MINUTES OF THE TOWN COUNCIL MEETING HELD ON NOVEMBER 12, 1996

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A.M. on November 12, 1996. 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 Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Personnel Director William Crouse, Acting Finance Director Cheryl Somers, Public Works Director Al Dusey, Town Engineer James Bowser, Police Chief Joseph Terlizzese, Fire Chief Vincent Elmore, Recreation Director Russell Bitzer, Director of Planning, Building & Zoning Robert Moore, Planning/Project Coordinator Timothy Frank, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Rabbi Moshe Scheiner from the Palm Beach Orthodox Synagogue. Mrs. Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Presentation of "Certificate of Achievement for Excellence in Financial Reporting" by Representative of Government Finance Officers Association for Fiscal Year Ending September 30, 1995, to Town's Elected Officials and Staff

A plaque was presented to Mayor Ilyinsky by Mervyn C. Timberlake, Financial Service Director for the City of Boca Raton, representing the Government Finance Officers Association.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky thanked Rabbi Scheiner and complimented him on the impending birth of his first child.

The Mayor noted that the Crime Watch Meeting was scheduled for Wednesday, November 13, 1996, at 7:00 p.m. in the Town Council Chambers, and the Chamber of Commerce Breakfast would be held on Thursday, November 14, 1996, at the Beach Club at the Breakers Hotel, which would honor the Town's Employee of the Year.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

Page 4, Defer Item XII.C.2. to the December 10, 1996, Town Council Meeting, Consideration of Request by the Greater South County Road Association for a Memorial Plaque Listing the Donors to the South County Road Tree Planting Project

Mr. Brower requested that this item be deferred to the December Town Council Meeting as more time was needed to consider options.

Mr. Wyett made a motion to defer Item XII.C.2 to the December 10, 1996, Town Council Meeting, Consideration of Request by the Greater South County Road Association for a Memorial Plaque Lsting the Donors to the South County Road Tree Planting Project; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Defer Item XII.C.8. to the December 10, 1996, Town Council Meeting, Consideration of Lease/Purchase Program for New Public Safety Radio System and New Police Mobile Computing System

Mr. Wyett made a motion to defer Item XII.C.8. to the December 10, 1996, Town Council Meeting; seconded by Mr. Shaw. Mr. Shaw then commented that the last time a financing agreement had been used, it was desired that the term coincide with the cash flow, and not end in December, but rather that the payments would end in June. He explained that revenues were received predominantly by June and there was no sense in carrying a loan that could easily be paid off when there was ample cash. He noted that he understood that this concern was to be addressed the next time a financing

~~agreement was done by the Town.~~

Mr. Doney replied that staff would address this matter.

On roll call the motion carried unanimously.

Page 7, Defer Item XV.C.11. to the December 10, 1996, Town Council Meeting, Special Exception No. 34-96, Alio Basbarro, 320 Peruvian Avenue

Mr. Wyett made a motion to defer Item SV.C.11. to the December 10, 1996, Town Council Meeting, Special Exception 34-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 8, Defer Item XV.C.13. to the December 10, 1996, Town Council Meeting, Special Exception No. 37-96, Ray and Sharon Flow, 1350 North Ocean Boulevard

Mr. Wyett made a motion to defer Item SV.C.13. To the December 10, 1996, Town Council Meeting, Special exception 37-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS

Mr. Adrian Winterfield commented on the GFOA award presented to the Town, finding it unusual that it was presented in public in view of the recent problems in the Finance Department.

He also commented that according to the manner in which the Comprehensive Plan was drafted private clubs had apparently been used in part to satisfy park and recreation requirements. He stated that he was not concerned about the substance, but the manner in which this was handled as there had been no written record of what went on either in the files of the Building Department or in Town Council Minutes. He maintained that the Comprehensive Plan was enacted as an ordinance, and the Town Council should have been aware of everything that had occurred in making that ordinance.

Mr. Winterfield additionally commented on the organization of the Grievance Committee, and remarked that in this case one might learn something from military justice, as he had never heard of a commanding officer being placed in the position where he could be overruled by two enlisted men--the Grievance Committee should not include the Town Manager, its actions should be in the nature of a recommendation, and the Town Manager should then take the final action.

Mr. Winterfield addressed the manner in which the cross at Bradley Park had been handled, as apparently the Town Council did not participate in the decision to grant the authorization to erect a cross at Christmas at Bradley Park, and he was of the opinion that this should have come before the Town Council.

Attorney Charles Hickman, on behalf of some of the residents of the Palm Beach Hotel Condominium, addressing a letter regarding an incident involving the application of the trespass laws that had been sent several weeks ago which had been responded to by Mr. Doney. He noted that as a result of that letter and response he had no avenue of recourse other than to have some of the concerns expressed in the letter addressed by the Town Council or one of its committees. He asked that the concerns be placed on the agendas of two different committees regarding the application of the trespass laws and also what one could do when administrative challenges through the Town Manager had been exhausted when it was believed that there was a grievance to be addressed. He believed the Public Safety Committees could perhaps address the issues, as well as an Administration/Personnel Committee with respect to a procedure by which decisions of the Town Manager could be addressed.

Mrs. Smith noted that Mr. Hickman and his clients were involved in litigation currently, and expressed a great deal of concern about involving the Palm Beach Town Council in a legal action that was going through the judicial process. She believed the request should receive attention after the court matter was resolved.

Mr. Hickman responded that litigation was ongoing and was ongoing at the time the trespass took place, which was the incident he was seeking to have reviewed.

Attorney Paul Thibadeau addressed the Town Council, representing Dr. Rhonda Nasser who was involved with the lawsuit referred to by Mr. Hickman. He explained that this was clearly a civil matter, and Mr. Hickman was attempting to get the Police Department to do what he could not get the judge to do. He suggested that was inappropriate--the judge should decide the issue, and then a return visit to the Town Council could be made.

Mr. McLendon asked Mr. Thibadeau if the point in question was concerning trespassing on property with the erection of a fence?

Mr. Randolph interjected that it must first be determined whether discussion would take place before the substance of the issue could be discussed.

Mr. McLendon withdrew his question.

APPROVED AGENDA (ITEMS VII THROUGH ITEM IX)

VII. APPROVAL OF MINUTES OF SEPTEMBER 5 AND 16, OCTOBER 8, 10, 11, AND 28, 1996

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Peggy Adams Animal Rescue League of the Palm Beaches, Inc.; No. 7-97
2. The Jewish Guild for the Blind; No. 23-97
3. The Jewish Theological Seminary of America; No. 27-97
4. Leukemia Society of America, Palm Beach Area Chapter; No. 39-97
5. Brandeis University Women's Committee; No. 76A-97
6. Palm Beach Day School; No. 130-97
7. American Society for Technion; No. 137-97
8. Palm Beach Festival, Inc.; No. 159-97
9. The Salvation Army; No. 197-97
10. Juvenile Diabetes Foundation International, Palm Beach Chapter; No. 240-97
11. Adopt-A-Family of the Palm Beaches, Inc.; No. 254-97
12. Comprehensive Alcoholism Rehabilitation Programs, Inc.; No. 259-97
13. Dana-Farber Cancer Institute; No. 288-97
14. The Jewish Arts Foundation; No. 299-97
15. YWCA of Palm Beach County; No. 325-97
16. Brandeis University National Women's Committee; No. 310-97
17. Planned Parenthood of Palm Beach & Treasure Coast Guild; No. 371-97
18. Palm Beach Fellowship of Christians & Jews, Inc.; No. 401-97
19. Historic Palm Beach County, Inc.; No. 416-97
20. Brandeis University National Women's Committee, Boca Raton Chapter; No. 417-97

Other

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

21. Planned Parenthood of Palm Beach & Treasure Coast; No. 120-97
22. The Garden Club of Palm Beach, Inc.; No. 123-97
23. Greater Palm Beach Symphony Association, Inc.; No. 124-97
24. Rosarian Academy; No. 127-97
25. Northwood University; No. 136-97
26. Edna Hibel Art Foundation; No. 292-97
27. Israel Cancer Association, USA; 379-97
28. Miami City Ballet; No. 397-97
29. New Hope Foundation, Inc.; No. 398-97

- Failure to File Prior Results Form Within Prescribed Time (No Fee)

30. Hanley-Hazelden Foundation; No. 239-97

IX. OTHER

A. Renewal of Existing Contracts and Agreements

1. Authorization for the Town Manager to Execute Agreement Between Palm Beach Community College and the Town of Palm Beach Fire-Rescue Department for Paramedic Clinical Practicums

Mr. Wyett made a motion to approve the Approved Agenda (ITEMS VII - IX); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Shaw asked for clarification on Item VII.A.30. - Hanley-Hazelden Foundation, and noted that no late fee had been paid and asking if the forms had been filed?

Mrs. Pollitt responded affirmatively.

Mr. Shaw explained that it was not indicated that the forms had not been filed, but that the fee had not been paid.

Mrs. Pollitt responded that they had filed the forms late, but this had occurred before the portion of the Ordinance was passed requiring a late fee, and assured Mr. Shaw that all the necessary forms had been filed.

Mr. Wyett commented on the Minutes of October 28, 1996 of the Special Town Council Meeting, page 8, stating that his statement concerning the 12.5% cap on the surcharge should be changed to read as follows:

Mr. Wyett suggested that at such time as $1,320,000 may be equal to or less than 12.5% of the annual total of non-surcharge revenue collected by the City from consumers within the Town, the surcharge rate shall then and thereafter be fixed at 12.5%.

Mr. McLendon suggested that the sentence following the statement of Mr. Wyett on page 8 stated by Mrs. Smith should read:

Mrs. Smith pointed out that the City had accepted that cap proposal for a period of five years.

Town Clerk Pollitt stated that these corrections would be noted and corrected on the permanent record.

REGULAR AGENDA

X. PUBLIC HEARINGS

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

Mr. Tim Frank, Planner/Project Coordinator, addressed the Town Council, stating that the property at 134 Seabreeze Avenue had been reviewed by the Landmarks Preservation Commission and found to meet the following criteria for designation: Criterion A - exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county, or town. Criterion C - property embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship. Criterion D - property representative of the notable work of a master builder, designer, or architect whose individual ability has been recognized or who influenced his age. In this case the architect was John Volk. Mr. Frank asked Mrs. Jane Day to continue with the presentation.

At this time Town Clerk Pollitt swore in all those who would be giving testimony in the proceedings today, and confirmed Proof of Publication regarding Landmark designation of 134 Seabreeze Ave.

Mrs. Jane Day explained that the reason that both of the properties being heard this morning were deferred was that both of the property owners had asked that research be done to find more information about these properties. The property at 134 Seabreeze Avenue was a good example of the Mediterranean Revival style of architect. The original architect had not been found, however, and it had been built in 1925 when Poinciana Park was developed, and was part of the boom time legacy of the Town of Palm Beach. However, in 1927, the young John Volk had just arrived in Palm Beach and started what turned out to be a seventy year career in the Town. This had been his first project in Palm Beach, and he had completely re-done the house from its 1925 appearance to what could be seen today. The re-design had been done for Samuel Harris, the theatrical producer, and the house at that time was called Via Mimosa. The house had originally beeen built for Charles Manning, who was a well-known realtor in the Town of Palm Beach. The house fulfilled Criterion A because it showed the development of Poinciana Park and the boom time legacy of Palm Beach; Criterion C because it was a good example of Mediterrian Revival style architect; and Criterion D because it showed how John Volk, one of the master architects of the Town of Palm Beach, took an existing property, re-did it for a new owner, and still kept it in scale and style with the neighborhood.

Mrs. Smith asked if the property owner had withdrawn his objection?

Mrs. Day replied that no communication had been received from the property owner over the summer. Extensive research had revealed no record of the original architect, as many of the builders in the boom times designed and built homes themselves; in addition the Building Permits skip from 1925 to 1946 on this particular property.

Mrs. Smith asked if the property owner was contacted before the hearing to tell him that further information could not be found?

Mrs. Day replied that he was not contacted personally, although he had been notified that the landmark designation would be heard again today through the normal channels.

Mr. Shaw made a motion that the Designation Report on 134 Seabreeze Avenue be accepted as part of the record; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mayor Ilyinsky expressed concern about designating the property before there was further conversation with the owner, and suggested that this matter be postponed.

Mr. Wyett agreed with the Mayor.

Mrs. Day stated that she would gladly contact the owner and would agree with deferral of Resolution 26-96.

Mr. Wyett made a motion to defer Resolution 26-96 until the December Town Council Meeting; seconded by Mr. Shaw.

Mr. Randolph asked Mr. Frank if there were any timing problems that may be caused by deferral?

Mr. Frank replied that there would be no problem.

On roll call, the motion carried unanimously.

Mr. Frank stated that staff would be pleased to contact the owner and would send another notice.

