TOWN COUNCIL MINUTES OF MEETING HELD ON NOVEMBER 10, 1992

Roll Call

I. CALL TO ORDER AND ROLL CALL - The Town Council meeting of the Town of Palm Beach was called to order at 9:30 AM on November 10, 1992 by President Bernard Heeke, in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilwomen Douthit and Wiener and Councilman Ilyinsky. Also in attendance for all or part of the meeting were Mr. Doney, Attorney Randolph, Mrs. Peters, Chief Terlizzese, Mr. Jakubiak, Mr. Elwell, Mr. Dusey, Mr. Frank, Mr. Moore, Mr. Zimmerman, Mr. Bowser, Mrs. Crozier, Mrs. Kelly and Mrs. Gorman.

Invocation

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

Presentation

III. PRESENTATION

A. Presentation by Mr. Robert Nachlinger, Finance Director, City of Miami Beach, of Government Finance Officers Association's "Certificate of Achievement for Excellence in Financial Reporting" to Town's Elected Officials and Staff - Mr. Nachlinger addressed the Mayor and Town Council indicating this award is for the Annual Audit Report of the Town and he was pleased to award the Certificate of Achievement for Financial Reporting to the Town of Palm Beach. He stated this is the highest award that can be awarded in governmental financial reporting. He was very pleased to tell them the Town's financial reporting meets their standards and has been judged one of the best of its kind. He stated there is only four per cent of all local governments that have achieved the standards and receive the award and it is very rare that a municipality achieves both of these awards and he congratulated them on their efficient staff who is quite dedicated. He presented the award to Mrs. Crozier, Finance Administrator. Mrs. Crozier accepted the award and recognized Mrs. Kelly and Mrs. Gorman of her staff whose assistance was invaluable.

Comments of Mayor

IV. COMMENTS OF THE MAYOR - Mayor Marix thanked the Garden Club and Mrs. Ballinger for their beautification of the Town Hall District, especially the Memorial Fountain Park.

V. APPROVAL OF AGENDA

Approval of Agenda

APPROVED AGENDA (ITEMS VI. THROUGH VII.) Mrs. Peters requested the minutes of October 26, 1992 be deferred until the next meeting. Mr. Heeke asked that under Any Other Matters, there should be some discussion about writing a letter to the new Palm Beach Co. Delegation, emphasizing that Amendment No. 10 did pass and it should be implemented as soon as possible. Mayor Marix expressed her concern about the Florida League of Cities' position as she felt they spent taxpayers money to try and get this Amendment off the ballot and she wondered also if they should continue membership in the League. She asked that the Beaumont Lot be considered also under Any Other Matters. Mr. Doney noted there were several other items that he has sent memoranda on and they are in the book. Motion was made by Mrs. Douthit to approve the Agenda as amended. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Heeke noted the October 26, 1992 minutes are being removed from the "Approved Agenda" and a motion was made by Mr. Weinberg, seconded by Mrs. Douthit to approve the "Approved Agenda" with the October 26, 1992 minutes deferred to the next meeting. Motion carried unanimously on roll call.

VI. APPROVAL OF MINUTES OF JUNE 15, JULY 14, AUGUST 11, 27, SEPTEMBER 2, 8 (5:01 P.M.), 14, 1992

Licenses & Permits

VII. LICENSES AND PERMITS

Charitable Solicitaitons

A. Charitable Solicitations

1. American Heart Association; No. 6-93
2. The Jewish Theological Seminary of America; No. 27-93
3. Cystic Fibrosis Foundation; No. 72-93
4. Garden Club of Palm Beach, Inc.; No. 123-93
5. Rehabilitation Center for Children & Adults, Inc.; No. 126-93
6. The American Committee for the Weizmann Institute of Science; No. 151-93
7. South Florida Public Telecommunications, Inc.; No. 168-93
8. The Lord's Place Auxiliary; No. 229-93
9. Save-A-Pet Florida, Inc.; No. 236-93
10. St. Ann School; No. 306-93
11. Lt. Col. Netanyahu Unit #5470 B'nai B'rith; No. 309-93
12. Colonial Dames of America, Palm Beach Chapter XVII; No. 316-93
13. Humanitarian Effort Through the Arts; No. 345-93

Beverage Licenses

B. Beverage Licenses

1. Request for Transfer of Ownership of a 4COP Alcoholic Beverage License by Victor Anthony de Marinis/264 The Grill, Inc., d/b/a 264 The Grill from Alyce Jeanne Marks d/b/a 264 Restaurant at 264 South County Road.

Regular AGend.

REGULAR AGENDA

VIII. PUBLIC HEARING

Res. 12-92

A. Landmark Designation for 241 El Vedado Road - Consideration of Resolution No. 12-92 - Mrs. Peters confirmed publication of the Public Hearing has been received. All of those who were going to testify at the Public Hearing were given the oath by Mrs. Peters. Attorney Randolph read Resolution No. 12-92 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84 ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Timothy Frank explained the property at 241 El Vedado Way is a Neo-Classical structure designed by John Volk and this was presented last year, but was deferred until now at the request of the former owner. He advised during that time the property has been sold and the new owner has been served the proper notice and has not responded with a negative statement. He stated this property meets Criterion C, that it embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship. He stated it also meets Criterion D, a notable work of one or more master builders, designers or architects whose individual ability has been recognized to have influenced their age, and in this case the architect is John Volk.

Mr. Frank introduced Mrs. Jane Day of Research Atlantica and her firm will be assisting the Town with expert testimony on the designation reports on landmarks. He reported on Mrs. Day's staff is a PhD from Brown University who is also on the staff of Florida Atlantic University.

Mrs. Day addressed the Mayor and Council indicating this house was designed by Mr. Volk in 1936 and is an excellent example of the Neo-Classical style and is unique since the style has been used throughout the country and was adapted to the Town of Palm Beach climate. She noted that typically a Neo-Classical style usually has a two story portico with a central entrance and because this property faces south, the entrance to the property was located on the western facade, which allowed people to pull up on the western side and blocked the interior from the brutal western sun. She explained Mr. Volk took the Neo-Classical element with the pediment above the door and put that on the western facade. She noted on the front, Mr. Volk took what was typically Neo-Classical and made it into a very lovely one-story symmetrically masked enclosed porch. She stated the house has a hip roof and a center chimney and the wings extend out on both sides to the east and to the west and the pool is on the eastern facade so it can have the best exposure. She stated the windows are typical of the Neo-classical style and six lights were used on everything but the front portico, as on either side of the central window are four lights, with shutters included and the classical ionic columns have been used to emphasize the central structure. Ms. Day was congratulated by the Council on her presentation.

Mrs. Douthit moved that the Designation Report be made part of the record. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mrs. Wiener asked if there has been any response from the owner to which Mr. Frank responded they have not, but there have been some minor renovations made to the house and the Landmarks Preservation Commission had granted certificates of appropriateness for those renovation, so the owner is aware of the process.

Mayor Marix recalled Mr. Volk making a comment to her at one time as he was a friend of hers, and the comment was that the new architects did not have a deep understanding of mathematics and proportions.

Motion was made by Mrs. Douthit that 241 El Vedado Road, meeting the Criterion C and D be landmarked. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Licenses & Permits

IX. LICENSES AND PERMITS

Char. Sol.

A. Charitable Solicitations

1. Leukemia Society of America; No. 39-93 Mrs. Peters explained the Leukemia Society had previously had two violations of the Ordinance and last year, they failed to return their Results Form on a timely basis. She stated it has now been received. Patricia MacDonald of the Leukemia Society of America addressed the Council indicating she was late in returning the Results form and apologized for this oversight. Motion was made by Mr. Ilyinsky that the Charitable Solicitation Permit be granted. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

2. The Salvation Army; No. 197-93 - Mrs. Peters explained there was a previous violation with a higher percentage than allowed at that time, but last year the Results Form was returned late. Joel Boyd of the Salvation Army addressed the Council noting the functions held in the Town of Palm Beach are usually headed up by volunteers, and the volunteer last year was hospitalized and the report was not finalized and was delayed for several months and he apologized. Mrs. Wiener moved the Charitable Solicitation Permit for the Salvation Army be issued.Seconded by Mr. Ilyinsky.

Mayor Marix reminded all that this Charitable Solicitation Ordinance is a serious matter, to try and keep the good organizations coming and keep the less good ones on their toes, and there is no problem with the organizations that are here before them today, however, she wondered if a fine could be imposed on those who don't abide by the regulations. Mrs. Wiener did not think that was appropriate for a Charity. Mayor Marix thought it would make them very aware and the fine could be donated to another charity. Mr. Weinberg thought it would just be a slap on the wrist. Mayor Marix thought that was being done now and she thought they had to think of some way to make sure the reports are filed timely. Mr. Heeke thought it may be some inducement for the charity to pay more attention and this is probably a subject for the Ordinance, Rules & Standards Committee to discuss. On roll call, the motion carried unanimously.

Mr. Randolph asked to go back to the landmarking of 241 El Vedado Road as the motion did not adopt Res. No. 12-91. Mr. Heeke thought that was the intent of the motion. Mrs. Douthit agreed but moved that Res. No. 12-92 be adopted. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

X. COMMITTEE REPORT

Committee Report

A. Ordinance, Rules and Standards Committee of October 16 and November 9, 1992

REPORT OF THE ORDINANCE, RULES AND STANDARDS COMMITTEE MEETING HELD ON NOVEMBER 9, 1992

ORS Comm.

I. CALL TO ORDER AND ROLL CALL. The Ordinance, Rules & Standards Committee Meeting was called to order by the Chairman, Nancy S. Douthit at 9:30 AM on November 9, 1992 in the Town Hall Council Chambers.

On roll call, Chairman Nancy S. Douthit and Committee-member Hermine L. Wiener were found to be in attendance. Other Elected Officials attending were Mayor Marix and Councilman Ilyinsky. Also attending were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Assistants to the Town Manager Jakubiak and Elwell, Mr. Dusey, Mr. Moore, Mr. House, Mrs. Martinuzzi, Mr. Bitzer and Chief Terlizzese.

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

III. CONSIDERATION OF PROPOSED ORDINANCE NO. 13-92 - USE OF TOWN OWNED PROPERTIES AND RIGHTS-OF-WAY.

After consideration of the revised Ord. 13-92, the Committee recommends modifications to the following sections (underlined items show changes):

Sec.4. (2)(m)	Provisions for cleanup after conclusion of the special event. The applicant shall be responsible <u>for the costs of immediate clean-up.</u>
Section 5. (3)	The Town Attorney will consider and advise on language to include regulations relating to banners, balloons, flags, etc. on vehicles. Section 6. (7) The conduct of the special event will not substantially interrupt the safe and orderly movement of <u>pedestrian and vehicular traffic</u> contiguous to the place of the special event.
Section 11.	Insert the word "immediately" at the end of the second sentence.

Insert language into the Ordinance which will exclude Memorial Fountain Park as a location for Special Events.

IT IS THE RECOMMENDATION OF THE COMMITTEE THAT THE MODIFIED ORDINANCE NO. 13-92 BE SUBMITTED TO THE MAYOR AND ALL COUNCIL MEMBERS AT THE NOVEMBER 10, 1992 TOWN COUNCIL MEETING FOR CONSIDERATION AND FIRST READING.

IV. ANY OTHER MATTERS:

(A) CHARITABLE SOLICITATION ORDINANCE: Attorney Randolph was requested to review the Charitable Solicitation Ordinance and recommend changes with regards to:

(1) Whether or not multiple lunches or dinners or other parties on one specific day at separate locations by the same organization should be considered as one event under the provisions of the Charitable Solicitation Ordinance.

(2) More stringent language be placed on the Results Form with regards to proof that the monies collected by charitable organizations actually were received by the charity.

(3) Review the State Statutes with regards to the provisions the State requires and incorporate into the Town's Ordinance.

(B) DUNE ORDINANCE AMENDMENT: Review was made of Proposed Ordinance No. 10-92 AND IT IS THE COMMITTEE'S RECOMMENDATION THAT THE ORDINANCE BE SUBMITTED TO THE TOWN COUNCIL FOR ADOPTION.

V. ADJOURNMENT. There being no further business, the meeting was adjourned.

Adjournment

SIGNED Nancy S. Douthit and Hermine L. Wiener

Mrs. Douthit explained the report. Mrs. Wiener stated she had a problem with including fundraisers. Mr. Heeke asked that it be discussed when they consider the Ordinance adoption.

Mayor Marix asked if the Town Attorney was going back to the Committee with his recommendations on the Charitable Solicitation Ordinance? Mr. Heeke suggested they accept the report and then a follow up motion authorizing the Town Attorney to perform the tasks requested.

