TOWN COUNCIL MINUTES OF MEETING HELD ON NOVEMBER 12, 1991

Roll Call

I. CALL TO ORDER AND ROLL CALL Meeting called to order by President Heeke at 9:30 AM on November 12, 1991 in the Town Hall Chambers. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilwoman Wiener, Councilman Ilyinsky. Absent was Councilwoman Douthit. Also attending were Town Manager Doney, Town Attorney Randolph, Mrs. Peters, and for portions of the meeting, Mr. Elwell, Mr. Jakubiak, Mr. Moore, Mr. Zimmerman, Mr. Fletemeyer, Chief Elmore, Chief Terlizzese, Mr. Bowser and Mr. Dusey.

Invocation

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

Presentation by Mr. Adams of Cert. of Achievement for Excellence in Financial Reporting

III. PRESENTATION

A. Presentation by Mr. Damon R. Adams, Finance Director, City of Fort Lauderdale of Government Finance Officers Association's "Certificate of Achievement for Excellence in Financial Reporting" for Fiscal Year Ending September 30, 1990, to Town's Elected Officials and Staff

Mr. Damon Adams addressed the Council noting the award being presented is a very significant one which is received for the annual report for the year ending 9-30-90 and this is the highest form of recognition in government accounting and must meet the highest standards of GFOA's program and encourages completeness and clarity in reporting as well as standardized reporting principles. He stated this also reflects the endorsement and support of the elected officials and is truly a tribute to the Council's foresight and leadership, also reflects the high degree of professionalism and time by the staff in preparing the report and he presented the award to Mrs. Crozier, the Acting Director of Finance.

Comments of the Mayor

IV. COMMENTS OF THE MAYOR: Mayor Marix stated she would like the Council to focus on how incredibly lucky the Town was in the recent storm last week. She has seen many photographs of what actually happened and it is unbelievable that the Town did not suffer more serious damage and she thought if there was wind or rain with it, it would have been dreadful. She felt they had to congratulate themselves on the fact that the clean-up and the procedures connected with the handling of the storm were done in a very efficient manner and she will work hard to try and get some support against these storms in the permitting process for a reef but this shows we must have more protection.

Approval of Agenda

V. APPROVAL OF AGENDA Motion was made by Mr. Ilyinsky, seconded by Mrs. Wiener, to approve the agenda with the withdrawal of Item XIV.C.5, Special Exception No. 14-91 with variance, Via Mizner Associates Limited Partnership; deferred to the December 10, 1991 Town Council meeting were items XIII.C.1, XIV.C.1, 3, 4 and 14; and the addition of an item under XIII.C.4 Discussion on Bike Trail Safety (Rollerblades). Motion carried unanimously on roll call.

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

Mrs. Wiener asked that on the minutes, there should be some mention of the fact and the time she left the Council meeting, recalling she was ill. Mr. Doney noted there are three individuals who had served one term on the Golf Commission and there is no recommendation on this matter at this time. Motion was made by Mr. Ilyinsky to approve the "Approved Agenda" as amended. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mayor Marix believed they should announce those who were being appointed to the various Committees. Mr. Heeke indicated there are two sets of appointments, one for the Bicentennial Eagle Restoration Committee and the Golf Commission. Mr. Doney read their names:

Golf Comm.

Bicentennial Eagle Restoration Comm.

Golf Commission - Mrs. Bea Keiser, Mr. Tom Keresey and Mr. Eugene Pollack and the Bicentennial Eagle Restoration Committee: Mrs. Earl E. T. Smith, Mrs. Hoffstot, Judge Knott, Mr. Granville Morse and Mr. John E. Stewart, Mr. Sidney Kohl, Mrs. Loren Fletcher Cole, and Mrs. Henry Phipps Hoffstot.

Mrs. Wiener wondered if such items as the Warrant Listshould be included in the Approved Agenda. Mr. Randolph stated that is not a problem from a legal standpoint. Mr. Heeke suggested that the item numbers be included in the paragraph describing the "Approved Agenda." Mrs. Wiener did not believe New Business should be a part of the "Approved Agenda" as she has no problem with what is on it today, but would like to see it treated on an individual basis, such as the appointments. Mr. Heeke advised most of these items are fairly standard and any member of the Council may pull any of these items off of the "Approved Agenda" if they so wish.

Mr. Weinberg noted there was a correction to the minutes on Page 22, line 4, the word "unfair" should be "fair".

APPROVED AGENDA

VI. APPROVAL OF MINUTES OF OCTOBER 8, 1991

Licenses & Permits

VII. LICENSES AND PERMITS

Charitable Solicitations

A. Charitable Solicitations - Recommend Approval

1. City of Hope; No. 13-92
2. American Red Cross Palm Beach County Chapter; No. 20-92
3. Society of the Four Arts; No. 62-92
4. Palm Beach Opera, Inc.; No. 68-92
5. Brandeis University; No. 76-92
6. The American Jewish Committee; No. 125-92
7. American Society for Technion Israel Institute of Technology, Inc.; No. 137-92
8. American Committee for the Weizmann Institute of Science; No. 151-92

9. Community Foundation for Palm Beach and Martin Counties; No. 221-92
10. Palm Beach Par 3 Golf Course; No. 227-92
11. Palm Beach Rotary Foundation, Inc.; No. 231-92
12. St. Ann School; No. 306-92
13. Palm Beach Atlantic College; No. 328-92

Charitable Solicitations (cont'd)

B. Beverage Licenses

Beverage Lic.

1. Application for transfer of a 4COP Alcoholic Beverage License by Mark Farrell DeLorme/The Bar Harbor Lobster Pound Restaurant, Inc. at 237 1/2 Worth Avenue

VIII. NEW BUSINESS

A. Appointments

Appointments

1. Bicentennial Eagle Restoration Committee created by Resolution No. 50-91 - Consideration of Appointment of Committee Members

Eagle Restoration Comm.

2. Golf Commission - Three terms to expire in November 1991

Golf Comm.

B. Other

1. Proposed "Palm Sale" Scheduled for March 22, by Preservation Foundation of Palm Beach

Palm Sale by Pres. Foundation

2. 1991-92 Approved Zoning Hearings Calendar - Additional Zoning Commission Hearings to be Held December 3 and 4 (if necessary), 1991

3. Comments on Proposed Palm Beach County Water Conservation Ordinance

IX. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR October 1991

Mr. Ilyinsky moved for approval of the "Approved Agenda", seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

REGULAR AGENDA

X. PUBLIC HEARINGS - Pursuant to Chapter 10, Article XIV "Taxicabs" of Town Code of Ordinances

Public Hearings

A. Application by Arthur Y. Weldon for Aristocrat Limousine Service to Obtain Certificate of Public Convenience and Necessity for 1988 Lincoln Town Car Stretch Pursuant to Section 10-321 of Town Code of Ordinances

Aristocrat Limousine Service - Section 10-321 of Town Ord.

Attorney Joseph Mincberg addressed the Council on behalf of Aristocrat Limousine Service requesting the Town to increase the cap of fifty permits and grant his client a Certificate of Public Convenience with two permits. He noted they have been requested by Mr. Murray Goodman to have their limousine service at the Esplanade and will not need public parking but will park their two limousines in the Esplanade Parking Lot. He advised his client has had five years experience driving with the largest limousine company in Palm Beach and now wishes to branch out on his own. He introduced a letter of recommendation from Murray Goodman. He advised he is amending the original request and is not requesting the taxi stand as the cars will be parked on private property and will restrict its business affairs to the shoppers at the Esplanade. He advised all of the other qualifications as to insurance and the automobiles have been met.

Mr. Heeke asked where would they be driving the people who make the requests for the limousine service? Mr. Mincberg advised generally it will be transportation of the shoppers to the homes, and anything that may be requested of them. Mr. Heeke noted one of the references given by Mr. Weldon is Councilwoman Wiener. Mr. Mincberg advised Mr. Weldon has been providing service to the people in the Town for a number of years. Mrs. Wiener advised Mr. Weldon has delivered a service to her and her husband very favorably and she would recommend him very highly.

Attorney Randolph advised the Mayor and Council this is a public hearing and has been advertised as such and anytime the cap of 50 permits is being changed, it must be advertised as a public hearing and the opportunity given to anyone who wishes to speak to it. He understood the application did ask for one permit, but it is now being modified to two permits, to which Mr. Mincberg agreed.

Mr. Heeke called for public comments. Michael Ripton of Everglades Limousine addressed the Council advising he sees no reason to increase limousine permits in the Town. Mr. Heeke asked if he would be willing to station an automobile at the Esplanade? Mr. Ripton advised they presently do service the Esplanade. Mr. Mincberg advised Mr. Goodman, the owner of the Esplanade, obviously doesn't feel the service is being provided the customers of the Esplanade as Mr. Mincberg views this as a private arrangement with very little impact on the Town per se, in that the cars will not be advertised or utilized in the Town but concentrating their business only at the Esplanade. He believed that Mr. Goodman recognized a need for this service at the Esplanade and Mr. Goodman wants Aristocrat to provide that service.

Mr. Weinberg asked if this would be exclusively for the Esplanade and anyone else who wanted this service could not have it? Mr. Mincberg responded the customers can choose whom they want to do business with, but the Esplanade is putting their seal of approval on Aristocrat, however the shoppers are free to choose whom they wish to do business with.

Attorney Peter Broberg addressed the Council indicating he represents Mr. Ioime of Alibi Limousine which is next on the agenda. He advised his client and his partner have purchased a limousine service which has a stand at the Esplanade and they have four permits there so there are limousines available at the Esplanade. He pointed out the number "fifty" was picked for a reason which he viewed as keeping traffic at a cap in the limousine business. He believed that if Mr. Weldon wished to purchase a license, he was sure there were some out there that could be purchased as they are a saleable commodity, and they are self-renewing by presenting the cars and having them inspected annually. He believed the cap should not be increased as all are concerned about traffic but secondly, if Mr. Weldon is serious about putting in a limousine service, he should explore purchasing one.

Aristocrat Limousine Service -Sect. 10-321 of Town Ord. (cont'd)

Mrs. Wiener asked Mr. Broberg what led the Goodman Co. to make this request when there are four limousines available out of there now? Mr. P. Broberg responded he couldn't comment on this. He stated Mr. Joe Acquaotta, who is the seller of the Palm Beach Limousine service could probably answer this as he has his service for sale and probably didn't provide the necessary service that was necessary and that is why he sold out.

Mrs. Wiener believed the Council always tried to stay out of the money aspects of these things, not only in the limousine business, but in all areas. Mr. P. Broberg stated he understood that but just brought it up for the practicality aspect.

Mr. Weinberg asked if there was a need for additional cabs in the Town at this time or should we hope for a good future around the corner? Chief Terlizzese responded his opinion is that fifty is a lot of cabs in this Town and he didn't believe there were fifty as there are a lot of permits not attached to cabs, so what happens is the existing companies purchase the permits and some of them have as many as 14 permits, but they don't have 14 limousines. He didn't believe there was anything in the Ordinance that would allow the companies to purchase the permits without a cab number or a serial number or a title to a vehicle attached to the permit.

Mr. Randolph responded the Ordinance does require that there be an automobile to go with a permit. Mrs. Wiener agreed there were a lot of permits out there and no cars to go with them. Chief Terlizzese agreed.

Mayor Marix asked if someone could just buy up all the fifty permits allowed? Mr. Randolph stated if someone had fifty vehicles, they could purchase the permits to go with those vehicles from someone else and they possibly could accumulate all of them. Mr. Heeke believed that unless it can be clearly demonstrated there are fifty vehicles assigned and permitted, we don't need to increase the cap.

Attorney Mincberg felt the question brought up earlier about the impact on traffic would not apply here as the cars will not be on the public roadway but within the parking garage at the Esplanade. Mr. Weinberg did not agree indicating they would be leaving the garage and riding on the Town streets. Mr. Mincberg advised the cap of the fifty permits is creating a black market in these permits and what costs $400 to the Town for buying one of these permits is now valued in the thousands of dollars, if one were to acquire these permits, since there is a cap and there are profiteers with respect to these permits and the request he made on behalf of his client is a good one and the Goodman Co. wants them and they will be parking their vehicles in the garage and he reiterated his request that these two cars be allowed to be stationed at the Esplanade.

Jack Campionella of Park Limousine Service advised if private permits are issued for the Esplanade, the Breakers will want to do the same thing on their property. He pointed out the times have changed and rather than the big limousines, people are now riding in Cadillacs and Chrysler Town Cars. He advised there are permits available and they are worth money. He gave as an example, Joe Acquaotta who has served this Town for 25 years loyally and has built up a nice business and now wishes to retire and has an opportunity to get monies for these permits and if the cap is increase, Joe will lose his deal and that is not fair. He believed if they work hard, the permits should be worth money as they build up the value in them. He believed that every limousine company that has been sold has been able to make money and that is not the Council's concern, as that is a private thing, but they are worth money and there shouldn't be anything wrong with it that they are.

Mr. Heeke believed the Council deferred this item until the next two items on the agenda are completed and then it will be known if there are permits available.

Mrs. Wiener believed that the next item indicates there is an operator who has not renewed for whatever reason, and at this point we are working under the fifty permits that are allowed in the Code. Mr. Doney advised the agenda has been put in this order because Mr. Weldon had his request in earlier to be considered at this Hearing.

Mr. Weinberg moved Item X.A be deferred at this point in time until Item X.B is completed. Seconded by Mr. Ilyinsky. On roll call, the motion carried with Mrs. Wiener voting negatively as she didn't believe it was fair or in order.