B. Landmark Designation of 153 Clarke Avenue; Resolution No. 29-96 (Deferred from June 11, 1996

Mr. Frank addressed the Town Council, stating that this property was related to the previous property; the Landmark Preservation Commission had studied the property and found that it meet Criterion A - exemplifies and reflects the broad cultural, political, economic or social history of the nation, state, county, or town; Criterion C - embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.

Mrs. Day continued with the presentation, stating that 153 Clarke Avenue was the home Charles Manning moved to when he sold the previous property (134 Seabreeze). The Clarke Avenue house was the first house done by Gustav Moss and John Volk as a team in 1927. The house was a good example of the Mediterranean Revival style and as such deserved landmarking by the Town of Palm Beach.

Mr. Curlain, the owner of the property, thanked Mrs. Day for the time and effort she had put into the project.

Mr. McLendon made a motion to accept the Designation Report as part of the record; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve Resolution 29-96 designating property at 153 Clarke Avenue as a landmark in the Town of Palm Beach, on the basis that it met Criteria A, C, and D as identified in the Designation Report; seconded by Mr. Wyett.

Mr. Randolph read Resolution 29-96:

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

On roll call the motion carried unanimously.

XI. **OLD BUSINESS**

A. Other

1. Consideration of Proposed Water Franchise Agreement Negotiations with the City of West Palm Beach

Mr. McLendon referred to his memorandum of November 8, 1996, stating that the final conclusion was that the Town should proceed with the offer on the modifications to the Water Agreement, including Item 1, which acknowledged the agreement by the City of West Palm Beach to include the surcharge water revenue in with the other water revenue, so that any allocation for capital improvements would have that in the enumerator and would increase the improvements that the Town was entitled to. The second item concerned Mr. Wyett's suggestion recommending a surcharge cap which would be forever; the City had come back and offered a 5-year limit. Mr. McLendon recommended that the Town ask for a 10-year limit, with expectations somewhere between 5-10 years. Mr. McLendon stated that his major concern was the immortalization of surcharge. He asked Mr. Randolph to explain the meaning of the word "statutory" in the last two Agreements sent by the City of West Palm Beach.

Mr. Randolph replied that if the Agreement was signed for a length of term, the validity of the surcharge would be recognized, and the only way to do other than that would be to either not agree to it, or ask that both sides have an opportunity to have that matter resolved in court.

Mr. McLendon asked the significance of the word "statutory?"

Mr. Randolph explained that he believed it was a recognition of the fact that the 25% was based upon a statutory criteria.

Mr. McLendon recommended that the Town proceed with another revised Agreement based on the three items mentioned, as well as another change he contemplated on water service line connections. He explained that wherever a reduced pressure type back flow preventer was put in there was an automatic 8-10 pressure drop. Presently, the pressure point of measurement was at the meter and Mr. McLendon suggested that wording should be changed "to the point of back flow preventer," which would give the Town a better position.

Mr. Jim Bowser, Town Engineer stated that he presumed that there was a standard pressure loss through one of the devices, and a reduction factor could be applied for the back flow devices in the measurement of the mains.

Mr. McLendon remarked that he was in complete agreement and sympathy with the City that back flow protection should be provided, however, he did *not* agree that the reduced pressure type was required everywhere universally. He noted there was nothing really wrong with a double check valve assembly approved for that type of installation to do the same work, and the pressure drop was much, much less, so if the City insisted on the RPC devices, then they should be willing to measure the pressure further down.

Mayor Ilyinsky asked Mr. McLendon if he believed the Town was any closer to signing a contract?

Mr. McLendon replied that he was hopeful, and if the City wanted to say no that was their right; what their reaction would be to the removal of the recognition of the legitimacy of the surcharge was speculative.

Mayor Ilyinsky suggested that any meeting between the Town and the City of West Palm Beach be postponed until Mr. Wyett and Mr. McLendon conducted further negotiations.

Mr. McLendon responded that he would like to work with staff and get the Agreement ready to go.

President Smith concurred with the Mayor, suggesting that comments be put in writing and a draft sent to Mayor Graham for comments.

Mr. McLendon proposed that the draft Agreement be sent to the Deputy City Attorney, since that office had communicated with the Town, however, Mayor to Mayor would also be acceptable.

Mrs. Smith suggested that the more appropriate way would be from Mayor to Mayor.

Mr. Wyett expressed concern with the 5-10 year proposal on the cap, because at the end of that time a 25% surcharge would be a very large increase, as 10 years from today a basic water bill could easily be 50-100% higher than it was presently. He urged that some type of formula be used for the time period after the cap period. Mr. Wyett referred to the condominium rate, which was a rate of the total use divided by the total number of units, which eliminates the inverse rate and keeps their water rates low; he recommended that the condominium rate be codified in the Agreement, as it was not now mentioned in the Agreement. He commented on the right to install a non-potable water system, recommending that a note be included in the draft that the City would cooperate as to the rights-of-way that may be needed by the Town through their City to build a non-potable water system. Mr. Wyett referred to page 6 of the proposed Water Agreement where the figure of $1,320,000 was quoted as the current surcharge and suggested that the figure be verified before a final Agreement was signed. He expressed concern with future costs to the water system as expansion of the water system to other communities would eventually cause the City to want to expand the basic water supply purification system, and since the Town would not be using more water in the future it should not be obligated to pay a proportionate share of increasing that capacity for no purpose of its own, suggesting that it also be mentioned in the Agreement. He also suggested that protection be included for the Town in the Agreement if the City included "City costs" as a portion of its water department costs.

Mr. McDonald agreed with the incorporations suggested by Mr. McLendon, and questioned the term of the Agreement.

Mr. McLendon explained that the latest revision had been changed to 30 years, however if the City refused to sign an agreement containing Town rights to future legal action he would suggest a shorter term. He recommended a 50 year term with language included that would permit the Town to sue in the future if needed.

Mr. Shaw suggested that it was important to include an average pressure or operating pressure rather than a minimum pressure, as well as a positive position on water re-use and some indication that the Water Re-Use Plant was receiving a portion of its water from the Town of Palm Beach, which the Town should have the right to use.

Mr. Bowser explained that currently the Water Plant disposed of all effluent down deep wells into the boulder zone. The City of West Palm Beach was about to initiate a project to dispose of treated effluent through wetlands, however there had been some questions as to ownership of effluent, which had not been resolved, but the City was moving forward at 100% of their own cost for the construction, operation and maintenance of the re-use facilities, which would be returned into their wetlands and eventually into the water catchment area.

Mr. Shaw explained that his concern was with the possibility that the City of West Palm Beach could develop a non-potable water system with the source of water coming from re-use water, and he did not think it would be fair that the Town of Palm Beach would have to pay for the water that had already been paid for by the Town. He noted that the distribution system was a separate issue, and could be built by either municipality; and that if the City put the re-use water back into the wetland system the Town should receive some sort of credit so that the same water would not be paid for twice.

Mr. Bowser explained that the question was the ownership of the effluent from the Water Plant and as to whether there could be a charge to other entities for its use, which was a matter that was being considered right now. If the City did put water into wetlands, that was not the most efficient system and they may only get 10% of it back to the Plant, but there would be a savings to the entities involved in that there would not be payment for disposal down deep wells. In addition, the Plant was facing the possibility of having to build a new deep well, which would be a shared cost, and by having the wetlands systems there could be indirect savings to the Town. Mr. Bowser stated that the question was if West Palm Beach developed a re-use system for 100% of the water, should they be paid for the use of their effluent or not?

Mr. McLendon stated that language could be included in the proposed Agreement stating that the Town owned that water and could do with it what they pleased.

Mrs. Smith suggested that language be created for a paragraph that could be inserted into the draft Agreement regarding this matter.

In response to Mr. Shaw's question regarding the average water pressure, Mr. Bowser recommended that the Town stay at a minimum, because if an average was used there would be no guarantee of steady water pressure daily. He did express that the City would probably not object to language saying that they would endeavor to maintain a 60 PSI pressure.

Mrs. Smith suggested that language be added to the draft Agreement.

Mrs. Smith asked if the calibrated hydraulic model had been done?

Mr. McLendon replied that there was a draft, but the model had not yet been finished.

Mrs. Smith suggested that Mr. Bowser and Town staff discuss this with the City of West Palm Beach staff. She noted that on page 5 it was stated that the Town and City staffs would meet once per year to coordinate capital improvement projects, and suggested that a time be set for that in April as that would be prior to Finance & Taxation Committee meetings; on page 6 she noted that it read "There is no irrigation in the Town provided by well water," and that should be explained to the City of West Palm Beach as an incorrect statement so it would not preclude any resident in the Town from having a well.

Mr. McLendon addressed each item mentioned so as to define what would be incorporated in the draft Agreement:

Item 1 - what would happen after the term or length of the surcharge cap. The City had offered 5 years and had indicated verbally that they may go to 7 years. Mr. McLendon believed it was unrealistic to look for more than 10 years.

With regard to the immortalization of the condominium rates, Mr. McLendon understood that had been part of the Resolution adopted by the City in 1994--that a residential unit was each unit in a condominium; language could be included in the draft that each unit was a residential unit and should be treated as such.

There had been verbal commitment to right-of-way for non-potable pipe cooperation and language could be inserted to confirm that.

The figure of $1,320,000 surcharge was probably a close estimate and could be verified.

With regard to paying for future expansion of the Water Plant, Mr. McLendon stated that he understood that was supposed to come from impact fees, and was not sure that this should be included in the draft Agreement.

Mr. Wyett interjected that he was taking into account testimony heard by the Town Council almost two years ago when West Palm Beach asserted that they had intentions to be the water supplier for the entire area, and if that became true the 47 million capacity would be used up well within the Water Contract, and the Town would be asked to pay a portion of expansion efforts to increase capacity. Mr. Wyett explained that he wanted to make sure that the Town would not be paying a surcharge on top of an increased water rate as a result of expansion of the water system.

Mrs. Smith remarked that talking about the reconstruction of a facility in 30-50 years and tying the charges today into what those costs would be and locking them in for Palm Beach was untimely and far afield at the current time.

Mr. Doney noted that unless one Council member would dissent, staff would assume that the Town Council was comfortable with the suggestions of items to be included in the draft Agreement made by Mr. McLendon.

Mr. McLendon referred to the suggestion of Mr. Wyett as to the number of years of capping the surcharge, and emphasized that the Town Council should make a definite decision.

Mr. Randolph stated that the capping provision would not be in the document that would be presented to the City, because at the last meeting the 12.5% formula in lieu of the capping had been discussed, unless the Town Council now wanted to present an alternative.

Mr. Wyett stated that he preferred to leave the term for the number of years of capping the surcharge blank as a signal that the Town was not accepting the 5 years, and would like to negotiate. He warned that when water rates doubled, or perhaps tripled in the future it would be a huge burden.

Mr. McDonald commented that there were two issues: one was capping and the other was the percent of the surcharge.

Mr. McLendon explained that the City had repeated over and over that the 25% surcharge was not negotiable, and suggested that the Town ask for a cap of 10 years.

Mr. McDonald asked if the revised Agreement addressed utilization of a percentage of funds for repairs to the water system in Palm Beach?

Mr. McLendon responded that the City had agreed to include the surcharge in the fraction that would determine how much the Town would receive.

Mr. Peter Elwell, Assistant Town Manager, clarified that Mr. Wyett had described a slow decline from the 25% level frozen at the $1,320,000 million, which would then cause a slow decline from 25% as the rates increased until it reached 12.5%, and then the percentage would freeze at 12.5% so the dollar amount would actually increase for the City over the life of the contract after that.

Mr. McLendon stated that he understood that it had been agreed to present West Palm Beach with the 12.5% surcharge for 50 years.

Mr. Wyett clarified that the Town was not requesting 12.5% for 50 years, but was asking for the 25% that was already being paid to be capped at approximately $1,320,000 and as it then declined it would gradually lower to 12.5% because as water rates double from where they were now it would become 12.5%; then as water rates rose from double upwards the dollar value to West Palm Beach would increase.

Mr. Randolph stated that the language was drafted in the Agreement as follows:

Regardless of any law or other regulation which may now or at any time in the future allow a surcharge of greater than the surcharge agreed to herein, the City hereby agrees that it will not at any time or for any purpose impose a greater surcharge upon consumers within the Town. The parties further agree the annual total amount of statutory surcharge shall not exceed the annual total amount of statutory surcharge imposed by the City upon the customers within the Town for the fiscal year of the City ending September 30, 1996, which amount is One Million Three Hundred Twenty Thousand Dollars ($1,320,000). However, at such time as $1,320,000 may be equal to or less than 12.5% of the annual total of non-surcharge revenue collected by the City from consumers within the Town, the surcharge rate shall then and thereafter be fixed at 12.5%.