Motion was made to accept the report of the Ordinance, Rules & Standards Committee of their meetings held on October 16 and November 9, by Mr. Ilyinsky. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Motion was made by Mr. Ilyinsky to authorize the Town Attorney to perform the tasks as outlined in the Ordinance, Rules & Standards Committee in their November 9, 1993 Report with regards to the Charitable Solicitation Ordinance. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

XI. OLD BUSINESS

Old Business

A. Ordinance - Second Reading

Ord. 12-92

1. Ordinance No. 12-92 - Amendment to Coastal Construction Code, Chapter 5 of Town Code of Ordinances - Attorney Randolph read the Ordinance No. 12-92 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5 OF THE CODE OF

ORDINANCES,RELATING TO BUILDINGS, AT ARTICLE IA, APPENDIX,COASTAL CONSTRUCTION CODE, SECTION IV, DEFINITIONS,SO AS TO AMEND THE DEFINITION OF "SUBSTANTIAL IMPROVEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Ilyinsky that Ordinance No. 12-92 be adopted on second reading. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

New Business

XII. NEW BUSINESS

A. Ordinances - First Reading -

Ord. 10-92

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

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

Mr. Moore explained an ordinance was passed in 1989 to deal with the dunes in the Town and preservation of same and annually the guidelines are readopted. He noted in the original Ordinance three classes of permits were provided for, Class I, II and III. He recalled the Town was in a dispute with regards to a Class I type permit issue on a major dune system and that dispute was subsequently settled and the Class I permit has been modified to track that type of settlement. He recalled the provisions in the Ordinance do not take into consideration previously developed properties which were not defined previously; and they have provided for an Appeals process with a fee for same and also they have provided for a Sunset type provision when and if the State decides to move the current Coastal Construction Line landward.

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

Ord. 11-92

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

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

Motion was made by Mrs. Douthit to adopt Ordinance No. 11-92 on first reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Ord. 13-92

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

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

Attorney Randolph explained he was directed by the Ordinance, Rules & Standards Committee to make several changes which were discussed and he explained at Section 5, Page 3, an additional paragraph Four has been included on banners and flags. He stated he did not include vehicles in this provision. Mrs. Wiener stated she would like to have that in the Ordinance. Mr. Heeke thought it should not prohibit governmental flags, such as would be used in the 4th of July Celebration.

Mr. Randolph explained another change is item 9 under Section 5 on the prohibition of events at Memorial Fountain Park. Mr. Heeke thought if there would be a delay of just a few minutes, it would have an effect on response time of the Fire-Rescue vehicles.

Mr. Heeke noted in Section 6, paragraph 6, Mrs. Wiener had a comment. Mrs. Wiener stated she had a problem, philosophically, with taking commercial and fundraising and putting them in the same paragraph. She didn't believe that charities would be using any of these areas, but she didn't like them lumped in with the commercial, as if a charitable organization wished to do something of this kind, they would be able to come to the Town Council and talk about it. Mrs. Douthit thought it should remain in the Ordinance as they would have the right to appeal to the Council. Mr. Heeke asked if the Council would have the latitude to grant a variance to a charity? Mr. Randolph responded they would have a the latitude to judge this on a case-by-case basis, but he didn't think the distinction would be on the basis of it being a fund raiser as opposed to a commercial event, as that would allow the commercial entity to appeal and get a variance.

Mrs. Wiener stated she would be opposed to that. Mayor Marix asked if they are putting into effect this ordinance for a reason? Attorney Randolph stated they are actually doing it for three reasons, one is to codify what has been done previously through an administrative process; and secondly, to give certain criteria to those who wish to have a special event; and thirdly, for the benefit of the Town to provide for public safety. Mayor Marix asked if they have this event to provide for the safety of the people, she didn't believe they should be giving variances. Attorney Randolph agreed that if a variance is granted, it should be based upon the public safety characteristics, rather than the nature of the event. He didn't believe they should be talking about giving variances but discuss the merits of the Ordinance itself and whether it should include charitable events, commercial activities, etc.

Mr. Heeke asked if fundraising was omitted from the Ordinance and then they experienced an onslaught which created trouble, the ordinance could always be amended. Mayor Marix asked what if someone who wanted to have a Special Event for a commercial purpose and offered to give a percentage to a charity, would that be a charitable event? She believed they would be opening up doors that they really don't want to be opening.

Mrs. Wiener asked Mrs. Peters how many events have been requested by charities in the last year at these locations? Mrs. Peters responded during the year there are approximately five to ten charities which bike or walk through the Town and they have been given Special Event Permits. Mr. Randolph commented that all of these events may not fit into this Ordinance as it is questionable whether a single-file bikathon would really be a Special Event. Mrs. Wiener agreed.

Mr. Adrian Winterfield suggested they may not be ready for a first reading on this, pointing out under the Ad Hoc feature, commercial photography with models is covered and he didn't know whether that would be included or excluded. Mr. Randolph stated they would be excluded. Mr. Winterfield asked if the Town was now saying no more commercial photography on Town rights-of-way, as the old procedure would then be eliminated. He felt they should be more explicit. He suggested also that if the Council is going to reserve to itself the right to approve charitable solicitations, it should also have the say in the first instance as the way this is drafted, it is not known who is going to be deciding, the Town Manager or his designee. Ord.13-92

He stated he was concerned because had Council had the original authority in the Klan case, perhaps the monies spent on the lawsuit could have been saved.

Philip Engelhardt addressed the Council, thinking the Mayor's comments on public safety are well taken and suggested they might want to consider a different threshold before they got into the approval process which could be the size or nature of the gathering, without singling out commercial versus charitable. He thought it could perhaps deal with the number of people projected to attend the event, or some level of distinction which didn't discriminate.

Mrs. Douthit recalled the numbers of people were addressed at great length at the ORS meetings. Mr. Heeke noted it is addressed in Section 4, item (h) and this is information which the applicant must submit, so it is a factor which would be reviewed. Mrs. Douthit felt fundraising should be left in the Ordinance.

Mrs. Douthit made a motion to modify Section 5, regulations relating to Special Events, sub-paragraph 4, which would be amended to insert after "similar devices" the language: "decorated vehicles and trailers" and following the word "flags", the language "other than official governmental flags." Attorney Randolph suggested the wording: "the use of decorated vehicles and trailers in connection with the event, shall be prohibited." Mrs. Douthit so moved. Seconded by Mrs. Wiener. On roll call, the vote was unanimous for the motion.

Motion was made that fundraising be allowed to remain in Section 6, Paragraph 6, by Mrs. Douthit, seconded by Mr. Ilyinsky. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

Mr. Doney asked the wording to be amended in Section 4, Paragraph (1) to state: "A complete application addressing all items in Section 4 (2)...." as what happens they send the information in piecemeal and the staff doesn't have the opportunity to comprehensively review the application. Mr. Heeke suggested the time to get the application into the Town be sixty days prior to the event rather than thirty days, as it looks to him that they would have to hold special meetings to meet that time table. Mr. Randolph stated that has already been taken care of by ORS with the phrase that they would be able to deal with it at the next regularly scheduled Town Council meeting.

Mr. Doney stated Mrs. Peters would not accept the application unless it was complete. Mr. Randolph commented if there should be revised language that is fine, but paragraph 2 states the application for a special event permit shall set forth the following information, but he will adhere to the wording Mr. Doney quoted, if need be.

Motion was made by Mrs. Douthit that Mr. Doney's suggested language be included in Section 4 Paragraph 1 that it has to be a completed application. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Motion was made by Mr. Weinberg that Ordinance No. 13-92 be approved as amended. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Motion was made after further discussion by Mrs. Douthit to approve Ordinance No. 13-92

B. Resolution

1. Resolution No. 45-92 - Proposed After School Program Late Pick-Up Fee - Attorney Randolph read Resolution No. 45-92 by title: Res.45-92

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING A RECREATIONAL DEPARTMENT YOUTH PROGRAM LATE PICK UP FEE CLASSIFICATION AND RATE.

Motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky to approve Resolution No. 45-92. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

C. Appointment

Appointments

Golf Commission

1. Golf Commission - Two Three-Year Terms to Expire November 1995 - Mr. Heeke noted two members of the Golf Commission are presently serving and are willing to continue and since it is their first appointment, they are eligible for reappointment and they are Mr. Joseph Berkow and Mr. S. Ashton Clark, Jr. He noted there have been other residents who have written letters to be appointed to the Golf Commission and they are Miss Robin E. Weiss, Mr. Max Schorr and Mr. James Maddock. Mr. Weinberg moved that Mr. Berkow and Mr. Clark be reappointed. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

D. Other

Historic Bucida Buceras Tree

1. Consideration of Request for De-designation and Permission to Remove an Historic Bucida Buceras Tree at 155 Barton Avenue by Mr. Stanley Segal - Mr. Heeke noted there is a memorandum from Mr. Dusey to Mr. Doney on this subject, which stated that Mr. Ugi, Building & Grounds Manager, has been to the site and made an inspection as well as the horticultural expert, Mr. Robert Hayes do recommend this tree be de-designated as a Specimen Tree. Motion was made by Mr. Ilyinsky to de-designate the tree. Seconded by Mr. Weinberg. Mrs. Douthit asked if the Garden Club was notified of this and did they have any objection? Mr. Dusey indicated he was certain there were no objections. Mrs. Douthit asked if this was neglected so badly that the de-designation is the only way to go? Mr. Dusey responded before they restricted the trimming, it had already been trimmed on the one side, and the location is between two homes and they couldn't grow and maintain it to a specimen quality, as it is too confining and it was his thought that the tree should not have been designated originally. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

Appeal - Vreeland Solid Waste Billing

2. Appeal of Public Works Director's Decision to Town Council by Mr. David R. Vreeland Concerning Billing for Solid Waste Collection and Disposal - Mr. David Vreeland addressed the Council noting he moved to Royal Poinciana Plaza in May and has been billed at the rate of $59 per month for refuse removal. He stated he has no more than one gallon plastic bag per week and he is requesting relief from that payment. Mr. Dusey recalled writing to Mr. Doney on Nov. 2, 1992 explaining the situation. He advised Mr. Vreeland occupies 1000 square feet and the rate structure adopted by the Town Council is $59 per month. He reported the rates are based on average generation and some people do generate more but some generate less. He recommended that there not be given relief as no-one ever generates exactly what they are being charged for.

Mrs. Douthit believed it was unfortunate that Mr. Vreeland is one of those who does not generate much refuse, however, if he is given relief, there will be many others who will be making that request and although she has the greatest of sympathy, she didn't think it should be allowed. Mayor Marix agreed with Mrs. Douthit, but was wondering if the system should be studied to see if those people who generate a large amount of refuse should be paying for it. Mr. Heeke realized when a rate structure is established, it won't please everyone and that is the problem, but there are certain rates which the Town must pay. Mr. Dusey responded the Town is responsible for tipping fees at the Landfill and that is part of the total cost of collection. Mayor Marix asked if it could be handled somewhat like the license charges for different categories and perhaps that this could be handled in that way, with some businesses paying more for more refuse and some less for less refuse. Mr. Heeke believed this would put a burden on the staff to administer. Mr. Weinberg asked if he only had one bag a week and he took it home, would he still have to pay to which Mr. Dusey responded affirmatively.

Mr. Dusey reported they are working on a rate structure basically based on the Solid Waste Authority's assessment charges where the owner of the property would be billed on a quarterly basis and the tenants would not be directly involved. Mrs. Wiener noted in the back-up material, it looks like they empty the dumpster at the Plaza, so the relationship is right there and it is not like it was a dumpster being emptied at a restaurant, or a private office building, so perhaps something could be worked out with the Poinciana Plaza. Mr. Vreeland advised the staff at the Plaza does pick up the bags in front of each office, so there is a means of measuring what is generated.

Mr. Weinberg moved to deny the appeal. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Fireworks Display at Everglades Club

3. Consideration of Request by Brenda Van Der Mije for Fireworks Display on Saturday, November 28, 1992 at the Everglades Club. Mrs. Brenda Van Der Mije addressed the Council requesting a five minutes show of fireworks at the end of a wedding reception at the Everglades Club. She advised the Club has no objection and has sent a letter so stating. She noted there was also a letter from Mrs. Zambelli's International Fireworks company explaining the location and the distance of the fireworks and the Certificate of Insurance. She advised this Town is the only Town in the United States which will not allow fireworks and she asked them to give her request favorable consideration.

Mr. Heeke advised they are not inclined towards having fireworks in this Town as the community is 97% residential. Mrs. Van Der Mije responded they are trying to be Town-serving and fireworks are a beautiful spectacle and should be looked at differently than the way they are looking at fireworks. She stated Mrs. Zambelli is in the audience and can give her assurances that the proper distances required will be observed. Mr. Heeke didn't believe she was hearing what they were saying and that is that this would be the only fireworks display in the Town as they have, over the years, phased out the firework displays at the various hotels and clubs.