Alibi Limousine Service Appeal

B. Appeal by Mr. Louis Ioime, President and Mr. Richard Pittala, Operations Manager of Alibi Limousine Service Pursuant to Section 10-320(d) of Town Code of Ordinances for Failure to Renew Certificate of Public Convenience and Necessity and Permits for same; and

Appeal for Time Extension to Purchase Palm Beach Limousine and Acquire Vehicle Permits for Same

Attorney Broberg advised there are only forty-two permits outstanding at the moment as Alibi has four and Palm Beach Limousine has four. He reported the Ordinance requires the Licenses be renewed on an annual basis by November 1, and lists a number of things that need to be done, one being a VIN number and inspection by the Police Department to prove there is a car that goes with the registration. He recalled in the past a car didn't always have to go with the license renewal and the people came in and paid for their license renewal and it could be put on a shelf until such time when a car was needed because business had picked up. He indicated this year when they came in to do the same thing, they were told they couldn't do that and consequently they requested additional time to add some cars, however November 1st had passed and the Ordinance had to be followed and their permits were cancelled. He stated that is the reason they are here today appealing that administrative decision which is allowed by the Ordinance.

Attorney Broberg noted that Alibi Tax has purchased Palm Beach Limousine, a/k/a Esplanade Limousine Services and they have four permits. He reported the application fee was paid by Palm Beach Limousine to renew their permits, and that is in the works but the transfer is taking place, but practically November 1st has come and gone and there are not four cars in service. He believed technically, by the Ordinance, their permits have been repealed also. He requested the Council that because of the prior dealings with the office which allowed them to renew without having vehicles, his clients were mislead or led to believe that they could pay for their permits and not put cars on. He advised now that his clients have purchased Palm Beach Limousine, they do have eight cars to put on, four from Alibi and four from Palm Beach Limousine, although they will probably merge into one company.

Attorney Broberg advised his request is to allow until January 1st, or to a period which the Town Council feels is fair, an extension of the time to put the cars on for the permits. He felt his clients tried to follow the Ordinance with the way they were led to believe it was interpreted, prior to Nov. 1st, but it didn't work out that they had the cars in place on Nov. 1st, and they were rejected. He requested the Council to overturn the administrative decision which has repealed their licenses and allow them time to get cars registered and inspected by the Town for the permits.

Alibi Limou. Service Appeal (cont'd)

Mr. Richard Pittala, Operations Manager of Alibi Limousine addressed the Council on the service or lack of it that was provided at the Esplanade, they did purchase in good faith from Mr. Acquaotta with the idea of putting on the cars for the permits as business warranted it in the future. He stated this does present a problem for them financially as they were not prepared to do this with the purchase of the company at this time, and did not have the cars nor the insurance on the cars to be in compliance, but will be able to do it if the Council would grant the extension. He advised they will be able to provide the service to the Esplanade in a professional manner. He advised they have already talked to the Lexus Co. in Palm Beach, and have ordered cars, and will have the model, makes and ID numbers available shortly, but without this approval, they didn't want to incur this expense.

Mr. Heeke asked how many permits were issued for the current fiscal year which actually have the cars? Mr. Doney advised there are 42 of the 50. Mr. Heeke noted that does not include the eight requested by Alibi or the two requested by Aristocrat. Attorney Randolph advised it is his understanding they do not have their vehicles but are asking Council to grant this and give them some time to get the vehicles to go with the permits. Attorney Broberg reported Palm Beach Limousine does have four cars which could go on today, however, Alibi is missing three cars.

Mayor Marix asked if last year the regulation requiring cars to be put with the permits was not being enforced? Mr. Doney responded that is what has been represented to the Town. Mayor Marix asked how many permits were issued last year that did not have cars with them? Mrs. Crozier responded it is difficult to answer that question but from the information she has on hand, it looks like there may have been ten.

Mr. Heeke believed one way of solving it is to have those with the cars get their permits and for those who don't have cars, they may come in when they have the cars and seek a raising of the cap when they have the cars.

Mr. Ilyinsky noted he doesn't have a problem with B, but does with A. Mr. Heeke recalled the Ordinance was amended in 1988 and the cap was put on and the regulations set out with regards to renewal by Nov. 1st, and the Ordinance states failure of the applicants to renew their permits by Nov. 1 shall act as an automatic revocation of the Certificate or Permit and thereafter it shall be unlawful for them to operate taxi cabs or limousines covered thereby, and he viewed this as a way to avoid trading of permits and over proliferation of vehicles of this type in the Town. Mayor Marix felt the problem is we were issuing the permits without the actual cars and that is what troubling her. Mr. Heeke agreed the Ordinance was not being properly enforced.

Mr. Rifton addressed the Council stating it was obvious there wasn't enough business on the island to warrant everybody having their permits. He believed the person who was handling this was very lax in the enforcement and they never found out there was such an Ordinance until Mrs. Crozier advised them of it this year.

Mr. Heeke did not believe a need had been demonstrated to increase the cap. Mrs. Wiener believed the whole thing was quite peculiar and she would have this point of view whether or not Mr. Weldon had provided her with limousine service or he didn't.

Mr. Ilyinsky asked if the philosophy of selling a permit was being contested here to which Mr. Heeke responded negatively as did Mrs. Wiener. Mrs. Wiener felt what they were discussing is the fact that if the cap was at 50, there would have to be 50 cars and at this point, they are talking about 47 cars and that means they are not at the limit. Mr. Randolph agreed that administratively they are not at the limit. He advised the reason for the appeal is so these people could come in and explain the circumstances and what we are hearing today is year after year, they were renewing the permits without having vehicles because that is what they understood the program was from the administration. He reported the question before the Council is whether or not these people, by the actions of the Town, not the Council but the administration, had acted to their detriment as apparently there was an agreement for purchase and sale of some permits, because they thought the permits were there and now as of Nov. 1st of this year, they are not. He stated they are asking the Nov. 1st date be extended so as to allow them to put cars with those permits.

Mr. Heeke believed the proper way to tackle this would be to exhaust the 50 permits, and that would be to grant Mr. Weldon's two permits and this would leave the other group with a shortage of two permits and he felt they could always come back to the Council and request relief for this year only because of the manner in which the dealings had taken place with the Town previously.

Mr. Ilyinsky indicated he had problems with putting two cars in the Esplanade and he had no problems with granting the appeal in Item B. Mrs. Wiener pointed out the cars don't even exist. Mr. Ilyinsky stated he knew that but they are buying them.

Mr. Heeke stated what he was trying to do was to avoid any increase just for Mr. Weldon , assuming the other 8 are there giving us the 50 and a precedent would be set by increasing vehicles at a particular location, the Chesterfield, the Brazilian Court or wherever, as then again we would have a proliferation of taxies, which we don't want. He believed it should be first come, first served. He asked Mrs. Crozier if the other 42 permits had the cars actually in place? Mrs. Crozier responded they have been in receipt of VIN numbers and Registration numbers and tag numbers and the next thing necessary would be to have the limousine owners physically present their vehicles to the Police Department.

Mr. Randolph advised they are basically denying the appeal before them and having denied it, there is no reason to take a position in regard to "A" since the permits are indeed available. Mrs. Wiener did not agree, noting there are 42 available now, and there is someone asking for 2, so there are 44 now and the appeal could be granted and six permits issued at this time.

Mayor Marix wondered if they should increase the cap to 52, because a mistake has been made in the past about enforcing this Ordinance and not because normally there would be 52. She stated the

Alibi Limou. Appeal (cont'd)

reason simply is because we made a mistake. Mr. Heeke pointed out there are four vehicles already available which qualify for the permitting.

Mr. Heeke believed at this time, under Item B, there are four vehicles already available which would qualify for the permits and we add two to Mr. Weldon, so there would be six added to the 42, which would make 48 vehicles. Attorney Broberg believed they were going backwards, noting these gentlemen at Alibi have four permits, and the Council is trying to take two away. He indicated they are there on appeal that they were led to believe there was a proper procedure in effect in the Town and they are entitled to those four permits as they are entitled to the four permits for Palm Beach Limousine and that is eight permits, which adds up to 50.

Mrs. Wiener used as an example that this is a zoning issue and the applicant and his attorney see this law written in black and white and the Town Council doesn't grant those kind of things and what they are trying to do is to get along with everybody and the fact that there has been an administrative problem in this matter in the past does not answer the question and the question there is for everyone to see and certainly someone who is in business in the Town should be well informed about the requirements. She agreed with Mr. Heeke. Mr. Broberg advised there are laws on the books that are interpreted differently than written and this is what they are talking about - a law on the books which was interpreted differently than it was written and that is the way his client was entitled to rely on it, to his detriment in their course of business and if they are going to take the permits away from them, he thought it would be a problem.

Attorney Mincberg felt the ordinances are there for all to read and it does state that all the Permits must be renewed by the first of October and we are now at Nov. 12. He informed the Council that his client had his application in by October 1 and has the cars ready to go and he should be able to get his permits and any adjustments they have to make in the future can be made.

Attorney Broberg reiterated Alibi purchased four permits from Palm Beach Limousine and offered to sell Mr. Weldon two of them and he knows that is not the business of the Council, but they can have two of the permits in that way, but they refused. Mrs. Wiener commented that is not the Council's business. Mr. Broberg stated the big issue is whether permits can be taken away because of an administrative interpretation of the Ordinance, noting the money was sent in for the permits in a timely fashion and it was returned. Mr. Weinberg offered the fact that the money was returned because they didn't have the actual cars. Mr. Broberg responded that is the way it was done in the past. Mr. Heeke felt the whole idea of amending the ordinance in 1988 was to prevent this from occurring as the Council didn't want phantom cars out there with permits and someone could hoard them without having the actual vehicles.

Mr. Ilyinsky moved the appeal be granted and thirty days grace period be given for them to produce the actual vehicles. Mrs. Wiener asked for an amendment to the motion that the appeal be granted for six permits to which Mr. Ilyinsky did not agree.

Mr. Randolph stated they are going to either grant the appeal or they are not and he didn't see the reasoning behind granting the appeal for six and not eight, as they either agree they are equitably estopped and these people have been misled in regard to this or they are not. Mrs. Wiener disagreed stating her reason is the fact that those cars just don't exist and what they are doing is granting favoritism and although they state they have ordered the car, it is not here today and what she is trying to do in saying six is to protect them so they can continue to do business on the island with the six, as someone could come tomorrow and have the actual six cars and file an application and they would be granted the permits.

Mr. Randolph advised these people are telling the Council they had permits in the past because they were told by someone in the past that they didn't need cars in the past and they expected to come in on Nov. 1st and be able to renew those, but now are being told they need cars, so they wish to have an extension of time in order to procure the vehicles to go with the permits. Mr. Heeke believed the motion to grant six would accomplish that at this point and they could come back after they have the other two cars and ask for two more because of the estoppel at another meeting. Mayor Marix didn't know why they couldn't let them have the permits, go over the cap, because they have made a mistake as our administration has misled them for years, so two extra cars over the cap is not going to be the end of the world and she views this as a moral obligation, and not establishing a precedent due to the circumstances and eventually two people may be giving up their permits and we'll be back to the 50 cap. Mr. Heeke suggested if that is the way they wish to go, he would suggest the additional cars be added to the appeal (Item B) rather than to Mr. Weldon's request.

Mrs. Wiener moved that the Council approve and grant to Mr. Arthur Y. Weldon for Aristocrat Limousine Service the Certificate of Public Convenience for two cars which will be parked on private property of the Esplanade. Seconded by Mr. Weinberg. Mr. Rifton asked if it was not a part of the Ordinance that there has to be proof of necessity? Mr. Heeke stated they have heard those arguments and they are now in executive session. Mr. Rifton advised when he purchased his company, he was purchasing the reputation of 47 years that the company had been in business, and he sees the Council throwing all of that out the window.

On roll call, the motion carried with a negative vote cast by Mr. Ilyinsky. (3-1).

Mrs. Wiener moved that the Council grant to Mr. Louis Ioime, President and Mr. Pittala, Operations Manager of Alibi Limousine Service a renewal of their Certificate of Public Convenience which means a granting of the appeal of the administration which will permit them to have eight cars, which are two over the cap which has been in place up to now, as long as all eight cars are registered with the Town as of January 1, 1992 for a full fee. Mayor Marix wondered if it would be in order to have in the motion that we are going over the cap with the two permits, because of an administrative mistake to which Mrs. Wiener agreed and amended her motion to add: "due to what we believe to be an administrative mistake".

Mr. Ilyinsky seconded the motion and the amendment. On roll call, the motion carried unanimously.

Licenses & Permits

XI. LICENSES AND PERMITS

A. Charitable Solicitations - Other

Charitable Solicitations

1. United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc.; No. 49-92

Charitable Solicitation United Jewish Appeal

Mrs. Peters informed the Council this particular application could not be recommended for approval as there was no audit. Attorney Joseph Metzger addressed the Council on behalf of the United Jewish Appeal requesting the permit be granted with the stipulation that the audit would be provided prior to the event as the audit will not be ready until mid-January. Motion was made by Mr. Weinberg that the Charitable Solicitation Permit be granted with the proviso that the audit be submitted to Mrs. Peters prior to the event. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

2. The Fashion Group International of the Palm Beaches; No. 327-92

Charitable Solicitation The Fashion Group

Mrs. Peters advised this application is in order but was not filed on a timely basis, and they needed a waiver to the advertising rule. Ms. June Fisher addressed the Council explaining the function is going to be underwritten and they will be raising monies for their scholarship fund, and until they got all the details worked out, and filed the application, time had run out on them. Motion was made by Mrs. Wiener to approve the Charitable Soliciation Permit for the Fashion Group with the advertising rule waived. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

A short break was taken.

Meeting called back to order by President Heeke.