Mrs. Smith clarified that the length of the Agreement would be 50 years, and confirmed with Mr. Bowser and Mr. Elwell that the codification of condominium rates would be addressed, as well as Palm Beach right-of ways.

Mr. Shaw referred to page 4 of the draft Agreement, Section IV Capital Improvements, Section B, where it was stated "...the statutory surcharge set forth in Section IV-B hereof," and noted that he did not believe that was the right section.

Mrs. Smith noted that the decisions of the Town Council were very clear; Mr. Elwell and Town staff would help clarify any discrepancies.

Mr. Randolph clarified that he would draft language indicating that either party would have an opportunity to file suit in regard to the surcharge matter.

Mr. Elwell advised that staff was clear on the potential expansion of the water system relating to impact fees, however, he asked for clarification of expansion of the utility department function and administrative costs charged to the general fund and whether it should be addressed in the Agreement?

It was the consensus of Council that this item would not be addressed in the draft Agreement.

Mr. Elwell next addressed the comment of Mr. Shaw concerning re-use and how the entities would operate, and asked if that would be addressed in the draft Agreement?

Mrs. Smith clarified that Mr. Bowser would be writing a paragraph in this regard.

Mr. Elwell then addressed the comments of Mrs. Smith regarding staff follow up on the hydraulic model issue; depending on that follow up there could be some impact on the paragraph relating to that in the draft Agreement.

Mrs. Smith stated that the status of the hydraulic model would be ascertained, and if there was reason to incorporate reference to it in the draft Agreement staff could add that language. She noted that she would like to have a staff to staff discussion on the hydraulic model *before* the language was inserted into the Agreement; Mr. McLendon would review the language determined by staff before it was made part of the Agreement. Mrs. Smith clarified that the language would be drafted, reviewed by Mr. McLendon, and the draft would be sent under cover letter from Mayor Ilyinsky to Mayor Graham.

2. Consideration of the Town's Permit Application to the South Florida Water Management District to Utilize the C-51 Canal for Non-Potable Water

Public Works Director Al Dusey reported that a meeting had been held with the South Florida Water Management District (SFWMD) to discuss the Town's Permit Application in general. He reviewed some of the highlights of that meeting:

The indication was during the next ten years that the number of no-discharge events would likely be about the same as they have historically been, which was 68. There were two public meetings scheduled for November 19 and 20 to release the information for Phase I of the lower east coast Water Supply Plan. This Plan would have information on allocation of water resources. Beyond that, the Corps of Engineers in South Florida would re-study the whole drainage system with the Everglades Restoration in mind, and that study was scheduled for completion in 1998, which Mr. Dusey believed was key for the Town long term. A statement had been made that those who had permits to withdraw from the C-51 Canal may have an allocation from the storage area to be developed by SFWMD. Right now SFWMD was buying large sections of land and it was their intention to store water in those areas, eventually getting it back to the Everglades. Mr. Dusey believed that it was also their intent that some of that water would be released to the C-51 Canal to make sure that there was a water flow and if the Town had a Withdrawal Permit water could be allocated to the Town on a daily basis for that purpose. In order to obtain a Withdrawal Permit the Town must have a method of supplying water for irrigation when it cannot be withdrawn from the C-51. A Withdrawal Permit could not be issued until the Town had ways to cover those days when water could not be taken out of the C-51 Canal. Re-use had been discussed at great length--SFWMD had expressed the opinion that re-use was economical at this point in time; Mr. Bowser's estimate of $47 million had been brought up with the suggestion that they pay half of that, however the funding was not available to them at this time.. Mr. Dusey indicated to them that re-use was something the Town would like to pursue if it was economical, and would do so when it was economical. SFWMD indicated that on a State basis the Water Management Districts were being encouraged to fund greater portions of this kind of thing, so availability of funds could happen in the future.

Mr. Dusey related that SFWMD had told him that the town needed to pursue the Permit or abandon the application. He recommended that the Town wait for two things: one was the answer from SFWMD to the Mayor's letter regarding whether the Town may get water; and the other was to allow Town representatives to attend the Lower East Coast Water Supply Plan meeting on November 19 and 20, and then come back to the Town Council in December to report.

Mr. McLendon mentioned the statement from SFWMD that staff would only recommend permitting C-51 Canal water beyond the point that such flows would be injurious to the estuary and asked Mr. Dusey if any comment had been made about that?

Mr. Dusey replied that language had been discussed, however, part of the problem was unfamiliarity with their system. He explained that SFWMD had been told that the Town was very hesitant to spend the huge amounts of money to do all the studies they wanted without knowing if the Town even had a chance to get the water, and they understood that. He stated that he believed their language was such rather discouraging, but that was not their intent. The meeting had been very cordial.

3. Consideration of Town Council Approval of the Lake Worth Inlet Management Plan

Town Engineer Jim Bowser reported that in 1993 the Town Council had signed an agreement with the Florida Department of Environmental Protection (FDEP) to undertake a study of the Lake Worth Inlet to determine how the effects of the Inlet could be mitigated with respect to the performance of the Sand Transfer Plant. The draft report had been reviewed and endorsed by the Town Council in April of 1995, and the State had now completed its review and was ready to act on the final plan and had issued a Summary of Findings Report and Recommended Implementation Plan. The main points of this plan were reactivating and enhancing performance of the Sand Transfer Plant; continued periodic Inlet maintenance dredging; expansion of the settling basin; and restoring down draft beaches to mitigate the effects of the Inlet. Mr. Bowser explained that staff had worked with the State, requested comments from interested parties and local communities, the Corps of Engineers, and the Port of Palm Beach, and these comments had been sent to FDEP, and staff was recommending that the State's report be accepted.

Mr. McLendon asked what quantity of sand the existing upgraded Plant was pumping?

Mr. Bob Clinger of Palm Beach County Environmental Resources Management Department responded that a consultant surveying company was prepared to perform a production monitoring rate survey of the Sand Transfer Plant as soon as sea and sand conditions were appropriate. Currently an estimate based on the manufacturer's capability of the Plant was approximately 300 cubic yards per hour.

Mr. McLendon asked if an entirely new Plant needed to be constructed in order to put more sand across the Inlet?

Mr. Clinger explained that there had been a build up of sand over a period of four years when the Plant was down, and now there was a lot of sand on the north side that was now moving towards the Plant. At some point the sand would stabilize back to what it once was before 1990 when the Plant went down, and even though the Plant will have the capability of moving more sand across the sand would not be coming to the Plant in any greater numbers than it did when the Plant was reconstructed. Presently there was a lot of sand being moved much more efficiently than it could have been with the previous Plant, but that was the result of the high supply of sand on the north side; eventually that supply of sand would diminish and a more stable condition would result.

Mrs. Smith referred to the report from the Department of Environment Protection and asked why there was no mention of a new Sand Transfer Plant?

Mr. Clinger replied that the DEP supported efforts for the construction of the new Sand Transfer Plant.

Mr. Bowser explained that the Inlet Management Plan did not call believe a brand new Plant was necessary.

Mrs. Smith responded that there had been a perception of the public that a new Sand Transfer Plant had been agreed to and the Town of Palm Beach was prepared to expend the funds, and she clarified that nothing had been agreed to at all.

Mr. Bowser mentioned that funds from the State for improvements at the Inlet could not proceed without an Approved Plan. The State would process the request of the Town for 50% of the improvements spent at the Plant thus far once the Plan was adopted by the State. The Town had been allocated $507,000 to date for implementation of the Plan, and once it was adopted 50% of the work that had been done to return the Plant to operation would be returned by the State.

Dr. Sanford Kuvin addressed the Town Council, indicating that Town staff had stated that the Inlet Management Plan was what should be done towards beach restoration. The State had already indicated that further studies may be necessary at Town expense if the

Plan was approved today. He stressed that the Town Council had authorized the money for this Plan in 1993 before the Council agreed to repair the old Sand Transfer Plant, not knowing the outcome of the repairs. After a delay of six years the upgraded Plant was pumping more sand than ever before. The Town had a long experience with failed beach restoration plans--in 1974 the Coastal Restoration and Preservation Program was never acted upon; in 1988 the Army Corps Definite Project Report was also not acted upon because of lack of funding; now the Army Corps had completed its Coast of Florida Study, which called for a new Sand Transfer plant. The Council had just signed the Tri-Local Agreement with the Port and the County which included a new Sand Transfer Plant as part of the $3.9 million money hoped for from the Federal Government. All of the new and untried concepts in the Plan, including the potential of tearing down the upgraded Plant, and the building of multiple discharge pipes would require new permitting from several agencies, including the Department of Environmental Protection and the Army Corps of Engineers, which would take years to pursue. Dr. Kuvin gave his opinion that the only rationale for a new Sand Transfer Plant would be such significant technical superiority over current engineering as to make the current beach restoration program obsolete. He noted that had not happened, and warned that the Town would be placed in long term danger by experimenting with new, untested technologies, particularly when the current program works. Dr. Kuvin maintained that approval of the Plan included Council endorsement of an experimental concept of multiple discharge pipes associated with a promise of increased sand transfer, but with absolutely no engineering plans, no data, no cost estimates, no description of pipe hardware, no sand output studies, and no insight or projected outcome problems with easement rights or other legal problems that would inevitably follow. He urged that the Town Council withdraw support for the Plan until answers to all of the obvious questions could be determined.

Mr. Jim Koontz, resident, addressed the Town Council, stating that on March 13, 1995 he had written to the Town Council pointing out mistakes of fact in the Lake Worth Inlet Management Plan, and he noted that the revised plan contained the same mistakes. A plan based on misinformation, containing proposals based on misinformation made no sense, and if the Town Council accepted the Plan as it was now stated it would endorse a plan for which the Florida Department of Environmental Protection could not issue permits without holding hearings. Since that department knew the faults in the proposed Plan it was unlikely that permits would be issued until faults in the Plan were corrected. Mr. Koontz urged that the Town Council not endorse the Plan until permits could be obtained for its implementation. He noted that the Town Council, the Port, the County, and the Florida Department of Environmental Protection all were aware of what must be done to prevent erosion of the Town beaches. The Council was still trying to provide a political solution to a physical problem. Mr. Koontz emphasized that the Corps of Engineers would need a permit or modification of a permit and a hearing in order to deposit sand from the Inlet on the mid-Town Beach.

Mr. McLendon asked Mr. Koontz to delineate the mistakes he had described.

Mr. Koontz replied that he had written an eight page letter, dated March 13, 1995 outlining the faults of the Plan, and had sent it to each member of the Town Council. He noted that the revised Plan had the same mistakes in it as the original Plan.

Mr. Gary Lickle, Chairman of the Shore Protection Committee, addressed the Town Council, stating that there was great optimism about what could be done in Palm Beach for saving the beaches. He noted that further engineering was needed, however new studies were not needed--there were two good solid plans in place, the CCMP, which would need to be updated, and the Applied Technology Management (ATM) Plan.

Mr. Dick Breese addressed the Town Council, stating that the Plan was seriously flawed, with many questions remaining unaddressed. As an example, he noted that for two years he had been writing about a sand bar just north of the south jetty that should not be there--the only place that the sand could have come from was over the top of the south jetty or through it. He explained that the only way to have a viable feeder beach south of the south jetty would be to take care of a concentration of energy along the jetty.

Dr. Sanford Kuvin replied to the comments of Mr. Lickle, stating that he had suggested that he approved of the Applied Technology Management Plan in totality, however the placement of the discharge Plant pipe south was predicated on the northerly flow of sand from the discharge pipe around the jetty Dr. Kuvin explained that when he spoke to the president of ATM, asking if any sand marking or any other technological studies were conducted to certify that sand was indeed going north, the reply was negative. He noted that it was disturbing to hear that a decision was being made by the Town Council about a flawed plan.

Mayor Ilyinsky clarified that there had been only one meeting discussing the new Sand Transfer station, with no commitment of funds made, with merely a suggestion that the Inlet could be kept clear at a less expensive way. He asked Mr. Dusey, Director of Public Works, to explain further.

Mr. Dusey addressed the Town Council, stating that the Tri-Party Agreement was not specific to any improvements. It only said that the Town would cooperate with the implementation of the Inlet Management Plan. The Tri-Party Agreement was well in the works long before the Coastal Florida Study of the Corps of Engineers came out. There was no commitment for funding in the Tri-Party Agreement. He explained that the $3.9 million came from the Coastal Florida Study prepared by the Corps of Engineers for an entirely new plant with a slightly different pumping technology--this had not been available when the Tri-party Agreement was drafted.

Dr. Kuvin responded that there was no commitment by anyone, but the fact was that rebuilding a new transfer plant was proposed to support the $3.9 million request for necessary improvements at the Inlet.

Mr. Dusey disagreed, stating that the $3.9 million came from the Coastal Florida Study.