Mayor Marix asked if they could have the fireworks on a barge? Mr. Heeke stated they could have it in the Intracoastal. Mr. Doney reminded all that the Town corporate limits do go to the centerline of the Intracoastal Waterway, so they would have to be westward of that line. Mr. Weinberg moved the request to have a firework display be denied. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Southern Bell Rights-of-Way

4. Consideration of Request by Southern Bell Dated October 30, 1992 to Perform Work in Rights-of-Way Within the Town Between December 1, 1992 and May 1, 1993 (Relates to Sections 12-50 and 12-51 of Town Code of Ordinances) Mr. Heeke called for a

representative from Southern Bell to make the request and there was no one in the room. Mr. Ilyinsky moved that this matter be delayed to later in the meeting. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

5. Consideration of Excess General Liability Limits and Excess Public Official Liability Limits - Mrs. Martinuzzi, the Risk Manager addressed the Mayor and Council indicating she has done a market search to determine the availability of limits to increase the Public Official and General Liability limits. She indicated the market is narrowing as a result of some of the catastrophic events during the past few years. She advised she only has been able to procure fifteen million for the Public Official Liability and up to thirty million for the General Liability. She recommended purchase of the additional limits. She advised there was availability of a fixed cost in the budget line item and if they do not use that money to purchase the Fixed Cost insurance, it would roll into the Liability Reserve.

Liability Limits

Mr. Heeke felt very strongly that the additional limits should be obtained as there are many citizen members serving on the various Commissions and Boards, particularly the Retirement Board and he did not think they should be sitting out there being exposed.

Mrs. Martinuzzi stated she is preparing a separate memorandum for the Retirement Board for quotations that she has marketed and that will be presented to the Board later this month. Mr. Heeke noted this will cover all of the Commissions to which Mrs. Martinuzzi agreed.

Mrs. Wiener recalled some type of a co-insurance situation being discussed some time ago with the Florida League of Cities. Mr. Doney responded the Town was at one time with the League and it was related to the Handlesman case. Mrs. Wiener commented she hated to spend monies on things that will not come to pass or where there is outside coverage and she believed in that particular case there was outside coverage available. Mrs. Martinuzzi commented at that time when that claim was served on the Town, the Town had duplicate coverage between Arthur J. Gallagher and the Florida League of Cities package, however, they could not collect from both insurers at the same time. Mrs. Wiener asked if a suit is filed in excess of five million against individuals, would there be a generally accepted principle in court - one, on the individuals being sued in their public capacity and secondly, is there a generally accepted principle of reducing the figures to something feasible? Mr. Randolph responded the Public Officials are covered up to the limit of the policy and as long as there were acts performed under their official capacity, they would be covered, but he knows of nothing that if a judgment exceeded a certain amount, the Public Official would be relieved of any liability.

Mr. Heeke thought if they are acting within the scope of their duties, some jury might feel otherwise. Mrs. Wiener believed that sometimes there are actions without any malicious intent, beyond what is a public capacity and she thought perhaps this might blend to that kind of a thing. She does have a problem with spending a lot more money on insurance. Mr. Heeke believed there could be a judgment against them for the rest of their lives, recalling the Handlesman suit was for twelve million and they were named individually and it exceeded the coverage the Town was carrying. Mrs. Wiener thought the question was where would they stop as if someone sues them individually for one hundred million dollars, they would not be covered. Mayor Marix thought it was more likely that people would sue for five or ten or fifteen million, and she believed that adequate coverage is very important. Mr. Heeke thought they were obliged to protect the people who serve the Town. Mayor Marix didn't understand exactly what type of monies they were talking about? Mrs. Martinuzzi responded the coverage is proposed on a layered basis. She stated the Town presently has its current coverage at five million dollars and the premium was $25,200 for one year coverage. She advised an additional layer of five million dollars can be purchased for an additional annual premium of $40,000 and another five million can be purchased on top of that for coverage of fifteen million for an additional premium of $25,000.00. Mayor Marix responded she doesn't understand why there is such a disparity in the premium. Mrs. Martinuzzi explained the current coverage is five million, so they were able to get a fairly priced renewal premium this year. She advised the second five million will cost $40,000, which is the minimum premium. She noted the higher limits of liability have a lower premium cost as the higher you go, the more remote it becomes that that coverage will be used. She advised they have only been able to secure the fifteen million in the market. Mayor Marix noted this additional coverage of ten million will cost the Town $65,000

Mrs. Martinuzzi explained it is an aggregate limit and a claims-made policy and is provided for all of the members as well as the Town itself. Mayor Marix asked if each Council is sued for two million and the Town gets sued also and the total would be sixteen million, that would mean we would only be covered for fifteen million and have nothing left for the remainder of the year. Mrs. Martinuzzi explained it would depend on how the judgment is worded.

Mrs. Martinuzzi stated the Excess General Liability would work the same way, with the coverage being provided in layers and an additional premium for each layer of coverage. Mayor Marix asked what this policy would cover? Mrs. Martinuzzi explained this is General Liability coverage for the Town, third party liability for the slip and fall cases and presently there is five million dollars worth of coverage. Mayor Marix stated the question they want answered is whether to go to fifteen million or thirty-five million dollars. Mrs. Douthit did not think the five million dollars was adequate. Mayor Marix believed she would go for the fifteen million on the Public Officials Liability and fifteen million on the General Liability.

Mr. Heeke agreed with the Mayor's suggestion of fifteen million for both. Mayor Marix asked how many claims were paid in the past year for liability claims? Mrs. Martinuzzi advised there are many actions still pending and most of the costs have been for defense and we have prevailed in a numerous number of judgments in the past year. Mayor Marix asked if this pays for the defense costs to which Mrs. Martinuzzi responded affirmatively. Mayor Marix asked Attorney Randolph if he thought the five million limit was adequate coverage? Mr. Randolph stated in the past it has been adequate.

Mrs. Wiener felt it was an open-ended deal. She stated the insurance companies are tough as they get people to buy the insurance, and she really felt the amount of money spent on the additional coverage will go down the drain and serves no real purpose. Mr. Heeke did not agree, as there are people asked to serve on Committees and Boards and anyone can get irate and upset because of decisions made by those members as well as the Council and some could suffer financially because of judgments against them. Mrs. Wiener asked who can recall the last time a Commission has been sued? Mayor Marix recalled the Zoning Commission and the Town Council were all sued for a huge

amount of money in 1972. Mrs. Wiener noted that was twenty years ago. Mrs. Wiener pointed out they wish to spend $65,000 to prevent something that hasn't happened in twenty years? Mayor Marix stated she has a good idea of how they can make some of it up.

Liability Limits

Mr. Philip Engelhardt addressed the Council and asked if they knew what the Florida Statutes state on the ability of someone to bring an action against a Public Official acting in the normal course of their responsibilities? Mr. Heeke responded normally they would hope to win those kind of suits, however, they can be lost at a lower court and then they would have to go through the appeals process, and cited as a good example, the Handlesman suit, which went through the appellate process before the Town finally prevailed and on this suit every member of the Town Council were named individually and it was a twelve million dollar suit. He stated the measure of damages in this suit was the loss of the leasehold revenue Mr. Handlesman would have received. Mr. Engelhardt stated he knows the concept of the damages but what he is trying to determine is the thread to be able to accuse the Public Officials. Mr. Randolph stated they would have to go beyond the scope of the activities of a Council member, although there is a Statute which addresses the Sovereign Immunity Statute. Mr. Engelhardt advised it still must go through the judicial process to make a determination as to whether or not they are protected by that Statute. Mr. Randolph responded they are protected by that Statute to a point. Mr. Engelhardt wondered if there could be a combination of a deductible and protection against the defense. He commented that the biggest expense to the Town is the defense of the action, even if the action is frivolous and gets dismissed. He thought if the policy would protect against the cost of defense, that would be the first round; and secondly, if the deductible was high enough the costs would go down and the odds of the insurance company never having to pay out would be minimal. He thought they should try to get something through the legislature which would be a little more explicit. Mayor Marix stated this has been a concern for some time and now they have the layering of the limits of liability and the premium cost.

Mr. Heeke pointed out there is also the problem of counsel provided by the defense, as they had some difficulty with that and had to get the right folks in on the Handelsman suit, because one of the insurance carriers wanted their pick but the Town did prevail.

Mrs. Martinuzzi reported the Town has a $100,000 retention on the Public Officials policy and $200,000 retention on the General Liability policy.

Meeting was adjourned for lunch at noon.

Meeting reconvened at 1:30 PM by President Heeke.

Motion to increase the Excess Public Official Liability coverage from five million to fifteen million dollars was made by Mr. Ilyinsky for a premium of $65,000.00. Seconded by Mrs. Douthit. On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion.

Motion to increase the Excess General Liability coverage to fifteen million dollars was made by Mrs. Douthit. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Motion was made by Mr. Ilyinsky that the funds to pay the premiums for the excess coverage be taken from the liability reserve. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Southern Bell rights of-way

4. CONSIDERATION OF REQUEST BY SOUTHERN BELL DATED OCTOBER 30, 1992 TO PERFORM WORK IN RIGHTS-OF-WAY WITHIN THE TOWN BETWEEN DECEMBER 1, 1992 THROUGH MAY 1, 1993. Mr. Heeke noted the representative from Southern Bell is here now and this matter can be discussed. Mr. Richard Silvestri of Southern Bell addressed the Council explaining they have various items of work that they cannot complete prior to December 1, 1992 which is the cut-off date for permits of this kind. He advised they are behind in their scheduling because of Hurricane Andrew and they are requesting authorization to be able to work after December 1st. Mrs. Douthit believed this was a matter of safety for the residents. Mr. Heeke went over the six items requested. After further discussion, a motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky to approve the extended work hours through December 18, 1992. Motion carried unanimously on roll call.

Water Conservation Program

6. Consideration of Proposed Water Conservation Program - Mr. Heeke noted a memorandum has been prepared by the Town Manager pursuant to Council's discussion on this in August, requesting a program be devised for conservation, education and public awareness. Mr. Doney explained the program identified in his memorandum is a considerably scaled-back program than the program recommended by James Montgomery in their water conservation efforts. He indicated they are attempting to implement an education and awareness program which will effectively reduce the water consumption in Town, so the Town can attempt to meet its goals as outlined in the Comprehensive Plan. He advised there was an insert of a letter signed by Mr. Heeke in the water bills to all Town residents advising of the need to not water between 9 AM and 5 PM. He felt an additional type mailing will be sent either in February or March, and they contemplate to use news releases and through the field personnel of the Town, will identify violations to solicit voluntary cooperation, when sprinklers malfunction, etc. He recalled the Town has an xeriscape program and also in place in the Code, is the water saving devices, principally shower heads and commodes. He recommended additionally that the Council consider the adoption of an Ordinance in 1993 actually restricting watering to three days a week.

Mr. Doney stated they will be encouraging larger users to have a water audit to try and implement changes which will effectively reduce consumption.

He reported there is a proposal by the East Central Wastewater Treatment Plan for reuse project where the effluent from the plant is treated to a certain degree so that it could be used for irrigation purposes, principally on golf courses. He stated this was previously studied by Montgomery and this would be quite cost prohibitive to actually put the piping in place to transport that water over to the Town.

Mr. Doney thought the program presented by Mr. Dusey and his staff is a good program and it can be added to if there are additional ways to achieve the goals. He stated he is requesting authorizations from the Mayor and Council for any comments, suggestions and modifications they may wish to make to approve this particular program, so that it may be implemented.

Mr. Heeke referred to the letter to the City and asked if a meeting could be set up and he would be sitting in on these meetings to discover what thoughts they might have as some programs have already been implemented.

He thought that under the County ordinance, warnings and citations are to be given, and he would rather see a friendly letter with some of these materials contained in the letter, and when the Public Works people or the Police Department notice sprinkler systems in operation during the day, simply leave that at the residence and state we are trying to communicate on a one-on-one basis, as he viewed this method of receiving more favorable response.

Mayor Marix asked if figures have been obtained as to how much water is used in the Town of Palm Beach per square mile, compared to other people? Mr. Peter Elwell responded these are being obtained through Montgomery who has access to information from municipalities throughout the County and they will be sending us a summary. Mrs. Marix did not mind if Montgomery were used but she didn't believe that other Town Managers or City Managers were not aware of the amount of water they used. Mr. Elwell stated he was hopeful that this information would be available today but it hasn't happened, however they anticipate having it very soon.

Mr. Heeke thought the Mayor had touched onto some things that needed to be brought out, for instance, when the street is being watered and perhaps this is something that can be pointed out to the residents, as a lot of folks don't realize this. Mrs. Wiener wondered if there was another mailing with a headliner "Is your money going down the drain?" as that would get their attention. Mayor Marix thought it was very important to help people know they must check their sprinklers as when they are on in the daytime, you can see it but at night, it wouldn't be that easy.

Mr. Heeke felt they were going into the right direction. Mr. Doney was hopeful it would achieve results.

7. Consideration of Changes to Charitable Solicitation Permit Application Form and Consideration of Reporting Results of Fundraising - Mr. Randolph reported he will be looking into this and reporting back to the Council on this subject. Mr. Heeke announced this will be deferred until Mr. Randolph has finished his study.