XII. OLD BUSINESS

A. Other

1. Consideration of Lake Worth Inlet Sand Transfer Plant

Lake Worth Inlet Sand Transfer Plant

Attorney Randolph advised the County has taken the position in this case, even though they had written a letter that they would no longer be operating the Plant after September 30, 1991, they took the position at the trial that they would operate it as long as the Town would pay for it and by doing that, they raised the issue that money damages was appropriate. He advised where money damages are appropriate, one cannot get equitable relief because there is a remedy by receiving money damages and the Court indicated in its Order that in the event the Town were to become involved in operating the Plant and had to pay for it, and ultimately they prevailed in a law suit, that we could collect damages. He stated in light of the position of the County in that regard, he proposed the complaint be amended which previously asked for Declaratory Relief and Injunctive Relief to ask for damages for Palm Beach County's failure to operate the Plant and for damages which have occurred to the beaches as a result of their failure to operate the Plant under the terms of the contract. Mr. Heeke asked the Council if there were any objections to this recommendation and hearing none, he advised the attorney to proceed to protect the Town's interest.

XIII. NEW BUSINESS

A. Resolutions

1. Resolution No. 54-91 - Requesting the Florida Legislature to Provide Adequate Funding for the Preservation and Repair of the State's Beaches

Res. 54-91

Attorney Randolph read the Resolution No. 54-91 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING THE 1992 FLORIDA LEGISLATURE TO PROVIDE ADEQUATE FUNDING FOR THE PRESERVATION AND REPAIR OF THE STATE'S BEACHES AND TO IDENTIFY A LONG-TERM DEDICATED FUNDING SOURCE AND REQUESTING THE STATE TO IMPLEMENT PROGRAMS ENCOURAGING THE DEVELOPMENT OF NEW AND INNOVATIVE COASTAL MANAGEMENT METHODS.

Mr. Ilyinsky moved for adoption of Resolution No. 54-91. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Bid Awards

Bid Awards

1. Sealed Bid No. 033-90/91 for Phipps Park Lifeguard Building - Consideration of Resolution No. 51-91

Sealed Bid. No. 033-90/91

Mr. Randolph read the Resolution No. 51-91 by title:

Res. 51-91

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO WEST CONSTRUCTION, INC. FOR THE PHIPPS OCEAN PARK LIFEGUARD BUILDING.

Mr. Doney advised there is a letter from Chief Terlizzese and Mr. Dusey which lists some deduct items from the original bid in order to limit the amount needed from the Undesignated Capital Improvement Fund Balance to do this particular project. Mayor Marix wondered if the building had been in place during the recent storm, would it have been damaged? Mr. Doney stated he didn't believe it would have been from this particular event but he couldn't predict what another storm would do as it would depend on its severity. Mayor Marix asked if it was going to be placed in the safest place to be able to get the job done but still be safe from certain type storms? Mr. Doney stated it is in order to do its function, i. e., have the visibility of the beach area.

Motion was made by Mr. Weinberg to adopt Resolution No. 51-91. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously for approval.

C. Other

Kelly Tractor's Request for Abondonment of right-of-way (deferred)

1. Consideration of Kelly Tractor's Request to Palm Beach County for Abandonment of Right-of-Way Adjacent to Town's Okeechobee Boulevard Property

Mr. Heeke noted this item has been deferred until the December Town Council meeting.

Tiffany planters

2. Request by Jeff Smith, Architect for Tiffany and Company, 256 Worth Avenue, to Add Four (4) New Planter Boxes and Palm Trees in Sidewalk in Public Right-of-Way on Hibiscus Avenue

Mr. Smith, Architect for Tiffany & Co. addressed the Council, exhibiting a proposed plan, indicating they were approached by the Worth Avenue Association and asked them to beautify Hibiscus Avenue by continuing the rhythm of palm trees from Worth Avenue down Hibiscus and his client was quite pleased and will pay for the trees if the Town Council will allow the planting in the right-of-way.

Mr. Dusey advised he has sent a memorandum to the Town Manager on Nov. 7, 1991 setting out terms and conditions, should this be allowed.

Mr. Heeke wondered what this would do with respect to the lighting requested by the Bustanis. Mr. Dusey believed there was a difference as this particular request by Tiffany's as it would allow continuity of the planting with Worth Avenue and he thought what the Council was trying to avoid at the Bustani building were having buildings lit differently around the Town. Mr. Dusey believed the sidewalks at both places were ten feet but at Tiffany's there is an additional three or four feet to the curb and that is where the palms would be planted. Mr. Ilyinsky recalled the Council did not ask them to remove the palm trees but remove the lighting. Mr. Dusey advised the palm trees belong to the Town and that was correct, they asked the lighting be removed.

Mrs. Wiener viewing the drawings, asked if the height on the drawings was the actual height the palm trees would be? Mr. Smith responded that is approximately the height as shown as they were told by the Worth Avenue Association that the trees should have a maximum height. Mr. Smith stated they are replacing the present trees on Worth Avenue with a larger tree so there is a continuity.

Mrs. Wiener wished to be assured there was enough sidewalk there, so they wouldn't be impeding on it from a public safety point of view. Mr. Smith responded the sidewalk is the same as it is on Worth Avenue.

Mrs. Wiener moved that Tiffany & Co. be permitted to add the four new planter boxes and palm trees in sidewalk in the public right-of-way on Hibiscus Avenue, providing the conditions as set out in Mr. Dusey's memorandum of Nov. 7, 1991 are met. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Dusey's memorandum of November 7, 1991 is as follows:

"We have reviewed the above-referenced request dated November 6, 1991 from Architect, Jeffrey Smith. Should Town Council decide to approve the request, it is recommended that it be subject to the following conditions:

(1) Permits are obtained from the Planning, Building & Zoning Department and the Public Works Department prior to commencing the work.

(2) The owner of the property agrees to execute a hold harmless agreement and provide insurance coverage on an annual basis naming the Town as additional insured with both documents meeting the requirements of the Town's Risk Manager and/or Town Attorney.

(3) The owner of the property agrees, in writing, to perpetually maintain the trees, wiring, lighting and sidewalk around each tree.

(4) That the requirements of #2 and #3 be recorded in the Palm Beach County Court House as an encumbrance on the property in a form acceptable to the Town Attorney.

In addition, although not a requirement, it is recommended that irrigation be run to each planter area and that the property owner also be responsible for the irrigation

Storm Damage Repairs

3. High Tides and Wave Damage of October 31, 1991 - Utilization of Storm Damage Contingency Funds in FY92 Budget and Request for Appropriation from Undesignated General Fund Balance to Complete Repairs

Mrs. Wiener asked if there was an essential differential in monies from what it would take to put it back to the way it was? Mr. Dusey advised if they wished to open up Mid-Town to pedestrian traffic, the parapet wall would need to be replaced as well as the sidewalk and curbing that was damaged in the storm. He believed they wouldn't have to replace the landscaping, the benches, or the containers or the stairs at Gulfstream, which would remove approximately $100,000 from the estimation. Mrs. Wiener wondered if there was some way the wave toppings could be screwed into the wall as she heard they were a hazard when the storm was in progress. Mr. Dusey advised there would be some other ways they could be fastened to stay on a bit better, but when the wall crumbled, that too was a hazard. He didn't believe it would be any safer and it would be much more expensive to install. Mrs. Wiener wondered if there was any way this could be made part of the wall? Mr. Dusey did not believe there was. Mr. Heeke stated the timing on when it will go in will be left up to the Public Works Department.

Mr. Weinberg asked if the estimated cost included the painting of the wall? Mr. Dusey advised that will be done in-house as that was under way at the time and it will have to be completely redone.

Storm Damage Repairs (cont'd)

Mr. Heeke noted there were some issues listed in the Town Manager's memorandum to the Mayor and Town Council of November 8, 1991, which asked if they desire that any non-essential work be postponed until same could be funded through a future year's budget or should the full estimated amount be appropriated from the undesignated General Fund balance? Mayor Marix asked if this estimate was $100,000? Mr. Dusey responded the $100,000 was a part of the total estimate and there is no connection. He stated this $100,000 is monies budgeted on an annual basis for storm damages as a contingency. Mayor Marix asked if this $100,000 budgeted would include the landscaping to which Mr. Dusey responded it may, as it will be the Town Council's priority.

Mayor Marix knew they were going to be discussing landscaping under the trees on North County Road and in the Memorial Fountain Park and she was wondering if this should be discussed later on, as it may be partly underwritten.

Mrs. Wiener stated it is a philosophical question as they must make a determination as to whether they want to put it back as quickly as possible or do they want to hold up on this. Mayor Marix explained the reason she brought this up is she was speaking to a member of the Garden Club on priority items and perhaps they may consider the oceanfront more of a priority than some of the others which might be given to the Town. Mrs. Wiener believed they would be happy to accept whatever they want to give, however, a determination has to be made as to whether or not they wish to get this done now.

Mr. Heeke noted the next item is discussion of repairs to the Beach Patrol Headquarters and of the desired level of lifeguard services at the Mid-Town Public Beach area. Mr. Heeke believed it may be that minimal repairs could be had now as he believed there was a lesser beach now than what was there before October 31, and it may be that they put it back in operational order with the minimum repairs and then they could go back and look at it when the beach is more built up. Mrs. Wiener agreed as she couldn't see the point of the exercise as there is a lot of money being spent on personnel who didn't have much to do.

Mr. Dusey advised the electrical system needs to be replaced and that is $3500. He reported the interior damage wasn't as bad as it could have been as they are estimating it would be approximately $2500 which is mostly doors and things of that nature. He advised the exterior top railing oceanside was badly damaged and that will cost approximately $4000 to put that back into shape and the total for the whole life guard headquarters would be approximately $10,000 to make it habitable. Mr. Heeke believed some of the items are safety items and he would like to see them completed.

Mr. Dusey advised they are recommending demolition of the Old Lifeguard Building. Mr. Ilyinsky moved the demolition of the old beach structure be authorized. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Heeke inquired about the newer Lifeguard building and if that top deck were taken off, would it help keep people off of there? Mr. Dusey stated they couldn't do it as it is an integral part of the beach structure.

Mrs. Wiener moved that the railing be replaced onto the Beach Patrol Building. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mrs. Wiener moved the electrical work be put back into working order in the Beach Patrol building. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Heeke suggested the stair replacement be left out of the work to be done until it is seen whether there will be a beach there and they could monitor it on a thirty day period.

Mrs. Wiener moved that at the Mid-Town Beach, the items 1 through 8 be authorized, as contained in Mr. Dusey's memorandum to Mr. Doney of Nov. 7, 1991. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

The items were:

1. Replace Parapet Wall
2. Parapet Wave Topping
3. Remove and replace 5' sidewalk with curb.
4. Remove and replace sidewalk
5. Remove and replace colored sidewalk
6. Remove debris.
7. Compacted Fill.
8. Landscaping, Benches and Container Replacement

Mr. Heeke referred to the Beach Steps on page two of that same memorandum and these are at Phipps Park, 4 sets, El Pueblo, Platform and Steps, La Puerta, Steps and the steps at Clarke Avenue, all of which have beaches. Mr. Ilyinsky moved the beach steps in these areas be replaced. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Heeke stated the next item is Dune Repair at Clark Avenue Beach which is pretty important due to the roadway along there and Mrs. Wiener moved this be approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Dusey stated the next item is the Roadway Protective Seawall (Private Property) and the parapet damage at the north end of Angler Avenue would be in the amount of $12,000; at Banyan Road it would be $24,000 with $4,000 for the removal of debris and disposal of debris. Mr. Dusey advised there could be arguments made in both directions on this. Mr. Heeke asked if the Town's roadway is threatened by the present condition to which Mr. Dusey responded negatively stating the parapet wall is generally ornamental and they don't serve any purpose in retaining fill and for that reason, they didn't need to be replaced at this time. Mr. Heeke believed they could monitor this but perhaps they ought to remove the debris and dispose of it. Mr. Ilyinsky moved the debris removal and disposal be authorized in this area. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Dusey advised there have already been some charges made against this storm damage account for the rental of equipment, etc. He referred to Page 2 of Mr. Doney's letter requesting the Town

Storm Damage Repairs (cont'd)

Council to declare an Emergency and in that way they won't have to get formal bidding, although they will get the best estimates to do the work.

Mr. Heeke asked if there was any possibility to get some help from the State for reimbursement? Mr. Doney advised this is being pursued, in addition to the Town's insurance program, but the issue that prompts this question is the public safety issues and in order for the staff to proceed with the quotations and not have to go through the sealed bid process, the Town needs to declare these items of work as an emergency. Motion was made by Mr. Ilyinsky that the Town Council declare this an emergency so essential repairs may proceed. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Dusey advised he will report back to the Town Council at the December 10th meeting on the monitoring of the items discussed earlier.

Mr. Doney requested the authorization for any amounts which exceed the $100,000 of the Storm Damage Contingency Account would be funded from the Undesignated General Fund balance and he will recapitulate it for the next Town Council meeting. Motion was made by Mr. Ilyinsky to take the funding for everything authorized today over the $100,000 of the Storm Damage Contingency Account from the undesignated General Fund Balance. Seconded by Mr. Weinberg. Motion carried unanimously.

Mr. Doney advised the Beach Patrol Headquarters and the contents and Chief Terlizzese will replace the items they need from surplus and if additional appropriations are needed, they will come back to the Council at the next Town Council Meeting.

Mr. Doney reported the Department of Natural Resources sent representatives the day after the storm and have issued emergency permits so the Town may proceed with this work and it will not be held up. He reported they have also authorized the Building and Zoning Department to issue permits to the private property owners for their walls and stairs.