Mr. Doney referred to the Tri-Party Agreement entered into on October 15, 1996, paragraph 6, page 4, which said "OBLIGATIONS OF THE PARTIES: The local sponsor for federally funded projects shall be determined on a project by project basis. Additional obligations of the parties shall be more specifically addressed in an amendment to this Agreement after the projects recommended in the Lake Worth Inlet Management Plan and/or the Coastal Florida Study have been approved as set forth in paragraph 4 herein above. Each of the parties agrees in good faith to negotiate the terms of such an amendment to this Agreement." He explained that it was his understanding that all options would be kept open in order to allow maximum Federal and State participation as far as funding opportunities.

Mrs. Smith stated that the Town Council would not slam the door on obtaining millions of dollars without covering every condition possible, and this Town Council had *not* committed the taxpayers of the Town to any additional funding of a new Sand Transfer Plant. She emphasized that there was no dollar amount committed to by the Mayor or the Town Council in the Tri-Local Agreement.

Mr. Doney once again referred to the Tri-Party Agreement and read paragraph 4: "PARTIES TO SHARE EQUALLY IN FUNDING: The County, the Town, and the Port agree to share equally in the funding of the local share of Federally funded projects or project costs of non-Federal projects identified in the Lake Worth Inlet Management Plan and/or Coastal Florida Study. The projects shall be deemed approved only if mutually agreed to, in writing, among the County, the Town, and the Port.." Mr. Doney explained that the Town Council thus had the ability and authority to make a decision down the road based upon current information.

Mrs. Smith remarked that the language was very clear, and she referred to Mr. Clinger of Palm Beach County for his opinion on same, and he was in agreement.

Dr. Kuvin specified that his objection was that the Town had agreed to a plan that was flawed.

Mr. McLendon responded to Dr. Kuvin's remarks concerning experimental technology and noted that it was not quite experimental in nature and had been done in other places before.

Mr. Shaw made a motion to approve the Lake Worth Inlet Management Plan; seconded by Mr. McLendon with the understanding that individual construction items would come back before the Town Council before being approved. On roll call, the motion carried unanimously.

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

Dave Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that he was updating the Town Council on the status of the Franchise Agreement with Comcast Cablevision, Inc. Attorney Nick Miller had reviewed and revised the Agreement, which had been submitted to Comcast, who had 30 days to review it. Comcast comments would be reported at the December Town Council Meeting.

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

Town Attorney John Randolph gave an update of several collection items that he had been requested to look into:

Code Enforcement Lien - Eric Gilbertson: There had been an offer of $625.00 to pay off the lien if the Town would waive late penalties. Mr. Randolph explained that the lien had been outstanding since 1983.

Mr. McLendon made a motion to approve acceptance of the offer of $625.00 with penalties waived; seconded by Mr. McDonald.

Mrs. Smith stated that she was in favor of settling it, but believed the language stating that he was paying it in appreciation for the mid-Town beach was inappropriate, as this was a legal matter and not a charitable contribution from Mr. Gilbertson to the Town. He was merely paying a fine that was levied against him. She urged that be made part of the motion.

Mr. McLendon and Mr. McDonald agreed to amend the motion to approve acceptance of the offer of $625.00 in payment of the lien against Mr. Gilbertson, including language that the payment was not in appreciation for the mid-Town beach, but was for the settlement of a fine levied against Mr. Gilbertson by the Town.

Garden City Company Lien: Foreclosure had been planned on this Code Enforcement Lien, however the attorney for the owner disputed the computation of the amount of money owed, as the owner had determined that a penalty was owed from June to August and indicated that they would be willing to pay that. The attorney had indicated that there would be an offer regarding settlement sometime today. Mr. Randolph noted that he would like to continue negotiations before foreclosure was attempted.

Mr. McDonald made a motion that this item be delayed and discussed later in the agenda in order to give Mr. Randolph time to contact the owner's attorney; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

C. Bradley- small solid waste disposal account: No response had been received. Mr. Randolph noted that he would need Council direction as to how to file the few solid waste disposal accounts remaining unpaid. He suggested that one route would be to prepare a County Court Complaint and pursue these matters, as the amounts were quite small.

Mr. McDonald suggested that the Town Council approve filing of a small claims action, but before filing it one more letter be written to Ms. Bradley.

Mrs. Smith suggested that Mr. McDonald speak with Ms. Bradley in lieu of writing a letter. She passed the gavel and made a motion that Mr. McDonald speak with Ms. Bradley; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Liens initially in the name of Elizabeth Ward: One small amount of $467.25, sidewalk assessment, which was now in the name of Nick Angiuli. The other larger amount ($23,788.79) was for a seawall assessment from 1970, which was now in the name of Mr. Haryman.

Mr. Wyett asked if the larger amount was collectable?

Mr. Randolph replied that there was a legal argument that it was collectable and he had discussed it with the attorney for the Title Insurance Company who claimed that it was not collectible.

Mrs. Smith suggested that legal action be filed.

Mr. McDonald asked if both the sidewalk assessment and seawall assessment could be incorporated in the same complaint?

Mr. Randolph responded affirmatively.

Mr. McDonald made a motion to proceed with filing action in the Circuit Court; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

XII. NEW BUSINESS

A. Resolutions

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

Mrs. Smith stated that as a member of the Everglades Club and to ensure that there would be no question or challenge in the future she would recuse herself on this vote. She passed the gavel to Mr. McDonald.

Town Engineer Bowser addressed the Town Council, stating that as part of the non-portable irrigation system at the Everglades Club, the South Florida Water Management District had requested the construction of monitoring wells, which would have to be placed around the Club to measure any degradation of ground water resources. The Everglades Club had come to the Town asking to put three wells in the road rights-of-ways in some grass strips and sidewalk. Mr. Bowser explained that the one on the sidewalk may be a tripping hazard in the future, and the Club agreed that could be deleted. Today Mr. Bowser presented the other two locations; one on Chilean just west of County, and one on Middle Road between Via Marina and Gulfstream. Mr. Miller of the Everglades Club was present, and Mr. Bowser asked that he complete the presentation on behalf of the Club. Mr. Bowser noted that staff had no objection to the granting of the easements.

Mr. Shaw stated that he had no problem with placement of the wells, but he cautioned that precedents may be set as to how the Town would grant easements and any compensation that could be accorded it. Mr. Shaw then made a motion that Resolution 49-96 be deferred until the issue of Town compensation relating to the granting of easements could be investigated further; seconded by Mr. Wyett.

Mr. McLendon asked if the wells would be accumulating data that would be transmitted from the Everglades Club to the South Florida Water Management District?

Glenn Miller, of Miller Engineering, responded that the two monitoring wells would be 35' deep with a 2' pad on top, and someone from the Everglades Club would take samples on a monthly basis, which would be analyzed. There would also be water level data included.

Mr. McLendon asked how many similar existing wells were a part of the system?

Mr. Miller responded that there would be a total of four monitoring wells drilled; two off-site and two on-site.

Mr. McLendon suggested that Town Engineering Staff be copied on data submitted to South Florida Water Management District for Town education, as a condition to the granting of any easement.

Mr. Wyett asked why monitoring wells would have to be placed off-site?

Mr. Miller responded that the well field was along the east property line and it was important from a monitoring standpoint to see what was happening east of the well field as well as north, south, and west of the well field. In order to give any meaningful data one monitoring well had to be put east of the well field, which put it off-site, and the other one off-site was north of the well field.

Mr. Wyett concurred with Mr. Shaw regarding the granting of Town easements.

On roll call, the motion carried 4/0, as Mrs. Smith had recused herself.

Mr. Bowser noted that he was already working on a methodology to charge for occupancy of the Town road rights-of-ways in connection with utilities, and offered that same could be applied to the easement issue as well. He explained that he had obtained some information via attendance at a Telecommunications conference, and the methodology used for occupancy was to take the footprint, add 2' on each side, multiply it times the value of the land adjacent to the area or designated values per square foot, and then charge 10% per year for the occupancy. He also suggested that perhaps a minimal charge for administration could be charged.

Mr. McDonald suggested that Mr. Bowser put everything in writing, if possible before next month so that this matter could be reconsidered at the next Town Council Meeting.

Mr. Shaw asked Mr. Miller when drilling was planned?

Mr. Miller replied that there was a time element involved.

Mr. Bowser stated that they would have until December 1, 1996 to meet Town rules. They had been held off twice before in appearing before the Town Council. It would be one day to do the whole job, with minimal disruption, and SFWMD did want this job completed in order to obtain the data.

Mr. McDonald remarked that delays due to lack of Town policy would be taken into consideration.

Mr. Shaw asked if it would be possible to have the methodology information to Mr. Miller by next week?

Mr. Wyett commented that this was not an emergency, and when the Everglades Club had come to the Town Council to obtain permission to erect an irrigation building they made no mention of the wells to be drilled at the time. He noted that the wells were totally contrary to a study that he and Sam McLendon had made for an ASR, because if the Town put an ASR in it would be supplying the Everglades Club for non-potable water at a cost for which it would not be reimbursed. He repeated that there was no urgency to do this, and registered his strong opinion that he wanted to know about easements rather than any special privileges considered for the Everglades Club.

Mayor Ilyinsky strongly suggested to Mr. Wyett that if he was going to accuse the Everglades Club of any type of dishonesty that they should be allowed to have a lawyer in the room to discuss the matter.

Mr. Wyett explained that it was not dishonesty--they had just not revealed total information. He was not accusing them of being dishonest.

Mr. McDonald suggested that the Everglades Club matter be placed on the agenda for next month.

Mr. McLendon asked Mr. Miller if he had looked at the alternative of moving a few feet away onto private property in order to not have to get involved with the easement issue, etc.?

Mr. Miller replied that the rights-of-ways were preferable from the standpoint of ease of access and avoidance of other potential problems. One well that was done away with at the request of Mr. Bowser had been planned near the Colony Hotel. All of the wells were to provide a measure of safety for the aquifer itself.

The matter was deferred to the December Town Council Meeting.

2. Resolution No. 51-96 - Establishing Commercial Solid Waste Collection Fees

Mr. Dusey addressed the Town Council, explaining that each year the solid waste collection fees were re-calculated based on the adopted budget and the revised tipping fees from the Solid Waste Authority. Resolution 51-96 contained the new fees--because the tipping fees went down from $40 to $23 per ton, the cost to commercial customers had also gone down; in addition some economies in operation had been received, which also contributed to reduction. The new fees were anticipated to generate about $492,000 during the fiscal year.

Mr. Wyett asked the figure generated by the old fees?

Mr. Dusey replied that they were substantially more because the Town was getting reimbursed for tipping fees--the figure was close to $560,000. With the reduced tipping fees the commercial customer was paying up front to the Solid Waste Authority for the garbage that was brought to the landfill.

Mr. Shaw asked if commercial properties had been asked to do more recycling?

Mr. Dusey responded that consideration had been given to a feature that would have a 10% surcharge for those that did not recycle, which had not been pursued at this point until Town Council gave direction. That would require purchase of $11,000 of new containers to handle the additional recyclers. He offered to present another Resolution next month with that kind of feature.

Mr. Shaw agreed that recycling adjustments would need to be addressed.

Mr. Wyett asked if there was a legal requirement to reduce the rates relative to costs?

Mr. Randolph explained that when tipping fees were lowered that was usually passed onto the customers.

Mr. Wyett asked if costs included administrative costs?

Mr. Dusey replied affirmatively.

Mr. Shaw made a motion to approve Resolution 51-96; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Randolph read Resolution 51-96

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, 1997.

Mr. Dusey would come back to the December Town Council Meeting to address commercial recycling.

B. Appointments

1. Golf Commission - Two Three-Year Terms to Expire November 1999 and Three Alternate Three-Year Terms to Expire November 1999

Recreation Director Russell Bitzer addressed the Town Council, stating that the Golf Commission had five members whose terms expired this month--two regular members and three alternates. A ballot had been prepared for voting on the new appointments.

After the voting, Mr. Bitzer announced that all terms would expire in November, 1999, with Mrs. Ann Herman being reappointed to a second regular term; Mr. Jay Rossbach, Jr. was appointed as a regular member for a first term; Mr. Maddock, Mr. Richard A. Raffo, and Ms. Arlene Bruck-Thurman were appointed as alternate members.

C. Other

1. Consideration of Report of the Shore Protection Board

Mrs. Smith thanked Chairman Lickle and the members of the Shore Protection Board for their diligent work, and a Special Town Council Meeting would be scheduled to go over the report in depth.

Chairman of the Shore Protection Board, Gary Lickle, addressed the Town Council stating that twelve experts in the area of beach erosion and protection had been heard during the past year and answers were given on how to deal with the beach erosion issue in the report submitted by the Shore Protection Board. He reviewed the twelve major points covered in the report:

1. Lake Worth Inlet and Jetties.
2. Sand Transfer Plant.
3. Town Responsibility.
4. Protection Area.
5. Funding.
6. Past Plans & Studies.
7. Beach and Shoreline Protection Through Renourishment & Structures.
8. Future Oversight & Coordination.
9. Legal remedies.
10. Monitoring.
11. Environment.
12. Implementation and Outside Agency approvals.

