building and new landscaping would appear as green as the current property.

Mr. Smith responded that more green would be seen from the road.

Mrs. Smith stated that the Town Council would now consider the Special Exception and Variances one step at a time.

The first portion to be considered was the Special Exception (26-95) with Site Plan Review pursuant to Section 5.15(c) of the Town Zoning Code.

Mr. Shaw made a motion to approve Special Exception 26-95, items 1, 2 and 4, with the hardship being the nature of the lot and land. Seconded by Mr. McDonald. On roll call the motion carried unanimously:

Item 1: Special Exception with site plan review pursuant to Section 5.15 lot area, for lots equivalent to or greater than four times the minimum lot size for the district;

Item 2: Variance from Section 4.20, Schedule A, which requires a minimum lot frontage width of 100 feet. The lot width is approximately 60 feet.

Item 4: Point of measurement variance to permit the measurement to begin at the finished floor of the habitable space (elevation 19.66 NGVD) in lieu of the finished floor of the garage (elevation 11.0 NGVD).

Item 3 remained to be considered by the Town Council--the variance from Section 4-20 of the Town Code. Mrs. Smith asked what the hardship was?

Mr. Smith stated that the hardship was the way the lot was subdivided, and the split driveway. He stated that he could perhaps change the diameter of the island.

Mrs. Smith asked Mr. Smith what he would have to do in order to eliminate that particular variance request, as she found a great deal of difficulty with variances on brand new projects.

Mr. Smith stated that he would withdraw that portion of the request.

18. Site Plan Review No. 3-95 - Augustine Falcione, 970 N. Lake Way; to allow placement of a sculpture over 6' and under 12' tall pursuant to Section 5.50(b) of the Town Zoning Code. R-B District -

Mr. John Lang, landscape architect for Augustine Falcione, addressed the Town Council, stating that the Agenda was incorrect and the sculpture was actually 12'9" tall, and would go into a large, formal garden. He displayed an exhibit showing the placement of the sculpture and landscaping. Mr. Lang stated that the sculpture could go under 12', and a variance would not be needed.

Mrs. Smith asked if there was any wall or any type of covering on the Lake Trail?

Mr. Lang stated that there was a 5-foot wall along Lake Trail, and a hedge which will be grown up to 12'.

Mr. Moore stated that staff had no objections to the Site Plan Review, however, the sculpture would have to be

reduced by 9", or the applicant could come back for a variance.

Mr. McDonald made a motion to approve the placement of the sculpture of 12'. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

19. Flood Insurance Variance No. 1-95 - Gilbert Kapelman, 1511 North Ocean Boulevard; to remodel an existing structure for more than 50% of the market value with a finished elevation of 7.0'+ in lieu of the required +7.5'. R-B District -

Mr. John Mitchell, a general contractor representing Mr. and Mrs. Gilbert Kapelman, addressed the Town Council, stating that the applicants simply wanted to remodel bathrooms and kitchen as well as putting a new ornament on the front (which had been through ARCOM and approved).

Mr. Moore stated that the permit had been issued for a remodeling, and it had been his understanding that Mr. Mitchell had discovered additional work that needed to be done after the project began. He noted that this was a rare occasion that this item was before the Town Council, since these matters were usually determined by the Building Department and the Contractor prior to the issuance of any permits. Mr. Moore stated that it was fortunate that there was a 7' elevation, and invited Mr. Mitchell to comment on the application.

Mr. Mitchell stated that the structure was CBS block and they were simply trying to remodel, however, it had been appraised at a very low level by the tax appraiser.

Mr. Moore asked Mr. Mitchell if construction had begun?

Mr. Mitchell responded affirmatively.

Mr. Moore asked Mr. Mitchell what had prompted him to come to the Town Council for a variance?

Mr. Mitchell responded that he had not received the certificate of the flood plane elevation level prior to asking for the first application.

Mr. Moore replied that it had been the understanding of staff that the work had been started, then it was discovered that more than the allowable amount of work needed to be done.

Mr. Mitchell responded that was true; substantial things needed to be done that were not evident until walls had been opened up, and in doing so, it was found that the cost of doing that work would be more than what had been originally anticipated. He added that basically, all that they were trying to do was to remodel bathrooms and kitchen.

Mrs. Smith asked Mr. Mitchell if the reason that he was before the Council today was because the additional interior work was not evident when the original permit was filed?

Mr. Mitchell responded affirmatively.

Mr. McDonald made a motion to approve Flood Insurance Variance 1-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

D. Other

1. Consideration of Request for Waiver to Sections 12-50 and 12-51 of Town Code of Ordinances by Ronald M. Dixon, P.E. for New Lakefront Bulkhead at 1840 South Ocean Boulevard - DEFERRED TO THE DECEMBER 12, 1995, TOWN COUNCIL MEETING.
2. Consideration of Request for Waiver to Section 12-51 of Town Code of Ordinances by Carol B. Reed, Project Manager, for Cafe L'Europe at 331 South County Road - APPROVED EXTENDED HOURS: 8:00 A.M. - 8:00 P.M.

The owner of Cafe L'Europe, addressed the Town Council, requesting permission to extend construction working hours from 8:00 A.M. - 8:00 P.M., so that the restaurant could be finished before the season, and because they had run into a few unanticipated difficulties, such as the sprinkler system and additional electrical. He added that the extended hours would not interfere with anyone else.

Mr. Moore stated that the requested extended hours, beginning December 1, 1995, were acceptable to the staff. He added that Mr. Dusey had looked at this also, and there should be no problem with the right-of-way.

Mr. McDonald made a motion to approve the request for extended hours. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON NOVEMBER 14, 1995

Mrs. Smith pointed out that under New Business, #9. Variance No. 53-95 - Adele Raffo, Penthouse A, Park Place Co-Op, Inc. had been moved to the end of the Agenda, as there was no one present for the application. Mr. Moore recommended that this item be deferred until the next Town Council meeting. Mr. McDonald made a motion to defer Variance 53-95 until the December meeting. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

XVI. ANY OTHER MATTERS -

Mr. Moore stated that he had talked with several people on Worth Avenue who were finishing up jobs which would take a few extra days. No vehicles would be on Worth Avenue and the jobs should be finished by Friday. He added that anyone working after that date would be visited by the Code Enforcement Department for the issuance of citations for working beyond the 15th of the month. The work would not be stopped, but the penalty would be paid for working beyond the 15th.

Mrs. Smith asked if the fines were by the day, and how the money was collected?

Mr. Moore replied that fines were by the day, and a Notice to Appear was issued, which could be appealed to the Code Enforcement Board if desired.

XVII. ADJOURNMENT- THE MEETING WAS ADJOURNED AT 8:10 P.M.

Mary A. Pollitt
Town Clerk