Changes to Char.Sol. Permit Applicatio Form

8. Consideration of Request by Ms. Barbara Norcross for Occupational License to Conduct Business at Colony Hotel - Request for Waiver to Section 10-48 of the Town Code - Mrs. Barbara Norcross addressed the Mayor and Council requested permission to be employed by the Colony and practice her profession as a psychic. She has submitted the background data requested.

Occupation al License to Conduct business a Colony Hotel

Mr. Moore stated this type of profession usually takes place in a commercial area and the Colony Hotel is located in a residential RD-2 zone, however, Mrs. Norcross is asking that section to be waived and if the Council does not waive it, she would be required to find a location within the commercial district.

Mrs. Norcross advised she doesn't wish to hang out a sign as she has worked in the Keys for 12 years and has found the proper good exposure of being a psychic should be introduced to this Town in a very correct way. Mr. Moore reported if this is granted, it should be limited to hotel guests only as a function of entertainment.

Mayor Marix asked Mr. Moore how does it work that outsiders could come into the Hotel and buy jewelry in a gift shop and we are telling Mrs. Norcross that she would have to deal with hotel guests only. Mr. Moore responded that there are uses customarily incidental to hotels that would be permitted as accessory use primarily, but not necessarily limited to hotel guests and would not preclude the public from walking in off the street and using those services. He advised they do come with restrictions, such as no advertising to the outside public, no direct access to the street and their basic clientele be hotel guests, but not necessarily exclusive hotel guests.

Mrs. Wiener asked what happens if she goes to have dinner at the Colony and whatever services they have for the guests are available to the public? Mr. Moore responded the difference is a use customarily incidental which would be found in South Florida hotels. He advised sundry shops, dress shops, jewelry shops are found in the luxury hotels in this area and this particular profession or service which is being requested is not customarily incidental to hotel use within South Florida, so it falls into more of a category of that of stand-up comic or entertainer and he suggested if the Council waives this particular section, it be limited to the hotel guests in that respect.

Mr. Randolph advised the reason this is on the agenda is one, even if the applicant were going to operate in a commercial district, they would have to come before the Council to get authority to do so. He believed the language is prohibitive and he was not sure they had the authority to allow this activity to take place in other than commercial property. He doesn't believe that section could be waived as he views it as being prohibitive. Mayor Marix asked if there was a difference between a psychic, a healer or psychoanalyst. Mrs. Norcross stated there was a difference. Mr. Randolph did not believe this could be done in a residential district. Mrs. Norcross pointed out she was an employee of the Colony. Mr. Ilyinsky asked if this woman was employed by the Colony, would that make any difference? Mr. Heeke asked if she was going to continue as an employee and not as an independent contractor? Mrs. Norcross repeated she is an employee of the Colony.

Mr. Moore stated it is a very fine line but it was his understanding that Mrs. Norcross was going to be performing her abilities as an employee or as part of an entertainment package, such as a stand-up comic would be performing within the hotel, and that would be permitted. He understood the waiver request was for all of the requirements to open up as an office and he did not think they could do that in that hotel.

Attorney Randolph felt it was important to make the determination that the applicant will be acting only in her capacity as an employee of the hotel and if that is the case, they didn't have to give a waiver, other than to give consideration because of this position which is drafted in the Ordinance to allow her to conduct that business in the Town. He thought they should find out from the applicant whether or not there is any intention on conducting the business with persons on the outside and if they are going to come to the hotel to use these services. He felt if that was the case that would be a commercial use not allowed in that area.

Occupational License at Colony Hotel

Mrs. Wiener stated there was something that she was not understanding as they do not permit hotels in residential areas to advertise their restaurants or anything else they may provide, however, it is open for everybody as if she wants to go to that restaurant, they are not going to turn her away, and she views this as the same thing. Mr. Randolph did not know if it was the same thing. Mrs. Wiener recalled there was a beauty parlor there and there are people who don't live in the hotel who utilize it. Mayor Marix recalled the beauty parlor has an entrance to the street and has signs in the window, which make it even more complicated. Mr. Moore reported it has been grandfathered in as it has been there a long, long time.

Mr. Heeke asked Mrs. Norcross how she would be functioning in her business? Mrs. Norcross responded she gives lunches twice a week at the hotel free of charge and views herself as an "educator" and it is open to the public through the hotel. She is a resident at the hotel and at the moment she has a television program through Comcast, so she supports the community and it is advertised in commercials for the hotel. She is asking basically to be available for people for private readings. She doesn't go out and solicit and is not a fortune teller and considers it a dignified profession. She advised when she reads for someone, it is done in privacy in an office-type atmosphere. She will continue to reside at the Colony Hotel, if she has to, and do her lunches and radio show and television and support Palm Beach but will go across the bridge to have the private readings.

Mrs. Norcross stated she does have an excellent reputation and knows people who live in Palm Beach will be upset to travel across the bridge when she could be available to them in the Town. Mr. Heeke asked if she was compensated by the hotel to which Mrs. Norcross responded she is paid weekly by the hotel. Mayor Marix asked if she goes into the hotel and buys a drink or dinner, she can do that from those employees who provide that service or she can go there to have her hair done and would pay the beautician to do her hair, but she cannot really see why Mrs. Norcross is here as it is the same thing.

Attorney Randolph explained the Ordinance states: "No person shall engage in the business or profession described in this article in any portion of the Town without that portion thereof zoned, under the Town's Zoning Ordinances as commercial property." Mr. Randolph believed Mrs. Norcross was coming before the Council stating that in addition to being an employee of the hotel, she wants to deal with her customers and that is why the waiver is being requested.

Mrs. Douthit asked if she would be doing any personal advertising? Mrs. Norcross stated she would not as everything that is advertised is in connection with the hotel.

Mr. Weinberg asked who would he pay if he sought the services of Mrs. Norcross? Mrs. Norcross stated she is working that out. She stated if it has to go through the hotel, she would do it. She isn't doing anything for the past six weeks as she has stopped everything as she wants to be sure what she does is done right.

Mr. Moore stated the first issue is in order for her to practice her profession, she must come to the Council and the place of practicing, the staff and Town Attorney are saying is that as part of the hotel operation, she can function in the same capacity as an entertainer. He stated the television show and radio show go way beyond the intent of the commercial uses allowed.

Mrs. Wiener believed that was something that was now being studied by the Zoning Commission, so all the hotels in the residential area may have different regulations after the Zoning Season. Mrs. Wiener believed the first thing they needed to do is to make a decision as to whether or not Mrs. Norcross can practice her profession as a psychic in this Town and she moved that Mrs. Norcross be permitted to practice in this Town. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Moore commented it was his feeling that the only way she could practice her profession would be as in an entertainment capacity. Mr. Ilyinsky noted she works for the Colony, so she would not be required to do anything further. Mrs. Wiener thought it might be a good idea to have the Colony write a letter that she is an employee of the hotel.

Mayor Marix asked if she could have the same category as a masseuse? Mr. Moore stated a masseuse would be a customarily incidental use of a hotel in the South Florida area. Mayor Marix stated if she is an employee of the hotel, why do we have to say she is an entertainer? Mr. Heeke responded it would depend on the category. Mrs. Wiener asked Mrs. Norcross if she had any problem being officially listed with the Town as an employee of the hotel and as an entertainer? Mrs. Norcross stated she had no problem with being listed as an employee, but she is not an entertainer and she doesn't wish to step back in her convictions. She knows they really don't know what to do with her as it is a different category, but she hoped someone would find an answer to the problem. Mr. Randolph did not think she needed to be categorized. Mr. Moore responded they couldn't give her a license to do the television show or the radio show at the hotel. Mrs. Norcross stated she is not doing that at the hotel but at the television studio. Mr. Moore noted any advertising would be in conjunction with the hotel.

XIII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR OCTOBER 1992 - Motion was made by Mrs. Wiener, seconded by Mr. Weinberg to approve the Warrant List and Fund Expenditures. On roll call, the motion carried.

XIV. DEVELOPMENT REVIEWS

Major Matters - Architectural Commission

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of October 28, 1992 - Motion was made by Mrs. Wiener to approve the Major Matters considered by the Architectural Commission at their meeting of October 28, 1992, with the exception of Item B-31-92, New Residence and Accessory Structures for Ocean Bay Development, Inc., 910 South Ocean Blvd. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

The major matters were:

B51-92 - Demolition and new residence for J. Sirigotis, 256 Miraflores Dr. - Deferred.
B68-92 - Remodeling of residence of Robert and Lynn Fessler, 1015 S. Ocean Blvd. - Approved conditionally.
B18-92 - Landscape plan and materials for Agnes Rosenthal, 745 North Lake Way - Approved

conditionally.
B73-92 - New residence for Sidney Kimmel, 1020 N. Lay Way - Deferred.
B74-92 - Awning at Lee Haven's Fine Jewelry, 235C Worth Avenue. - Approved conditionally.
B75-92 - Remodeling of store front at Mondi's, 226A Worth Ave. - Deferred.
B79-92 - Renovations on residence of Paivi Alperson, 157 Everglade Ave. - Approved.
B76-92 - Remodeling of entryway to store entrance for Love Realty, 319 Worth Avenue - Approved.
B12-91 - Landscaping for residence of Mr. & Mrs. Eugene Applebaum, 325 Via Linda - Approved conditionally.
B62-91 - Landscape Plan for Agi Rosos and Jacques Have, 101 El Bravo Way. Approved conditionally.
B79-91 - Gates for residence of Michael Burrows, 1495 N. Ocean Blvd. - Removed from the agenda.
B84-93 - Demolition and new residence for Mr. & Mrs. James Stern Zisson, 1679 N. Ocean Blvd - Approved demolition with conditions - deferred the new residence plans.
B85-92 - Addition to second floor for Jeffery W. Smith, 241 Sanford Ave. - Approved.
B86-92 - Demolition and removal of one story structure, etc., for Kirk Friedland, Trustee, 200 Esplanade Way. - Approved.
B87-92 - Demolition of two story house at 240 Australian Avenue. Applicant: Brazilian Development Co., Inc. Approved.
B88-92 - Addition to residence of Mr. & Mrs. Ronald Ferrer, 218 List Rd. - Approved.
B89-92 - Gates for residence of E. F. Hanson, 1300 S. Ocean Blvd. - Approved.
B90-92 - Addition to residence of H. Z. Rosner, 505 S. County Rd. - Approved conditionally.
B91-92 - Entry to residence of Joe Champ, 318 Via Linda. Approved.
B92-92 - Addition to residence of Luis and Lillian Fernandez, 246 Eden Rd. - Deferred.

Mr. Heeke stated they will now discuss B31-92, new residence and accessory structures at 910 South Ocean Blvd. Mrs. Wiener stated she has received several complaints about the ingress and egress from Via Bellaria onto this property for the service building. She thought this needed to go back to the Architectural Commission to have this question resolved and she so moved. B31-92

Attorney Doyle Rogers addressed the Council on behalf of the applicant, noting the only item up for review would be the final approval for the residence at 910 South Ocean Blvd., which faces Clarendon Avenue. He advised this application has been under review for seven months and at the last Architectural Commission meeting, it was given final approval and that is the only thing up for Council review. He reported the Via Bellaria area has not been completed and they are not prepared to discuss that as there is no final design as yet on that building and it will have to go to the Architectural Commission for the design and the site plan, at which time all of the residents on Via Bellaria will receive notice and have the opportunity to attend the Architectural Commission. Mrs. Wiener knew they were piecing something together here and perhaps it should be considered. Mr. Rogers advised they do not have a Site Plan or design on the Via Bellaria prepared as yet. He felt it was unreasonable and unfair to hold up this project which has been through the process for a seven month period and which needs to go forward in order to have the work completed within a reasonable time. Mrs. Wiener did not feel it was unfair or unreasonable as the number of residents on that street are quite concerned. She is not trying to hold this project up, but she has a concern. Mr. Rogers responded he too has a concern as to why these residents did not express their objections earlier, recalling one of the residents come to his office to view the site plan and they didn't come back to him to voice any objection.

Mr. Moore reported the matter has been in front of the Architectural Commission for almost seven months and exclusively it was for the property at 910 South Ocean Blvd. He advised that subsequently the applicant obtained the property at 151 Via Bellaria and initiated some changes in the Site Plan in the use of the property at 910 South Ocean, the Lucom property, as well as the Via Bellaria property. He commented that the guest house and the employees' quarters were moved from the Lucom property and put on Via Bellaria with one new structure to be constructed for the domestic employees and a remodeling of the existing single family residence which is proposed to be the guest house. He stated that in the acquisition of this property, it has been pointed out that they have not noticed the properties which would be affected within 200' of the Via Bellaria property and they will give notice to them when this Via Bellaria property is considered by the Architectural Commission.