Mr. Lickle remarked that there was much misinformation about beach erosion/protection and suggested that a public relations campaign would be necessary to educate citizens.

Mr. McLendon commended the board for their approach to the beach erosion problem, and expressed concern about a taxing district if an inlet to inlet basis was used, as many municipalities were involved.

Mr. Lickle responded that there were no definite answers as of yet, and if other municipalities refused to participate there would be no choice other than to go on without them.

Mrs. Smith thanked Mr. Lickle for his report. The Special Town Council Meeting to go over the Shore Protection Board report in depth was set for January 16, 1997 at 9:30 A.M. Mr. Clinger of Palm Beach County, and other groups that may be interested would be notified.

2. Consideration of Request by the Greater South County Road Association for a Memorial Plaque Listing the Donors to the South County Road Tree Planting Project

DEFERRED TO THE 12/10/96 TOWN COUNCIL MEETING.

3. Consideration of Florida Power & Light Company's Overhead Wiring System in the Town of Palm Beach

Mr. Doney explained that Florida Power & Light representatives were present to address questions from the Mayor and Town Council, in particular the recent electrical fire in the Bradley Place area, and FPL intentions to bring the system to an acceptable standard that would protect the Town and its residents from such incidents.

Mr. Rod Macon of Florida Power & Light stated that the objective of FPL was to provide safe and reliable service to all customers at the very lowest cost possible. FPL reliability was as good or better than it had ever been, and the occurrence on October 7 in the Bradley Place area had been an isolated incident and investigation of the cause had been inconclusive.

Mrs. Smith asked Mr. Dusey the condition of wiring in the Town?

Mr. Dusey replied that the electrical supervisor had submitted a list of examples of problems in the Town of Palm Beach:

- A steel pole on County Road and Sunset was in very bad condition and FPL had been asked for assistance.
- A garbage truck had backed up into a pole and the support brackets on a transformer were in such bad shape that the whole thing shorted out. It had taken months to repair it, even after the Risk Manager had written to FPL.
- Aluminum wiring was being used rather than copper, and there was corrosion in the connections as a result of using aluminum.
- Temporary repairs were made after storms without making them permanent.
- There did not appear to be schedules for tree-trimming around wires.
- In the Worth Avenue area there was 150' of line between two poles with five splices on it. Apparently there were new maintenance crews that were not familiar with the Town.

Mr. Macon responded that it would have been helpful to have a copy of the list before today, and he could not respond to all of the items at this time. The company had gone through many changes over the past five years, however, service reliability today was better than ever. Trimming was still done around power lines every day with priorities based on momentary interruptions. He offered a response to all items on the list at a later time.

Mr. McLendon asked if FPL had a multi-year plan for replacement of wiring, etc?

Mr. Macon replied that planning people looked at age of facilities as well as the load on facilities, with system improvement work then being planned.

Mrs. Smith asked if consideration to burying power lines was given when line replacements were done?

Mr. Macon responded that would have to be requested by a customer.

Mrs. Smith asked if favorable consideration would be given by FPL if the Town asked that all lines be buried?

Mr. Macon replied that the request would be considered, however, expense would also have to be considered.

Mrs. Smith asked if some type of cost sharing could be worked out?

Mr. Macon stated that a formula was used when current overhead lines were requested to be buried--only those who specifically requested underground lines would pay the associated costs.

Mr. Shaw noted that there were three commercial districts in the Town, and the recent problem near Bradley Place had caused damage to equipment and business owners. He pointed out that FPL had a responsibility for maintenance on the electrical system in Town, and that going underground in these commercial areas was also a responsibility of FPL.

Mrs. Smith remarked that there were many older residents in the Town of Palm Beach with medical problems necessitating the use of machines, and she suggested that an emergency medical line be instituted by FPL for use when there was a power outage.

Mr. Macon replied that there was a program for customers on life-sustaining medical equipment and he would provide that information to the Town for distribution.

Mr. Wyett asked Mr. Macon to report back to the Town Council in 30-60 days.

Mr. Doney stated that the list would be provided to Mr. Macon, as well as copies of correspondence from local merchant associations.

Mr. Macon would contact staff to arrange a specific date for returning to report to the Town Council.

4. Consideration of Additional Cost to the Town of Palm Beach for Placement of Maintenance Dredged Sand from Lake Worth Inlet for Mid-Town Beach Area - Request for Town Council Authorization for Funding

Town Engineer Jim Bowser addressed the Town Council, stating that last year the Town Council had authorized staff to discuss signing a Memorandum of Agreement with the Corps of Engineers which would allow the Town to pay the cost difference of excavating the sand at the Lake Worth Inlet and moving it to another spot on Palm Beach Island. The Memorandum of Agreement had been signed by the Corps on July 16, and staff had received bids put together by the Corps of Engineers. The estimate by the Corps was for 100,000 cubic yards at $344,000, making the overall unit cost $3.44 per cubic yard. Staff believed that the bid was a very good one and was recommending acceptance of that with a contingency of $120,500 established in order to take care of any additional sand over the 100,000 cubic yards. Should there be extraordinary events the Town would still be responsible for paying for additional sand. The additional sand cost was $2.41 per cubic yard for anything over 100,000 cubic yards. Mr. Bowser pointed out that everything was contingent upon modification of a Corps permit to add the mid-Town beach disposal site. He explained that the sand would be moved to mid-Town, starting at the north end of the Clarke Avenue beach, and proceeding south.

Mrs. Smith asked if any thought had been given to putting half of the sand in the north end and half at Clarke Beach?

Mr. Dusey replied that would double the costs, as pipes would have to be laid in both locations.

Mr. Wyett made a motion to adopt Resolution 52-96; seconded by Mr. McDonald.

Mr. Randolph read Resolution 52-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE CORPS OF ENGINEERS TO PLACE MAINTENANCE DREDGED SAND FROM PALM BEACH HARBOR ONTO MID-TOWN BEACH.

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

5. Consideration of Federal Funding Assistance Program for Beach Projects

Assistant Town Manager Peter Elwell addressed the Town Council, stating that the Town was not precluded from going through the traditional means of obtaining Federal Funding for future renourishment projects at the mid-Town beach, and the Corps of Engineers had advised that a project could be authorized provided it met all pertinent criteria through "Congressional Adds"--projects which were added on during Congressional consideration of the Federal Budget. In order to line the Town up for beach funding, the Town Council would have to initiate a process communicating with Congressman Clay Shaw as well as Senators Connie Mack and Bob Graham, that would lead to the Congressional Add process for the mid-Town project, and at the same time completion of the technical work (the General Design Memorandum) would be required.

In reference to State funding, Mr. Elwell advised that there had been an appropriation for implementation of the Lake Worth Inlet Management Plan.

Mr. Wyett asked the amount of the potential recovery from the Federal Government?

Mr. Elwell replied that the potential would depend upon the General Design addendum that would be approved by the Corps of Engineers and the assessment of public to private benefit.

Mr. Shaw asked if contact had been made with Congressman and Senators?

Mr. Elwell responded that there had not been direct contact, but based upon the work Congressman Shaw had done relating to the Inlet and congressional assistance in the past it seemed that there would be no resistance in taking it forward.

Mr. Shaw replied that he would want to see some written confirmation from Congressman.

Mr. Doney advised that Congressman Shaw had indicated his support to the Mayor and Town Council for the Lake Worth Inlet Management Plan and the Federal funding opportunities that exist in that area. Now there were steps to be taken in order to pursue Federal funding assistance, which would include hiring a lobbyist to represent the Town in this regard.

Mrs. Smith suggested that the Mayor write a letter to Congressman Shaw and Senators Mack and Graham asking their views on the availability of Federal funding for the Town before a lobbyist in Washington was hired by the Town.

Mr. Shaw made a motion to approve the Mayor writing a letter to Congressman Shaw, and Senators Mack and Graham asking for their views on the availability of Federal funding for the Town; seconded by Mr. Wyett.

Mr. Elwell clarified that the motion would include the Mayor's letter, as well as written confirmation from the Corps of Engineers about the process, and seeking a quotation from a coastal engineer about costs.

On roll call, the motion carried unanimously.

6. Consideration of Proposed Relocation of the Coastal Construction Control Line - Potential Delegation of Authority from Florida Department of Environmental Protection to Palm Beach County

Mayor Ilyinsky stated that he and Mr. Elwell had been attending the Countywide Beaches and Shores Council meeting for years, and the Coastal Construction Control Line issue had now come down to a yes or no vote. He suggested that Mr. Elwell could respond to any questions.

Mr. Elwell referred to his memorandum of November 5, 1996 wherein staff recommendations were set forth recommending that the Town Council adopt a motion stating that the Town respond to both questions posed by the Beaches & Shores Council negatively. *(1. Does your community support the concept of CCCL authority being delegated from the State to Palm Beach County? 2. Is your community willing to expend funds to pay a portion of the cost of establishing the new CCCL using a zonal approach based on appropriate scientific methodology?)* He explained that the action was recommended for the following reasons:

- A county-set CCCL would not necessarily be seaward of a State-set CCCL. It could be in the same location or could even be landward. The zonal approach would ensure that proper scientific methodology would be used to set the line, but it would not ensure less regulation upon the Town's oceanfront property owners.

- Because approximately one-quarter of the County coastline is located within the town, the cost to the Town of participating in the zonal approach studies would likely exceed $50,000 and could exceed $100,000. A portion of these costs might be reimbursed by the State.

- Finally, and most importantly, the very serious negative impacts of the relocated CCCL which were expected when the line was proposed by the State in 1992 have not been experienced in other counties where the CCCL was previously relocated. Property values have not declined. Requests to build seaward of the line have not been denied. More properties are significantly affected by the new line than by the old; but FDEP's administration of the permitting program has allowed oceanfront property owners to fully utilize their properties, provided they build to special coastal zone standards.

Mr. Shaw made a motion to approve staff recommendation to say "no" to both questions; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mayor Ilyinsky remarked that many people were concerned that if something happened to accessories, such as swimming pools, etc., on property falling eastward of the new Coastal Construction Line that they would not be able to rebuild, and reassured everyone that this *was not* so, however, it would be under a slightly different building code.

Mr. Elwell confirmed the Mayor's statement, stating that the code requirements were more strict seaward of the line, but the State had not denied any oceanfront property owner a permit to construct either a home or improvements.

7, Consideration of Request for Authorization for the Town Manager to Execute Agreements for Recommended Town Medical Plan for FY96

Personnel Director William Crouse addressed the Town Council, stating that he had submitted a memorandum to Mr. Doney outlining the premiums for calendar year 1997 based on actuarial assumptions and reports. He noted the premiums were slightly up, and the actual experience of the plan had been excellent. The primary reason for the slight rise in premiums was due to trend, which basically said that medical costs were still going up. He pointed out that the State of Florida required by State Statute that employers offer retirees the same medical program offered to employees, and that the insurance be offered at a rate not to exceed an actuarial determined rate of commingling the retirees' actual experience with the employees' and their dependents' experience. That rate sets the maximum allowed premium that the employer can charge the retiree, and for the first time in the history of the Town medical plan the rate was being set at the maximum allowed by State law for the dependents.

Mr. Wyett asked what percentage of the employees and retirees were on the EPO Plan?

Mr. Crouse responded that the EPO had gained membership--there was an approximate 70% total.

Mr. Wyett asked what could be done to convince employees to switch to the EPO Plan?

Mr. Crouse replied that less out of pocket expenses were required and that was a great incentive. Employee meetings were held, and written publications were distributed.

Mr. Shaw made a motion to approve the new Medical Plan rates for Calendar Year 1997, authorizing the Town Manager to execute Agreements for the recommended Town Medical Plan for FY96; seconded by Mr. Wyett.

Mr. Doney pointed out that this was a responsible decision from a budgetary perspective, and there were dollars reserved exclusively for the Health Insurance Program.

On roll call, the motion carried unanimously.

8. Consideration of Lease/Purchase Program for New Public Safety Radio System and New Police Mobile Computing System

DEFERRED TO THE 12/10/96 TOWN COUNCIL MEETING.

9. Consideration of 1996-97 Palm Beach County Legislative Delegation Public Hearings

Mr. Doney stated that there was an opportunity for the Mayor and Town Council to speak at the Public Hearings and request funding or legislative proposals.

Mrs. Smith asked what local bills had been submitted that would affect the Town of Palm Beach?

Mr. Doney replied that staff was not aware of any.

Mr. Shaw proposed talking to the Palm Beach County Legislative Delegation to attempt to get South Florida Water Management to be more receptive to individual communities in the resolution of non-potable issues.