Mr. Heeke complimented the staff on the highly professional manner in which the Department Heads handled the situation as well as the clean-up by the Public Works Department. He stated the City Manager of City of West Palm Beach offered their assistance, if it was necessary. He believed the decision by Chief Terlizzese to monitor those coming onto the island was a wise one and the City of West Palm Beach also cooperated in that effort. He heard Mr. B. T. Kennedy, Director of Palm Beach County Division of Emergency Management make the comment that there were some communities that would concern him when events such as this do occur, but Palm Beach was not one of those as they have a good plan which is implemented very very well and he was just here to assist us, if we needed it. He believed everyone was well-prepared and the efforts that everyone made were outstanding.

Roller-Blade Skating on Lake Trail

4. Roller-Blade Skating on Lake Trail.

Mrs. Wiener reported she has had concern expressed from a lot of people on this subject as there are a lot of curves on the Lake Trail and the rate of speed with which the people on roller blade skates come flying by is very dangerous. Mayor Marix recalled a speed limit had been imposed for cyclists on the Lake Trail and perhaps whatever speed limit has been put into effect should be enforced for roller-bladers. Mr. Weinberg advised they have the same problem in the southend of the Town. Mr. Randolph advised currently roller skating and bicycling is being regulated and if public safety is a concern in this area, it can also be regulated and if it is enough of a problem, perhaps there could be prohibition in certain areas.

Mr. Doney advised he has talked with Chief Terlizzese about the enforcement of the speed limits, but with five miles of Lake Trail in the north end and three miles in the south end for pedestrians and bicyclists, the enforcement problem are difficult. He advised the Police Department does patrol these areas with a Trail Bike, but it is a hard issue to catch people in the act.

Chief Terlizzese reported the State of Florida has a Statute which prohibits roller-skating in the streets and the Town of Palm Beach has an Ordinance which does not allow roller skating or skateboarding on its commercial sidewalks. Chief Terlizzese suggested the best approach at this point in time would be to enforce the existing ordinances and State Statutes and the speed limit is ten miles per hour and he too has received complaints about roller skates and roller blades and if the officers see the careless operation and excessive speed limits, they should definitely enforce the Ordinance.

Mr. Weinberg recalled some time ago, there was some discussion on installing warning signs and they decided not to install them, and thought perhaps they needed to go back to that. Chief Terlizzese recalled the speed limit signs are there and he would interpret that to mean the speed limit needed to be observed by any kind of self-propelled device which would include roller-bladers and he has people patrolling the Bike Trails and they will do their best to provide more scrutiny. Mr. Heeke believed that was a good idea to have increased attention given to the enforcement of the speed limit and if necessary, the Public Safety Committee can take another look at it, as he believed there was a method already available for looking into this.

Luncheon break was taken.

Meeting called back to order at 1:15 PM.

Development Reviews

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of October 23, 1991 - Excerpt Available in Town Manager's Office

Major Matters Architectural Commission

Motion was made by Mrs. Wiener, seconded by Mr. Weinberg, to approve the Major Matters considered by the Architectural Commission at their meeting of October 23, 1991. Motion carried unanimously on roll call.

The major matters considered were:

B73-90 - Landscape Plan of David J. Mahoney, 1296 S. Ocean Blvd. - removed from agenda.

B55-90 - Remodeling of residence of Mr. & Mrs. Stanley, 1332 N. Ocean Blvd., - approved.

Major Matters (cont'd)

B57-91 - New Townhouses for Barbara Tuck, 235 Chilian Ave. - Approved conditionally.

B112-90 Boathouse for Stephen Levin, 446 N. Lake Way - removed from agenda.

B62-90 - New residence for Agi Rosos and Jacques Hava, 101 El Bravo Way - removed from agenda.

B28-91 - Courtyard Revisions for Love Realty, 238240 Worth Avenue - deferred.

B97-90 - Revisions to residence of Leonard Sessa, 6 South Lake Trail - approved conditionally.

B65-91 - Revisions to residence of C. Claude Mimun, 1144 N Ocean Blvd. - approved conditionally.

B69-91 - New residence for Dr. Steen Rose, 165 Seminole Ave. - approved conditionally.

B70-91 - Renovations to residence of Mr. & Mrs. Horace Beacham, 230 Arabian Road - approved conditionally.

B71-91 - New residence - Palm Beach Land Investments, Inc., Windsor Court (formerly 690 N. County Rd.) - approved conditionally.

B72-91 - New Beach House for Mr. & Mrs. Gerard Haryman, east of 230 S. Ocean Blvd. - approved conditionally.

Mayor Marix asked what the status of the Stanley House was as she was concerned about that. Mr. Moore reported the approval granted was for additions and remodeling of the existing home. He recalled the original approval granted anticipated the roof being no higher than the original roof structure and it was determined there was a difference of approximately one and one-half feet from the north and the south end and Mr. Stanley came back for a re-clarification and asked that the roof level be equal. He advised the point of determination is along the Boulevard which has been established by a surveyor and the reconstruction of the roof will be no higher than the existing high point of the existing roof, exclusive of the towers. He advised the Certificate of Occupancy will not be issued until a determination is made that they have not gone higher on this roof line. Mayor Marix recalled there have been several mistakes made on this home and another one further down the road and she wished to be assured there will be no more on this particular one. Mr. Moore responded they are going through it very thoroughly to ensure there will be no errors.

B. Appeals

Appeals

Appeal of Zoning Var. 43-91

1. Appeal of the Building Official's Decision Regarding Zoning Variance No. 43-91, L. F. Larsen, 1070 North Ocean Boulevard; to allow a second story height modification and a two-story addition at the rear of the existing residence. R-A District.

Mr. Moore reported there has been a packet of information distributed to the Council by Attorney Lynch on this appeal which includes the application for variance, Mr. Zimmerman's letter regarding the Council's action, the minutes of the Architectural Commission of July, 1991, and the staff comments. He noted the application for variance was for height as there was a two story building which was going to be remodeled with the original second story being removed and a new second story was being constructed. He advised portions of the first floor area on the west were to be modified to allow for a three foot extension and a larger pool, plus the addition of a porte cochere.

Mr. Moore advised the Mayor and Council this home is located in the R-A District and has nonconforming side yards as it existed at the time of the application. He stated the application was reconstruction of the second story six feet higher than what was permitted in the Ordinance and they stated the hardship was this is a ridge property and the point of measurement from the Boulevard to the floor area was significantly higher. He believed the house was not any higher and does not exceed the requirements of the Town's Zoning Ordinance. He commented that in an effort to relate to the Architectural Commission in July, the discussion centered around the roof construction of the French Provincial vs. the peaked roof of the north and south wings, which are in question as they are too close to the existing north and south property lines, approximately ten feet instead of the fifteen required. He reported in an effort to work with the Architectural Commission, the applicant redid the design and brought it back with the elimination of the peaked roofs and having straight flat roofs on the north and south wing.

Mr. Moore advised staff made an error at this point in time and did not recognize that in order to have changed that roof design, it would be necessary for them to continue the demolition process on the north and south wings, leaving the walls up on the extreme north and south sides. He reported the demolition permits were applied for and they were issued based upon the Architectural Commission's approval and failure of his office to spot the necessity for an additional variance since they were demolishing significantly more than 50% of the structure, leaving the walls nonconforming on the north and south property lines.

Mr. Moore stated the argument that they had given us regarding the Town's floor area, under Section 5.17, and they advised they were not going any further with additional floor area, which they are not, and there is not any additional floor area being requested. He advised what was not determined and the applicant did not realize that they were in violation of Section 8.23 of the Zoning Ordinance which talks about destruction by Acts of God, fire, etc., or owner's acts of more than 50% of that structure and even though Section 5.17 gives relief from other portions of the nonconformity, it does not give a direct relief in that respect. He advised the intent of the Ordinance is for an addition to be put on and at least 50% of the existing structure would be retained and the rest of the nonconformity would be allowed. He believed in this case, because of the discussions with the Architectural Commission, the failure of the staff to identify the complexity involved in removing the rest of the roofs, demolition has taken place on this property and most of the Floor Area is there although they have removed a few small sections of extra walls that they shouldn't have, but they have reworked the existing walls in anticipation of the new construction.

Mr. Moore stated he then made the determination that this permit had gone beyond what was intended in the original application for variance and with going to the Architectural Commission, gone beyond the requirements of the Ordinance to allow for continuation of work. He informed the Mayor and Council the contractor was contacted and they were extremely cooperative and they came in to discuss this matter and three options were given them:

Appeal of Zoning Var. 43-91 (cont'd)

(1) Apply for a variance.

(2) Shrink the house and make the sideyards conform and remove the last vestage of the house and build the house to be in compliance with today's sideyard setbacks.

(3) Appeal the decision of the Building Official.

Mayor Marix believed the Council heard the request to remodel the second story and obviously that would not be very healthy to the downstairs, but this particular house is totally demolished and that is why she asked Mr. Moore to take some photographs of it. She felt if the Council gave permission to change the second story and instead the house was demolished. She believes they have been taken.

Attorney Frank Lynch addressed the Council on behalf of Mr. & Mrs. Larsen. He stated his primary concern was plans were submitted as to what they were going to do some time ago and exhibited a plan which he believed was before the Town Council at its July meeting. He pointed out the front walls and the covered porch area of the house were substantially different than what existed before, as there was a porte cochere added in addition to the second story addition. He stated as far as any misrepresentation was concerned, these plans were presented to the Town and the demolition and reconstruction was done in accordance with those plans. He advised his clients have spent considerable sums of money for the reconstruction of this house up to this point. He stated the reconstruction is at the point where the floor joists would have been installed if the work had not been stopped. He advised they did consider shrinking the house but it was not something that could have been done within economic reasons.

Mr. Lynch stated as far as the 50% demolition regulation, they have gone over those figures and believe they are within that 50% restriction and not more than 50% of the house has been demolished. He advised the Code does speak to floor area and the existing structure prior to demolition was a little over 9000 square feet and the area removed by the demolition was approximately 4200 square feet, which is just under 47%.

Mr. Lynch advised with regards to the variance, the variance was for the height of the structure and the Council found that based on the hardship that was demonstrated, the variance application was in order and was granted. He stated what was demolished and what wasn't demolished, the minutes do not show and as far as the minutes are concerned, there were no misrepresentations to the Council.

Mayor Marix disagreed noting the pictures clearly show the house is more than 50% demolished. She believed that anyone who would go and look at it would realize that it is more than half knocked down. Mr. Lynch disagreed, noting contractors and the architect have confirmed they haven't knocked down more than 50%. He advised this is for the floor area as the existing slab remains.

Mrs. Wiener asked where the 50% is, as the pictures show much was demolished and asked if the slab is considered as part of the floor area. Mr. Moore read the Section 8.24 to the Mayor and Town Council from the Code of Ordinances, stating the slab would be part of the percentage. Mr. Heeke noted the second floor isn't there also and that made up the floor area also. Mr. Lynch stated that is correct and the certification speaks to that. Mr. Moore advised staff identified in the course of looking at the application that not more than 50% should be removed, and Mr. Zimmerman's letter to the applicant states the approval is for a second story addition and nothing more. He has read the minutes of the meeting and the problem is the applicant was concentrating on the second floor addition and what was not understood and not identified by the applicant was the fact they were going to tear down more. He stated this was all compounded when it reached the Architectural Commission. He asked Mr. Lynch if the exhibit now on the board was the one exhibited to the Town Council at their variance hearing to which Mr. Lynch responded affirmatively. Mr. Moore stated in that case, there is a conflict as he thought what was shown the Town Council was another exhibit which showed the east elevation reflects the roofs in a different configuration. Mr. Moore stated sometime between the time the plans were exhibited to the Town Council, the west elevation showed the peaked roofs.

Mr. Heeke didn't recall seeing that particular exhibit at the Town Council meeting.

The architect addressed the Council stated when they went to ARCOM they agreed the peaked roof did not reflect well and they wanted to see a pitched roof so they had another rendering done and maintained the Town Council's decision with regards to the 40' height and they maintained that at the peak of the roof and they had to go to a 10' second floor in order to accommodate the 40' variance and fit the house underneath that. He stated the footprint of the residence has not changed as they took off a piece on the north side which was 56 square feet and he even removed the brick off the fireplace and when they took out the front loggia, they took the entire piece off, and they were given to understand from staff, they need not count the square footage of the pool deck and the pool as it was open to the sky and they only needed to calculate the roof areas. He stated in calculating the roof areas, they had taken off 46% of the existing residence, and according to the Zoning Code, that was square footage.

Mr. Heeke pointed out they have also removed exterior walls and he felt if they are going to do that kind of construction, they may as well comply with the setbacks. Mr. Jackman stated the demolition plan shows the exterior walls were not to be taken down and the contractors are here to talk to that. Mayor Marix knew when a house is being demolished, the plumbing and air conditioning is taken out and they did that and that is when they come and tell us, and if they had stated they were going to take the whole thing down, and if they wanted to knock the house down and build a taller one, they should have told the Council. She felt they were "took" on this application. Mr. Jackman stated he did rely on staff giving them input, which they received and staff making recommendations to the Council but in no way has he ever tried to hide what they were doing because in his experience of 22 years, when they stated they are going to remove a second floor and put on a new one, it certainly was not their intention that they just put a new addition on top of the first floor as there is a lot of construction and destruction before that happens in

Appeal of Zoning Var. 43-91 (cont'd)

order to accomplish the addition. He has presented site plans and elevations, etc., which indicated the house was being altered considerably.

Mr. Heeke believed it should have been mentioned to the Town Council as this is a nonconforming structure with setbacks and in all candor, it should have been represented to the Council in that form. Mrs. Wiener asked Mr. Moore if more than 50% of the structure was removed, according to the Code? Mr. Moore responded the way the Ordinance is written and the use of the words "Floor Area" in fact it was not if floor area was the sole determinant. Mr. Moore believed the intent of the Floor Area would be all-inclusive, but it doesn't specify that in the Code. He believed that if there was more than 50% of the structure destroyed by an act of the owner and a permit was issued, he believed they have gone beyond what the intent of the Ordinance was. He advised the applicant stopped the job voluntarily and they did not have to have a red tag put on the job.

Mrs. Wiener recalled when she discussed this with Mr. Moore, which all Council members do before the Town Council meeting, she was under the impression that there was also a change in the roof as a result of what ARCOM wanted and that may have caused further demolition. She believed the petitioner stated it was a choice situation.

Mr. Jeff Smith, Chairman of the Architectural Commission advised the Commission did prefer there be a roof change on the structure and at the time he appeared before them, he raised the question as to why they were not tearing down the entire house as there was no much remodeling being done and he didn't understand why they wanted to keep any of it and was told they had to do it this way in order to maintain the setbacks. He believed if the Council considered the floor area as part of the 50%, it would change remodeling from here on out and he believed if the roof was gone, they were more than 50% demolished and he will be interested in seeing the outcome of this particular application for future projects.

Mrs. Wiener believed this may be something that needs to be studied. Mr. Lynch advised the Ordinance states "floor area" and it doesn't say the things Mr. Smith would like it to say, but they have to work within the guidelines of the rules that are on the books now and he felt that is what they were doing. Mayor Marix asked why this wasn't brought out at the other meeting. Mr. Lynch didn't believe it would have been relevant at the time, and he felt the key was the "floor area" and he has calculations that say he is not in violation of the floor area and he believed they should be able to keep what they have got. Mr. Heeke felt there was a difference of opinion on this now.

Mrs. Wiener asked if this type of situation has been before the Council in the past or is this a first? Mr. Moore responded they have not although the first Stanley House had to come in for a variance to rebuild the house and subsequently the side of the building. He commented the Ordinance has been interpreted for years and it was his understanding that floor area was floor area and not as Mr. Smith described it. He stated the architect is quite correct as when you are going to be removing a second story, you just can't cut it off, and there is roof work that needs to be done and from a practical standpoint, some of the roof area does have to be removed but in this case, it virtually has been all removed.

Mr. Ilyinsky asked what the options were for the Council today? Mr. Heeke responded they either sustain or overrule the Building Official's decision. Mayor Marix noted they did voluntarily stop the construction. Mr. Heeke stated they did and elected to appeal the decision.

Mr. Lynch stated what is before them is what has been submitted to the Town, the construction documents and the face page is marked "ARCOM APPROVED" and the balance of the sheets are stamped that they have been reviewed and these were the plans on which the Permit was issued. He thinks Mr. Moore agrees the work that has been done did not exceed what the permit allowed. Mr. Moore agreed, however, it is his contention that the work that was permitted was done so on not a full understanding of what was going to occur.

Mayor Marix did not believe it would be too big of a problem to get the walls back to where they should be and observe the setbacks as there is no house there. Mr. Moore agreed there is just the slab and the exterior walls on the north and south. Mayor Marix believed that the walls were sort of semi-rebuilt as they were about to fall down. Mr. Moore noted there are form boards shown in the pictures where new concrete was poured.

Mr. Lewis F. Larsen addressed the Council, indicating he has been a legal resident for ten years and this is the first time he has appeared before the Council. He stated he has bought this oceanfront property which is a large undertaking and he and his wife have planned every detail meticulously including the construction schedule. He has gone through the various reviews, approval and permitting procedures and felt the Town representatives were extremely careful and thorough and welcomed their suggestions and requirements which were mandated prior to the issuance of the approvals and permits. He stated his representatives were directed to fully comply with every regulation and they went by the book. He stated his people were called back to Town Hall time and time again to furnish additional details and information prior to the issuance of each approval and permit.

Mr. Larsen recalled the first time he appeared before ARCOM, the plans were not approved and after a careful review, they agreed with their suggestions and went back to the drawing board and appeared before them again a month later and after another careful review, they issued their approval in August. He noted the Building Department needed from late August to early October for their extensive review, so it is evident how cautious they were until they were satisfied the permit be issued. He stated the construction was finally started.

Mr. Larsen advised he learned last week that the permit would be revoked and was told his representative allegedly made a false statement at a Town meeting. He asked if any documentation had been presented to any of his people in support of this allegation by any Town Official and was told there was not. He stated up to this time, no-one from the Town has communicated the first word about this matter to him personally. He advised he has already spent hundreds of thousands of dollars relying upon the permit issued and he voluntarily shut the job down, pending the outcome of this proceeding. He has already suffered a loss in the tens of thousands of dollars as a complicated construction schedule was largely disrupted and it is already uncoordinated. He advised if there was any further delay, it will be beyond question a monumental disaster to him personally. He viewed the building permit as an agreement and says to him that the Town agreed that he had done everything required by the Town's laws and regulations prerequisite to

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constructing that particular home, depicted on the plans submitted on that particular parcel of oceanfront property. He advised he relied on that agreement and the permit. He implored the Council to try and understand how they would feel if they were in his position, as he thought that he had the right to be treated reasonably and fairly, with justice and compassion. He asked them to allow his permit to continue and set them back on the track of mutual respect and cooperation, with which they were all riding before this was derailed.

Dr. Sten Lilja addressed the Council noting that a few minutes ago, there was a statement of how the floor area was treated in the past. He wished to make two comments - one, on a two story home, it is impossible to end up with less than 50% of a home, even if it were torn down completely; number 2, there is a precedent from 1988 where a building permit was revoked at 1326 North Ocean Blvd. , while 100% of the floor area was still left. He advised the entire first floor was left and the entire second floor was left and the reason for the revocation was due to the fact that the home was demolished and taken off, even with the second floor.

Attorney Randolph believed some clarification was needed as he was not sure the options they were considering were the correct options. He thought that it has always been felt that if someone is basically demolishing a house, when they rebuild, they should rebuilt in conformance with today's Ordinances. He advised when this matter first came up, he was of the opinion that when a house is demolished, they should abide by the Ordinances as they exist today. He now understood the issue before the Council is this applicant came before the Council for a variance for height, and either due to intent or miscommunication, it was not represented in the application for the height variance that they were going to have to do more than knock down the second story, therefore, he believes some of the Council feels they may have acted differently had they known the whole thing was coming down. He believed that if that were the case, and the variance was revoked, the position that the applicant would now stand in would be that he would not have a height variance. He believed the previous way it was applied by Building Department was that if this person were not coming for a height variance but just to rebuild this house, that he could have done exactly what he did here and leave up 50% of more of the floor area and would be able to rebuild this house. He stated that is why he questioned if the Council were to deny the appeal in this case, the applicant would have only have to give up the variance previously granted. He believed it made sense to look at the Ordinance and perhaps amending it in the future, if the intent was that when anyone demolishes a house by more than 50% of the value, that it should be changed to make it clear. He asked the Council to forget the variance application for height and if a person comes in to rebuild this house, he would be able to do so with the nonconformities in place, had he done exactly what has been done in this particular case. He stated if that is the case, the first point, he didn't believe he would have to come back for a variance for the side-yard setbacks at the next meeting as all he would be losing would be the variance he had originally applied for.

Mr. Moore clarified that had the scenario been such that the roof was removed and not the roof for the second story only as had the roof been left in place without demolishing the rest of the roof system and the walls were inadvertently removed, which has been satisfactorily explained to him by the contractor - however, the Ordinance has been interpreted since 1977 and the key determinant is the "more than fifty per cent". He advised the applicant has elected to go beyond that as they simply chose to. He didn't believe the architect deliberately misled the Council but omitted to tell the Council and staff what he was going to do. Mr. Moore believed that they could demolish up to 50% and rebuild it exactly in the same configuration, under Sections 5.17 and 8.24. Attorney Randolph asked if more than 50% of the floor area was demolished as the Ordinance was applied in the past? Mr. Moore responded as the Ordinance has been applied in the past, they have demolished more than 50% of the floor area and its attentive walls and roof. He stated Floor Area is being defined as slab, walls and roof, and that is how he would interpret it.

Mr. Moore commented on Dr. Lilja's statement on the house at 1326 North Ocean Blvd., which was Mr. Stanley's first house and he believed that was a good example.

Mr. Jackman read the definition of Floor Area from the Code: "Sum of the gross horizontal area of all the floors of a building, except the basement or sub-basement, as defined, measured from the exterior faces of exterior walls and the supporting columns." Mrs. Wiener asked Mr. Moore if this wasn't common knowledge to those who are in the building business day after day and if it were common knowledge, why was the building permit issued? Mr. Moore responded that had the application had gone forward as submitted to the Mayor and Council, this would not be before them today. He advised once it got to the Architectural Commission and a roof change was instituted and it was not the Architectural Commission's fault, but the staff's fault for not catching it then, to realize when the roof change came along, so did the rest of the demolition take place and it should have been caught and it is a staff error. He felt it was unfair of the applicant to hang this one hundred per cent of the staff, as when their own presenter, Mr. Jackman, failed to indicate to anyone that he was going to have to tear down ninety five per cent of the structure in order to rebuild it.

Mrs. Wiener asked if Mr. Moore would not have had some idea of the amount of destruction that would be necessary? Mr. Moore stated they did, but they did not, under the application to the Mayor and Council for the height variance, it would not have needed this variance. He stated when staff failed to catch it at the Architectural Commission level, it was when the need for the additional demolition was developed.

Mrs. Wiener stated she was troubled when people come to the Council asking for something and they forget to ask the right question and it is assumed that they are of ill will. She stated she has heard said today that the plan as the Council saw it at the time it was presented to the Council for a variance, would not have caused more than 50% demolition. Mr. Moore stated that was correct, according to his best experience. Mrs. Wiener commented on the change that was made at the Architectural Commission, and wondered if that would have caused that much more or was that very minor and is there something else there that she doesn't see, not being a building person?

Mr. Moore responded this did require the change that was finally approved at the Architectural Commission required a brand new roof system on the first and second floor , which instituted the demolition of the rest of the building. He stated the builder took the shortest distance, which was demolish it and demolish it in a hurry, as they didn't do the center section and rebuild it on the sides and rebuild it, which they could have done. Mrs. Wiener reminded Mr. Moore the Council does like people to get through with the job. Mr. Heeke asked if this was not a way of getting around complying with the setbacks? Mr. Moore responded under Section 5.17, they have proposed verbiage at the next Zoning hearings which would talk to this issue and if more than 50% of the value of the structure is contemplated for renovation, that it would not be permitted. He explained it is not spelled out specifically in the Ordinance and has been a matter of interpretation and without spelling it out directly, it has produced this problem today.

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Mayor Marix asked what would the setbacks be for the north and south sides? Mr. Moore responded five feet each side to bring it into compliance. Mayor Marix noted this is an extremely large house and it is hard for her to see that they couldn't pick up five feet or four perhaps. She pointed out the house is not built and they have spent a lot of money knocking it down, but there has not been much spent on the building of the house as yet, by backing the north and south wall to where they belong.

Mr. Larsen addressed the Council stating he wished to give them each a personal apology for any offense they might feel because of this situation and swears that this was not intentional and there was no intent to deceive. He believed they followed the regulations very carefully and again went back the book and it has been said today there are measures being instituted to clear this up as it is not written very clearly, however, he wished to state the cost to change this at this point, as the slab is being used, and the cost will be considerable and they would virtually have to go back to the drawing board. He stated they would have to remove the slab and start over with new footers and use all of the time that has gone into this to date, and all of the costs and start completely over and they are talking about months of preparation and huge costs.

Mr. Jackman advised in the presentation before the Architectural Commission, they were very concerned about the second floor height variance and what effect it would to the surrounding neighbors and they provided them with a section running north and south to the site to show the relationship of the house to the north and south, so the wings of the house were kept low and they were charged with the job of maintaining the footprint of the existing residence, in order to save the structure which was inside, such as the plumbing, and to enjoy the existing setbacks. He stated they did attempt to do that. He recalled when the contractor submitted the plans to the Building department, inclusive in the plans was a clear, definitive demolition plan and if there was a question at that time, they could have documented the percentage which was being demolished, but they were never given to understand that the Code related to covered space, and they thought it was floor area and that is what they based their calculations on.

Mr. Larsen advised about four or five days before the final building permit was issued, after a couple of months of review, Mr. Moore called his representative into his office for a final recalculation of this so-called fifty per cent rule and thereupon subsequently issued the permit. He stated this was before anything started that this meeting took place.

Attorney Lynch commented the case cited in his letter is close to this situation and one of items was an issuance of a building permit which the City subsequently found out was in error because of potential misrepresentations by the owner. He pointed out one of the holdings of the court on which they based their opinion, is the Court saw fit to overturn the decision of the Building Department was that the City's original grant of the Building Permit could not be attributed solely to the property owner's conduct, but equally to the conduct of its own representatives. He explained the permit was issued based on these plans and there is no dispute from the Building Department that they have gone beyond those plans.

Mr. Jeffrey Smith addressed the Council (Chairman of the Architectural Commission) asking to be able to comment on the fact that ARCOM approved something which made them tear down more of the house as he didn't believe ARCOM interpreted this as any more than they were doing to begin with. He recalled they came in front of ARCOM with a plan, ARCOM suggested improvements and we didn't tell them how to do it but asked them to return the following month and it was not demonstrated that more had to come down but came back with a new plan. He believed the Council should, because of the fact there is a situation where the building is under construction and there is more than 50% demolished, and there is an owner with a problem and if this was not allowed to go forward, the applicant would have to put in pilings. He didn't believe it was malicious that it happened but felt as far as the interpretation of the 50% rule be upheld and the best thing for the property owner to do is to come back and get a variance for the setbacks and the 50% demolition to reconstruct. He felt this would be the proper thing for the Town Council to do and not set a precedent for the future as far as knocking down all the walls and roof and then be able to rebuild because the slab was in place.

Mr. Heeke noted Mr. Smith has recommended the Building Official's decision be sustained and have the applicant apply for a variance. Mr. Smith stated he believed also that there was a hardship here.

Mr. Moore advised this applicant, in his opinion, had they built the plan that was submitted for the variance, would not have been before the Council today, as the changes which occurred to this plan necessitated them tearing down what they did tear down. He felt what was wrong here was Mr. Jackman failed in his presentation before the Council and to the staff to indicate they were going to have to tear down more until later at the Architectural Commission meeting and that is when the staff made the mistake, both himself and Mr. Frank. He didn't believe the applicant did anything wrong, although Mr. Jackman did fail to give the full story when he was applying for a height variance.

Attorney Lynch stated they have submitted their plans to the Building Department and had permits issued based on those plans and their representatives have come back to the Building Department to confirm that the 50% rule has not been violated and the permit was issued on that basis and construction started on that basis.

Mr. Weinberg indicated he was confused about this and he didn't believe they were going to get anyplace by blaming the Building Department or the contractor or the architect or anyone else as there is a problem here and the Council needs to solve it and he asked what were the options available for them to act on this?

Attorney Randolph advised the issue before the Council today is whether to sustain the opinion of the Building Official or to grant the appeal. Mr. Heeke asked if it was sustained, then they would come back with a variance? Mr. Randolph believed there were two issues, as he thought this was before the Council because they were not given all the information needed in regards to the height variance. He reported the question is if the Council does sustain, is the height variance no longer valid and the second issue would be if the Council wants to require them to come in for a setback variance at the December meeting. Mr. Heeke explained he has no difficulty with believing the topography of the land created the problem which gave rise to the request for the height variance, nor his vote granting same at a previous meeting.

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Mr. Heeke stated he would be in favor of sustaining the Building Official but limiting the request coming back to other than the height variance issue. Mayor Marix asked if he meant he could have the height variance but would have to come back and talk about the setback variance. She noted there were pictures in front of them with new footings and wondered if they were making a bigger area there than there was previously? Mr. Moore advised they are form boards for the new footing. Mr. Jackman advised the only thing that was tore out in way of footings was the loggia, the breezeway around the pool, and they will be going back in and then of course, the porte cohere. Mayor Marix asked if it had anything to do with the size of the slab? Mr. Jackman responded negatively, noting they are doing exactly what they said they were going to be doing on the plans with regards to demolition.

Attorney Randolph asked if the house that was ultimately to be constructed was the same size as what was originally envisioned by the Council when they originally granted the variance? Mr. Moore responded affirmatively. Mr. Jackman advised the plan that was before them and approved does have an increase in the square footage and it always has. Mr. Moore asked if it was more square footage than what was approved by the Town Council or isn't it? Mr. Jackman advised it was exactly the same as what was approved and nothing has changed. Mayor Marix asked if this was changed when they went to ARCOM? Mr. Jackman responded it is exactly the same as what Council approved as ARCOM only changed the roof line and only changed the aesthetics. He stated they agreed with ARCOM and took a month to restudy the elevation but they were in accord with ARCOM.

Mr. Ilyinsky stated he had a concern and that is the rights of the applicant who were depending on what the Building Department told them, and if in fact, the only thing that was changed was the roof line and it was ARCOM that changed it, he wondered if there was an injustice being done today to a certain extent. He indicated he would like the applicant to agree to make this house smaller, as he agreed with the Mayor on the setback problem. He believed a lot more of the house was torn down than anyone expected and he felt there needed to be some sort of a compromise reached. He stated he agreed also with Mr. Smith on his comments.

Mr. Larsen addressed the Council asking if the architect or his builders could address the Council and give them the insight about the effect in time and cost, even to the building site itself as removing the whole slab would probably cause them to have to install new pilings and he would like his people to tell the Council the effect on what the shrinking of the house would have at this time.

Mr. Jackman advised with the way the slab is, it can't effectively be reduced as it would ruin the rooms as they are. He stated it would ruin the inside rooms as if you took 5' off of the two car garage, there couldn't be a two car garage. He advised if it was taken off of the kitchen and the loggia and bath area, they would no longer have that there also and another thing, in tearing down what is now there, there is a Coastal Construction Line which would have to be adhered to, so there were a lot of reasons to maintain what they felt was the accepted architectural interpretation.

Mayor Marix asked if their building did not conform to the Coastal setback line? Mr. Jackman stated it does because of the fact it is existing. Mr. Moore advised a small portion of the dining room on the north corner is encroaching on the line. Mr. Jackman advised when they altered the second floor, they pulled it back in. Mr. Ilyinsky asked how many square feet would the house have when they finished it? Mr. Zimmerman responded it is 7800.

Mayor Marix felt it was partly the Town's fault for not picking up on this, but also, she felt that it was partly the fault of Mr. Larsen's representative who didn't indicate they were going to be demolishing it in the fashion they did, so there definitely was a lack of clarity in mental transmission and if the Town is trying to work out a solution, they should try and work with the Town on some sort of a compromise. She recalled they stated they couldn't reduce the house. She noted the Council is being asked to give the whole thing, and perhaps the builder and the architect and Mr. Larsen could think very hard and try to come up with something. Mr. Larsen stated if he knew everything he knows now about this presentation, he would have arranged for a more full presentation when they came for the height variance. He believed it would be a hardship in dollars and cents and he would like to compromise by giving them five feet, but anybody who knows about building, such as Mr. Smith, can testify as to the difficulty of taking up that whole slab and possibly doing pilings, as it just can't be moved, as it addressed a bathroom. He stated if anything positive comes out of this, he would recommend the regulation governing this was obeyed as there is a way to perceive this entirely within the Town's regulations but it should be clearly clarified so the next person isn't as confused as they are, and eliminate the potential for this set of circumstances to happen again, since it boils down to the definition of floor area.

Mayor Marix explained when the presentation was made to the Council at the variance hearing, they were not discussion the floor area to be destroyed, as they were discussing the second floor which they were going to change on the height. She recalled no-one discussed the floor area, but she was interested to find out something as she heard today to alter anything in order to meet the setbacks, they would have to take up the entire slab and put down pilings, and she asked if there was any way the house could be reduced? Mr. Smith responded the owner has complied with some of the ARCOM requirements to make the house look better and that is something that was given to the Town and that should be a plus on his behalf. He believed the architect on the project should have anticipated and known that more than 50% of the house was being demolished.

Mr. Heeke declared the Council to be in executive session and called for comments or a motion by the Council. Mayor Marix believed the issue of the height of the second floor was not made clear to the Council when they voted on the variance, as they talked about the top story being too high and didn't tell the Council he was going to have to knock down the whole thing down, except for the walls on either side because they wanted to maintain the old setbacks.

Mrs. Wiener felt they were playing ostrich and she viewed the fact that there are professionals and when she does something in a professional capacity, she has a basic idea of what she is doing and if there are no questions, that means it is because it is okay. She recalled being told by Mr. Moore that according to the Ordinance, this is within the fifty per cent. She stated the Town Attorney is telling us they have given a permit on which the owner was relying on, and the people who are building this have indicated they have done everything possible and have received the permit. She believed it was true what was presented today and she knows everyone does view this a little differently. She knows the job was stopped because of a complaint somewhere and perhaps technically, somewhere there is an error, but the final answer is the house they have been discussing is the house that they approved for a variance and that is where the truth lies. She moved that the decision of the Building Official be overturned. Mr. Ilyinsky indicated he would be delighted to second the motion, but he would like to have something in return to bring this in compliance with the Town Ordinances.

Mr. Larsen asked what did they want which would be realistic? Mr. Ilyinsky responded to make the house smaller and asked if the house could be reduced five feet? Mr. Larsen responded it is an integral design which harmonizes with the property and with the existing structure and although theoretically it is possible, it takes them back to Square One and realistically, they are talking of close to one-half million dollars. Appeal of Zoning Var. 43-91 (cont'd)

Mr. Ilyinsky asked Mr. Jackman if he was going to charge the owner a half million dollars to make new plans? Mr. Jackman responded he would not. He stated the change can be made, for instance, on the two car garage. He noted it is already a tight situation in the garage as it was built years ago, and it is not a garage which could be reduced, as the floor elevations are all different in this house and that is one of the constricting elements of the existing footprint. Mr. Weinberg asked if there were no other room that goes to the perimeters of the building, and was it only the garage? Mr. Jackman stated the garage would be the determining factor because directly behind it is the guest suite. Mr. Weinberg asked if the guest suite could be reduced? Mr. Jackman stated if that was done, they should reduce the garage also. Mayor Marix asked what about the other side of the house? Mr Jackman responded that was possible to reduce five feet, by dropping a room out of the house. Mr. Moore suggested they proportionately shrink the rooms moving across. Mr. Jackman stated that would not be possible as the rooms as they travel across the house are fixed by solid outside walls. He stated the wings that stick out on the house are lined up with interior petitions.

Mr.Ilyinsky asked if two and one half feet could be taken off both sides of the house, and he will second the motion. Mr. Larsen stated they could take five feet just as easily as two and one half feet, but the problem is the time factor as they are behind schedule and they are talking of millions of dollars of investment. He wished that he could change it and it really doesn't matter if it is five feet or two and one half feet or one foot, it is the time element and he does have to go back to ARCOM with a landscape plan and will do everything possible to do the nicest landscaping job and would welcome their suggestions, so he is trying to do something.

Mr. Heeke noted there was no second to the motion.

Mr. Ilyinsky asked again if they would consider reducing the residence? Mr. Larsen agreed noting the architect just informed him they could take one foot off of each side. Mr. Ilyinsky moved the Building Official's decision be sustained. There was no second to this motion.

Mr. Larsen asked if it was not helpful that the record will show they compromised and did make a change in deference to the Council's feelings? Mrs. Wiener asked how much could they possible reduce it? Mr. Jackman responded the guest suite is on the oceanfront and is presently it is 13.6' and whatever he takes out of the garage would have to come out of the guest suite and that would bring them down to 11' and that is a problem since they need a bathroom and a hallway to get into that room. He reported on the north side of the house, a 2.5' reduction would make them lose a door in the breakfast nook and they would have to eliminate the hobby room and make it a bathroom.

Mr. Heeke noted they now have agreed to a greater reduction with it being 2.5' on the north and 1' on the south. Mr. Ilyinsky made the motion that the Building Official's decision be overruled contingent upon the owner agreeing to a two and one half foot reduction on the north side and one foot on the south, which would increase the sideyard setback on the north by the two and one half feet and on the south by one foot. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mayor Marix repeated her request that the Council be furnished with exhibit which would be poster sized pictures made from photographs.

C. Variances, Special Exceptions and Site Plan Reviews

<u>Old Business</u>

1. Variance No. 38-91 - Donald J. Trump, Mar-a-Lago, 1100 South Ocean Boulevard; to consider expansion of nonconformities as per Section 8.23 of the Town Zoning Ordinance and allow the existing property manager's cottage to front a new street at a setback of 18' in lieu of 35' as required, and allow the garage to the property manager's cottage to setback 8' when 35' is required, and allow the garage, staff and service quarters to the main structure to be setback 12' from the means of ingress and egress when 35' is required. R-AA District. Deferred from October meeting. This item was deferred to the December meeting. Var. 38-91 Mar-a-Lago (deferred)

2. Variance No. 56-91 - Heinz Gundlach, 150 Algoma Road; to place a pool on north end of property running East and West providing a front yard setback of 11.0' in lieu of 35.0' as required. R-A District. Deferred from October meeting. Mr. Heeke indicated he had a conflict with this as Mr. Gundlach is a client of his law firm and Mr. Weinberg took over the chairing of the meeting. Var. 56-91

Mr. Bill Erwin from Worth Builders addressed the Council, representing Mr. Gundlach who will not be able to be here today. He noted there were some changes made to the plan and site plan has been submitted, showing the pool has been made smaller and are enclosing the pool area with vegetation so it cannot be viewed from the street or the side property.

Mr. Erwin recalled there was an objection from the neighbor to the west, Mr. Baker, who has since reviewed the plans and when he was told this pool construction would not be until after May 1st and he has withdrawn his objection. Mr. Erwin advised there have been front yard pools installed in the Town.

Mr. Moore recalled one of the questions asked of Mr. Gundlach was why could not this pool be placed in the rear, however it would necessitate the removal of a large ficus tree. He stated this

Var. 56-91 (cont'd)

would be placed 13' from the edge of the property line on Algoma Road and is proposed to be landscaped. He noted this is a substantial variance, although the applicant has been made an effort to cut down the size of the pool and increasing the setbacks somewhat. He felt the hardship was self-imposed and the pool is not conforming, even being reduced in size.

Mr. Weinberg noted the setback is 13' and he believed the variance was for 11'. Mr. Moore advised that was the original application and it has been modified since. Mr. Erwin stated they have placed the pool closer to the house and shrank the pool from 13' to 12'.

Mr. Erwin noted there are overhead power lines which encroach the property line which they will have to stay away from. He stated the existing focus tree is a neighbor blocking tree both for the Gondolas and for the neighbor to the south and if the tree were removed, the site wall would probably be damaged and would have to be removed.

Mr. Ilyinsky moved the Variance No. 56-91 be granted with the proviso that construction not start until May 1st, and the ficus hedge be maintained. Seconded by Mrs. Wiener. On roll call, the motion carried.

Mr. Moore noted the hardship is the irregular shaped lot in the rear of the property.

Spec. Excep. No. 12-91 with Variance

3. Special Exception No. 12-91 With Variance - Hals Realty Associates Limited Partnership, 401 South County Road; to allow applicant to expand existing use from 6,500 sq.ft. to 8,500 sq.ft. and to permit off-street parking within 500 ft. To allow construction of a partial second story per Section 5.48 and to request a variance from Section 8.21 allowing expansion to a nonconforming structure (deficient setbacks). C-TS District. Deferred from October meeting. This matter was deferred to the December meeting.

Spec. Excep. No. 13-91 with variance

4. Special Exception No. 13-91 With Variance - Power-Love Associates, 256 Worth Avenue; to allow applicant to change the use from retail to restaurant and to allow applicant to occupy 7,000 sq.ft. in lieu of 2,000 maximum allowed. Additionally, allow off-street parking within 500 ft. but with a variance because parking is in a different zoning district. C-WA District. Deferred from October meeting. This matter was postponed to the December meeting.

Spec. Excep. No. 14-91 with variance (withdrawn)

5. Special Exception No. 14-91 With Variance - Via Mizner Associates Limited Partnership, 42 Via Mizner; to permit the applicant to change the use of space which is 2,000 sq. ft. on the second floor from an office to a private club; and a variance to allow 5 off-street parking spaces instead of the required 25 spaces. C-WA District. Deferred from October meeting. Withdrawn per Letter Request dated October 24, 1991, from Mr. Peter Broberg.

This matter was withdrawn.

Spec. Excep. No. 16-89 with Variance & Site Plan Review

6. Special Exception No. 16-89 with Variance and Site Plan Review - A. Paul Prosperi, Biltmore Galleria, 255 and 265 Sunrise Avenue; to allow construction of two (2) one-story commercial structures requesting special exceptions for: the use of first floor space for a financial institution to occupy 3,000 sq.ft. in lieu of 2,000 maximum allowed; variances requested are: provide 80 off-street parking spaces in lieu of 90 required; and provide 16.3% landscaped area in lieu of 25% required. C-TS District. Request for one (1) year time extension. Attorney Paul Prosperi addressed the Council requesting a one year extension for Special Exception No. 16-89. Mr. Moore stated he had no objection provided the area in question could be landscaped until the work is initiated, so it will not be left unsightly during the season. Mr. Ilyinsky moved the one year extension be granted. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Var. 53-90

7. Variance No. 53-90 - Tova Leidesdorf, 203 S. Lake Drive; applicant proposes to divide subject property and requests variances to allow construction of a single family dwelling on a parcel with a lot frontage of 63' measured at the building setback line in lieu of 125' as required, and to allow the proposed property line to be 5' from an existing two-story accessory building in lieu of providing the required 15' side yard setback. R-A District. Request for one (1) year time extension. Attorney Ray Royce addressed the Council requesting the extension. Mr. Weinberg moved the one year extension be granted. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

__New Business__

Var. 58-91

8. Variance No. 58-91 - Agi Rosos & Jacques Hava, 116 El Bravo Way, a vacant parcel; to allow additional height to be added to an existing east property wall from 4.3 ft. to 7.0 ft. above South Ocean Boulevard, thereby exceeding the 4 ft. maximum allowed per Section 5.36 of the Town Zoning Ordinance. R-A District. Mr. Jeff Smith, Architect, addressed the Council on behalf of the applicants requesting an existing wall height be increased. He stated currently the property is vacant but they will be constructing a single family residence. He stated this property has never had a house on it before but was a continuation of 121 El Bravo Way. He advised it is over an acre parcel and currently the traffic on South Ocean Boulevard is very loud and they would like to increase the height of the wall and this will match the walls on the north and south of the property. He did not feel this would be a hardship on any of the surrounding neighbors and it is not in conflict with variances granted in the Town and the property owners would like to have the height increased for full enjoyment of their property.

Mrs. Peters read a letter of objection from Attorney Michael B. Sims representing William Hanley, 91 Middle Road. Mr. Smith advised he would not be going any higher than the Hanley wall and it will be measured from the road.

Mrs. Wiener moved for approval of Variance No. 58-91. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

9. Variance No. 59-91 - Leo & Margie Lewandowski, 306 Pendleton Lane; to allow construction of a greenhouse providing a sideyard setback of 6 ft. in lieu of 15 ft. required. R-B District. Mrs. Lewandowski addressed the Council requesting the variance stating the reason they wished to place the greenhouse here is if they would locate this in the area of Cocoanut Row, they would have to remove huge trees. She stated the neighbor most affected has written a letter indicating she had no objection.

Var. 59-91

Mr. Moore advised this is a double frontage lot, and this is a side yard setback which is 15'. Mrs. Wiener recalled the double frontage lot has been used as a hardship in the past. Mr. Moore indicated the problem is this is on the side and the house is closer to the line. Mrs. Wiener felt since this is a double frontage lot, the neighbor is not in objection, and the house itself is closer to the line, she feels this should be granted and she so moved. Seconded by Mr. Ilyinsky. Mr. Heeke indicated in this case he doesn't see the double frontage being a hardship in this particular case. On roll call, the motion carried 3-1 with Mr. Heeke voting against the motion as he couldn't see there was a hardship.

10. Variance No. 60-91 - Jeanne Ray, 226 Chilian Avenue; to allow construction of an awning carport providing a front yard setback of 8 ft. in lieu of 25 ft. required, and a side yard setback of 8 ft. in lieu of 20 ft. required. R-C District. Mr. Joseph Mattei of American Awning Co. addressed the Council on behalf of Mrs. Ray stating the awning is to get the six cars for the six units under cover which would be landscaped to screen it from the street.

Var. 60-91

Mr. Moore advised Mr. Frank's comments there is no hardship demonstrated, there are too many nonconformities and an overdevelopment of the site, however the Building Official has no objection as the parking is existing and the carport should be screened, if granted. Mr. Heeke stated this reminds him of a condominium parking lot with the free standing carports outside. Mr. Matay stated this is a one way street and the lot already has a hedge.

Mr. Heeke asked what was the hardship to which Mr. Mattei responded it is just the fact they wish covering over the cars. Mr. Heeke explained that the variance must run with the land and this couldn't be considered a hardship. Mr. Moore recalled a similar variance was granted to the Stepson property, but that property did have a double frontage and this property does not. He stated this is an existing parking lot and this is an attempt to cover some of the parking.

Mr. Wiener's asked if the hedge could be allowed to grow to six feet, which should minimize the aesthetics. Mr. Mattei responded his client does plan to hedge the whole area and the hedge should be around 9 1/2 feet. Mr. Heeke asked if she would be willing to remove the awning if she failed to allow the hedge to grow in a certain amount of time? Mr. Mattei believed that could be a stipulation.

Mrs. Peters read a letter of objection from a neighbor, Charles Rolla, 226 Chilian Avenue.

Motion was made by Mr. Ilyinsky to approve the Variance 60-91 with the condition that the hedge be allowed to grow to a height which would sightscreen the awning and after the hedge meets the required height of nine and one half-feet, the building permit be issued for the installation of the awning carport. Seconded by Mrs. Wiener. On roll call, the motion carried 3-1 with Mr. Heeke voting against the motion, stating he was voting against the motion because he could see no hardship demonstrated.

11. Variance No. 61-91 - Dr. David Haughton, 232 Royal Palm Way; to permit occupancy of 700 sq. ft. Optometrist office without providing the required 5 off-street parking spaces per Section 6.21. C-OPI District.

Var. 61-91

Dr. Haughton addressed the Council requesting the variance, noting he has to have, according to the Code, five parking spaces but he really doesn't need five parking spaces as he is a one man office and really doesn't need five spaces. Mr. Moore advised if the doctor were to lease additional space, he could meet the requirement and since it is a one man operation, staff has no objection. Mr. Weinberg asked if there was only himself in the office and Dr. Haughton responded affirmatively. Mr. Weinberg moved the Variance No. 61-91 be granted. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

12. Variance No. 62-91 - Richard Brams, 120 Via Vizcaya; to allow construction of an addition providing a front yard setback of 20 ft. in lieu of 35 ft. required. R-A District.

Var. 62-91

Pat Seagraves, SKA Architects, addressed the Council, requested the variance which is for an eighty square foot addition, adding of a closet to the master bedroom which does not presently have one. He advised they would not come out with any further with the addition than the house already does. He noted the front yard curves around and it is a circular type lot and they will be removing 350 square feet from the rear of the house and their site coverage will be less than it is presently and the addition will match the existing architecture. He stated the landscaping is quite heavy and the house cannot be viewed from County Road and they do intend to maintain this landscaping.

Mr. Moore agreed this is an irregular shaped lot and for that reason, staff has no objection. Mr. Heeke noted this is a minimal variance. Motion was made by Mr. Ilyinsky to approve Variance No. 62-91. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

13. Variance No. 63-91 - Mrs. J. Ira Harris, 310 Wells Road; to allow installation of a 6.5 ft. diameter dish antenna providing a front yard setback of 6 ft. in lieu of 30 ft. required. R-B District. Andrew Adams from Turnkey Communications addressed the Council noting the dish antenna can be put into the ground and can be hid very easily with the landscaping, but needs the variance because of the setback requirement.

Var. 63-91

Mr. Heeke recalled there have been several variances granted to this property throughout the period of construction and he felt on a lot of this size, there should be ample location sites without the need of a variance. Mr. Adams responded he had gone over the site very carefully by walking it with Mr. Zimmerman and the line of sight is nineteen degrees off the horizon, and that does impose a difficulty as it blocks the signal.

Var. 63-91 (cont'd)

Mr. Moore agreed this is a large site and this will be very close to the property line and the variance that was granted recently dealt with the size of the dish rather than the placement of the dish, so here they are looking at the placement. He indicated there has been no hardship demonstrated.

Mr. Adams advised if he was allowed to use a larger dish, they could accept more blockage, but then there would be another regulation that he could not live up to. He advised that it has been recognized the State of Florida absolutely requires a ten foot or twelve foot dish but he has done everything he can to locate this smaller dish, which is 6 1/2 tall and 5 1/2 wide. He has to use the best of all equipment to make it acceptable and there still will be some channels which will have interference. He advised there are other alternatives for hiding dishes, and it may not be for this particular one, but he wished to make the Council aware of the fact that it is available and that is a dish which looks like an umbrella.

Attorney Lynch addressed the Council, noting there has been a variance granted for this property due to the narrowness of Bradley Place. He believed there is a hardship here because of the double sided lot and the difficulty is the property already has been fairly well developed and landscaped and the proposed location is the best from a visibility standpoint, as you just can't see it as it is behind a fourteen foot hedge which now exists.

Mr. Weinberg could not understand why they couldn't observe the setback when they had such a large lot. Mr. Heeke observed this was new construction and the owner recently built everything on it. Mr. Lynch showed the Mayor and Council a site plan showing the lot and what is now on it.

Mr. Ilyinsky noted there have been several variances which have been granted on satellite dishes. Mr. Heeke did not recall the Council granting one to be put in the setback. Mr. Ilyinsky moved Variance No. 63-91 be granted. There was no second to the motion.

Mr. Heeke handed the gavel to Mr. Weinberg to chair the meeting and moved the Variance No. 63-91 be denied. Mr. Heeke assumed the chairing of the meeting and second was made by Mr. Weinberg. On roll call, the motion carried for denial 3-1 with Mr. Ilyinsky voting against the motion to deny.

Spec. Excep. No. 15-91 with variance

14. Special Exception No. 15-91 with Variance - 214-218 Worth Avenue, Inc., 214-218 Worth Avenue; to allow conversion of nonconforming second floor residential use to a permitted commercial use providing 10 required parking spaces to be located in a different zone per Section 6.21(d)(3). A variance is requested from Condition (d) of the above mentioned special exception which would require the parking to abut the commercial use. A variance from Section 8.23 is requested to enlarge/extend a nonconforming building allowing enclosure of alley way. C-WA District.

This matter was postponed to the December Town Council Meeting.

Spec. Excep. No. 16-91 with variance

15. Special Exception No. 16-91 with Variance - Island National Bank of Palm Beach, 440 Royal Palm Way; to allow expansion of a special exception financial institution use from 5,635 to 6,955 sq. ft. A variance from the provisions of Section 6.21 of the Town Zoning Ordinance allowing applicant to provide 5 off-street parking spaces in lieu of 6 required. CHOPIN District. Mr. William Watson, Executive Vice-President of Island National Bank addressed the Council indicating they wish to expand their space to house a recently acquired trust company, which is a wholly owned subsidiary of the Bank and currently there are five employees associated with this subsidiary. He indicated he will be able to furnish five parking spaces. Mr. Moore advised the Bank is located in the C-OPI District, which does not have a space or minimum size requirement, but the bank itself is a Special Exception and that is why they are before the Council today. He recalled this Bank has been before the Council several times and has proven itself to be Town-serving and he believed this is a subject that needs to be addressed as to whether or not they will continue to be Town-serving. He recalled in the past the Bank has indicated the number of employees would not demand the full requirement of parking and suggested Mr. Watson address whether or not they have more spaces than they utilize for the number of employees they have and the documentation should be presented that they will continue to be Town-serving. He stated his staff has no objection to the variance request as it is minimal. Mr. Heeke commented trust services is usually low volume and not the same as commercial banking. Mr. Watson advised they are currently Town-serving and to the best of his knowledge, will continue to be, however, he believed the documentation on this is due in April of next year which will be provided and this is necessary due to the approval of the Town Council for their site at Sunrise and Bradley.

Mr. Moore reminded Mr. Watson this is a separate application before them today and they wish to expand space, so it would be the staff's recommendation that if the Council does consider granting this Special Exception, that the applicant provide up-to-date current documentation of their Town-serving ability, with more than fifty per cent of their clients having the 33480 address. Mr. Watson indicated he had no difficulty with that at all, either as a timing problem or meeting the requirement.

Mrs. Wiener moved Special Exception No. 16-91 be granted with variance to Island National Bank. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Randolph reminded the Council for the record this motion was conditioned upon them meeting the requirement demonstrating they are Town-serving, to which the maker and seconder of the motion agreed.

Spec. Excep. No. 17-91

16. Special Exception No. 17-91 - Testa's Hotels and Restaurants, Inc., Testa's Chevron, 231 Royal Poinciana Way; to allow a special exception service station use to expand their operation; applicant proposes operation of a convenience type food store. C-TS District. Attorney Lynch addressed the Council on behalf of Testa's, who wish to expand their operation by having a convenience type food store. He advised they would not be expanding the building but this would be part of the operation of the present service station. Mr. Moore noted this is a Permitted Use and the service station is a Special Exception Use and they felt this was a modification of the present Special Exception, so

it before the Council today for their consideration. He indicated the staff is concerned about the parking on the west side of the property and he feels this spaces should be signed and marked for the use of the convenience food store operation. He hoped they would be able to provide planters on the center portion of the sidewalks for the east and west approaches which would probably encroach two feet into the right-of-way, which means they would have to apply to the DOT for permission to do that. He asked that the hours of operation be the same as the hours of operation of the gas station.

Spec.Excep. No. 17-91

Mrs. Peters read into the record a letter of objection from Mrs. Marie Bruno, 167 Everglades Avenue.

Mr. Heeke asked if there would be any pumps used for self-service? Mr. Testa responded there would be three pumps dedicated to self-service on the outside island closest to the street. Mr. Moore pointed out there are four islands and one is self-service. Mr. Heeke asked if they would have any problem with a condition that at least two of the islands remain full-service. Mr. Testa did not see any problem with that. Mr. Heeke asked if the hours would be limited to those that the gas station would be open? Mr. Testa responded the station and the store would run simultaneously and he had no problem with that condition either. Mrs. Wiener asked if the facility would be open beyond the time that the restaurant would be open to which Mr. Testa responded it would not.

Mr. Weinberg commented that he likes the restaurant at Testa's and in fact had lunch there today, but he was concerned about the traffic situation. Mr. Heeke called on Mr. Moore for his comments about the traffic. Mr. Moore advised he thought the planter boxes to separate the island would be a good idea. Mr. Lynch advised if the application is made to the DOT and they are denied for whatever reason, they still be permitted to open the convenience store. Mr. Moore stated if that should happen, perhaps a curb could be installed because he had a concern about the convenience store customers coming west and jumping across the east intersection and driving across the sidewalk area to get to the five spaces to park, instead of continuing west and taking a right hand turn into the west entrance. He believed this would also be a beautification of the sidewalks and the pumps. Mr. Lynch advised he had no problem with that but they were concerned if they should be turned down by the State. Mr. Moore pointed out the planters at the restaurant encroach right now.

Motion was made to approve the Special Exception 17-91 by Mr. Ilyinsky conditioned with the recommendations of the Building Official that Testa's make application to the DOT for the planters to encroach on the right-of-way and if they are denied, the curb cuts would be reduced so there would not be direct access; secondly, the hours of operation will be limited to the hours the gas station is open, provided however, the gas station will not be open longer than the restaurant itself; that two of the four service lanes would remain full service; and five parking spaces on the west side would be explicitly marked for customers of the convenience store. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Heeke announced that any construction would have to be according to Code, and there would be a periodic inspection by the Fire Department.

D. Other

1. Consideration of Proposed Landscape Plan for the Restoration of Memorial Fountain. Mr. Moore advised the Town applied and received grant monies from the State for the restoration of the Mizner Fountain. He stated the landscaping to be done at the Fountain area was graciously donated by the Garden Club, with the Town providing the labor to install. He advised before this can go to the Landmarks Commission for its final approval, authorization is needed from the Council, as the landowners, to file for the Certificate of Appropriateness to the Landmarks Preservation Commission.

Landscape Plan for Restoration of Memorial Fountain

Mr. Frank advised Mrs. Summers was to be here today, however had an emergency and had to leave for California. He stated the Garden Club is interested in the design of this Fountain Park and they will pay for the materials and the Town will pay for the labor.

Mr. James Sved addressed the Council showed two pictures, one a photograph at around 1937 and a postcard from approximately the same time period, and it was within ten years of its original design and he didn't believe the landscaping would have changed very much in that time.

He advised they would first remove and relocate certain plants; second, would replace the plants with like plants in the same place; third, the addition of plants where there were none before; what will remain the same.

He thought the biggest difference is the removal of portacarpus bushes and they will be removed and relocated to another part of Town; secondly there would be removal of two of the palm trees, which would allow for more sunlight for the plants which will be placed there. He advised at either end of the park, where the portacarpus bushes are presently, there are four small Alexander palms which would be removed.

He advised the removals are to open this area and give a more park-like atmosphere.

He stated on the south end they will be removing the "love" plants and that will be turned into the original rock garden.

He stated the replacement plants at the gateposts would be orange impatiens in the winter and marigolds in the summer time. He advised the jasmine hedge which runs along the perimeters, would be replaced with Korean boxwood, which grows much slower and would allow visibility of the fountain from the road. He stated the current annual scheme would be replaced with orange and yellow marigolds. He stated the pink hibiscus behind the gate posts would be replaced with peach hibiscus. He stated the annuals around the flagpole would either be replaced with grass or the new annual scheme and the bougeonvillea behind the main fountainhead would be removed since they don't receive the proper amount of sunlight at this time. He advised to be added at the rock garden would be the new annual scheme. He advised behind the ballustrades would be put yellow flowering trees to be placed at the south.

Landscape Plan for Restoration of Memorial Fountain (cont'd)

He advised the Royal Palms will remain and the Korean boxwood around the reflecting pool would remain.

Mayor Marix advised she was at the meeting with several of the Garden Club members and since that meeting, other Garden Club members have told her of their concern about spending this kind of money and removing plants which have done well, when there are so many other things that need doing in Town and wondered if the disparity of agreement has been resolved by the Garden Club and keep what is there and add some of the landscaping later, and she asked if the matter was resolved.

Mr. Frank responded when the Garden Club first contacted hm and told him they were interested in this project, they asked for their guidance and they appointed a committee. He advised when the Committee had completed their research, he talked to Mrs. Wean and she stated that what the Committee had developed was in accord with what they had been asked to do and he heard there may have been some controversy about the matter, but he has not heard any differently from Mrs. Wean that there has been any changes.

Mayor Marix believed it was important to resolve this as she was in receipt of a letter from Dr. Moore of the Civic Association on the subject of some of the terrible things that have been happening, and he says perhaps they could join efforts with the Garden Club and make this a community spirited project. He referred to the damage on the oceanfront and she believed there was some worry about this particular plan and she wouldn't want it approved or disapproved until it is sorted out. She advised she saw Mrs. Wean briefly earlier and Mrs. Wean stated Mrs. Summers had to go out of town on an emergency although she has intended to be at this meeting. Mrs. Ballinger addressed the Mayor and Council indicating Mrs. Summers called her last evening and asked her to come and explain to the Council that the Garden Club is very much behind this landscaping plan. Mayor Marix asked if the Garden Club would be willing to help with the landscaping on the oceanfront? Mrs. Ballinger stated she had no answer on that and all she was asked to do was to tell the Council the Garden Club was definitely behind the landscaping planned for the Memorial Fountain and she really didn't believe one had anything to do with the other. Mr. Heeke agreed.

Mrs. Bettina Anthony addressed the Council indicating she was a past president of the Garden Club advising that the Garden Club had installed the planting at the oceanfront with the idea that the Town would maintain it.She agreed this project being discussed has nothing to do with the oceanfront landscaping but if the Council wishes to ask the Garden Club if they wish to contribute, they may do so.

Mayor Marix stated she knew this but wanted to find out exactly.

Mrs. Wiener asked if the landscaping proposed would fall within the Xeriscape requirements? Mr. Frank responded affirmatively. Mr. Moore believed it exceeded the requirements.

Mr. Frank advised the plants and trees being removed could be relocated. Mr. Sved reported if they are salt tolerant plants, they could be removed to the oceanfront and there are four Alexander palms, two Cocoanut Palms and nine Portacarpus trees.

Mr. Heeke asked what the cost would be to replant the annuals to which Mr. Dusey responded if the planting areas are the same that we have now, there should be no significant difference. Mr. Heeke noted the lower palm trees behind the Fountain itself, seem to block the Town Hall building and he would like to have a view of the Town Hall through the garden area as this is a setting for the north end.

Mr. Sved advised the removal of the Palm Trees would not only allow light for the plants being proposed and presumably will allow more visibility for the Town Hall. Mr. Sved advised there were nine trees there originally and they simply have removed the end two trees. Mr. Frank recalled in the original days, the Town Hall did reflect in the pond, and that is the achievement they are trying to retain.

Mr. Heeke asked if some consideration could be given to having a view of the Town Hall. Mr. Heeke felt that since a lot of money has already been spent on the renovation of the Town Hall, it should be able to be viewed. Mrs. Wiener agreed and thought perhaps instead of removing the end ones, they should open open up the center. Mayor Marix believed the Garden Club should think about this a little more as all they can view of the Town Hall is the fire department doors from the Park. Mr. Heeke believed that further consideration needs to be given to having a view of the Town Hall reflecting in the pond. Mr. Frank stated he will do it but the point is they don't want to take out all of the vegetation but want to achieve the transparency effect the Council would like. He pointed out the vegetation that we have now was supposed to be trimmed at the level of the ballustrades and when it was done, they received a number of comments on the replanting that had occurred which actually it wasn't, it was simply trimming the existing.

Mr. Heeke asked the plan of attack would be to bring them back the new renderings showing the proposed landscaping as modified today.

XV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE - There were no comments.

XVI. ANY OTHER MATTERS

Annual Report

A. ANNUAL REPORT. Mr. Doney advised several options are being considered to reduce the cost of the Annual Report and there will be a straight-forward text and photographs and the pages will be reduced.

Palm Beach International Airport

B. PALM BEACH INTERNATIONAL AIRPORT. Mr. Doney reported they would like to have a representative present at the Dec. 10, 1991 meeting to report on the noise abatement study.

Taxi Ordinance

C. TAXI ORDINANCE. Mr. Heeke believed this needs to be looked at very carefully to make sure the vehicles are in operation and if the taxi companies do not have them, they make lose the number of permits they now have. Mr. Doney asked if he meant there should be strict enforcement of the Ordinance as it now exists in the Code? Mr. Heeke commented this should be looked at very carefully and staff should make some recommendations and after Council looks at them, this can go to Ordinance, Rules & Standards Committee. Mrs. Wiener believed that by putting a cap on the number of permits there may be in the Town, they have created a black market and there are funny things going on and she didn't think that was the intent of the original Ordinance when it was adopted. Mr. Heeke agreed if the permits were not being used, they should be surrendered.

D. EMPLOYEE OF THE YEAR BREAKFAST. Mr. Doney advised this Breakfast will be held on November 13, 1991 in the Breaker's Hotel in the Venetian Ballroom.

Employee of the Year Breakfast

E. EVALUATION OF THE TOWN MANAGER. Mr. Doney reminded those Council members who have not met with him to please do so and this matter be an item on the agenda at the December Town Council meeting.

Evaluation of the Town Manager

F. TOWN COUNCIL CONSIDERATION OF ZONING MATTERS. Mr. Moore requested the zoning recommendations be heard by the Town Council on January 6, 1992 and January 7, 1992, if necessary, to which the Council agreed.

Town Council Consideration of Zoning Matters

G. PALM BEACH CIVIC ASSOCIATION REQUEST FOR HOUSE NUMBERS TO BE VISIBLE. Mayor Marix indicated she had a request from the Palm Beach Civic Association that there be some method devised whereby all citizens in the Town are reminded that their house numbers must be fully visible, in the event of an emergency.

Civic Assoc. request for visible house numbers

H. PERMIT FROM DNR ON PEP REEF AT MID-TOWN BEACH. Mayor Marix suggested several council members should attend the meeting of the Governor and Cabinet on this matter and urged any Council members to attend, if possible. President Heeke urged the Mayor to attend, emphasizing the fact that this is the Town's permit.

Permit from DNR on PEP Reef

I. DONATION FROM PALM BEACH ROTARY CLUB. Mr. Ilyinsky indicated the Rotary Club would like to give a donation to the Town and it was suggested to them perhaps it could be benches at the Mid-Town Beach with an emblem on the back of the bench showing the Rotary Club has made the donation. He stated they would also be willing to donate one or two benches on the Lake Trail.

Donation from Palm Beach Rotary Club

J. LANDSCAPING AT MID-TOWN BEACH. Mayor Marix stated she had received a letter from Dr. Moore of the Beautification Committee of the Palm Beach Civic Association who wished to work with the Garden Club on the landscaping at the Mid-Town Beach. Mr. Heeke suggested he contact the Garden Club directly. Mr. Doney advised in order for them to coordinate the work to be done at the Mid-Town Beach, if there is a multitude of helping individuals, it will take more time to get the job done. He advised their intent was to replace the landscaping as it was previously. Mr. Heeke stated that is what was agreed on earlier in the meeting and he believed that input could be received and donations to defray the cost of the installation would be welcomed. Mayor Marix believed that the Town could use all the help they could get. Mr. Heeke agreed if it was financial help. Mayor Marix pointed out the letter didn't say it wasn't financial help, and no-one stated it would be any different. Mr. Heeke requested the Town Manager to apprise them of what action had been taken today. Mr. Doney responded he will draft a letter of response for either Mr. Heeke or the Mayor's signature.

Landscaping at Mid-Town Beach

XVII. ADJOURNMENT. Meeting was adjourned at 5:10 PM.

Adjournment

Grace T. Peters
Town Clerk