Mr. Moore commented it is his opinion that with the proposal for this property on Via Bellaria to be now included in the project, there should be an unity of title for both properties and there may be a problem with that, however, zoning wise, in order to have accessory uses on the property, there must be a principal use and a unity of title would be necessary. He stated that as a result of the change in the original plan, the service entrance which was once to be maintained on the 910 South Ocean Blvd. site is now proposed to come across the Via Bellaria property and that has caused some concern to the neighbors on that street.

Mr. Heeke noted there were two motions made by the Architectural Commission and the first was to approve the buildings on Clarendon Avenue and South Ocean Boulevard with the condition that the landscaping plans be presented at a later meeting and he asked if the Council wished to deal with that issue. Mr. Rogers requested permission to respond to Mr. Moore's comments on the Unity of Title as they intend to do that but wish to have final approval of the other area before they provide the Unity of Title. He announced there has been no decision made that service will come through Via Bellaria and the hearing at the Architectural Commission will have a lot to do with that decision. He is meeting with the principal owners of the properties at Via Bellaria next week. He urged Council to approve the recommendation of the Architectural Commission on the 910 South Ocean property and they will come back on the Via Bellaria issue at a later date.

Mr. Randolph advised the Council he believed the request being made of them today is to look at these two properties independently of each other and give them final approval on the property at 910 South Ocean Blvd. and consider in the future the concerns on 151 Via Bellaria. He didn't see how these can be viewed as two separate things when the intent is to tie them together by Unity of Title. He stated his concern was what the applicant's position going to be in the event final approval is given to the 910 South Ocean Blvd. today, and leaving the access problem and the Via Bellaria property to a future meeting because that hasn't been finally approved and then the situation could be, based upon the final review of the Via Bellaria property, that there will not be access from Via Bellaria but at the South Ocean Blvd. property, then the applicant could say final approval has been granted on the 910 South Ocean Blvd. and that the Town would be estopped from coming back, and his advice would be for the Council to look at this as one total project.

B31-92

Mayor Marix wondered why they couldn't give the approval for 910 South Ocean Blvd., with a provision that if they don't have access from the Via Bellaria property, they would have to waive their rights for the 910 property and they couldn't use as an excuse that they have already spent a lot of money on the project.

Attorney Robert Deziel addressed the Council pointing out it is the nature of our Building Department's process that requires them to do what they wish to do today. He pointed out in the County if they were wanting to build a project like this, they would go and show them the footprint and appear before them once and that would be the end of it, however, in the Town, they have been working on this project for over a year and it could take seven more months to get approved the other two buildings. He pointed out as far as approving what is before them today and the possibility of being estopped when they bring up Via Bellaria, he stated they really don't know what they want to do there as yet. He felt when they were ready to discuss those issues, they will meet with the neighbors and come up with solutions they need to address on Via Bellaria.

Mr. Randolph responded it is difficult for him to recognize with all that has gone on at this point, that they should blindfold themselves to the fact that indeed there is going to be some tie-in of the two properties. He stated if the 910 South Ocean Blvd. can stand on its own and they can be assured there will be no tie-in, then perhaps they should deal with them independently, but what has been before ARCOM is the two properties, not independent of each other, but with the thought in mind at one point that they would be tied together. He realizes they are not tied together yet, but if the accessory buildings do go on the Via Bellaria property, there will be a requirement for Unity of Title. He realizes the applicant does need to go forward, and if the Council wishes to go forward on this, they need to have a representation that if anything happens on Via Bellaria, the Town won't be estopped from addressing those concerns at a later time, because they have given final approval today on a portion of the project.

Mr. Rogers responded they would definitely make that representation. Mr. Deziel asked the Council to think about the message they are giving to them, as lawyers, as the day they knew their client would acquire the Via Bellaria property, that information was shared with Mr. Moore and Mr. Zimmerman and they left them know everything that was known about the project. He believed they had laid all their cards on the table and stated when all of the things come up in the proper sequence, they will participate in that sequence and that would be according to the Code, which states they should be able to do what they want to do today.

Mayor Marix asked if, with the correct wording, they could approve this and if something goes wrong with Via Bellaria, a solution would be found to handle that, and she thought this should be approved as if anything does go wrong, they have agreed to work with the Town, and she wouldn't want to see them wait another seven or eight months to get started. Mr. Randolph's response was if this approval can stand independently on its own, without consideration of the integration of the Via Bellaria property, he sees no reason why they can't deal with it on its own, but he hasn't seen that to be the case, prior to this meeting.

Attorney James Brindell addressed the Council on behalf of several property owners on Via Bellaria, George Mann, Michael Kent and Ned Cook, and others. He wished to clear up one thing with respect to where this project is at this point in time, as he has heard the comment today that they weren't sure what they were going to do on the Via Bellaria property as they had just finalized the Clarendon part. He went over the files and found a Site Plan which showed both properties and he researched the Architectural Commission minutes, which recite that Mr. Rogers asked for final approval for the main residence and the buildings on 910 and are seeking conceptual approval for the entire site, including the Via Bellaria property, although detailed plans were not yet available at this time because of the zoning questions which must be addressed before the architectural plans are drawn. He felt the Site Plan, which they did receive conceptual approval on, and his clients were not properly noticed for that, and this deals with the ingress/egress issues and it is clear to him that there is an obvious relationship between all the parts of the properties, which makes sense to him as it should be that way. He commented his point is that it isn't quite accurate for them to say they don't have a Plan as they do and it was put before ARCOM and it is in the Town files. He felt when they are talking about having a main residence on one street on a lot and then have a guest house and staff quarters on adjoining lots, the question is can the Via Bellaria structures be treated as stand alone units and that is the problem they have when artificial lines are drawn between these lots. He stated it wasn't as if the Clarendon property was going to be done this year and then next year, they acquire these other parcels and come back to the Council to request joining them up with the Clarendon parcel and do a guest house and staff quarters on there, and that is not the situation here. He hoped that in the spirit of good neighbors, they would be able to solve the issues with them this week and that should not delay them seven or eight months, as the issues are straightforward.

Mr. Brindell recalled hearing Mr. Rogers state that on the access issue, they haven't decided that it is all going to come off of Via Bellaria, which suggests to him that they may come off of Clarendon, so there is confusion here and that is the kind of confusion you get into when you know there is not a uniform plan and it is not being dealt with as a unity. He urged the Town Council to send this back to ARCOM to take up as expeditiously as possible the finality of the Site Plan and Building Plans for the entire property. He believed the applicant does know what they intend to do and there will be some issues about the guest quarters, for instance, as if they are going to stand alone or not going to stand alone, there are issues there which relate to how the staff quarters will relate to Via Bellaria and how is it going to relate to the entire property.

Mr. Brindell announced it was his opinion that it would be a lot cleaner from the standpoint of the approval process and legally, to deal with this as one project, as he felt in fact that is exactly what it is.

Mayor Marix agreed with Mr. Brindell that if it was only a matter of meeting with the people on Via Bellaria and coming back next month, that should not be of any trouble to anyone, but she thought the complications of what it is going to look like has taken a long time, however, talking about guest houses not on the same property, she recalled Mr. Peltz having a large guest house across the street from his home. Mr. Brindell felt one of the points here is that this particular project is a very large project and it is important to see all of this as one project and to understand the relationship with the other parts and the total impact it will have on the neighborhood. He felt that was the course of things here, and it was not something that was happening by happenstance sequentially. He stated he didn't mean to infer it couldn't be done. Mayor Marix recalled the home that they are proposing to be the guest house was Mrs. Haupt's home

and it is a beautiful home and she hoped they weren't thinking about tearing it down. Mr. Brindell responded they wish to renovate it not tear it down but they also wish to build staff quarters.

Mr. Rogers asked what their basic objection was as he didn't believe it should not affect the 910 property. Mr. Brindell responded the main objection is the service quarters which essentially is serving a Clarendon residence to now be shunted to Via Bellaria. He commented he could not tell from the records whether the architectural plans which have been shown for the staff quarters were originally shown on the northern half of the property are in fact going to be the same ones, but the biggest issue is the access issue for service which he viewed as interrelated because in the Site Plan the roadway system interrelates both halves of the property and he recalled Mr. Rogers stating that he didn't know for sure if it was all going to come off Clarendon or Via Bellaria, which says to him that the access issue, even in the approvals granted by ARCOM apparently were not final and that is one of the issues that should be taken into consideration. B31-92

Attorney Deziel addressed the Council noting there is a service access on Clarendon, and he agrees with Mr. Brindell about his clients' concern about what the staff quarters look like, and they will be meeting with them later in the week. He pointed out the staff quarter renderings where they were prepared to go to ARCOM could be three or four months away and that is the whole point, as some of the things that Mr. Brindell is concerned about are so far down the road.

Mr. Rogers believed they could eliminate some of that concern with regards to service and traffic into the properties. He stated Laird Pitts, who is the owner's representative will represent the service road on Via Bellaria is already there now and it is not a new access at all, and will service only the Via Bellaria property and the access on Clarendon will service the main residence.

Mr. Pitts addressed the Council stating he does understand the concerns expressed by Mr. Brindell and his clients, but it is difficult to address something which has not even been conceptually identified themselves. He stated at their meetings before ARCOM, they requested conceptual approval of mainly where the buildings were located and wanted to make sure ARCOM was comfortable with that relative to Via Bellaria, and they have a service access to the Clarendon site and whether or not they use the Via Bellaria site to service only Via Bellaria or not, if that is the concern to the Via Bellaria residents consistent with everything else they have done with the Town and the neighbors, to include Mr. Kent and the neighbors on Clarendon, they have acquiesced and dealt with their problems and he will assure the Council today that if that is the concern, and as the project manager, not only for the construction but for the management of this project subsequent to construction, he will insist that all service off of Via Bellaria is for the residence on Via Bellaria and all service for 910 will be only for the 910 S. Ocean Blvd. site.

Mr. Heeke asked Mr. Brindell if that would satisfy him to which Mr. Brindell responded it could very well do that, if in fact the Site Plan were changed, as it now stands, it does show an interconnected system. Mr. Pitts responded he does appreciate those comments but must respectfully disagree as he knows how the client feels about these types of issues and that managing the property if that is the request of the Council and the neighbors, they will deal with it, just as they did with the tidal basin and Mr. Kent's issues, and that will be the procedure and they will establish service only for the Via Bellaria sites and 910 will have its service and he will insist that that is the way it will be done.

Mr. Rogers commented he felt they were being pressured by the people on Via Bellaria who never attended the Architectural Commission meetings on this subject in the past and they know there will be Architectural Commission meetings in the future for approval of the Via Bellaria site and he felt it was unreasonable not to approve this after the length of time they have spent on this project. Mr. Brindell responded there is no guarantee that this particular owner will continue to own this property forever and that it will be managed as has been suggested here, and the Town has a concern when it looks at projects of this type as to what will be the future of the property and how will it be used in the future. He thought it was contradictory to argue conveniently when it is convenient that this is all one plan and why didn't his clients show up when it was all for the top half and not the south half, so they didn't really need to show up as it is two separate projects and then they will tell us that they needed to have this connection, as they needed to circulate as it is all one project. He has a hard time figuring out when it is all one project and when it is two projects, although he appreciates what they are trying to accomplish and assured the Council that his clients had no intention to stall the project as that is not their objective, and actually his clients are very impressed with the project, however, they do want to get some resolutions and he didn't think Mr. Pitts' suggestion was a satisfactory solution. He truly believed that this is a solvable point and it is not solved by a Site Plan, so either it is one project or it isn't. He commented that if it is a stand alone project, they do not need the interconnection and if they need the interconnection, then it must be one project.

Mayor Marix believed that since the second part is going back to ARCOM and will end up eventually before the Council, it would seem that if the residents on Via Bellaria are not happy with the final solution, that would be the time the Council would resolve it by stating the only way to solve the problem is to stop the circulation between the two properties and that probably would not happen but in the eventuality it should, she didn't think that needed to happen now as that condition can always be put on later, as what the applicant wants to do now is start working on the northern bit.

Attorney Randolph thought there was a legitimate question, even absent an objection by the Via Bellaria property owners, of whether or not this project should be approved on a phased basis. He thought the real question was since the property is going to be tied together by Unity of Title and since it is ultimately going to be one project, the real question is whether the Council wanted to deal with it as two separate projects and whether they wanted to give approval today of one project without ultimately knowing what will be happening with the whole property. He is not telling them that legally they cannot do it nor is he telling them that they legally can't give a phased approval to one project in order to accommodate a property owner, as long as the Council knows that phased approval is not going to somehow affect the remainder of the property. He thought they needed, for purposes of consideration, whether they wanted to approve this project before them today and perhaps even discount where the objection is coming from, or the fact that it relates to an ingress and egress and a determination be made as to whether or not it is appropriate to approve a part of this project today and leave independent consideration for the remainder of the project at a subsequent time.

B31-92

Attorney Deziel reminded the Council that at the Architectural Commission meeting, they were told that they would not review and give final approval on their Site Plan for Via Bellaria until the structures on Via Bellaria were approved, therefore, all the drawings have to be prepared and presented and it will take a minimum of perhaps six months to get the structures approved. He stated they do have two pieces of a puzzle and they know what the bottom piece is and have proposed a top piece to the puzzle but have not finalized it as yet and another one of the appointed bodies has told them that because of the way the system works, it probably will take three to six months to get the top piece finalized. He thought if they approved the bottom piece today, they are only approving the road that goes east and west and they are not approving any intra-property vehicular access or anything like that and he didn't want this to drift away from what they are here for today, and that is for the 910 property.

Mr. Rogers believed they would have further problems if they didn't get started on the main residence, such as the Coastal Construction Control Line.

Mr. Adrian Winterfield addressed the Council stating that the reference to two separate properties is just a tad disingenuous. He stated the reason the second property was acquired was there was not enough room on the 910 property, as the guest house and the staff quarters were originally planned to be on the 910 property and when it became apparent there was reluctance to approve the structures proposed to go onto that property, that this alternative was considered. He stated his problems with the project are the staff quarters, wondering if that was a normal accessory use and he thought this should have first come before Council for a decision on that subject and there should be no consideration at all by ARCOM until the Council decides that question. Mr. Winterfield wondered if anyone asked about the occupancy of this single family residence and whether it will be a single family or would it be something else. He recalled there was a provision in the Ordinance which prohibited employee executive retreats which distinctly prohibited the use of a single family residence by more than one family.

Mr. Philip Engelhardt addressed the Council noting as he listened to the presentation, he believed if as Mr. Rogers has stated the approval of the 910 could be had, were it not for the discussion on Via Bellaria, that the 910 project could proceed as is, and it seemed to him that Mr. Rogers' client would bear the burden of not making the project acceptable when they enter the next phase, and would be stuck with two parcels which could not be joined, and that is a economic risk and is greater than any stick the Council could hold over them, as he has the investment in both parcels and either will be able to use them the way he would like to or he could not, and if they want to use the parcels jointly, they would have to apply for something that would be accepted at that time and the financial exposure would be increased if he was made to wait at this time. He felt the only issue of concern in Mr. Randolph's comments, is by granting the permission at this time, the Town might render itself estopped from further interference later. He believed if the Via Bellaria parcel does not come into some kind of compliance with acceptable standards at that time, the granting of the permit at this time, would not be used against the Town to try to prove damages against the economic loss that would then ensue on Bellaria and that is the risk that the principal has to be prepared to take. and if he fails to be approved on Via Bellaria, he would have two single family sites.

Mrs. Elise Mackintosh addressed the Council stating she felt the Council should be thrilled that such a project is going to take place and it will be all under one owner, instead of subdividing this property. Mr. Heeke responded the real concern is the neighbors on Via Bellaria who have a concern of increased traffic, etc., on their street. Mrs. Mackintosh responded there could have been ten homes there on ten lots, which would produce much more traffic. Mrs. Wiener commented they don't really know about that. Mayor Marix disagreed stating she thought it would have been massive traffic. Mr. Rogers stated he appreciated the comments and he thought the Town would appreciate it also as they have tried to conform to the rules and regulations and make this a nice residence in the Town.

Mr. Rogers responded to Mr. Winterfield's comments noting the original plan covered less than 20% coverage and it just happened by coincidence that the Haupt property came onto the market during the time they were before Architectural Commission and his clients saw the opportunity to have more property and spread this project even more, and have a guest house and an extra lot for staff quarters. He stated it would be designed as a private residence and only one family would reside in the main residence and that is why they have the guest house. Mr. Rogers pointed out they have not opened up any access that does not already exist and are not asking for curb cuts, and as a matter of fact, they are closing a curb cut on South Ocean Boulevard and he urged the Council to consider the final approval of ARCOM on the 910 South Ocean Boulevard property.

Mr. Brindell asked if there is a document which shows this final approval? Mr. Rogers responded they have gone through all of the elements of this Plan, except for the Beach House, which requires a Special Exception. Mr. Brindell pointed out that they could say the final approval for the north half stops at the property line but the problem is there is a dead end road abutting on the next property and it looks like there are backing stalls adjacent to what will be the staff quarters and part of the plan has been finally approved by ARCOM and part has been conceptually approved by ARCOM, and he appreciated their representation that all of this can be controlled, but the question he has is whether the Council can impose a condition that is enforceable by the Town that effectuates that, as he doesn't believe a word condition can do that effectively and the only thing that can do that effectively is a modification of the Site Plan.

Mayor Marix believed they were all a bit in agreement that either ARCOM and then the Council, if the Plan on Bellaria doesn't meet with everybody's general approval, that is when they would say the road can't go through and if it does get approval, that wouldn't be necessary, but the control would be put on when the problem appears. Mr. Brindell suggested if that is the route they wish to take, he urged them to counsel carefully with their Town Attorney to make sure that condition is crafted very well to be effective. Mr. Rogers thought that would be after ARCOM approves it. Mr. Brindell did not think so as if they decide to take final action on the north half, there would have to be some condition on that approval that relates it around this issue to whatever comes later on the Via Bellaria property.

Mr. Ilyinsky commented he didn't think any of them would ever see another project like this and this is a special situation which requires unusual solutions and he agreed with Mr. Brindell about the condition. He understands the problems which the Via Bellaria neighbors are experiencing with regards to how many people would be living there. He would be willing to treat this as two entire separate projects if in the motion there would be some language that there couldn't be anything done on Via Bellaria until total approval is granted.

Mr. Randolph believed that was already understood that nothing could happen on Via Bellaria, but the real concern is with regards to the 910 South Ocean Blvd. property and he didn't think they could treat these as two independent projects. He believed if they wanted to, on the basis of the approval of ARCOM has given, and they want to give a phased approval to the first portion of this project subject, however, to the applicant not using that approval as an estoppel against the Town for anything that may be required to be done on that phase as a result of the final approval of Via Bellaria, he thought they could do that.

Mr. Heeke believed they had to do that as he didn't believe it started intentionally as a phased property but has worked itself around to that as the practicalities and the facts have developed.

Mrs. Lesly Smith representing the Architectural Commission addressed the Council pointing out that it came in as a phased project because it was a phased project. She stated they looked at this for months and reviewed every plan and had the full cooperation of the owner. She recalled the comments of Mr. Engelhardt, who introduced there could be a threat of a lawsuit, and she advised there was never any threatening that went on. She commented that the Architectural Commission never backs down and there have been many people who have appeared before them and happily accepted the delays that went on with their plans, so the Council can be assured that ARCOM will make sure the project is compatible. She advised 910 South Ocean Blvd. project started almost a year ago, and there was access from South Ocean Boulevard and there was the guest house to be considered, there was the garage, the staff quarters and they went over it inch by inch as it was presented to them. She recalled the entrance from South Ocean Boulevard was closed up as there was concern about that being the service entrance onto a main road so the plans were redone and the entrance was moved to Clarendon, where there are three or four entrances. She recalled at the last meeting of ARCOM, the Via Bellaria part of the project was submitted to them for approval and there were no elevations, but in effect, it has now become one major project.

Mr. Rogers asked if the condition would be a condition precedent to the approval of Via Bellaria to which Mr. Heeke agreed. Mr. Randolph advised this needs to be a condition on the 910 South Ocean Blvd. property of that phase as Via Bellaria is still before the Architectural Commission for conceptual approval.

Mr. Ilyinsky moved that the Council approve the 910 South Ocean Boulevard phase, previously approved by the Architectural Commission; subject however, to the applicant's representations that said approval shall not be used as an estoppel argument against the Town in the event future requirements of the Architectural Commission and the Town impose modified requirements on the project as a whole, including this particular phase.

Mr. Randolph commented that if they look at the project as a whole later on, and they believe there would have to be another access, the fact that this particular phase has been approved, they wouldn't be able to use that as an estoppel against the Town imposing a future requirement, once they had an opportunity to review the entire project. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

B. Variances, Special Exceptions and Site Plan Reviews

New Bus.

<u>New Business</u>

Var.65-92

1. Variance No. 65-92 - D. Mead Johnson, 1550 South Ocean Boulevard; to allow construction of a trellis roof over an existing third floor balcony thereby expanding a height nonconformance. R-A District. Attorney Gus Broberg addressed the Council on behalf of Mr. Johnson, noting this residence was part of the Lagomar Estates, and this property from time to time was considered to be a two story house, however, under the current Zoning Ordinance, since the first floor is only two feet below the level of the ground, the Building Department has deemed it to be a three story residence, which is a nonconforming situation in the R-A zone. He recalled there was a balcony construction opposite the floor level of the third floor and at that time, the Town did not require a variance in order to build the balcony, and now his client wishes to have this roofed in with a trellis roof, which would remain open at all times and he exhibited a picture of what was being requested. Mrs. Douthit asked if Mr. Broberg's client would be amenable to signing a document that he will not enclose the walls to which Mr. Broberg agreed. Mrs. Douthit moved for approval of Variance No. 65-92. Seconded by Mr. Weinberg. Mr. Heeke noted it is a long narrow lot that has unusual topography. On roll call, the motion carried unanimously.

Var.66-92

2. Variance No. 66-92 - Hans Pade, 695 North Lake Way; to allow the installation of driveway gates setback 7 1/2' in lieu of 15' required from Cherry Lane, the street side yard. R-B District. - Andre De LaRoche representing Mr. Pade addressed the Council indicating the main entrance of this property is on North Lake Way and the columns were approved when the house was built for the Cherry Lane entrance and because it is a narrow lane, there is a question whether it would block the traffic as there is an intercom there. He stated they will put a sign on that gate asking all traffic to use the North Lake Way entrance and the gate will be closed for security and for the aesthetics. Mrs. Wiener asked if they could get a letter from the applicant on that. Mrs. Douthit asked if they could reduce the variance and have it set back more than seven and a half feet. Mr. De LaRoche responded the columns are already there and that would be difficult. Mr. Moore advised the columns were approved but not with the concept that there would be a gate. Mr. Moore identified that this is not a primary entrance and a partial setback is being provided and Cherry Lane is not a heavily travelled thoroughfare and he has no objection to the application. Mr. Ilyinsky moved for approval of Variance No. 66-92. Seconded by Mrs. Wiener if there was a condition that the owner write a letter that a sign will be erected directing visitors to the primary entrance on North Lake Way. Mr. Ilyinsky accepted the amendment. On roll call, the motion carried 4-1, with Mrs. Douthit voting against the motion.

Var.67-92

3. Variance No. 67-92 - S.J. Alfred, Trustee, 220 Eden Road; to allow applicant to separate the two lots permitting the existing residence to provide a 10' side yard setback in lieu of 15' required. R-B District. Atty. Robert Deziel addressed the Council on behalf of the applicant, which is a Trust and the beneficiaries are Jim

and Dennis Hanrahan. He stated the home was designed by Maurice Fatio in 1936 and has had two additions, and has been owned by his client for the last ten years. He pointed out the characteristics of the property are it has 220' of frontage and 140' of depth, and split down the middle with no other structures it could accommodate two residences in this R-B District. He stated they wish to demolish the hatched areas exhibited on a plan so they can be at a point where they would be requesting a minimum variance and then get to the original Fatio structure. He stated with the demolitions, even though the application says ten feet side yard, he noted two feet of the jog is a fireplace and he believes they are allowed to have a minimal encroachment into the setback. Mr. Zimmerman confirmed that fact. Mr. Deziel advised instead of the ten feet, the variance would be 11.5 in lieu of 15' required. He stated this will provide them with a fully conforming lot which will be available for resale. He advised the house has been on the market for one year and they have had no prospective buyers except one who wished to demolish the entire house and have two salable lots. He thought they had gone to great pains to offer this minimum variance and asked for approval. Mr. Heeke noted they have reduced the nonconformity to which Mr. Deziel agreed. Mrs. Douthit asked if they would be willing to add onto the new lot the fifteen feet plus the 2.5'. Mr. Heeke noted she was talking about a deed restriction on the other parcel, which would make up the 3.5'. Mr. Randolph noted that would require the 18.5 setback on that side, which would be the regular setback plus the 3.5', to which Mrs. Douthit agreed.

Attorney Deziel acknowledged that concern but he pointed out it is tough enough to sell a lot and he thought they were already doing a lot with getting rid of a lot of the nonconformity and he realizes what they want has merit and would create 30' between the two houses, but he requested them not to place that additional restriction on them, as they want to sell the lot and get on with the restoration of the main house. He noted the new house would have a required 30' setback and the house on the lot has a 25' setback, so this will be staggered a little bit, and additionally the house across the street from the vacant lot has two ten foot sideyard setbacks. He advised the neighbors on either side have been contacted and they have no objections to the granting of the Variance. Mayor Marix believed anyone who buys that lot to build a house would be very happy to not build it too close to the other house.

Mr. Heeke believed it was a reasonable request and he didn't think 3.5 was too severe to ask for as they would still have 100' frontage. Mrs. Wiener moved the Variance No. 67-92 be approved. Seconded by Mr. Weinberg. Mr. Heeke asked if that was without the 3.5' requirement to which Mrs. Wiener responded it was. Mr. Randolph recalled he heard the statement that this application if granted would make the property more conforming and he asked if by dividing these lots, there was a nonconformity being created which did not exist before? Mr. Heeke stated that was correct and he felt they should make it up on the other piece of property and he would not vote for the motion in the present form. Mrs. Wiener pointed out they would be saving the Fatio home and bringing it into some conformity. Mr. Heeke agreed that was wonderful, but that is a totally buildable lot and he can't see that 3.5' on the property line would be a problem.

Mr. Moore noted that when they calculated the figures from the survey provided by the applicant, they show the setback is 10' from the property line rather than 11.5' as stated by Mr. Deziel. Mr. Deziel responded when he originally submitted it, he was measuring to the chimney and he produced a survey which showed the 12.1' figure. Mr. Zimmerman advised the 12.1' figure is not the setback but the length of the wall. Mr. Deziel agreed as the wall just straddles the property line and that is why it is 11.5' and not 12.1'. Mr. Zimmerman pointed out there are sufficient dimensions on the survey and when they are added up, they will end up with a 10' setback, excluding the chimney. Mr. Deziel stated he had a professional scale it for him at 11.5' and he guessed that was a mistake. Mrs. Wiener withdrew her motion.

Motion was then made by Mrs. Douthit that the division of the lots be granted and the difference between the actual setback and the 15' necessary will be made up on the westerly portion of the lot, by way of a deed restriction. Seconded by Mrs. Wiener. Mr. Deziel asked if they would consider an alternative and that would be to add the 3.5' on the western side of the main house and always require a 18.5' sideyard setback on the sideyard of the main house? He knows that will not allow 30' on the east side, but they will have the sideyard setback. Mrs. Wiener asked if this would be more of a variance to which Mr. Deziel responded negatively. Mrs. Douthit did not agree. Mr. Deziel pointed out this whole variance is on the east side of the house and they made the motion to have an additional whatever it takes to make up the proper setback and he is asking them to consider just leaving it at whatever is there and taking that setback and putting it on the western side of the house, and in that way the house will always have 30' of setback and what that accomplishes is the owner will bear the burden of having an additional setback on the side where they could build out an additional ten feet. Mrs. Douthit did not agree. Mr. Heeke and Mrs. Wiener did not agree.

Mr. Deziel advised they don't need a variance to do what the new motion says and they could give an easement to the new neighbor as they would have a lot which is in compliance with the Code. Mr. Moore did not agree that they would have the 100' frontage which is required. Mr. Deziel withdrew his request.

Mr. Heeke summarized the motion which is to have a deed restriction on the new property and have sufficient feet added to create the 30' feet between the two structures on the common border. Mr. Randolph pointed out it would be either a 20' or an 18.5' setback. Mrs. Douthit felt it was still a perfectly proper buildable lot. On roll call, the motion carried unanimously. Mr. Deziel asked if this had a one year life and it was effectuated by the sale of the new lot. Mr. Moore stated this would be valid for one year. Mr. Deziel asked if the lot was sold within a year, right that day, they took advantage of the variance to which Mrs. Wiener agreed. He stated if they don't want the variance, they let it lapse. Mr. Randolph did not think they could say they could sell the lot eleven months from now and they would still have a year from that point to have the variance in effect, as this variance is good a year from today and if they need an exemption, they will have to come back to the Council.

Mr. Moore advised they would have to record the deed restriction and apply for the demolition permit to demolish the section of the house which is nonconforming within a year from today.

Spec.Excep 29-92

4. Special Exception No. 29-92 - Richard Danton, 326 Peruvian Avenue; to allow a real estate office to occupy first floor space. C-TS District. - Mr. Richard Danton addressed the Council requesting authorization to operate a real estate office at

326 Peruvian Avenue. Mr. Heeke noted there was a letter of objection from Marshall B. Patterson, 320 Chilean Avenue. Mr. Moore stated he did try to reach Mr. Patterson to advise this application has nothing to do with the residential zoning, but has not been able to get in touch with him. Mr. Moore explained the variance application which is the applicant has requested the location of an office on the first floor and he needs to address the Town-serving aspect. Mr. Weinberg asked if the business was not now Town-serving? Mr. Danton responded it is and he is looking to have this space to open the marketing of property directly to the public. Mrs. Wiener asked if all his business was in the Town to which Mr. Danton responded affirmatively. Mr. Moore explained an affidavit would be required to prove the Town-serving, that is more than 50% of his clients are Town-persons. Mr. Randolph advised after that he is required to give an annual up-date. Mr. Ilyinsky moved the Special Exception No. 29-92 be approved with the condition the Town-serving affidavit be provided. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

5. Special Exception No. 30-92 With Variance - Waterhouse Securities, Inc., 450 Royal Palm Way, Suite 501; to allow occupancy of stock broker/financial institution. A variance from the off-street parking requirement, providing 5 spaces in lieu of 6 parking spaces required. C-OPI District. - Attorney David Shaw addressed the Council requesting the Special Exception with variance for parking for Waterhouse Securities, Inc. He stated they wished to open a new office at 450 Royal Palm Way, which is a stock brokerage business and the office will contain 1265 of gross rentable space. He advised his client has submitted the required Town-serving affidavit and it shows the existing client base of 25 Palm Beach residents, and they hope to gain additional Town-persons as their clients. He advised the business does not involve many client visits and the office would allow expansion for no more than two additional employees. He believed under the circumstances it would be appropriate to approve the application as this is a small office with small usage. Mrs. Douthit noted a variance is needed for one parking space. Mr. Shaw responded they have enough parking spaces for their employees and no visitors are contemplated, so they believe under that circumstance they really do not need all of the parking that the Code requires. Mr. Heeke asked if there were other customers which would be serviced by this office from Palm Beach County to which Mr. George Statter of Waterhouse responded they have approximately 1500 clients in the County. He advised the company has 200,000 accounts and 40 offices around the country and its' regional concept is intended solely to stimulate business in the areas it serves and he knows they have 25 customers in Palm Beach but there are many Town-persons who travel to and from Palm Beach on business who will be pleased to have this office. He assured the Council the advertising effort in this office will be solely to increase the client base in Palm Beach. He advised Mr. Waterhouse himself will spend two to four months in residence in Palm Beach and this office will be used by him. Mr. Heeke asked if the other clients they have in Palm Beach County will be serviced from the Palm Beach office to which Mr. Statter responded negatively.

Spec.Excep
30-92

Mayor Marix asked where do the customers in Palm Beach County get their service? Mr. Statter responded they would be serviced by their offices in Miami and Tampa. Mayor Marix believed it would be more convenient for them to be serviced out of the Palm Beach Office to which Mr. Statter responded if that was the case, they would move the account to Palm Beach. Mrs. Wiener explained they needed to have the office in Palm Beach Town-serving which means more than 50% of the customers in that office need to be Town residents.

Mr. Shaw pointed out the Palm Beach Office is a small office and the office is not designed to service those 1500 accounts as the staff in the Palm Beach Office is very small and could not service 1500 accounts. Mr. Heeke pointed out there is an annual statement which must be provided. Mr. Shaw stated they understand that would be a condition of the approval and they are willing to provide that affidavit. Mr. Heeke did not see how they could refuse to service the Palm Beach County clients if they asked to be serviced out of the Palm Beach office, and this would become a regional office rather than a Palm Beach office.

Mr. Statter assured the Council that this office is not intended to be a regional office serving people outside of Palm Beach. He stated they intended to advertise here and do whatever is necessary to build a Palm Beach client base and will furnish the annual reports. Mayor Marix asked why they wouldn't first open an office in a place like Phillip's Point where the Palm Beach residents could easily get to and then after they have a track record, they could move their office to Palm Beach. Mr. Shaw responded their attention is going to be directed solely to the Palm Beach residents and that's why they want this office and that is why it is not a large office as they won't be able to service a lot of accounts.

Mrs. Wiener asked if they were going to have a minimum account to be a certain figure, such as a half million shares or something like that, which indicates it would not be a generally broad retail thing, and they wouldn't be seeking the small investor and this would bring them to a point where they would understand that a minimum of 50% of their clientele would surely be Palm Beachers? Mr. Statter stated he couldn't say if they would refuse someone who wished to trade, for instance, one hundred shares if they were a Palm Beach resident and it was his preliminary thought they would like to have customers that do larger transactions but he couldn't imagine them not including anyone who is a Town-person. Mr. Statter advised most of their business is done by telephone and each account has a designation and if the Palm Beach office would receive such a communication, it would be automatically transferred to the office which has that account.

Mr. Ilyinsky moved the Special Exception No. 30-92 be approved, subject to an affidavit being provided that they are Town-serving and over 50% of their clients are Town-persons, and an annual audit will be filed. Seconded by Mrs. Wiener. On roll call, the motion carried 3-2 with Mrs. Douthit and Mr. Heeke voting against the motion.

Mr. Heeke stated they will now address the variance on the parking space. Mr. Shaw advised they will not have enough employees to use up the parking they have allocated to them and that still allows one extra space for the occasional visitor, so it his thought that five parking spaces are adequate. Mayor Marix asked how much space would they have to give up so they wouldn't need a variance to which Mr. Moore responded 250'. Mr. Shaw responded that is twenty per cent of the space and he didn't think they could do that, and if the Council believes it is necessary for them

to provide one off-site parking space, they will provide that parking space. Mrs. Wiener moved that the Variance for the parking space be granted, with the proviso that the applicant provides one parking space off-site to meet the Code regulations. Seconded by Mrs. Douthit. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

Spec.Excep. 31-92

6. Special Exception No. 31-92 With Variance - Nations Bank, 324 Royal Palm Way; to allow continuation of a special exception banking facility occupying 4,600 square feet and providing the same number of parking spaces as operated under the NCNB name. C-OPI District. - Mr. Moore advised this is a name change and the fact should be addressed by their representative, Mr. Wes Cawley, that the operations and procedures will remain Town-serving and their annual audit will be provided. Mr. Cawley addressed the Council stating that he can give the assurances that the Nations Bank will be 50% Town-serving and the annual audit will be provided. Mayor Marix noted there was a letter of objection from Mr. Peter Heydon who was concerned about the parking, and it may be he doesn't realize this is merely a name change and suggested the applicant contact him. Motion was made by Mr. Weinberg, seconded by Mr. Ilyinsky to approve Special Exception No. 31-92. On roll call, the motion carried unanimously.

C. Other

Storm Drainage Improvement

1. Consideration of Proposed Cost Apportionment Formula Between the Flagler System and Town of Palm Beach Regarding Storm Drainage Improvements - Deferred from September Meeting - Attorney Brindell announced progress has been made on the issue and conversations were had with the Department of Transportation about the possibility of having them participate in the cost and it has been agreed with the staff about the percentages of water contribution to the system, however, there are some other considerations due to the fact that Council input is needed. He stated Mr. McCarthy and Mr. Dusey have suggested that the Public Works Committee is the place where these issues should be addressed and have them make a recommendation to the full Council, to which the Mayor and Town Council agreed.

Waiver to Sect.12-51 Montel Jewelry Store

2. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Ms. Sandi Fisher, Fisher Clark Construction, Inc., for Work at Montel Jewelry Store, 319 Worth Avenue, for Monday Through Saturday to 10:00 p.m. and Sunday, 9:00 a.m. to 9:00 p.m., until November 25, 1992 - Barry Clarke, the General Contractor addressed the Council requesting extension of construction hours to finish the interior of the store. Mr. Heeke noted there are apartments in that area. Mayor Marix asked if the work was noisy which they wanted to do? Mr. Clarke responded the noisy part of the work has already been completed and there would not be a great deal of hammering or sawing as most of the work is fixtures and painting and floorcovering and electrical work, which shouldn't create any disturbances. Mr. Moore pointed out they wish to work on Sundays. Mayor Marix believed they could do the quiet things on Sundays. Mrs. Douthit felt they should forget about Sundays and let them work until 10 PM, to which Mrs. Wiener agreed. Mr. Moore asked if they could give assurances that the work would be completed by December 1st when he originally applied for the Permit, to which Mr. Clarke responded it was his understanding that they had to be done with the store front by the 1st of December, but not the complete interior. Mrs. Wiener noted they got the permit to do the job on October 29th and they expected to get the work completed in four or five weeks? Mr. Heeke explained the Council isn't the one making the application, as people make applications in sufficient time to complete the work, but the application that was submitted to the Building Department was not complete when they originally submitted their plans. Mrs. Wiener asked if they wanted the store finished or wait a year? Mr. Heeke recalled the Council has denied people the right to work during the season. Mayor Marix pointed out the man wants to complete the job and wants to extend the hours and work Sundays. Mr. Clarke believed he could have the job completed by November 25, 1992. Mr. Ilyinsky asked if he needed to work on Sundays to meet that deadline? Mr. Clarke responded if he could not work Sundays, the date for completion would be Dec. 7th. He apologized as it was his understanding that he could work on the Avenue as long as the exterior of the store was completed by Dec. 1st, he did not know that meant the interior work also.

Mr. Ilyinsky felt it was important to get these people in and out as quickly as possible. Mrs. Douthit thought it was outrageous. Mr. Heeke explained this is important to the merchants as the Thanksgiving weekend is one of the most important days of the year and they don't like disturbances on that weekend. Mayor Marix believed the merchants want everything to look good and this man wants to get it finished. Mrs. Douthit believed if they granted one, they would be deluged with other requests. Mayor Marix recalled this is not unusual for this time of year. Mr. Clarke stated his client wants to open on the 25th and the work will be done by that day, both inside and out.

Mrs. Wiener thought she heard him say that the work could be done by that time if they were able to work on Sunday. Mayor Marix thought they should be allowed to get finished as quickly as possible. Mr. Heeke agreed but he didn't want to see them work Sundays, as the merchants and the neighbors don't want this distraction.

Motion was made by Mr. Ilyinsky that the request for the extended hours be approved, through November 25, 1992, except for Sundays, with the heavy work being done during the daylight hours. Mayor Marix pointed out that they wouldn't be able to finish by Nov. 25. Seconded by Mrs. Wiener. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

XV. COMMUNICATIONS FROM CITIZENS.

Syringes on the beaches

A. SYRINGES ON THE BEACHES. Mimi Lambert, 990 Adam Road, addressed the Council advising she was fighting against medical waste which is found on the beaches in this Town. She stated she has been fighting with the Health Department about this problem and is requesting the Town to look at this medical waste and tell the people who have been destroying the evidence of the syringes she has been bringing into the Police Station, as if it can be traced, there is a $25,000 fine for each syringe, which is a Federal Law. She has been in conversation with Carol Meade of the Department of Environmental Regulation who informed her that there has always been medical waste on the beaches which can be identified and some of it has been traced back to the Navy. She has asked

them to produce the documentation. She has heard them say the HIV virus can live in a syringe in the warm waters of Florida and she didn't want anyone suing the Town but would like to find out who is doing this and put a stop to it. She wishes to alert the public that this is a hazardous situation, and the sources be fined and monies be deposited for the fines into the Town's account.

Syringes on the beaches

Mayor Marix asked when the evidence she was producing was destroyed? Ms. Lambert stated she has been finding them for the past two years, but there is no record of anything she has turned in, except for one she turned in May of 1992.

Mr. Heeke had to leave the meeting at 5:25 PM and passed the gavel to the President Pro Tem Weinberg to chair the remainder of the meeting.

Ms. Lambert stated the Health Department has told her they can only hold the evidence for ninety days, then they must destroy it. She stated she needs help from the Town on this project. Mayor Marix asked if she found most of them on the northernmost beaches of the Town? Ms. Lambert stated that was so. Mayor Marix thought they might be coming off of the freighters which are anchored off shore and asked how they could help her? Ms. Lambert responded she would like support with her petition and to help her fight the Health Department and have research on where these syringes are coming from. She believed also they were coming off the ships. She hoped the Health Department could be made to not destroy the evidence.

Mayor Marix asked Mr. Doney if there was any way the Police Department could be encouraged to not destroy this evidence after ninety days? Chief Terlizzese stated they have to follow a rigorous schedule in the destruction of hazardous material as this is toxic waste. Mayor Marix asked if they can be sent somewhere where they won't be destroyed? Chief Terlizzese stated they send it to the proper disposal facility and they incinerate it and vaporize it to protect the environment. Mayor Marix asked if there wasn't someplace it could be sent where it would be preserved so they could follow through on it? Ms. Lambert suggested she open a Safety Deposit Box to store it. Mayor Marix thought they needed to have some documentation on it, then it wouldn't matter if it was destroyed. Mr. Weinberg asked Mr. Doney to explore that possibility.

Mrs. Wiener asked if there was some other governmental body which the material could be passed on to and they could start following it up? Chief Terlizzese responded this is a 1500 mile long problem and it is not just a matter of the freighters off this shore, but this is as a result of privatization of medical and toxic waste and garbage disposal and they are taking it out to the ocean on barges and dumping fifty million tons of waste into the ocean every year and it winds up on the beaches of the entire U. S. He stated the Federal Agencies are the ones who have primary jurisdiction over this. He explained on his level, they do report it, they do document it but 99 times out of 100, the stuff has no evidentiary value and it is not all traceable and is not as easy as Ms. Lambert says it is. Ms. Lambert stated she talked to the DER and the EPA and they told her there was a Federal law that states every syringe has a number and they can be traced back to the factory, and this is how they found out the Navy was dumping their syringes a few years ago. Mrs. Douthit thanked Ms. Lambert for her interest and they will work on it.

Palm Beach Civic Asso Request on budget process

B. PALM BEACH CIVIC ASSOCIATION'S REQUEST ON THE BUDGET PROCESS. Mr. Doyle Rogers, Chairman of the Board, addressed the Council asking if they saw the request. Mrs. Douthit stated she rather he didn't mention it. Mrs. Wiener commented they didn't like receiving things like this a few minutes before a Council meeting. Mr. Rogers stated he didn't want action on this today but would like them to consider it and put it on the agenda for next month. Mrs. Wiener didn't believe there was a fire about this subject. Mr. Rogers agreed stating it was something that they wanted to address. Mrs. Wiener did not believe they had to like it. Mr. Rogers stated all he is asking is that they put it on the agenda for next meeting. Mayor Marix stated she hasn't read it as they delivered it to her house and put it under the doormat and it flew away. Mr. Rogers hoped they wouldn't be belligerent about it but just consider it.

XVI. ANY OTHER MATTERS

Amendment No. 10

A. AMENDMENT NO. 10. Mr. Randolph recalled Mr. Heeke brought this up at the beginning of the meeting and wanted the Legislative Delegation to give consideration to this matter and it not be delayed. Mr. Weinberg asked Mr. Doney to write a letter on behalf of the Council in that regard. Mrs. Douthit thought the Mayor and the President of the Council should both write as well as the Manager. Mayor Marix didn't want anyone to forget who was trying to get that amendment off the ballot and she didn't like this Town supporting that organization with the Town's money, and that was the Florida League of Cities. Mr. Randolph believed these were two issues. Mr. Weinberg did not believe they should just cut off Florida League of Cities. Mayor Marix thought they should realize they should not be arbitrary as the Florida League of Cities send out flyers and nearly got Amendment 10 defeated. Mr. Weinberg believed they were working on behalf of a majority of their members. Mr. Doney explained obviously there are two sides to the issue and the Florida League of Cities does represent over three hundred cities in the State and that's why it's difficult and there were other communities with similar characteristics as the Town of Palm Beach who were not in favor of it. Mayor Marix thought they had to represent their taxpayers and that is where their loyalty belongs. Mrs. Douthit thought the letters should be written to the Palm Beach County Delegation asking them not to delay the implementation of this Amendment. Mayor Marix believed the Town's position should also be made known to the Florida League of Cities. Mr. Doney suggested they go to the Palm Beach County Municipal League meeting and express that opinion and collectively see if support is forthcoming from the other communities. Mrs. Douthit thought it should be put in writing.

Beaumont Lot

B. BEAUMONT LOT. Mayor Marix believed this lot is always from one-third to two-thirds empty at all times and she has a memo from Mr. Doney dated Nov. 5, 1992, which outlined options. She didn't believe there was any parking lot in the Town which was not tied up by our own people. She realized there is a parking problem in this Town, but the Australian Lot is used by employees as is the Beaumont Lot and in spite of the fact that parking has been added in this area with the Police Station. She stated this has been the cause of a lot of unhappiness from residents and businesses in this area. She thought parking meters should be installed and the employees be given slugs to fill them and when a parking space is empty, then there could be revenue received from the public. Mrs. Douthit liked the idea as employees would be coming at 8:30 and the stores wouldn't open until 9:30 or 10:00 and by that time all the employees would be parked and the open spaces could be used by local businesses and residents.

Mrs. Wiener thought that rather than harangue and go through this thing, she would like to see the Public Works Committee take this matter up and report to the Council. Mayor Marix agreed. Mr.

Doney recalled they have spent a lot of staff time on this and have a mixed use in this lot at this time and there have been conflicts. Mayor Marix thought the slug idea would be then a super idea. Mr. Doney explained that may be so but there a number of employees who use the lot and come and go during the day and when they came back, there would be no space, and they would have to park on the streets. Mayor Marix knew this lot was exceedingly empty at all times. Mrs. Wiener recommended there be a Public Works Committee Meeting and their recommendations be made to the Town Council on this subject.

Letter from Mayor Graham re: Boat Parade

C. LETTER FROM MAYOR GRAHAM OF THE CITY OF WEST PALM BEACH ON BOAT PARADE. Mayor Marix stated the letter asks for the Town to donate police services that night. Mr. Doney advised the City of West Palm Beach reimbursed their police department for their salaries for overtime for the time they spent last year on the boat parade and he thought it was appropriate if the Mayor and Town Council agree, that as long as the City of West Palm Beach is not reimbursing their officers for that evening this year and absorbing the cost within their own budget the Town could do the same. Chief Terlizzese reported they generally require nine police officers to handle the boat parade on that night as there are huge crowds. He thought if the City of West Palm Beach wanted to sponsor the parade, they should assume the responsibility to help cover it. Mr. Doney commented it is always important to have good intergovernmental communication and cooperation with the City of West Palm Beach and believed a letter should be drafted, indicating that if in fact the City of West Palm Beach Police Department is not reimbursed for their overtime services, then the Town will absorb its' overtime services costs.

Letter from Prof. DeVore re: Fresh Drinking Water

D. Letter dated October 19, 1992 from Professor Clyde W. DeVore - Fresh Drinking Water from Ocean Water. Mr. Doney explained this memorandum has been submitted to the Mayor and Town Council with a letter dated October 19, 1992 from Professor DeVore and he felt that before the Town staff does anything with this, he would like some specific direction from the Town Council, and if there is no specific direction, he will take no further action on this matter. Mayor Marix noted this was new material. Mrs. Wiener suggested they just leave it be, a fortune has already been spent on a water study and she didn't believe there should be any further action. Mayor Marix thought they should always be aware of what options there are available and she believed that Mr. Heeke agreed that the negotiating position is important, and if they are aware of these other things and it is known we are, it might be helpful. Mrs. Wiener didn't want them studying one more item to which Mr. Weinberg agreed. Mrs. Douthit felt if they wanted to study it and make suggestions, that should be fine, but not at the Town's expense to which Mrs. Wiener agreed. Mayor Marix clarified that Professor DeVore has sent information on his mathematical model. Mr. Weinberg noted the consensus is there should be no recommendation.

Donations to town of PB

E. DONATIONS TO TOWN OF PALM BEACH DEPARTMENTS. Mr. Doney noted he is releasing a news release similar to what has been done in past years with regards to Donation Guidelines.

F. ITEMS SHOULD BE LISTED SPECIFICALLY ON AGENDAS. Mrs. Wiener suggested strongly that when there are items which they know the Council will be discussing, they should be part of the Town Council Meeting Agenda and not taken up under Any Other Matters.

Holiday Trees

G. GUIDELINES TO PLANNING ACTIVITIES RELATED TO THE TOWN'S HOLIDAY TREES AT WORTH AVENUE, SOUTH COUNTY ROAD AND ROYAL POINCIANA Way. Mrs. Wiener believed the Council was in accord on the guidelines to which Mrs. Douthit agreed.

Employee of the year breakfast

H. EMPLOYEE OF THE YEAR CHAMBER OF COMMERCE BREAKFAST. Mr. Doney reminded the Mayor and Town Council the breakfast to recognize the Town's Employee of the Year will be held on November 12, 1992 at the Breaker's.

I. MEETINGS. Mr. Doney reminded all of the upcoming meetings scheduled.

Amendment 3

J. AMENDMENT 3. Mr. Moore reminded this Amendment also passed with regards to Landmarked properties and the potential for tax relief. Mrs. Wiener pointed out it is a tax relief for some but a tax increase for others. Mr. Moore believed the Ordinance needed to be amended and suggested that he and Mr. Randolph draft the proposed new ordinance and submit it to the Ordinance, Rules & Standards Committee for submittal to the Council. Mayor Marix noted there are other communities which will be amending their ordinances also, and it was her thinking they should wait until other municipalities do the ground work, to which the Council agreed.

Annual Report

K. ANNUAL REPORT. Mr. Doney reminded the Mayor and Council the draft of the Annual Report is ready for review and he needs input from the Mayor and Council so it can be moved along.

Adjournment

XVII. ADJOURNMENT - Meeting was adjourned at 5:58 PM.

Grace T. Peters
Town Clerk