Mrs. Smith suggested that a letter be written to members of the Delegation.

10. Consideration of Format for Updated Town Code of Ordinances

Mr. Shaw made a motion to approve the two column format for the updated Town Code of Ordinances; seconded by Mr. McLendon. On roll coll, the motion carried unanimously.

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Referring back to XI. Old Business A. Other, Item 5. - Status Report from Finance Department Regarding Enforcement Procedure for Collection of Fines, Fees, and Other Monies Due to the Town - update by Town Attorney: Mr. McDonald made a motion that Mr. Randolph have 30 days to obtain an offer for negotiated settlement with Garden City. If an offer was not accepted, Mr. Randolph was authorized to proceed with court action; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

XIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Mr. Shaw requested that any potential purchasers of Town owned property submit detailed proposals including acquisition costs for consideration by the Town Council.

Mr. McDonald commented that the Civic Association reported that in the last few paragraphs of a story entitled, "Pro or Con", the following statement was made:

"At a recent Town Council meeting, the officials decided the Councilmen also could recuse themselves if they believed participating would create any appearance of impropriety."

Mr. McDonald assumed the meeting referred to was the August 13, 1996, Town Council meeting when the recusal process issue was discussed. Mr. McDonald said he had no recollection nor could find any support in the minutes of that meeting for that statement. Mr. McDonald said that if the Civic Association wanted to involve themselves in the political process in the Town, they have a duty to report the Council's actions accurately, and their conclusion was a misrepresentation of the facts by stating that Town officials can avoid voting by recusing themselves without meeting the requirements of special gain or loss and that is inflammatory and unfair to both Council members and Town residents.

Mr. McDonald acknowledged the courage and professionalism of Town Manager Doney during the Marie Crozier investigation and hearings, including his courage to make a very difficult decision and his professionalism in carrying out his initial responsibilities when his initial decision was not supported by the Council. Mr. McDonald recognized his courage to stick with his convictions and his good cheer and attitude throughout the entire process.

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

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

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of October 23, 1996 - Minutes Available in Town Manager's Office

The major matters were:

Deferrals and Continuations - Major Projects:

B57-96 Application by Euro-Homes, Inc., 242/246 Everglade Ave., for new two-story duplex - deferred.

B69-96 Application by Mrs. Arnold Miller, 1415 South Ocean Blvd., for new two-story single family residence - withdrawn.

B70-96 Application by Anita Gilberd, 265 Sandpiper Drive, to remodel front entry and circular drive - approved.

B72-96 Application by Jonathan Deitcher, 175 Via Palma, to demolish existing house and build a new two story home - approved.

New Business - Major Projects:

B75-96 Application by Mr. and Mrs. Jack Friedman, 901 North Ocean Blvd., for demolition of guest house, library wing and connecting bridge - approved.

B76-96 Application by John L. McDonald, 2258 Ibis Isle Road, for new single story residence - deferred.

B79-96 Application by Ed Cury, 1469 North Ocean Blvd., for demolition of existing residence - approved.

B80-96 Application by Lodar, Inc., 107 Indian Road, for demolition of existing one story residence - approved.

B81-96 Application by Mr. and Mrs. Sullivan, 246 Monterey Road, for 275 sq.ft. addition to increase the size of kitchen & remove some second story windows - deferred.

B82-96 Application by Sylvia Chilton, 446 Brazilian Ave., for new two family dwelling - deferred.

B83-96 Application by Bally Retail, Inc., 221 Worth Ave., to renovate storefront - approved.

Mr. Shaw made a motion to approve the Major Matters previously considered by the Architectural Commission at its meeting of October 23,1996; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

B. Time Extensions - None

C. Variances, Special Exceptions, and Site Plan Reviews

Town Clerk Pollitt swore in all those who would be testifying in the proceedings today.

Old Business

1. Variance No. 37-96 - Felice Forman, 150 Canterbury Lane; located in the R-B Zoning District; to allow a real property conveyance that will result in an 8.3' side yard setback in lieu of 15' required. (Deferred from October 8, 1996)

Ex-parte communications were declared by the following:

Mr. Shaw with Mr. Deziel
Mr. Wyett with Mr. Deziel.

Robert Deziel, representing the applicant, Felice Forman, addressed the Town Council, stating that the property located at 150 Canterbury Lane had 336 ft. of frontage and 200 ft. of depth with a 22 ft. paved right of way. He displayed a survey of the property for Council review, noting that permission was being requested to split the existing parcels 1 and 2 to create a conforming lot, resulting in a lot of 136 ft. of frontage and 200 ft. of depth. He explained the hardships as the following: An existing structure that had been there for decades; a lot split meeting all the current zoning regulations would result in a lot almost twice the size required by the Code. If this application was denied, a hardship would be created, as a bite would be taken out of Parcel 2, and in the future someone may need a smaller setback on it.

Mr. Moore stated that it would be better if the property was subdivided. A very unusually shaped lot would be created, including removal of the present garage.

Mrs. Smith suggested splitting the property into two lots.

Mr. Deziel responded that his clients had planned to have three lots.

Mrs. Smith replied that the property was actually in the estate section.

Mr. Shaw stated that there were alternatives other than a variance, and basing granting a variance on what a future developer of the land may or may not do would be setting a dangerous precedent.

Mr. Deziel explained that the three possible scenarios for the property were to either tear the structure down to meet current setbacks, the variance, or carve out a piece of the structure. He believed that addressing the situation through a variance would have a better result.

Mr. Shaw explained that there was no existing hardship.

Mr. Wyett stated that it would be detrimental to the Town to increase density, and found no legal hardship.

Mrs. Smith suggested that Mr. Deziel go back to his clients and explain the feelings of the Council.

Mr. Deziel stated that it was his feeling that one of two things would happen if the application was denied today: either the house would be demolished, or there would be gerrymandering.

Mrs. Smith noted that if members of the Town Council had pictures of the house to look at they would realize what would be lost if the house was demolished.

Mr. Shaw questioned that the client would tear a house down, and start from scratch rather than remove six feet of one corner?

Mr. Deziel established that he was merely telling the Council what he thought the result would be, so that if this matter came up in the future he wanted it to be on the record that the Council said the six feet was more important than the potential saving of the home.

Mr. Moore advised that the threat of tearing down the house was not a hardship.

Mr. Deziel responded that he had already given two hardships.

Mrs. Smith pointed out that there were three lots to deal with, and they could be divided into two lots.

Mr. Deziel explained that he was talking about separating only Lots 1 and 2, and the only way to make Lot 2 a conforming lot on the street was to leave 136 feet with Lot 1, creating a side yard setback of 8.3 feet, which was 6 feet short. If the Council denied the variance and the middle lot became unmarketable, demolition of the house would be an alternative.

Mrs. Smith stated that the third lot was mentioned in the application-- "the variance is needed to divide the main residence from the two existing vacant lots."

Mr. Deziel explained that the circumstances had changed since he filed the application--the property had now been purchased and the idea was to tear down the garage and eliminate the pool that straddled the property line.

Mr. Randolph clarified that this was a lot split, *not* a split into three lots.

Mr. Deziel agreed.

Mr. Randolph asked how long the third lot had been in separate ownership?

Mr. Deziel responded that there was a conveyance of lot 3 to a separate party and a conveyance of lots 1 and 2 to a separate party within the last 30 days.

Mr. Shaw made a motion to deny Variance 37-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

New Business

2. Variance No. 40-96 - William Lanting, 110 Seaspray Avenue; located in the R-B Zoning District; to allow construction of an addition providing a 7.5' side yard setback in lieu of 15' required, and thereby expanding a nonconforming structure.

There was no ex-parte communication declared regarding this matter.

Gene Pandula, representing Mr. and Mrs. William Lanting, addressed the Town Council, stating that this was actually a re-presentation of a Variance that had been applied for and granted approximately a year and one-half ago for a 3.8' wide connector of two existing buildings on the site. The two buildings, which were the main residence and childrens' bedrooms, were originally portions of a larger house, now know as 220 South Ocean Blvd. The time frame on the granted Variance had run out, and a request was being made to have the Variance remain in effect.

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

Mr. Pandula explained that the hardship was that the property was a piece of a larger estate, and the request was an attempt to maintain the integrity of the site. The site, with the exception of its width, was in compliance with all other zoning requirements. Secondly, the leftover space that would be created by not filling in the 3.8' would be worse than architecturally continuing the line of the building. The space would be used as a connection to the main house.

Mrs. Kahn, an immediate neighbor, stated that the correct address was 224 South Ocean, not 220 South Ocean.

Mr. Pandula gave the total dimensions of the addition: 3.8' x 15', with a height of 9'.

Mrs. Smith suggested that there should be landscaping on the property line.

Mr. McLendon made a motion to approve Variance 40-96, with the hardship relating to the dimensions, making a family unit of two non-conforming structures, with the condition that landscaping be installed along the property line; seconded by Mr. Wyett. On roll call, the motion carried 3/2, with Mr. McDonald and Mrs. Smith casting negative votes.

3. Variance No. 41-96 - Patrick Segraves, 210 Via Linda; located in the R-B Zoning District; to allow construction of an addition providing an east side yard setback of 10.5' in lieu of 12.5' required.

Ex-parte communication was declared by Mr. McDonald, Mr. McLendon, Mr. Shaw, Mrs. Smith and Mr. Wyett with Mr. Segraves.

Mr. Patrick Segraves presented a letter from a neighbor to staff. He explained that he was asking for a side yard variance on a home at 210 Via Linda. All of the houses on the street were one story, and had been built between 1950-60. He was requesting a side yard variance because the master bathroom in the house was 4' wide and needed renovation; the location of the addition was the only logical place. He noted that all of the lots were the same size and the majority of the houses had taken advantage of the side yard setback of less than 12.5' which had been allowed under the old zoning code in the 1950's. His home was the smallest of all the houses on the street, and the original drawings of the architect showed the house to be 10' from the west property line, and instead it sits 11' from the west property line, as it had not been built according to the plans. He pointed out that he had talked to his neighbors, who had no problem with the variance.

Zoning Administrator, Paul Castro, stated that in this situation the lot size met the minimum requirements for the R-B District; staff did not see any unusual or unique circumstance with the lot, or the structure itself, and for that reason staff did not support the request.

Mr. Segraves displayed exhibits of the elevation of the proposed addition. He explained that the hardship was the inadequate master bathroom; the only place to put the addition was in the proposed location; all of the rest of the houses on the street had taken advantage of previous zoning setbacks; and the house had not been built according to the original plans.

Mr. Wyett stated that this was a minimal request, the house had been built before the current Code, other homes in the area had similar conditions, and the value of the home would be improved. He urged that the Town Council find a way to accommodate Mr. Segraves.

Mr. Segraves advised that he could make the walls thinner and take 6" off the width.

Mr. Wyett made a motion to approve Variance 41-96, with the condition that the thinner walls be used, and that the roof not exceed 1' projection into the setback area; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

4. Variance No. 42-96 - Palm V, Gracie's Garden Cafe, 240 Worth Avenue; located in the C-WA Zoning District; to allow the use of a 170 sq.ft. addition for seating, contrary to a condition of

approval of Variance No. 50-95, which allowed the addition to this nonconforming building.

Ex-parte communication was declared by Mr. Shaw with Mr. Broberg and Mr. Handlesman, by Mrs. Smith with Mr. Broberg, by Mr. McLendon with Mr. Broberg, and by Mr. Wyett with Mr. Broberg.

Attorney Peter Broberg, on behalf of Palm V Associates, Gracie's Garden Cafe, addressed the Town Council, giving a brief history--in 1994 the owner of the building had come to the Council asking for a swap of space, which had been granted, but never acted upon. A variance was re-applied for in 1995, granted, and a condition of approval was that the space would never be attached to the restaurant. The total space, if added, would be well below 2,000 sq.ft., and the cafe would remain a take-out, which was a permitted use in the zoning district.

Mr. Moore stated that staff felt that the area should be separated from the restaurant, and there was no objection to the trade of space.

Attorney Frank Lynch, on behalf of the residents of Golfview Road, addressed the Town Council, stating that the residents objected to the fact that a restaurant could be placed within 15' of their back doors. The concern was the point at which a specialty food take-out would become a restaurant. Mr. Lynch asked the Town Council to consider the reason why the condition had been placed on the variance originally.

Mr. Shaw commented that a swap of space meant exchanging something for a similar use, and to take space that was not connected was not the same as having space contiguous to the main building. If the space was not connected he expressed that he would have no problem with it, or if there would be no seating he would not have a problem with a connected space.

Mr. McLendon preferred to see the space as it was depicted by Mr. Broberg.

Mr. Broberg agreed that the space could be attached without any seating, but with only counter space.

Mr. Lynch stated that the homeowners would be amenable to having the opening in the common wall closed so that there would be no access from the take out facility directly inside, as long as there was no connection between the spaces.

Mr. Wyett understood the concerns of residents and suggested the compromise of having the existing common wall with fixed French doors remain, so that when one was in the take out section one could see that there was a place to go to eat. He stipulated that there was no necessity for the take-out facility to give up the small ground area, as it was a public convenience.

Mrs. Smith remarked that area is now a common sitting area often used by the public, and she did not want to take seats away from residents.

Mr. Moore stated that the seats in question were not for service, but were for the use of the public.

Mr. Wyett asked if there was a way for the Council to stipulate that the space would never have table service?

Mr. Moore replied negatively--if there was table service the facility would become a restaurant and would need a Special Exception.

Mr. Wyett asked if the space could be acquire by the facility under separate lease, and utilization of the area would not be an issue because there was no restaurant use granted.

Mr. Lynch expressed concern over the precedent value that may set, as the facility grew closer to becoming a restaurant.

Mr. Broberg mentioned that in order to become a restaurant the facility would have to become before the Town Council as a Special Exception.

Mr. Shaw made a motion that the swap of the two spaces be granted, and that the new space would not be attached to the cafe; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

5. <u>Variance No. 43-96</u> - Brazilian Court, 301 Australian Avenue; located in the R-C Zoning District; to allow construction of patio covers, canopies, and covered walkways to be added to a nonconforming structure.

There had been no ex-parte communication regarding this matter.

Attorney Jim Brindell, on behalf of the Brazilian Court Hotel, addressed the Town Council stating that the variance was being requested in order to construct several items which were important to the renovations to the Brazilian Court: A pedestrian connector on the west side, connecting the northwest quadrant of the facility to the southwest quadrant where the dining area would be located; an entrance canopy; and other items relating to six patio areas that exist over which it was proposed to construct roofs and screen in. Some of the variances were for setbacks, and some were for coverage. Mr. Brindell reminded the Town Council that a variance had been granted for an additional coverage factor of 2,310 sq.ft., which brought the coverage up to 52.4%. In renovations so far, all but 28 of those square feet had been used, and 92 sq.ft. more was being requested today, which would bring the coverage to 52.4001%. The patio areas were originally included in the calculations given to the Town Council at the variance request some months ago.

Drawings and photographs of the proposed construction areas were exhibited to the Town Council in support of the variance request. Mr. Brindell explained that the pedestrian connector from the lobby to the dining area was important for the older patrons that would be using the hotel; the extended entrance canopy would allow weather protection, as well as safety, for people getting in and out of vehicles; the roofs and screenings of the patio areas would provide weather protection for the patrons that would use and enjoy the facility (these would require variances for setbacks along with the main entrance canopy). Because the hotel was a non-conforming use and structure, a variance was needed in order to expand.

Mr. Brindell asked that the Application submitted on October 11, 1996, and a letter from him to Paul Castro, dated November 7, 1996 be accepted as part of the record in support of this variance request.

Gene Lawrence, architect, explained the renovation requests in further detail.

Mr. Moore commented that the only real objection came from the Town Engineer Bowser objecting to any further encroachment upon the Town's public utility easement. The Building Department also suggested that Section 10.13, Item F, 1-4, which deals with variances, be addressed by Mr. Brindell for the record.

Mr. Lawrence stated that the easement of concern to Mr. Bowser ran along the face of a wall and under the building--the open space being discussed today was not over the easement.

Mr. Brindell stated that there were some provisions in the Code that related to hotels, under Section 10.13, and the Brazilian Court was certainly a unique hotel, as stated in those provisions, as evidenced by its landmarked status. The proposed variances were to enable the owner to continue the hotel use in a viable fashion as a landmark; the hotel had been in operation for 70 years and had not been incompatible with the surrounding uses. He pointed out that the there would be only 101 units, rather than the present 134 units, which was approximately 25% reduction in intensity. The current zoning for the property was R-C medium density residential, and hotels were not a permitted or special exception use within that district--consequently the hotel was a nonconforming use as well as a nonconforming structure. The property could be re-zoned to R-D(2) as an option, which would allow hotels as special exceptions, however, more than the hotel property would have to be re-zoned in order to avoid a spot zoning issue. In addition, if the area was re-zoned to R-D(2), then additional properties could be replaced by hotels, which would not be consistent to the land use strategy of the Town. The variances which were being requested would not result in the increase of units at the hotel, or intensification of the hotel use. The policy of the Town was to encourage the continued viability of land marked properties, such as the Brazilian Court hotel; the granting of the requested variances would be in harmony with the general intent and purpose of the Zoning Code, and would not be injurious to the general area involved, and would not be detrimental to the public welfare.

Mr. Wyett made a motion to approve Variance 43-96, with the finding that it was a continuation of an existing use for more than 15 years and was compatible with the neighborhood; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

6. <u>Variance No. 44-96 with Site Plan Review</u> - Paul Van Der Grift, 1300 North Ocean Way (now incorporating 207 Merrain Road); located in the R-B Zoning District. Applicant proposes to modify previous site plan review approval granted by Special Exception No. 4-96 on 4/9/96, which allowed construction of a residence on an oversized lot (52,903 sq.ft.), four times the minimum lot area.

Gene Pandula, representing the applicants, addressed the Town Council, stating that this Variance had been approved in March of 1996--two parcels had been combined under unity of title. The intent of the original project was not being altered, the layout had changed. They had now decided that modifications were necessary--the elements of the structure that did work were being left, the main entrance was being left exactly where it was, reconfiguring the existing motor court, leaving the garage where it was, doing away with the spot additions, and adding a second floor area. There was approximately 60% of lot coverage; approximately 60% of FAR; approximately 80% of bulk; 130% of minimum required landscaping, so the project was well within all of the outer limits. Approximately 800 sq.ft. of nonconforming structure was being removed on Merrain Road, so that all of the building now had a 30' Setback. There was a 70' setback from the west property line to the tennis pavilion; 150' to the face of the building; 80' from the north property line to the main facade of the building. Mr. Pandula incorporated graphics displaying the site plan and proposed elevations. He noted that the residence to the east was approximately 11' above the first floor level of the proposed residence on North Ocean Way.

Ex-parte communication was declared by Mr. Wyett with Mrs. Sousa, and Mrs. Smith with Mrs. Sousa.

Mr. Moore gave staff comments: There had been no comments other than from the Town Engineer - no walls, fences, hedges, or trees of gate posts were allowed in the north 2-l/2' utility easement; a Driveway Removal Agreement would be required for the decorative driveway over the easement.

Mrs. Smith asked the height of the house on the east side?

Mr. Pandula replied that it would be approximately 20', and the intention was to have the roofs flat in this area.

Mr. Wyett expressed the concerns of Mrs. Sousa with privacy, and suggested that high trees and a canopy may be added in order to create more of an illusion of privacy.

Mr. Wyett then made a motion to approve Variance 44-96, with the condition that a landscape buffer be created on the east side of the property to protect the privacy needs of the property to the east, as well as showing the neighbor the site plans for the Van Der Grfit residence; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

7. Variance No. 45-96 - John Castle, 1095 North Ocean Blvd.; located in the R-A Zoning District. Request a variance from Sec. 5.17 of the Town Zoning Ordinance to repair and reconstruct a nonconforming building where more than 50% of the building is being replaced.

Ex-parte communication was declared by Mr. Shaw with Mr. Broberg; Mr. McLendon with Mr. Broberg, Mr. Wyett with Mr. Broberg, and Mrs. Smith with Mr. Broberg.

Town Attorney John Randolph interjected that on ex-parte communications, the Resolution called for the Council members to not only announce with whom they had communication, but what the subject matter had been.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that there were no horse trailers involved in his request today, contrary to rumors that had been surfacing. Mr. Broberg reviewed Section 5.17 of the Zoning Code which said that additions complying with the Code, not adding more square footage than a normal building would allow, were allowed to non-conforming buildings--however, the Code did not apply to a dwelling that was demolished by more than 50% as determined by cubic footage. Mr. Broberg maintained that a building permit had been issued by the Town to allow the first floor to be fortified, and to facilitate this the second floor was raised approximately 2" to take stress off in order to complete the work, then would be replaced on top of the strengthened first floor walls. Unfortunately, the first floor fell down, and Town officials red-tagged the project, stating violation of Section 5.17 of the Town Code. Mr. Broberg had explained to the Building Department that this section of the Code had not been violated, and had provided supporting figures. The Building Department had suggested that the applicant appear before the Town Council. Since that time, an engineer had calculated that only 46.8% of the structure had fallen down, and therefore, the applicant was *not* in violation of Section 5.17, and was now present to ask for permission to continue with construction.

Mr. Moore commented that the structure should be re-built *exactly* as before.

Mr. Brennan explained that the original height had been 19.17' and the structure now would be brought to that height. He remarked that there was a meeting with Town building officials on how the building would be re-supported, and they allowed certain sections of the building to be removed and reinforce it. During that discussion, all of the walls were to remain up. When the second floor was raised, the sand moved, and vibrations from equipment sent the walls down, and there were sequential pictures available of the action.

Mrs. Smith mentioned that the building had been standing there since 1926 with no problem.

Mr. Wyett made a motion to approve Variance 45-96, allowing the structure to be re-built at 19.17'; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Wyett commented that large scale renovations should not be allowed to take place during hurricane season.

Mrs. Smith suggested that Mr. Moore could monitor that.

8. Special Exception No. 31-96 - Worth Avenue Associates, LTD, The Esplanade, 150 Worth Avenue; located in the C-WA Zoning District; to allow a restaurant to occupy 5,243 sq.ft., exceeding the 2,000 sq.ft. maximum permitted, thus requiring Town-serving status pursuant to Section 6.40(l) of the Town Zoning Code.

Attorney Jim Brindell, on behalf of Worth Avenue Associates, LTD, addressed the Town Council, stating that the proposed restaurant was in the same space in which a restaurant, Le Bateau, had been approved but had not survived. The same conditions would apply to the new operators, who were introduced by Mr. Brindell at this time. He explained that one was a former owner of an award winning restaurant in New York, and currently had interests in real estate, management consulting and car dealerships. The other had grown up in the restaurant business in the Italian Alps, received a formal culinary education in Italy and had been an executive chef in Manhattan.

Mr. Moore commented that staff had no objections to the taking over of the lease of Le Bateau, and all associated conditions, including demonstrating Town-serving, which the applicant had agreed to. He then read the conditions that had been placed on the approval of Le Bateau:

1. The restaurant shall be limited to 158 serving seats for 6 months from the date of opening. At that time an acceptable Town-Serving Affidavit indicating the number and percentage of persons served at the restaurant that are Town persons shall be submitted to this office prior to considering the use of 40 additional seats. In addition, Town-Serving Affidavits must be submitted to this office each subsequent year at the time of

renewal of your Occupational License.

2. The initial 14, and subsequently possible 21 required off-street parking spaces associated with the restaurant expansion shall be reserved in the receiving area across from the Esplanade for the duration of the restaurant's 15 year lease.

3. The bar portion of the restaurant shall be closed at 11:30 P.M.

4. Dinner shall not be ordered at the restaurant after 11:00 P.M., however, table service for those dining patrons that ordered prior to that time shall be allowed to continue.

5. All garbage, including glass, shall be stored in the restaurant after 7:00 P.M., and not placed in the dumpster or glass crushing area until after 8:00 A.M. the next morning.

Mr. Brindell agreed with the conditions.

Mr. Shaw made a motion to approve Special Exception 31-96, subject to the above conditions; seconded by Mr. McLendon.

Ms. Francis Ruth Necco, resident at 100 Worth Avenue, addressed the Town Council, stating that her appearance before the Town Council on May 9, 1995 on behalf of the Winthrop House residents led to some noise reduction in the Esplanade. She stated that she was present today to ask for help in consolidating those noise reduction gains and to ask for further noise reduction. She thanked the Goodman management for their response to date. In addition, Le Bateau had cooperated magnificently. She noted that monthly parking customers had been notified that vehicles must adhere to a 5-mile per hour speed limit, alluding to the Town No-Noise Ordinance, however the notice did not require that customers refrain from horn blowing. She asked for the help of the Town Council as follows:

1. Require the new restaurant to continue not to dump bottles and cans in the dumpster and use the compacter mandated last year.

2. Require the restaurant to prohibit its employees from at any time congregating near the dumpster and talking loudly.

3. Require Goodman management to assure that the valets adhere to the no horn blowing policy, and to add that to the notice to monthly parking customers.

4. Require the restaurant and Goodman management to request patrons waiting for their cars not to talk so loudly so as to disturb the Winthrop House residents.

She thanked the Town Council for their interest in the well being of the Winthrop House constituents, and concluded that she noted the special concern shown by Councilman Allen Wyett, who had truly represented the interest of his constituents by constantly overseeing the Esplanade noise matter.

Mrs. Smith noted that the restaurant could ask and the Goodman Company could ask, however, there could not be a condition that people not talk.

Mr. Wyett welcomed the two new owners of the restaurant, and urged that they keep the controls in place.

On roll call, the motion carried unanimously.

9. Special Exception No. 32-96 with Site Plan Review and Variance - Publix Super Markets, Inc., 265 Sunset Avenue; located in the C-TS Zoning District; to allow construction of a 1,350 sq.ft. addition for shopping cart storage, thereby expanding to 31,430 sq.ft. To allow addition without providing the required 7 parking spaces.

Mr. Tom Renee, of Publix Supermarkets, addressed the Town Council, stating that approval was being requested for the addition of a vestibule area under the existing canopy of the store at 265 Sunset Avenue. He explained that the store would be remodeled in order to provide better service to customers, and the vestibule addition would allow cash registers to be moved forward, add some new registers, improve the traffic flow in the store, provide better service, give better turn around time, and alleviate parking problems.

Mrs. Smith asked if the location of items within the store would be changed?

Mr. Renee replied that some upgrading would take place.

Mr. Castro commented that the purpose of the enclosure in the archway or arcade area was to provide room for the shopping carts to be moved out into that area. The entrances would open from the sides and would not be visible from the front of the building. Staff concerns related to parking, as the applicant requested a variance for 7 parking spaces, and the parking lot itself being used after hours by other commercial establishments in the area. The applicant should address the hardship criteria related to the variance, but in terms of the addition itself, staff had no objections.

Mr. Renee remarked that he had heard about the parking concerns, and had been told by Bradley's that they had hired security to watch the area.

Mr. Shaw asked if Publix would be willing to close off their parking lot at night as a condition of granting the request today?

Mr. Wyett commented that residents in the area had great concerns about the parking, and numerous attempts to contact management of Publix had been made. Previously the response had been that Publix Supermarkets did not close off lots anywhere. He suggested that the lot must be closed off at night after the store closes, with assurances from top management of Publix.

Mr. Shaw made a motion to approve Special Exception 32-96 on the condition that no building permit shall be granted until a satisfactory method of closing the parking lot after the store closes is in place.

Mr. Moore stated that there must be a safe egress for employees in the employee parking area.

Mr. McDonald seconded the motion.

Mr. Wyett stipulated that the chaining off would be done before construction.

Mr. Shaw asked if the condition could include a fine for failure to comply?

Mr. Randolph responded that they would be in violation of a condition of the approval.

Mr. Renee expressed concern about the ability of the Fire Department, etc., to enter the parking lot.

Mr. Wyett brought up a concern of a resident with safety, as the congestion on the parking lot was so great that residents walking to their cars had to walk right in the path of automobiles, and he suggested that Publix restore the walkway near the north exit.

Mr. Renee agreed that he would look into the matter.

Mr. Wyett urged that Publix management be notified that residents in Palm Beach consider the parking problem abominable.

Mr. Renee stated that it was hoped the remodeling would allow better service, which would in turn ease the traffic.

Mr. Wyett suggested that adjacent property be acquired for parking.

Mr. Deziel remarked that it was a shame that Publix had to bear the burden of Bradley's patrons trespassing on their property, and if the parking lot was closed there would be a planning problem created, as late night traffic would no longer be concentrated in one area.

Town Clerk Pollitt read the motion:

Motion to approve Special Exception 32-96 with the condition that no building permits would be issued until the parking lot was closed off at the store's closing time; also the landscape plan would include a sidewalk on the north side for pedestrians.

On roll call, the motion carried unanimously.

10. Special Exception No. 33-96 with Site Plan Review - Thomas Campaniello, 302/304 South County Road; located in the C-TS Zoning District; to allow construction of supplemental parking.

Ex-parte communication was declared by Mr. Shaw with Mr. Deziel about Special Exception 33-96.

Robert Deziel, representing the applicant, addressed the Town Council, stating that he would incorporate by reference Items A-N in his Site Plan Review Application.

Mr. Moore gave staff comments: Town Engineer Bowser commented that water quality retention area was required for the entire parking lot. Landscaping of 4' would be included, and there was no staff objection.

Mr. Wyett made a motion to approve Special Exception 33-96 with the condition that all water runoff be retained on the property; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

11. Special Exception No. 34-96 - Alio Gasbarro, 320 Peruvian Avenue; located in the C-TS Zoning

District; to allow a 45 seat restaurant providing a principle of equivalency of 14 parking spaces (8 existing spaces) in lieu of 21 required. The additional 7 required parking spaces are being proposed off-site pursuant to Section 6.21(D)(1). - **Request for Deferral to December 10, 1996 Meeting per letter dated November 5, 1996, from Mr. Gregory S. Kino**

DEFERRED TO THE 12/10/96 TOWN COUNCIL MEETING.

12. Special Exception No. 36-96 - Chase Manhattan Private Bank, N.A., 272-280 South County Road; located in the C-TS Zoning District; to allow continuation of Special Exception approval given Chemical Bank to occupy 12,384 sq.ft., acknowledging merger into Chase Manhattan Bank.

Ex-parte communication was declared by Mr. Wyett with the Mr. Broberg relative to the application.; Mr. McLendon with Mr. Broberg regarding the application; Mrs. Smith with Mr. Broberg regarding the application; Mr. Shaw with Mr. Broberg.

Attorney Peter Broberg, on behalf of Chase Manhattan Private Bank, addressed the Town Council, stating that Chase and Chemical Bank would formally merge on November 15, 1996. Town Code required Council approval of a Special Exception, (which had been granted in 1992) before a new occupational license was granted. Mr. Broberg noted that Price-Waterhouse had determined that 53% of the clients were Town persons as defined by Town Code, and he distributed that information to the Council.

Mr. Moore commented that Town-Serving must be addressed.

Mr. McDonald made a motion to approve Special Exception 36-96 with the condition that the applicant return in six months to comply with the Town-Serving requirement; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

13. Special Exception No. 37-96 with Variance - Ray & Sharon Flow, 1350 North Ocean Blvd.; located in the Beach Area Zoning District; to allow construction of a beach house providing a front yard setback of 8' in lieu of 10' required. - **Planning, Zoning, and Building Department Recommends Deferral to December 10, 1996 Meeting**

DEFERRED TO THE 12/10/96 TOWN COUNCIL MEETING.

14. Special Exception No. 38-96 - Gregory Karnig Boyajian, 235 Peruvian Avenue; located in the C-TS Zoning District; to allow a doctor's office on the first floor pursuant to the Town's Schedule of Use Regulation.

Ex-parte communication was declared by Mr. Shaw with Mr. Broberg regarding the application; by Mrs. Smith with Mr. Broberg concerning the application; by Mr. McLendon with Mr. Broberg concerning the application; and by Mr. Wyett with Mr. Broberg concerning the application.

Attorney Peter Broberg addressed the Town Council, stating that a Special Exception was being requested to put a medical/dental office in ground floor space in accordance with No. 16 of the Special Exception uses to the C-TS Zone. He explained that use would be minimal with few patients during one day, and parking was available.

Mr. Moore commented that the Town-Serving aspect must be addressed--that 50% or more of the customers would be Palm Beach residents or employees.

Mr. McDonald made a motion to approve Special Exception 38-96, with the condition that the Town-Serving requirement be addressed in six months; seconded by Wyett. On roll call, the motion carried unanimously.

15. Special Exception No. 39-96 - FJK Properties, Inc., 230 Royal Palm Way, Suite 408-410; located in the C-OPI Zoning District; to allow a 629 sq.ft. financial institution occupancy, and to allow a variance of one (1) required parking space.

Attorney Phillip Reid addressed the Town Council, representing the tenant of the space in consideration, Muriel Siebert and Company Stock Brokerage Firm. Zoning would in the office allowed general offices for real estate brokers and insurance brokers, however stock brokerage offices were not specifically mentioned. The office would be of beneficial interest to the public because the firm had many clients in Palm Beach at this time, who could now use this office rather than the Boca Raton office.

Mrs. Smith welcomed Mrs. Siebert as the first woman to become a member of the New York Stock Exchange in the 1960's and as a leader as an innovator for women being recognized on Wall Street.

Mr. Moore commented that the Town-Serving requirement must be addressed and maintained on an annual basis with the Occupational License renewal. He noted that there was a variance along with the request for one required parking space. Staff had no objections.

Mr. Wyett made a motion to approve Special Exception 39-96 with the condition that the Town-Serving requirement be addressed; seconded by McLendon. On roll call, the motion carried unanimously.

16. Site Plan Review No. 5-96 - John McDonald, 2258 Ibis Isle Road; located in the R-B Zoning District; to allow construction of a residence providing a lot depth of 98.53' in lieu of the 100' minimum required.

Mr. McDonald recused himself from participation because "the measure under consideration would inure to my special gain--and I am related to the applicant."

Mr. Moore explained that the lot in this case was undersized, deficient in depth, and thus required a Site Plan Review.

Mr. Ken Brower, of Brower Architectural Associates, representing John McDonald, addressed the Town Council, stating that the lot in question measured 120.03' across the front, which was 20' over the required street frontage; 98.53' and 95.97' on each side, and 120.06' across the back. The lot square footage was 11,633.59 sq. ft., with the required being 10,000 sq.ft. The property was one of six non-conforming properties in the portion of Ibis Isle Development where ten properties were platted between East and West Ibis Island Road. Mr. Brower proposed to build a single family structure that would be conforming in every other respect to the Zoning Code, and presented site data for review.

Mr. Moore commented that there would need to be agreement with the owner that the deficiency in depth of the lot would not be used as a basis for a zoning variance hardship at some future date.

Ex-parte communication with Mr. McDonald was declared by Mr. Wyett.

Mrs. Smith asked if the lot had been platted to these measurements when the original Ibis Isle Subdivision had been done.

Mr. Moore replied that was correct, and that the subdivision had been approved with those measurements.

Mrs. Smith clarified that the hardship would go with the land and the original subdivision of the property.

Mr. Brower explained that he was unaware of any conforming lots that had been available for purchase by Mr. McDonald.

Mr. Wyett made a motion to approve Site Plan Review 5-96, incorporating the fact that the hardship went with the land; the lot had been platted to these non-conforming measurements when the original Ibis Isle Subdivision had been created; seconded by Mr. McLendon. On roll call, the motion carried 4/0.

D. Other

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

THIS ITEM WILL BE ON THE 12/10/96 TOWN COUNCIL AGENDA.

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

Attorney Peter Broberg addressed the Town Council, stating that the applicant was requesting that construction work be conducted beyond November 14, 1996, with extended hours. Mr. Moss, President of Worth Avenue Merchants Association, had indicated that he did not have a problem with the green construction barrier enclosure staying up until December 6, 1996. He presented a letter from Mr. Moss stating same.

Mr. Moore commented that staff agreed with the request with the exception of Sundays and holidays.

Mr. Wyett made a motion to approve the request for Waiver to Sections 12-51 and 5-22 of the Town Code of Ordinances, Hours of Construction Work for Spa Theira, with the following conditions:

APPROVED UNTIL 12/6/96 WITH THE FOLLOWING CONDITIONS:

1. HOURS - 7:00 A.M. TO 9:00 P.M.
2. NO TRUCKS AFTER 11/14/96
3. NO HOLIDAYS, SUNDAYS, OR THE FRIDAY AND SATURDAY AFTER THANKSGIVING.

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

3. Consideration of Request for Waiver to Sections 12-51 and 5-22 of the Town Code of Ordinances, Hours of Construction Work, by Mr. James R. Brindell for Sonya Rykiel, The Esplanade, 150 Worth Avenue

Attorney Jim Brindell addressed the Town Council, requesting approval of extended hours of construction work from 7:00 A.M. to 9:00 P.M. Monday through Saturday; and 10:00 A.M. to 6:00 P.M. on Sundays continuing through November 22, 1996. The following conditions would apply:

All work that would emit noise outside the Esplanade would be done during normal construction hours, not during the extended hours.

Construction vehicles would be kept inside the parking garage and off the street during the extended hours of construction.

Mr. Moore explained that the Esplanade had been given Sundays in the past because all of the construction vehicles were inside the parking garage.

Mr. McDonald made a motion to approve the request for Waiver to Sections 12-51 and 5-22 of the Town Code of Ordinances, Hours of Construction Work, with the conditions as stated above; seconded by Mr. McLendon.

Mr. Wyett suggested that the hours be restricted to 8:00 A.M., rather than 7:00 A.M. on Monday through Saturday.

Mr. McDonald accepted that amendment to his motion. On roll call the motion carried 4/1, with Mrs. Smith casting a negative vote.

XVI. ANY OTHER MATTERS

There were none.

XVII. ADJOURNMENT

The meeting was adjourned at 9:06 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn