TOWN COUNCIL MINUTES OF MEETING HELD ON NOVEMBER 9, 1994

I. CALL TO ORDER AND ROLL CALL - The meeting was called to order at 9:30 a.m. by President Wiener. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Wiener, President Pro Tem Smith, Councilwoman Royal, Councilman Shaw and Councilman Goldsmith. Also attending for all or part of the meeting were Town Manager Doney, Town Attorney Randolph, Assistant Town Manager Elwell, Assistant to the Town Manager Jakubiak, Police Chief Terlizzese, Major Croft, Fire-Rescue Chief Elmore, Recreation Director Bitzer, Public Works Director Dusey, Town Engineer Bowser, Planning, Zoning and Building Assistant Director Zimmerman, Code Compliance Officer House, Town Clerk Peters and Deputy Town Clerk Pollitt. Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Town Clerk Peters. The Pledge of Allegiance was led by President Pro Tem Smith. Invocation

III. PRESENTATIONS Presentations

A. Recognition of Thomas M. Keresey, Golf Commission.
Mayor Ilyinsky presented a plaque to Mr. Keresey recognizing his years of service as a member of the Golf Commission.

B. Recognition of Bea Knopf, Golf Commission.
Mayor Ilyinsky presented a plaque to Ms. Knopf recognizing her years of service as a member of the Golf Commission.

C. Recognition of Martin E. Murphy, Zoning Commission.
Mayor Ilyinsky presented a plaque to Mr. Murphy recognizing his years of service as a member of the Zoning Commission.

D. Recognition of Eugene N. Pollock, Golf Commission.
Mayor Ilyinsky presented a plaque to Mr. Pollock recognizing his years of service to the Golf Commission.

IV. COMMENTS OF THE MAYOR - Mayor Ilyinsky mentioned the West Palm Beach Centennial and the entwined history of Palm Beach and West Palm Beach. He said the last few years have produced great cooperation between the communities, but during the last few months this spirit of friendship has been somewhat neglected. He recommended that, through mutual effort, restoration of the cooperation would be a great advantage to both communities. Comments of the Mayor

Mayor Ilyinsky said the Town Council will be presented with an inventory of estimated costs of alternate ways to provide potable water to the Town of Palm Beach. He added he did not wish to preempt that dialogue but wished to draw attention to the reality that the burden of all these defined costs must be shared by all participants involved in this endeavor, and this must play an important role in the ultimate evaluation of the decision process made by the Council.

V. APPROVAL OF AGENDA - Mr. Doney requested that item XV.B.8., Variance Number 59-94 be deferred until the January 10, 1995, Town Council meeting. Motion made by Mrs. Smith to defer item XV.B.8. Variance Number 59-94 until the January 10, 1995, Town Council meeting. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously. Approval of Agenda

Mr. Doney recommended that item XII.C.7., Palm Beach Public School P.T.A., an appeal of an administrative decision denying the landing of the Trauma Hawk and the refund of an application fee be added to the agenda. Motion was made by Mrs. Royal to add item 7 under XII.C., Palm Beach Public School P.T.A, an appeal as stated and and a request for a refund to the agenda. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Peters requested that item IX.A.1., Simon Wiesenthal Center, Number 264-95, be added to the Approved Agenda under item VII.A.21; that item IX.A.1. be changed to read American Committee for the Weizmann Institute for Science; and that item IX.A.3. YWCA, Number 325-95 be added to the agenda. Mrs. Peters explained that the YWCA planned an event in early December and would like to submit that application subject to the various departments' approvals.

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

APPROVED AGENDA (ITEMS VI. THROUGH VII.)

VI. APPROVAL OF MINUTES OF OCTOBER 11, 1994

VII. LICENSES AND PERMITS Licenses and Permits

A. Charitable Solicitations

1. Hadassah Angel of Mercy; No. 14-95
2. Jewish Federation of Palm Beach County, Inc.; No. 22-95
3. Leukemia Society of America, Palm Beach Area Chapter; No. 39-95
4. Anti-Defamation League of B'nai B'rith; No. 83-95
5. American Comm. for the Weizmann Institute for Science; No. 151-95
6. The Salvation Army; No. 197-95
7. Hanley-Hazelden Foundation, Inc.; No. 239-95
8. Juvenile Diabetes Foundation; No. 240-95
9. Adopt-A-Family of the Palm Beaches; No. 254-95
10. Food Relief International, Inc.; No. 272-95
11. Friends of AKIM USA - Palm Beach Chapter; No. 280-95
12. Citizens' Association South of Sloan's Curve; No. 286-95
13. Dana-Farber Cancer Institute, Inc.; No. 288-95
14. Jewish Arts Foundation; No. 299-95

15. St. Ann School; No. 306-95
16. Healthy Mothers/Healthy Babies of Palm Beach County; No. 323-95
17. Epilepsy Association of the Palm Beaches; No. 344-95
18. Louis A. Gaeta, III Memorial Scholarship Fund; No. 377-95
19. Papanicolaou Woman's Corp for Cancer Research, Inc.; No. 378-95
20. Israel Woman's Corps for Cancer Research, Inc.; No. 379-95

Motion made by Mr. Shaw to approve the Approved Agenda, Items VI. through VII. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

REGULAR AGENDA

Public Hearing

VIII. PUBLIC HEARING

Dune Preservation Permit

A. Dune Preservation Permit Application No. 3-94 - A Class I permit application of Halcyon Condominium, 3440 South Ocean Boulevard - Applicant proposes to trim seagrape, remove exotic vegetation, and revegetate pioneer and scrub zone dune areas with native plants per application on file at the Town Building Department.

Bob Smith addressed the Town Council and offered to answer any questions the Council had.

Mr. Shaw said a request for maintenance was made some months ago and a discussion ensued about radical cutting. Mr. Shaw wanted to know the results of the radical cutting.

Mr. Smith replied the seagrapes vary in height from four feet to the highest which is sixteen feet, and some of them will be cut back to four feet while others will be left in the ten to twelve foot range.

Mr. Gann-Matzen addressed the Town Council and stated this project is similar to several other projects where large seagrapes have been trimmed down to three and a half or four feet, and the results of the trimming and the additional out planting of native vegetation have been quite good. He added he is quite pleased with the results and the overall condition is enhanced.

Motion made by Mrs. Smith to approve Dune Preservation Permit Application Number 3-94. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

IX. LICENSES AND PERMITS

Licenses & Permits

A. Charitable Solicitations

1. American Committee for the Weizmann Institute for Science, No. 151-95 - Deborah Heller, Assistant Director for the Weizmann Institute for Science, explained she had submitted her permits late and the organization had recently experienced a number of changes. She added she will try to prevent this from happening in the future.

Mrs. Wiener said she would like to see a resolution to this as these charitable organizations appear before the Council month after month.

Mrs. Smith said she thought the ORS Committee had reviewed this; specifically, reviewing some of the qualifications for the appearance of the organizations at the Town Council meetings.

Mr. Randolph responded this issue was addressed by ORS, but it was particularly related to looking at if there would be penalties on charitable organizations who violated the terms of the ordinance. He understood the Council did not favor any penalties, and no meeting of the Committee was held.

Mrs. Wiener stated the Council did not wish to fine charitable organizations, but the issue needs to be addressed. She added the Council should decide to loosen the rules and regulations or tighten the rules.

Mrs. Royal suggested the Council send the issue to the ORS Committee again, and the Committee will look at the clarity of the ordinance and see if the ordinance is user friendly. She said the issue should be studied to see if the fault lies with the ordinance, the administration of it, or with the general public. Mrs. Royal suggested the ORS Committee make recommendations and return to the Council in thirty days with those recommendations.

Mrs. Wiener responded that she would not be in favor of any financial situation. Mrs. Smith agreed with Mrs. Wiener. Mrs. Wiener added perhaps the restrictions of the ordinance are too tight and the Council is attempting to protect the residents of the Town from something that it is not possible to provide protection from. She said the recommendation of the Council was for the ORS Committee to have a meeting to discuss this issue.

Motion made by Mrs. Royal to approve the American Committee for the Weizmann Institute for Science's request for a charitable solicitation. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Par 3 Golf Course

2. Palm Beach Par 3 Golf Course; No. 227-95

a. Consideration of Proceeds from Annual Ladies Pro-Am Golf Tournament on February 3, 1995.

Mr. Doney said that on October 28, 1994, the Palm Beach Golf Commission revised its recommendation for the beneficiaries regarding the proceeds from 1995 tournament proceeds. He added the tournament is scheduled to be held February 3, 1995, and the Commission decided the proceeds should remain in the Town and be divided between the Crippled Children's Society, the Palm Beach Recreation Center and the Par 3 Golf Course. Mr. Doney said the donations to the Recreation Center will be used to help fund the tree project at Seaview Park and the donations to the Golf Course will help pay for the replacement of the trees that have been lost to lethal yellowing over the years. He added during the years of 1984 - 1992 and in 1994, this tournament benefited St. Mary's, Good Samaritan, and JFK hospitals and the tournament proceeds were split into three parts. In 1993, the tournament benefited the victims of Hurricane Andrew.

Mr. Doney said the issue was before the Town Council, because the Golf Commission is offering their recommendation of the allocation of the proceeds.

Motion made by Mrs. Smith to approve the charitable solicitation permit, Number 227-95, Palm Beach Par 3 Golf Course with the provision that monies will be allocated to the Crippled Children's Society, the Recreation Center for the trees project and to Par 3 Golf Course for the replacement of trees. The motion was seconded by Mr. Goldsmith.

After discussion concerning the question of the Par 3 Golf Course's qualification as a charitable organization/event, the Council decided the replacement of trees has been recognized as a charitable project for other Town related activities. On roll call, the motion carried unanimously.

3. Y.W.C.A. - Number 325-95 - Mrs. Peters explained the application was submitted to her office on November 8; however, the event is scheduled for early December and action is necessary at the November meeting. Y.W.C.A.

Mrs. Smith asked if the Y.W.C.A. had a permit for the year or was this an additional event?

Mrs. Peters replied this application is the permit for this season, and this is not an additional event.

Motion made by Mrs. Smith to approve the application of the Y.W.C.A., Number 325-95. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

X. COMMITTEE REPORT

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING OF OCTOBER 24, 1994

Report of Public Works Committee

I. CALL TO ORDER AND ROLL CALL - Committee Chairperson Lesly S. Smith called the October 24, 1994, Public Works Committee meeting to order at 10:00 a.m. in the second floor Conference Room at the south end of the Town Council Chambers. On roll call Chairperson Smith and Committee member Goldsmith were found to be in attendance. Other Elected Officials attending the meeting were Mayor Ilyinsky and Councilman Shaw. Also attending from Staff were Mr. Robert J. Doney, Town Manager; Messrs. Albert P. Dusey, Director of Public Works; Ronald L. Meadows, Solid Waste Division Manager and David Kyzar, Vehicle Maintenance Supervisor of the Public Works Department; Mrs. Grace T. Peters, Town Clerk and Mrs. Mary A. Pollitt, Deputy Town Clerk.

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

III. DISCUSSION OF TOWN'S YARD TRASH DISPOSAL PROGRAM, INCLUDING CHIPPER OR TUB GRINDER.

Mrs. Smith stated that the reason for the Committee meeting was the Town Council's directive that the Public Works Committee look into the Town's yard trash collection and disposal program, including the possibility that use of a chipper or a tub grinder might make this operation more efficient.

Mr. Dusey stated Mr. Kyzar was present to answer any questions that may come up regarding the machinery to be discussed since he was involved in the research. Mr. Meadows was involved in the daily operations involving yard trash collection and disposal. Mr. Dusey stated Mr. Matich had suggested two possible revisions to the Town's system of removing yard trash, which are the chipping of materials and/or requiring the removal of the trash by the yard companies who would then be responsible for its disposal. Mr. Dusey said Public Works Staff has investigated the possibility of having several sites in the Town where the chipping and grinding could be done. He added the main problem with any location in the Town is the noise factor of the machinery that would be doing the chipping, and the main problem is with the chipper itself as the materials go through the machine.

Mr. Dusey said other problems are the large size of any chipper that would have to pass on the Town's narrow streets and the turn around space on dead end streets. He said the yard trash volume during the summer months, May through October, is extremely heavy due to the tremendous growth of the vegetation during that time.

Mr. Dusey said Mr. Kyzar investigated approximately ten chipper manufacturers and found only one, Morbark, manufactured by E-Z Chipper, Inc. in Winn, Michigan, that could handle the volume the Town generates in a timely manner; however, the drawback to the machine is the noise level. He said the manufacturer ran noise level tests, and the machine ran at 100 decibels in the immediate area of operation and 90 decibels at fifty feet away. Mr. Dusey stated both of these levels would be a major problem, not only to the residents within the area, but to the operators of the machinery as these decibels could produce deafness without the proper safety equipment and operation.

Mr. Dusey's recommendation was that due to the present available equipment having unacceptable noise levels for Town residents, the Town continue to monitor available technological improvements in the noise levels of these types of equipment and that the Town consider this matter at a future date.

Mr. John Matich addressed the Committee and said he noticed that the Town of South Palm Beach and Manalapan never have unsightly trash piles at any time on State Road A1A obstructing traffic. He asked that the Town find out what measures these communities are using to provide this service. Mr. Matich added that 90% of the condominium and apartment units in the south end of Palm Beach have companies who are responsible for the upkeep of the property. He said these companies could be requested by the Town to haul the vegetation to off-island disposal sites at the time the work was finished, thus keeping the area clean. Mr. Matich also questioned the efficiency of the existing equipment Public Works uses, especially the crane that picks up large piles of vegetation and leaves a great amount of residue behind.

Public Works Committee

Mr. Dusey responded that the Public Works Department handles a very large volume of material and different equipment has been investigated over the years, and the Town's equipment is replaced as the equipment wears out and the monies become available. Mr. Dusey said the present system is the most efficient system considering the Public Works Department picks up between 120,000 and 140,000 cubic yards of yard trash per year.

Mr. Matich said the Town allows residents to place yard trash out for pick up two days ahead of the pick up day in the summer and one day before during the winter months. He added this causes unsightly piles of vegetation along A1A and South County Road and suggested that the present schedule be altered.

Mrs. Smith asked Mr. Matich if he could influence the condominiums south of Sloan's Curve about the timeliness of placing the piles out for pick up?

Mr. Matich responded he thought the schedule should come from the Town's Public Works Department.

Mrs. Smith said the problem of trash piles is also a code enforcement problem, but one solution may be to stress the importance of on-site trash storage areas for both single family residences and condominiums throughout the Town.

Mr. Goldsmith said the north end of the island has many very narrow streets that cause problems when trash piles are placed upon them. Also, many of the single family residences, as well as condominiums in the Town, have no room for yard trash storage.

Mrs. Smith suggested the issue of the noise levels with the chipping machinery be investigated with the possibility that Morbark or another manufacturer be contacted to determine if these companies would have the capability of muffling the sound. Mrs. Smith added that if the noise levels were addressed by the companies, the Town's residents may not complain too much about the noise.

Mayor Ilyinsky said he had heard the Asplundh Company's chipper in operation, and it did not make too much noise.

Mr. Dusey responded the units Asplundh uses would not handle the volume of yard trash that the Town must handle.

Mr. Doney said the Town has had this problem with yard trash collection and disposal for many years. Also, the pick up schedules and other issues involving the piles of yard trash have been discussed many times by the Mayor and Town Council. Mr. Doney noted that South Palm Beach and Manalapan probably have ordinances actually requiring the removal of yard trash by each property owner. He added the Town's position has been to provide equitable service for all property owners, including commercial and condominium and single family units. Mr. Doney said the staff will determine what methods South Palm Beach and Manalapan use for trash removal.

Mrs. Smith said that she believed that all property owners must have the same rules. She said some residents employ individual gardeners who pile the vegetation in the street and do not have the ability or provisions for the removal. Mrs. Smith said all the types of situations should be included in any study for providing chipper services.

Mr. Matich suggested the trash collection and disposal could be sub-contracted by the Town.

Mr. Dusey recommended that the Town Council should only go to competitive bidding if it is serious about contracting this service, since it is very time consuming to put together specifications and very expensive for contractors to prepare bids. Mr. Dusey also stated that yard trash and garbage employees complement each other and the interaction of these two bureaus provide the most efficient use of these personnel, since the peak demand occurs at opposite times of the year for garbage and yard trash collection services.

Mr. Matich said a limit on the volume of yard trash placed out for pick-up could be set. Mrs. Smith replied limits could not be set because of the large volume generated during the summer months.

Mr. Doney said if the Committee plans to make a recommendation to the Town Council, other issues such as noise levels, the use of private vendors, performance standards, etc. should be detailed.

After discussion about the noise levels of the chipper, Mrs. Smith said Morbark should be contacted to see if they can lower the noise levels during operation. Mr. Goldsmith agreed with that suggestion.

Mr. Philip Engelhardt spoke to the Committee and said the piles of yard trash in the streets in the north end of Palm Beach sometimes interfere with access by emergency vehicles, as prescribed in a Town ordinance. He said yard trash is put out on the street on Friday for pick up on Monday and this creates unsightly piles during the weekend. He suggested that the schedules for pick up be rotated or alternately changed between the north and south ends.

Mrs. Smith replied changing the schedule, especially on a quarterly basis, could cause chaos with property owners, condominium owners and the Public Works Department.

Mr. Leslie Shaw said a hardship would be created for property owners who like to do some of their own gardening and yard work and put the yard trash out on the street on Sundays, if the current schedule were changed.

Mr. Doney stated that many of the condominium buildings do not have the physical space to retain yard trash on site.

Public Works Committee

Mrs. Smith said, although the issue of the piles of yard trash on the streets needs to be addressed, many of the residents who are returning to Palm Beach at this time of year are impressed by the neatness, the cleanliness and the appearance of Palm Beach, as compared to other areas of the country.

Mrs. Smith added one suggestion would be to see if the trucks leaving the island could be packed fuller. Mr. Matich suggested the possibility of using larger trucks. Mr. Kyzar replied, as Town equipment is replaced, the carrying capacity of the trucks is being increased.

After hearing the comments of Mayor Ilyinsky, Councilman Shaw, Mr. Doney, Mr. Dusey, Mr. Kyzar, Mr. Matich and Mr. Engelhardt, IT IS THE RECOMMENDATION OF THE COMMITTEE THAT the Town Council further review the yard trash piles on the streets, including the possibility of separating multi-family and single-family units and other types of users by adjusting the tax impact, if necessary, to provide equitable service, reviewing the suggestions by Mr. Matich and contacting the chipper company to investigate if the noise level could be reduced.

IV. ANY OTHER MATTERS

Mrs. Smith said the garbage on the beach is a problem after the small northeaster storm of the last week. She said debris such as styrofoam, bottles, wood and other materials washes ashore periodically during the winter months. She asked Mr. Dusey about pick up for this debris and where it should be placed?

Mr. Dusey responded that the items that normally go in the garbage can be placed there for pick-up. Large items such as wood would require that special pick-ups via the Public Works Department be arranged by the affected individuals, and there would be a charge for a special pick up.

Mr. Goldsmith said the public should be notified that special pick ups for beach trash can be arranged by contacting the Public Works Department.

Mrs. Smith noted that, unfortunately, beach litter such as bottles and styrofoam cannot be recycled because it would have to be cleaned before placing in the recycling containers. She emphasized the importance of notifying the public as to special pick-ups and said the Public Works telephone number, 838-5440, should be included in the notification via the media.

Mr. Shaw said that storms create litter on the beaches, and the Town could offer a free pick up for the beach litter as a gesture of good will.

Mrs. Smith replied, although this was a good, benevolent idea, a free pick up was not practical. She added storms can occur every two or three weeks during this time of the year, and this would set a bad precedent as some of the storms create very heavy loads.

Mr. Matich said the turtle nesting season is over November 1, and the contractor who cleans many of the beaches for the condominiums in the south end will not be working for the City of Lake Worth and that access needs to be provided to the beach through Phipps Ocean Park.

Mrs. Smith replied the Town cannot help on an access basis if the issue is between a private contractor and condominiums, but she suggested Mr. Matich contact Mr. Dusey at his office.

Mr. Dusey said the issue of the strangler fig tree is reaching a climax, since a 20 foot limb that had a diameter of 6-8 inches fell down, and another limb is in danger of falling at any time. He added the Public Works Department plans to remove the tree this week, and the residents will receive written notifications.

Mayor Ilyinsky said he had visited the site and he concurs with Mr. Dusey.

Mr. Doney said two letters will be mailed to the residents; the first one will be from Mr. Dusey advising of the immediate public safety issues requiring removal of the tree, and a second letter from Mayor Ilyinsky will outline the proposed plan, as suggested by Town Council, for the site where the tree existed. He added the residents on the street will be asked to work with the Town, and the Town will propose to install a raised curb, with related improvements, and the residents will be contacted regarding a proposal to plant a new tree, subject to Town approval, in that area.

On another issue, Mr. Goldsmith said that three residents of Wells Road inquired about the replacement of three Australian pines. Mr. Dusey responded that those trees will be replaced by the Town; however, the trees need to be root pruned and can be moved, with a 40% survival rate, only during June and July if suitable trees can be found.

Mr. Engelhardt asked if any fines from cruise ship lines can be recovered to help defray the cost of the beach trash pick up? Mrs. Smith replied no fines for garbage dumping by cruise ships have been collected, only for oil spills.

V. ADJOURNMENT

There being no further items for discussion, the meeting was adjourned at 11:00 a.m.

PUBLIC WORKS COMMITTEE:

BY: ______________________
Lesly S. Smith,
Chairperson

____
C. Gerald Goldsmith,

Committee Member

XI. OLD BUSINESS

A. Resolutions

Res. 36-94

1. Resolution No. 36-94 - Adoption of Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach - Deferred from October Meeting - Mr. Randolph read the Resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ADOPTING A MANUAL TITLED, "STANDARDS APPLICABLE TO PUBLIC RIGHTS-OF-WAY AND EASEMENTS WITHIN THE TOWN OF PALM BEACH, DATED NOVEMBER 9, 1994."

Mr. Randolph said the manual included with the back-up material provided to Town Council members was amended to include items addressed in Mr. Randolph's letter dated October 26, 1994. He continued meetings were held with Southern Bell and representatives from Public Works, and Mr. Dusey made some changes requested by Southern Bell that were satisfactory to the Public Works Department. Mr. Randolph said two additional meetings were held where he was present because Southern Bell wanted additional changes. Mr. Randolph recommended several amendments to the resolution and those are included. He summarized these amendments as ratifying the manner and method that the Public Works Department now operates. Mr. Randolph stated these are the recommendations that the Public Works Department and he can make at this time, and he recommended the approval of this resolution at this time.

Mrs. Wiener stated her concern was not with what Southern Bell wanted added to the resolution but with the departments and residents in the Town. She asked Mr. Randolph to confirm that any changes made at the requests of Southern Bell do not pose a future problem and asked Mr. Randolph to review the main points.

Mr. Randolph replied the greatest concern of Southern Bell was the period of five months that they might not have the ability to enter into the right-of-way to service their customers. Mr. Randolph responded his interpretation of the standards would allow them to do that; however, the tightest spot for them was Worth Avenue where the restrictions are much greater than in other portions of the Town. He added, considering the entire Town, this is an insignificant restriction on Southern Bell, and they are protected in the event of an emergency during that five month period. Mr. Randolph continued that Southern Bell has the ability to gear up their system during the seven month period, and with the exceptions included in the resolution which do protect the residents of the Town, that should be satisfactory with Southern Bell. Mr. Randolph stated he did not think Southern Bell was satisfied with the resolution, but he is satisfied.

Mr. Randolph stated another concern of Southern Bell related to the issuance of a permit to allow them into the easements, and their argument was that no other town required a permit to access the easements. He said Southern Bell contends these easements are theirs in essence as they are utility easements, and the Town should not be concerned with the work that is done within the easements because the Town does not have the expertise to inspect the work. Mr. Randolph said the purpose of the permit is not to allow the Town to inspect the work, but to notify the Town that work is being done at a particular location and the rights-of-way are clear during this period of time. Mr. Randolph stated that provision has been slightly modified to eliminate the need for sign off by the adjacent property owners in the case of a required need; however, in the case of aesthetics, a sign off is required by the adjacent property owners.

Mrs. Smith asked Mr. Randolph if anyone working in the Town for any reason would be required to notify the Building Department? Mrs. Smith said notification to the Building Department should be automatic.

Mr. Randolph replied that concept may be somewhat over burdensome because all the utilities work in various jurisdictions on a day to day basis on routine maintenance. In the past, Mr. Randolph said the Town has not required notification or permits for routine matters, but anything out of the ordinary, including excavation in an easement or blockage of rights-of way or properties, would require a permit.

After discussion concerning the issue of notification to the Town, Mr. Dusey said that over the years, thousands of requests by residents have been made for routine, nondisruptive, normal intrusions into the right-of-way; however, when projects were done that disrupted the neighbors, including excavations or use of the right-of-way, the Town was notified.

Mr. Shaw said routine maintenance did not fall into the same category as back shoveling, and if any equipment is brought into the area, the Town should be notified of this. Mr. Shaw questioned the wording in the current manual stating, "Routine maintenance, service connections or excavations in easements that are minor in scope and are backfilled within two business days do not require a permit."

Mr. Dusey responded some of the situations in the rights-of-ways can be taken care of with a hand shovel and do not require equipment, and the utility companies and the Public Works Department understand the meaning of "minor in scope" and do not require further clarification.

Mr. Goldsmith added the residents should not be penalized by making the routine too difficult to comply with, thus limiting the service to these residents.

Mrs. Smith said it is just a question of communication of notifying the Town who is working in the Town. She added the residents should be protected from unauthorized people coming on their properties, and the Town should know who is working in residential areas.

Mr. Shaw added some of the utilities use sub-contractors who are not always clearly identified, and the Town residents need to know who is working in the Town.

Mrs. Wiener stated the issue was raised of workmen coming in and out of Town, and this is an issue that the Town should exercise care in.

Mayor Ilyinsky said this issue could be a nightmare if the Public Works Director cannot be responsible for the workmen, ten additional policemen should be hired to check everyone in and out of Town.

Mrs. Royal asked Mr. Dusey if Florida Power and Light and Southern Bell were working in conformance with the new standards recently when they were working on Royal Palm Way in front of First National Bank?

Res.36-94 (Discussion)

Mr. Dusey said in essence the Standards are the practices of the Public Works Department; however, the Standards were not in effect at that time. He added large projects of this nature are allowed during certain months of the year as defined by Town Council.

Mrs. Smith said she had requested of Mr. Dusey that additional language be added to the Resolution, but Mr. Randolph stated the issue was covered, and Mr. Dusey will be on top of the situation. She added she was satisfied with Mr. Randolph's explanation.

Mr. Randolph stated the first area discussed was routine maintenance within easements and the next concern of Southern Bell was that they did not want to get a permit every time they came to the Town to do routine maintenance within the right-of-way. He added they did not want to notify the Town every time they needed to enter a manhole, and these previous requirements were not changed. He stated the Town wanted to have notification and a permit if Southern Bell were going into the streets and disrupting traffic.

Mr. Randolph said the remainder of the issues were minor changes in wording, made at Southern Bell's request, which were not objectionable to the Town.

Mrs. Smith added Southern Bell could come to the Council to appeal a decision if they are turned down for a work permit.

Mrs. Wiener said the attorneys for Southern Bell were attempting to simplify procedures for Southern Bell, and Mr. Randolph and Mr. Dusey will provide similar services for the Town.

Mr. Passmore, Southern Bell, addressed the Council and stated Southern Bell is concerned about the citizens of Palm Beach County. He added Southern Bell was specifically concerned about these Standards because a provision did prohibit them from doing work that is done at every other place that they do business in the State of Florida. He added Palm Beach is different from other communities, and with the provisions that were recently negotiated, business will be accomplished easier than it was before. Mr. Passmore complimented Mr. Dusey and Mr. Randolph on the recent negotiations.

Mr. Passmore stated the Public Service Commission mandated that Southern Bell provide service within a reasonable length of time to every citizen regardless of the time of year or day of the month. He added that mandate requires Southern Bell to accomplish tasks that are sometimes not popular with the traveling public. Mr. Passmore added Worth Avenue is taken care of as far as utilities are concerned, but residents all over the county are installing additional lines as not previously requested, and Southern Bell has to provide those requested services in a timely fashion.

Mr. Passmore said the goal was to resolve issues raised between the Town and Southern Bell personnel as these issues occur. He added the Town's rules are more extensive than Southern Bell wished them to be, but they understand the Town's concerns.

Ingeburg Chambers, 315 Cocoanut Row, stated a box was temporarily installed in July, interfering with her view. She added high bushes need trimming and trash litter is in the area. Ms. Chambers asked who will be responsible for taking care of that area, and she requested that she be notified when something of this nature occurs.

Mr. Dusey responded he and Southern Bell had met with Ms. Chambers last week and had reached an agreement to change some of the landscaping and use softer screening for the box which is similar to several others installed in Town. Mr. Dusey said the boxes are necessary to provide services to the Town and are actually underground vaults with an approximately two by eight feet box above ground.

Mrs. Wiener said that when work of this nature is being done within the Town, we advise the Town residents within so many feet of the project. She asked Mr. Doney if notification of these vaults was done.

Mr. Dusey replied no notification was sent out, because it has never been done.

Mrs. Wiener said notification is necessary for the residents, and this is only the beginning of these types of projects in the Town. She said she understood the utilities want to do their jobs in the most economical way they can, but the Town has a serious problem developing with residents.

Mrs. Smith reminded Mr. Dusey that when the vault was placed in the area of the North Fire Station, a discussion was held in front of the Town Council concerning the screening of the box. She added the locations discussed are on Town property, but Ms. Chambers property is in the middle of the residential area, and Ms. Chambers is impacted by the project. Mrs. Smith stated notification is very necessary, and if the project is in residential areas, the Council should decide if it will strongly impact the neighborhood and the residential quality of the Town. She added this situation created a bad precedent.

Mrs. Wiener responded she had observed projects of this type being constructed and Southern Bell may want to install additional vaults, and this practice is not acceptable. Mrs. Wiener added there are other designs and methods of construction that may cost more or not be easy to install, but the Town cannot afford to have a series of these installations. She asked who will do the clean-up and vegetation management in these areas? Mrs. Wiener stated the Council must know about these projects in the future and cannot have situations between the Public Works Department and a utility.

Mr. Dusey offered to present these projects to the Town Council in the future, and the present installations will be maintained by the Town on Town property and would normally be taken care of by the individual property owners, but if this property owner objects to that, the Town will take care of Mrs. Chambers property.

Mrs. Smith stated if the Public Works Department expects to have the individual property owners maintain these sites, then agreements will have to be reached before the installations.

Mr. Doney added these vaults are located in easements on rights-of-way. He stated he had talked to Ms. Chambers previously, and this particular vault is located on her corner because of the technical requirements. He added if the Council would like to have these plans brought to them, the Staff will provide recommendations with the conditions of permit issuance. Mr. Doney said the Town has not found any property owner, when there is an easement that is adjacent or convenient to his or her property, that would like to have the facility located on his or her property.

Mrs. Wiener stated there may be a way to make these facilities more acceptable to property owners.

Mr. Passmore said the vaults installed in the Town are the most expensive set-ups Southern Bell has, and in most places, Southern Bell will put up a cabinet or series of cabinets which occupies about a 20x25 feet area and is 10 feet high. He said the controlled environmental vaults used in the Town have only the entrance ways located above ground, and the air conditioners, humidifiers and sump pumps are located under ground. He added the above ground units are easier to install above ground and much cheaper. Mr. Passmore said he understood Ms. Chambers was upset with the vault since she was out of Town when the vault was installed.

Mr. Passmore stated the vaults are imperative to the communications for the Town of Palm Beach to provide for the conversion of the fiber optic cables and copper cables in these vaults, and a large piece of equipment is required for this conversion. Mr. Passmore added Southern Bell is doing all they can to make the above ground portions of the vaults as unobtrusive as possible.

Mrs. Wiener said one of the problems is looking down on top of these vaults and perhaps someone else, such as the Architectural Commission, should take a look at these.

Mr. Passmore replied Southern Bell is working with the Town's Staff to locate the best possible locations. He stated as the Town grows more vaults may be necessary.

Mrs. Wiener said she would like to see the Public Works Department review this and provide some input.

Motion made by Mr. Goldsmith to adopt Resolution 36-94. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Res. 54-94

2. Resolution No. 54-94 - Readoption of Routine Dune Maintenance Guidelines - Deferred from October Meeting.

Mr. Randolph read the resolution:

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

Motion made by Mrs. Smith to adopt Resolution 54-94. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

B. Appointments

Code Enforcement Board (appt.)

1. Code Enforcement Board - One Three-Year Term to Fill Balance of Term to Expire April 1995 - Deferred from October Meeting.

Motion made by Mr. Shaw to defer the Code Enforcement Board appointments until the December 14, 1994, Town Council meeting. The motion was seconded by Mrs. Royal. On roll call, the motion failed 3 to 2 with Mrs. Smith, Mr. Goldsmith and Mrs. Wiener casting negative votes.

Mrs. Wiener asked for another motion to fill the Code Enforcement Board vacancy.

Motion made by Mr. Goldsmith to appoint W. Trent Steele to fill the Code Enforcement Board vacancy. The motion was seconded by Mrs. Smith. On roll call, the motion carried 3 to 2 with Mr. Shaw and Mrs. Royal casting negative votes.

Mini-PERC (appt.)

2. Mini-PERC - One Four-Year Term to Expire September 1998 - Recommendation of Blue Ribbon Panel.

Motion made by Mrs. Smith to accept the recommendation of the Blue Ribbon Panel and approve the appointment of Richard Allen Doak, Jr. to be the employee's representative to the Public Employee's Relations Commission. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Zoning Commission (appt.)

3. Zoning Commission - One Three-Year Term to Fill Balance of Term to Expire February 1996 and One Three-Year Term to Expire February 1997 - Deferred from October Meeting.

Mrs. Wiener requested the Council members consider the appointments as the Zoning Commission will meet on November 21, and the zoning season will start shortly.

Mr. Shaw made a motion to defer the Zoning Commission appointments until the December 14, 1994, Town Council meeting. The motion was seconded by Mrs. Royal. On roll call, the motion carried 4 to 1 with Mr. Goldsmith casting a negative vote.

Mrs. Wiener asked that any Town resident who would be interested in serving on the Zoning Commission contact the Town Manager's office.

Mr. Goldsmith added anyone appointed to the Zoning Commission will have a very short time to prepare for the November 21, 1994, meeting, and he would have preferred the appointment not to be deferred.

C. Other

1. Consideration of Potential Alternative Sources of Potable Water - Update by Town Staff.

Alternative Sources of Potable Water

Mr. Doney reported that a multi-phase study was under the direction of Mr. Dusey using DUS Consultants to secure estimates from the Cities of Riviera Beach and Lake Worth and Palm Beach County as potential water suppliers and to determine related issues concerning the delivery of water. He added the economics and the financial costs of the issue needs to be evaluated. Mr. Doney asked Mr. Dusey to summarize the high points of the analysis to date, and Mr. Osterman, Diversified Utilities, is available for comments.

Mr. Dusey stated this report is a culmination of the work accomplished over the last three to four months. He said three engineers were employed to study the system requirements: one looked at Riviera Beach; one looked at the Lake Worth system; and the existing system on the island was looked at to see the requirements for another source to be integrated into the system. Mr. Dusey said after that information was accumulated, DUS Consultants put together a package to summarize the costs to the Town residents and the method of financing.

Mr. Dusey said that Riviera Beach, due to constraints on their well fields, could only supply 8 million gallons of water per day. The cost of moving the water from Riviera Beach to Palm Beach was very reasonable. He said Lake Worth has the capability to expand their facility to supply 8 million gallons, but the cost of moving that water to Palm Beach is very expensive.

Mr. Dusey reported the plan was to have Lake Worth and Riviera Beach supply 8 million gallons of water each to the Town and make the necessary renovations to the existing Palm Beach system which is basically a new back bone system. He added the cost of the existing distribution system in the Town of Palm Beach has not been defined, but methods exist to determine the cost. Mr. Dusey said that DUS used an average of figures that have been bantered about over the recent past. Mr. Dusey added that once the system was purchased, it would have to be maintained--meter readers, billing people, etc.

Mr. Dusey stated that DUS reviewed West Palm Beach's revenues from the Town of Palm Beach with the 25% surcharge and the usage, based on 1993 data, and then projected the Town of Palm Beach's rates to cover the costs--capital costs paid off over thirty years, operating costs and the purchase of the water in bulk. Mr. Dusey stated the bottom line is the cost to the Town to use these two sources which would be about 31.1% higher than the current West Palm rates including the surcharge.

Mr. Osterman said his job was to take the information that was furnished by the group of engineers and to collate that data and apply some existing consumption figures to determine which plan has the greater dollar impact on the Town residents. He said the 31.1% figure was based on the use of 16 million gallons of water per day, although the actual average water demand currently is 7 million gallons per day, although peak days and peak months push beyond that figure. Mr. Osterman continued that to obtain 16 million gallons per day for the Town, two suppliers are required with two delivery systems and it is an expensive plan. He stated the report concluded with a suggestion that if the Town was able to reduce its irrigation demands (programs using other sources of water have been tested at the Breakers to irrigate their golf course) and if the Town could re-address the subject of large underground storage that is now being done in Delray Beach, then the purchase requirement could be lowered to between 8 and 10 million gallons per day from perhaps one source as opposed to two sources thus changing the entire economic picture. He added, this plan, with the pure comparison of rates, does not meet a favorable economic test. Mr. Osterman said the signs indicate the water may be obtained in a more economical way if the matter were pursued.

Mr. Goldsmith asked if Riviera Beach and Lake Worth will have sufficient supplies of water in the long term?

Mr. Osterman said he had no idea what those factors might be as this was not part of this study.

Mrs. Royal said West Palm Beach intends to charge its users 4% per annum and has nothing to do with the current surcharge, and by the year 1999 the 31% would have been eaten up with the 4% yearly increases.

Mr. Osterman responded Mrs. Royal's premise was a good one, and this was not factored into the study because the engineering estimates in current dollars projected may offset the other. He added this is a compelling point, but DUS did not forecast this because assumptions would have to be made for other areas as well.

Mrs. Royal said the issue is very important, because the Town may become independent for the same dollar amount that one supplier, West Palm Beach, will receive. Mrs. Royal encouraged the possibility of purchasing the present system and then reviewing different suppliers including West Palm Beach for the purchase of water. She added looking at a non-potable supply such as the C-51 canal including storage would be important. Mrs. Royal said if the Town would not purchase so much water from West Palm Beach, the amount may fall below the level of the 25% surcharge.

Mr. Osterman said he had advocated a plan for the Town that would provide for self-sufficiency and reduce the reliance on others. He added it is not only the incremental increase in rates that the Town needs to be concerned with, but the Town needs to be aware of changing rate philosophy that tends to emphasize the inverse rate structure. He said the rate structure could change to be disadvantageous to the Town.

Mr. Osterman reported the Breakers conducted a test program drilling a horizontal well which is relatively inexpensive for the results and a test pump was conducted on enormously successful

Alternative Sources of Potable Water

levels; however, the test is at the very beginning of the program and additional tests will have to be conducted. He added the well was put in during July and the Town Staff had monitored it. Mr. Osterman stated the well establishes a zone of water that is not otherwise used for any purpose.

Mr. Goldsmith added a similar test is being conducted at the Palm Beach Country Club with a number of wells that were drilled in various locations. He said the water will be used for the golf course, and the theory is the same with the storage of the water on top of the lens on top of the salt water.

Mrs. Royal replied the largest users in the Town of Palm Beach are the golf courses, and if the largest users, the golf courses, are removed from the loop then the purchase of potable water may be feasible from West Palm Beach.

Mr. Osterman said the golf courses may not be totally eliminated from the use of potable water, because during various times of the year a supplemental supply of water may be needed in addition to the wells.

Mr. Goldsmith added that some years may pass to determine the salt incursion and a very delicate balance must be maintained as the salt content will ruin any golf course on any given day. He suggested the wells may be purely a minor supplemental source.

Mr. Osterman replied not enough data exists to argue the point, although he does not agree with Mr. Goldsmith's view point. He said he thinks that adequate testing programs indicate that management of the lens of water effectively will preclude the salt problem.

Mr. Goldsmith stated he agreed that the technology will have to be used just for the economical management of the golf courses; although he thinks the water will always have to be mixed and the supply at the Breakers appears to be larger than the supply at the Palm Beach Country Club. He added if a dry spell should occur the water generated by the wells will not be sufficient to keep the golf courses green.

Mr. Osterman agreed with Mr. Goldsmith's observation.

Mrs. Smith asked Mr. Osterman if he sees any changes in the water picture compared to five years ago?

Mr. Osterman replied he did not see any changes, and the last month reflects the fact that the usage characteristics have not grown or may be slightly less. He said that the Town, as a consumer, uses 7.5 million gallons of water per day and has a peak of 15 million gallons of water per day, and it is not cost effective to purchase 16 million gallons of water per day when the Town would need that amount only 30, 40 or 50 days a year. He added that fact suggests strongly that storage is the answer as probably aquifer storage and recovery and that would require an engineering study. He further stated he had not seen a material change in the needs for the characteristics of the services of the Town.

Mr. Osterman said that under the correct set of circumstances, with a favorable contract with the City of West Palm Beach, his company would favor that solution since the supply is available and good and is improving. He added the problem is an economic one.

Mrs. Smith said that after three to four years of spending a large sum of money for studies, the Town has neither a "correct set of circumstances" or a "favorable contract". She added that the report submitted on Friday before this meeting did not allow the Council members sufficient time to study the report with experts. Mrs. Smith said the report raises more problems than it solves, and a different source should be sought for non-potable water.

Mr. Osterman stated West Palm Beach should supply the Town with water beyond the expiration of the current contract in February.

Mrs. Smith asked if Mr. Osterman would be in a position to supply the Town with definitive alternatives within the next thirty days?

Mr. Osterman replied he could not comply with that request because engineers need to supply information regarding the alternate sources and specifics.

Mr. Shaw said the Council needs to know the alternatives up front to make an educated evaluation.

Mr. Osterman replied he was not suggesting a dual piping system on all streets for irrigation for individual houses as this is disruptive, but the greatest impact would be from large users. He stated pursuing a non-potable source to augment the potable source would be the cheapest and most effective course of action to reduce the demand on potable water.

Mrs. Wiener recalled that early in the study regardless of the decision by the Town, all water costs in the State of Florida would increase, especially in this area.

Anthony Elia, DUS Consultants, replied that was true and the cost will be born by the consumers.

Mrs. Wiener recalled that the rates Palm Beach pays for water were among the lowest anywhere and that the rates would eventually double and triple in the not too distant future. She added this was brought to the Council's attention when the issue of desalinization was discussed, thus making that procedure not as expensive as it first appeared.

Mrs. Wiener said that a cost is attached to the issue of non-potable water unless the large, green areas that are held privately within the Town (such as the Country Club and the Breakers that are conducting private projects) and large private owners provided some of their own non-potable water, then the Town would be in a better situation. She continued the Town cannot force private users to supply their own non-potable water and questioned the estimation of the cost of non-potable water.

Mr. Elia replied the costs of the water based on horizontal wells, reclaimed sewer water or from other sources would have to be determined, and he did not have those costs available.

Mrs. Wiener said the issue is the amount of money that may be well beyond the amount of money that is spent with West Palm Beach, and she would like to have serious figures if the Town went to a second non-potable water system including the savings to the Town in return for the expenses for the second water system.

Mrs. Wiener said the concern is for the large amount of money expended for water studies, engineering, etc. to this point, but certain facts and figures must be obtained before the Council can move in a definitive direction.

Alternative Sources of Potable Water

Mr. Elia responded his firm can supply the economics for the studies, but they do not have the necessary engineering assumptions. He added the assumptions in the latest reports were from engineers, and the assumptions did not include all the variables. He suggested if the Council wishes to explore different assumptions, engineering facts could be gathered and his company could then figure the economic factors.

Mrs. Wiener stated, at this point in time, the Council is moving in the direction of trying to figure out an economical, feasible way to deal with non-potable water.

Mr. Goldsmith said an important issue to consider is the availability of water in south Florida overall; where is water going to be available? He added certain towns in South Florida have water, and South Florida Water Management is diverting water to many places including South Bay. He continued the Corps of Engineers have approved a major expenditure for the West Palm Beach water supply of $44 million and cut off of the canals coming out of the western areas into the Ibis or Loxahatchee Reserves. Mr. Goldsmith stated the availability of water is going to be more important than the price, and a guaranteed supply, such as West Palm will have, will be of prime consideration. He added price negotiations can follow after the determination of availability.

Mr. Goldsmith said the water distribution system in the Town is outmoded and definitely needs upgrading in the next few years. He added if this is not done, the Town will not have the availability to have water delivered or adequate pressure.

Mr. Elia said the type of treatment and supply the Town would have would determine the direction the Town should take.

Mrs. Royal added that South Florida Water Management has the authority to delegate the water to whomever they wish in time of drought; therefore, West Palm Beach may not have the water in that situation. She said it is important that the Comprehensive Plan will be reviewed by the State in 18 months and various penalties can be handed out by the State to encourage the wise use of water, one of which is a $1 million a year fine. Mrs. Royal stated that West Palm Beach received exemption from the next round of penalties by putting in an inverse ratio, and the Town should look at ways to come up to the State's requirements and that should be part of the on-going water study.

Mrs. Smith asked Mr. Elia if he was aware of any useful information from any of the water studies done in the past that would help the Town today?

Mr. Elia responded that the studies should concentrate on the economical issues.

Mrs. Smith said many solutions to the water problem should be looked into and the feeling at this meeting was that West Palm will have the water and have the cheapest rates.

Mr. Elia replied other solutions mentioned including reverse osmosis, brackish water and storage have cost factors involved and those costs need to be defined and compared to the overall cost. He added alternative sources are available to cut down consumption of potable water.

Mrs. Smith stated the Council has spent years working on the water problem, and the contract expires in February, 1995. She continued the City of West Palm Beach will supply the Town with water as the State mandates they must, and without a contract, West Palm Beach can charge increased rates.

Mr. Elia responded the City of West Palm Beach determines the rates, and they have a right under the State statutes to charge the 25% surcharge.

Mr. Shaw stated one way to stop the "hostage" situation with West Palm Beach is to stand up and make a decision of how the Town will find alternative water sources. He added the program is comprehensive or combined approach versus the single-minded approaches studied in the past, and the Council needs to make an affirmative decision regarding the reduction of water consumption using a comprehensive approach. He continued the Town should be looking for a reliable source of non-potable water to be used in conjunction with the golf courses and the public areas of Town.

Mrs. Royal referred to a June 7, 1994, memorandum from Al Dusey which stated the capital costs, once they are paid back over thirty years, the cost per thousand gallons including operating costs is less than our average customer is paying for potable water from West Palm Beach, and this proposal appears economically feasible if we can find a way to store large quantities of water when water is plentiful in the canal. Mrs. Royal said this is essentially an endorsement of an aquifer storage and a recovery system, and a meeting was held with the South Florida Water Management District considering the possibility of using re-used water from the regional sewage treatment plant for non-potable purposes in Town. She added this proposal was of interest to the Town and as information became available all parties were to be kept informed. Mrs. Royal asked Mr. Dusey if any additional information was received concerning this source?

Mr. Dusey replied South Florida Water Management has not supplied any additional information concerning gray water, and they had planned to inform five entities, Palm Beach is one of those entities, of any potential plan. Mr. Dusey said the problem is the sewage treatment is located by the Turnpike at 45th Street and the cost of moving that water to Palm Beach would be very, very expensive.

Mrs. Smith asked Mr. Randolph when the contract with West Palm Beach expires in February, 1995, who would fix the broken water mains after that date?

Mr. Randolph replied that in addition to the responsibility of West Palm Beach to supply the Town with a source and reasonable supply of water, they would have to reasonably maintain the system to continue the quantity and the pressure of needed water. He added, without a contract, there would be no inducement to make substantial improvements in the water system.

Mrs. Smith asked if it would be possible for the Town to purchase the water system of pipes from the City of West Palm Beach?

Mr. Randolph replied the contract contains language that would make the purchase of the system possible from West Palm Beach.

Alternative Sources of Potable Water

Mrs. Wiener stated the City of West Palm Beach has not upheld its obligation to the Town to maintain the pipes as they should be maintained under the contract, and she would like to see this situation corrected. She added the pipes are not in the condition they should be at this time and probably have not been for several years. Mrs. Wiener said the Council should decide how serious the non-potable situation is and determine the cost of study. She said the study will cost more than the 25% surcharge and two decisions should be made:

1. Should the City of West Palm Beach bring the piping system in Palm Beach to a proper order?

2. Should the Council move forward on a study concerning the non-potable water issue?

Responding to a question from Mrs. Smith, Mr. Dusey replied the consultants who provided previous studies did not look at non-potable water sources to any great degree but looked at sources including storm water, aquifers, rain water from West Palm Beach, reverse osmosis and desalinization.

Mrs. Wiener requested a synopsis be prepared for the Council members containing the information from the reports generated over the years regarding the water studies.

Mr. Shaw, responding to Mrs. Wiener's query concerning the condition of the water pipes, stated Mr. Randolph ought to determine legally if the contract has not been fulfilled with Palm Beach regarding the upkeep of the piping system, then the natural step is to pursue some form of reimbursement or remedy to the problem as suited to the Town of Palm Beach needs. Mr. Shaw said the Town should go ahead and take a stand that West Palm Beach has not treated the Town fairly, and the Town has no choice but to continue studying water sources and suggested coordinating with Florida Power and Light in a planned sub aqueous crossing to Palm Beach to bring water to the island.

Mr. Randolph stated the Town was negotiating with West Palm Beach concerning the rebuilding of the system in the contract, and the Town had the impression the system could have been much better and offered to submit a written report, in conjunction with Mr. Dusey, concerning the state of the system and remedies that would be available to the Town.

Mrs. Wiener agreed the Council should move forward on that issue and asked if an estimate could be available for a reasonable study for a non-potable water supply that would supply all the information the Council would need to know about the subject. Mrs. Wiener added that information for the non-potable water study should be studied with the major private areas excluded and included. She asked the figure be determined for a totally comprehensive study that would allow the Town to determine what percentage of the water would come from a particular source and an up front cost would be stated, but the non-potable water would be considerably less than the potable water. Mrs. Wiener said the cost and the availability of water are the two important items to be considered.

Mr. Dusey replied the costs could be obtained and one of the questions to be answered is the possible storage of non-potable water and the requirements of the environmental agencies for storage of that water.

Mrs. Wiener requested that the cost estimate be presented at the December meeting.

Mr. Shaw added the cities of Riviera Beach and Lake Worth may be able to supply water to integrate with the proposed study.

Responding to statements from Mrs. Smith, Mrs. Wiener said the direction to Mr. Dusey was to prepare a cost estimate for a study, and his staff was not equipped to make the determination of suppliers.

Mrs. Wiener reminded the Council that all questions concerning a water supply system cost money, and the issue of the non-potable water has not been answered previously. She asked Mr. Randolph to report on the condition of the pipes and the contractual obligations for the City of West Palm Beach at the December meeting.

2. Consideration of Continued Regulation of Comcast Cablevision in Accordance with the Cable Consumer Protection and Competition Act of 1992.

Comcast

Mr. Randolph referred to his letter to Mr. Doney dated October 19, 1994, in which he advised if the Town Council chose to de-regulate, the process is simple and a determination would be made that it is no longer to the benefit of the customers in the Town to regulate. He added there cannot be any consideration for de-regulation, but assuming these two items exist, a letter may be written to the Federal Communication Commission advising them that the Town no longer wishes to regulate. Mr. Randolph stated de-regulation would be effective upon notification; however, the FCC has the opportunity to review the decision. He advised if the Council decides to pursue this route, because the Council has an ordinance in effect, the Council should go through the process of rescinding that ordinance. Mr. Randolph continued the process would be an orderly manner in which to both de-regulate and get rid of the ordinance but also it will give the public an opportunity to have a voice in the decision to de-regulation which will be important to the FCC. Mr. Randolph added if the Council chose to de-regulate presently and decided to regulate in the future, that process could probably be accomplished at a later time. He advised if any rates were imposed in that time of de-regulation, nothing could be done about them.

Mr. Randolph declared there is an alternative to de-regulation which is to continue regulation based upon the ordinance that the Town Council passed, but perhaps not take such an active role as the Council has recently done. He advised that the Council would continue to have the protection of regulation and the right of review of the various forms, and if a form looks reasonable and within the guidelines of the FCC, the Council can have a public hearing and approve or disapprove of the form. Mr. Randolph continued that if the Town Council were to choose this option, the staff would need direction for the choice the Council makes to determine how active or passive the choice will be.

Mrs. Wiener asked, if the Council chose de-certification, could that be accomplished until the Public was notified?

Mr. Randolph replied the prudent action would be to give the Public notice.

Mrs. Wiener asked what procedure would be followed by the Town if they chose to de-regulate and then decide to regulate at some future date? Comcast

Mr. Randolph responded the process would be simple and the Council would adopt an ordinance to regulate, but if that happened too often, the FCC could respond with closer attention to the Town's actions.

Mrs. Wiener asked what the relationship was between this item and item 2.a. on the agenda concerning the establishment of basic tier rates and associated equipment charges?

Mr. Randolph stated if the Council does not wish to de-certify at this meeting or wishes to continue regulation in a more passive role, the forms 393 and 1200 and the issue of the increase for inflation are still to be considered by the Council. Mr. Randolph said the staff has provided all the information they have available at this point concerning the form 393, and the Council has three options:

1. Disapprove the rates on the basis of the information provided in the past and on the resolution provided by Mr. Randolph at the September meeting.

2. Recommend approval of form 393 leaving the issues that are in litigation with the understanding that if the decision is favorable it will affect the Town as well as others.

3. The consideration of form 393 could be postponed with the risk that the refund issue could be jeopardized.

Mr. Randolph said he did not think the form 1200 had to be addressed today, but another issue to be considered is Comcast's request to raise rates based on inflation. He added the first decision to be made is the issue of decertification and other alternative approaches.

Mrs. Wiener agreed with Mr. Randolph's recommendation that the Town continue to regulate but in a more passive manner and leave all the options open for the future.

Mr. Goldsmith made a motion to continue to regulate in a more passive manner. The motion was seconded by Mr. Shaw.

Mrs. Royal asked if Mr. Jakubiak had an estimate of the amount of refunds the Town Council may be foregoing for the residents?

Mr. Jakubiak responded he did not have that figure, but those refunds would be lost.

Mr. Randolph said the reason an answer could not be given was if the Council approves form 393 then the issues that Staff has brought up related to refunds would go away. Responding to Mr. Doney's question concerning the vote on regulation in a more passive manner, Mr. Randolph said the ensuing issues would not be superseded by this vote.

On roll call, the motion carried unanimously.

a. Reconsideration of Results of Accounting Review of FCC Form 393 to Establish Basic Tier Rates and Associated Equipment Charges for Comcast Cablevision - Deferred from October Meeting. Comcast

Mr. Randolph stated the Staff does not have new information, but a resolution was prepared and submitted at the September meeting that incorporated all the Staff's recommendation regarding form 393 and basically recommended disapproval. He added that in the event the Council does not wish to disapprove form 393 or if the issues of the installation charges and several of the other items are not challenged at this time, then the Council could approve form 393 as submitted. He said if the Council wants further information, form 393 could be postponed.

Mr. Jakubiak stated form 1200 has until December 14, 1994.

Mrs. Wiener said that the Council expressed concerns at the last meeting regarding the amount of money including the Staff's time that was spent on this item and the returns did not justify the time. Mrs. Wiener added deferral of this item will not provide the Council with information not known at this time.

Mr. Randolph offered to read a copy of the resolution presented at the September meeting to see if the Council wished to object to any of the items or go forward with the form 393.

Mr. Randolph stated the first issue of concern was the Valuepak, and the resolution had a provision that indicated that Comcast Cablevision has attempted to remove four stations from its basic tier referred to as the Valuepak, and those channels were not included on the FCC form 393 and that the Town is of the opinion that said program should be included on the FCC form 393.

Mr. Randolph said that Comcast has been charging subscribers a fee to cover costs associated with maintaining internal wiring and there is a substantial question under FCC rules if a charge can be imposed for internal wiring and therefore the Town objected to Cableguard.

Mr. Randolph recalled the Staff compared installation charges to another cable company in the area and noted that Comcast increased installation charges in one category from $39.95 in 1990 to

Comcast

$64.29, and the Staff stated Comcast failed to carry the burden of proving that their proposed rates relating to installation charges are reasonable. He continued that equipment charges compared to others are 25%-170% higher than a competitor, and at the start of regulation, Comcast imposed a $3.00 service charge per house for additional outlets and the Town is of the opinion that this new charge is not permitted by the cable act of 1992 and the Town rejects this charge. He added the Town rejects the practice of keeping interest that is made on deposits that are placed with Comcast, and the Town objected to a $10.00 late fee charged by Comcast that is $7.00 higher than a competitor.

Mr. Randolph added the resolution had a provision that Comcast should immediately reduce their rates, that they must keep adequate records of all amounts received in respect to rates and issues in order to establish what the refunds would be. He continued that Comcast may not increase their rates for basic service and equipment to any individual or group of subscribers unless reviewed by the Town.

Mr. Randolph said the resolution covered all the Staff comments to date.

Mrs. Wiener recalled the Council decided they were not going to address every issue.

Mr. Randolph said he wanted to state all the issues in the resolution to allow any Council member to comment on any one issue.

Mrs. Royal asked how many of the issues Mr. Randolph mentioned are in litigation by other communities?

Mr. Randolph responded the Valuepak and the Cable Guard are the two matters in litigation, and in the event that Comcast was not successful in the litigation, the Town wanted to preserve its rights. He added, in his opinion, that if Comcast is not successful in the litigation, they are going to be bound by whatever decision the court makes.

Mr. Len Rozek, Area Vice-President and General Manager for Comcast, addressed the Town Council and stated Cableguard and Valuepak are not form 393 issues and Comcast intends to follow whatever the court ruling is on these issues regardless if any of the municipalities regulate or do not regulate.

Mr. Shaw asked if the Valuepak is not considered an item to be charged extra for would it then become part of the basic tier?

Mr. Rozek replied it would not become part of the very basic tier but the next level of service, described by Comcast as Standard Service and would not be included with the lowest level covered by form 393.

Mr. Shaw questioned the issue of interest on deposits and asked for Mr. Rozek's response to this question.

Mr. Rozek replied he was not aware that the Town was waiting for this and will supply an answer to the Town.

Mr. Doney referred to the November 2, 1994, memorandum from Mr. Jakubiak, page two, "...the Town Staff's review of Comcast's cable rates indicates that there are potential problems and questionable practices concerning the re-tiering of its basic tier rates, which are not in conformance with the Cable Act of 1992. In addition to the installation charges, the Staff has concerns with the negative option billing practices and the 'a la carte' pricing methodology utilized by Comcast. It is this type of methodology that precipitated the FCC to draft revised rules and require a second cable rate review, through the processing of FCC Form 1200."

Mr. Doney said he would like the Mayor and Town Council to be aware that the preceding remarks reflect the Staff's position.

Mrs. Wiener replied the Council's position was the time spent by the Staff and the Council was excessive compared to the end result, and the rules and regulations change frequently.

Responding to questions from Mrs. Smith, Mr. Rozek said new rules are supposedly coming out Thursday, November 10, 1994, but he did not know if these rules would affect Valuepak and Cableguard.

Motion made by Mrs. Royal to accept the results of the accounting review FCC form 393. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

b. Reconsideration of FCC Form 1200 to Establish Basic Tier Rates and Associated Equipment Charges for Comcast Cablevision - Deferred from October Meeting.

Motion made by Mr. Goldsmith to accept the results of the accounting review for FCC form 1200. The motion was seconded by Mr. Shaw.

Mr. Doney, responding to a question from Mr. Randolph, stated the Staff does not have the form 1200 and the Town has not completed everything on the form because this was contingent upon using an outside cable rate analyst.

Mr. Randolph said the reason for this item being on the agenda was to see if the Council wanted to act on the issue. Mr. Randolph said the Staff may want to do some basic element of review without the involvement of a consultant.

Mr. Doney replied he sees this as a cumulative issue since the record indicates the Town has disagreed with items in the form 393, and therefore in the form 1200 which supersedes the form 393, the Town will have the same basic differences of opinion.

Mrs. Wiener stated there have been basic differences between the two parties, and these differences will not be resolved other than in a court of law which is being handled in other localities. She continued that it is reasonable to handle form 1200 in the same manner as form 393.

Mr. Randolph replied his concern was that the Town had basic information regarding form 1200 to allow for an action.

Comcast

Mrs. Smith asked if Staff had reported all the information they had on form 1200?

Mr. Jakubiak replied, as Mr. Doney stated, items are carried over from form 393 to form 1200; however, the "a la carte" billing can be objected to the FCC by the local authority. He added the same issues would fall into the form 1200 review. Mr. Jakubiak continued that the form 1200 is a very detailed form that requires financial information from the cable company, and it would be a waste of staff time to do a limited review of that form.

Mr. Jakubiak, responding to a question from Mrs. Royal, responded form 1210 is for inflation and external increases, and according to today's direction from the Council, the Council chose to regulate in the future. He continued the inflation and external increases will have to be considered based on the approval of the forms 393 and 1200, and if those forms are approved at this meeting, these rates will go into effect in the community. Mr. Jakubiak concurred that the date for the form 1210 is December 26, 1994.

Mrs. Wiener stated she recommended that the form 1200 be treated in the same manner as form 393.

On roll call to accept the results from accounting review for form 1200, the motion carried unanimously.

3. Consideration of Comcast Cablevision's Proposed Cable Rate Increases.

Mr. Rozek said the impact on limited basic service would be an increase of 15¢--from $7.96 to $8.11, and it is a mathematical calculation based on the increase in the Gross National Product Price Index provided by the Bureau of Economic Analysis, United Stated Department of Commerce. He said Comcast has followed the appropriate section of the regulations, obtaining the appropriate tables and followed the mathematical exercise.

Mrs. Wiener asked if Comcast could forget the increase in an effort to reconcile some of the Town's concerns?

Mr. Rozek replied this increase is a corporate decision and Comcast's have gone down substantially over the last year and one half. He continued the regulated revenue in the Town of Palm Beach has decreased by 28%, and the company has accepted the regulations leading to rate decreases and regulations now allow small increases which the company wants to implement. Mr. Rozek said these rate increases, according to the FCC, are allowed quarterly; however, Comcast does not want to implement them that often. Mr. Rozek replied he could not guarantee there would be no rate increases within the next 6 - 12 month period since these decisions are made at a corporate level, and the company is attempting to recover from a rather substantial lowering of their operating revenue.

Mr. Goldsmith said Comcast already has established its fixed costs and the Town is completely wired and questioned the need for an increase since the external costs are not affected.

Mr. Rozek replied the reality is Comcast has recently completed rebuilding the cable system in the Town, and the company did not anticipate the decreased rate structure after that was completed. He added this 15¢ rate increase reflects the increased programming costs which are the variable costs plus the general inflation cost number. Mr. Rozek stated that every subscriber in the Town would be affected by the 15¢ increase.

Motion made by Mrs. Royal to approve the cable rate increase. Mrs. Wiener passed the gavel to President Pro Tem Smith and seconded the motion. On roll call, the motion carried unanimously.

Mr. Rozek responded to Mr. Shaw's question concerning the interest on the deposit money and said he would have a written response prior to the December Town Council meeting.

4. Consideration of Request by CoTran for Revised Routes Within the Town of Palm Beach - Deferred from October Meeting.

CoTran (Revised Routes

Mr. Doney reported Major Croft and the representative from CoTran had extensive communication since the October meeting. He said the Council had requested specific, proposed scheduling and routes for review by the Police Department to allow review and comments from a public safety perspective. He referred to the October 14, 1994, letter from Mr. Irving Cure to Mr. Doney providing details of the routes and timetables. Mr. Doney said that Major Croft has reviewed the routes and the bus stop locations, and the Police Department's concerns have been addressed.

Mrs. Wiener asked why three buses were scheduled for route 41 in the morning and only two in the afternoon?

Jerry Brian, Manager of Project Development for CoTran, replied three hours of operation time was scheduled in the morning and only two hours in the afternoon. He explained that each trip took one hour thus equalling three and two trips.

Mrs. Wiener questioned Mr. Brian concerning the identification of bus stops with signs every two blocks. She stated she did not believe there should be a bus stop every two blocks nor would bus stop signs located every two blocks be approved by the Council.

Mrs. Wiener suggested the system that operates in the north end of Palm Beach has worked well with the buses stopping on demand for passengers. She asked Mr. Brian about route 43 which projected 10 buses serving that route at 45-60 minute intervals, and requested a comparison to the current level of service.

Mr. Brian responded the current service level is 5 buses with frequency of service provided every 30 minutes.

Mrs. Wiener noted that the current service is less frequent than the proposed service. She reiterated her position concerning the signage issue and the frequency of stopping at designated areas every two blocks.

CoTran (revised routes)

Major Croft said the Police Department reviewed the routes for planned stops and with the new routes there are over 1,000 stops. He stated after the review the Department reduced the designated stops to between five and ten. He added the designated stops may need signs; however, this will not go into effect until 1996. Major Croft said most of these designated stops are already in place and have signs, but the signs are different than presented in the literature. He reported that Mr. Irving Cure has promised that whatever signage chosen by the Town of Palm Beach will be used.

Major Croft stated currently the only bus stop signs are in the downtown area where the issue may be public safety.

Mr. Brian replied the standard in the industry is to identify bus stops every two blocks but these may not be identified with signs.

Mrs. Smith asked Major Croft why three bus stops were put on Royal Palm Way.

Major Croft replied that CoTran's review indicated that Royal Palm Way was a busy area with increased passenger pick up.

Mrs. Smith objected to the corner of Royal Palm Way and South County Road as a site for a bus stop because of the traffic congestion.

Major Croft said the area was busy, but an existing bus stop is located on the southeast corner. He added the bus stop shown on the route at South Ocean Boulevard and Royal Palm Way will be changed to Brazilian and South Ocean Boulevard where a bus stop currently exists.

Mrs. Smith stated she would find it totally unacceptable to have any type of sign, and certainly not the submitted signage which was an advertisement for CoTran.

Responding to a question from Mrs. Smith, Major Croft agreed that there is no signage presently north of the North Fire Station, and CoTran has indicated the Town has approximately 100 designated bus stops. He added CoTran has agreed that no bus stop signs will be installed in the north end of the Town.

Mr. Shaw questioned the amount of duplication in the downtown conversion of the three routes and asked if a route could be created that would be an on-going north/south route that would allow a larger bus to cross the north bridge, travel to the south across the bridge thus leaving a strictly north/south transfer system to operate on an all day schedule. He added that many of the people who would take the bus do not get up at 6:00 a.m., and he questioned the ending of the route at Lake Worth with those residents living south of Lake Worth not having access to the buses.

Mr. Brian said the route does terminate at Lake Worth Beach where two other routes terminate including one coming from the south via Manalapan and the Lake Worth cross town route. He said CoTran has identified Lake Worth Beach as a transfer point in the system, and the suggestion to have a route running primarily in the Town of Palm Beach on a north/south basis could be studied; however, that system would requiring transferring, and the proposed system does not require transfers.

Mr. Brian said that a one way charge for a bus ride is $1.00, transfers are 20¢ and discounts are given for senior citizens, students and the disabled.

Mrs. Wiener stated the Council is not concerned with creating routes for CoTran but to make certain that the routes CoTran has designed do not cause traffic problems, unsightly signs or make it dangerous for pedestrians.

Mr. Brian said he was looking for approval of their routing structure, and the issue of the signage can be worked out with the Town. He added CoTran needs to finalize the routing structure to tie in with other meetings scheduled including a meeting with the County Board of Commissioners.

Mrs. Wiener asked on what basis was CoTran planning to double the number of buses to handle an increase in riders?

Mr. Brian said the current numbers of riders on routes 4 and 5 indicate added service would be well received, although he was viewing the adding of a route, from two to three, and not the doubling of the number of buses.

Mr. Shaw stated he would like to see a different routing structure including his suggestion for a north/south route, and he would like to see one map where all three proposed routes overlapped.

Motion made by Mr. Goldsmith to accept the routes as put forth by CoTran subject to Staff revision at a later date; without signage, no added eyesores to the public rights-of-way and the buses will stop on demand in the residential areas. The motion was seconded by Mrs. Smith.

Mrs. Royal added she thought it was unfair if a rider wished to travel from one end of Town to the other and was required to pay a transfer fee.

Mr. Brian replied given the number of trips scheduled in the morning and afternoon, he did not anticipate a high demand for transfers, but he will take that under advisement when reviewing Mr. Shaw's suggestion of a north/south route. He said the highest percentage of riders to the north end was domestic help coming to the island from the West Palm Beach area.

Mrs. Wiener stated her goal was to have the best service possible with the least amount of buses.

Mrs. Smith asked if the plan presented to the Palm Beach County Commission would be rejected or amended?

Mr. Brian responded he did not think the plan would be rejected, but it could be amended considering 34 routes were involved county wide. Mr. Brian said if the County Commission wanted to change the routes in Palm Beach, he would relay the concerns of the Town Council to the County Commission.

On roll call, the motion carried 4/1 with Mr. Shaw casting a negative vote.

5. Consideration of Potential Sale of Town-Owned Property on Pike Road (West of West Palm Beach in Unincorporated Area of Palm Beach County) - Deferred from October Meeting.

Town-Owned Property on Pike Road

Mr. Doney referred to his memorandum dated November 2, 1994, to the Mayor and Town Council, that summarized the results of the Calloway and Price appraisal. He said that Calloway and Price have estimated the market value of the property to be $870,000 if the zoning is changed to "Light Industrial" and $800,000 if sold "as is".

Mr. Doney said an important point to consider is the statement in the October 13, 1994, letter to Mr. Dusey, indicating "that it should be clearly understood that the market value definition includes reasonable marketing time. There is evidence in the market that tentatively suggests the beginnings of a real estate recovery, while this is not a foregone conclusion, nevertheless, the worst seems to be over. It is our opinion that the marketing time should take one to two years based upon today's market. Obviously, if a quick sale liquidation is the goal, market value would not be realized but rather a lower number liquidation price."

Mr. Doney said if the Town Council would like the Town Staff to proceed with the legal requirements to sell this property as surplus, the issue may be readdressed in six months. He added his suggestion would be that the proceeds from the sale should be restricted in use and in capital improvement funds only.

After hearing responses from the Council members, Mrs. Wiener suggested the property does not need to be sold at this time.

Mrs. Smith stated the reason the issue was brought up was over the issue of the water meter and the $30,000 to $40,000 that would cost. She added if the Town does not wish to sell this property, should the water meter be installed? Mr. Dusey and Mr. Randolph replied it did not.

Mrs. Smith suggested it may be advantageous to the Town to have the property rezoned "light industrial".

Mr. Randolph stated the Town would have to go through the process of rezoning with the County and six months should be allowed for the completion of this activity. He added a petition for a zoning change would have to be filed, submitted to the Planning and Zoning Commission in the County, go to the County Commission and then advertised.

Mrs. Smith stated since there is no hurry to sell this property, the re-zoning should be done to command a higher selling price.

Motion made by Mrs. Smith not to sell the Town owned property on Pike Road and to have it re-zoned. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 4/1 with Mrs. Royal casting a negative vote.

6. Consideration of Replacement for Strangler Fig Tree on Lagomar Road - Deferred from October Meeting.

Strangler Fig Treee on Lagomar Rd.

Mr. Dusey reported a major branch of the tree was lost and the condition of the remaining part of the tree was hazardous and the tree was removed. He said the Mayor wrote a letter to the residents explaining the situation and suggested replacement with a smaller tree and reconfiguration of the curb. Mr. Dusey said when responses have been received from the neighbors, the project will go ahead.

Mrs. Wiener asked Mr. Dusey to report back to the Council after the residents have responded.

7. Update on Proposed Peanut Island Park - Consideration of Official Town Comments and Revised Conceptual Plan.

Peanut Island Park

Mr. Doney reported that a public comment meeting was held at the Port of Palm Beach on October 25, 1994, to view and discuss the revised Conceptual Master Plan for the proposed Peanut Island Park. He added Mr. Elwell attended this meeting and reiterated the Town's official comments of June 14, 1994.

Mr. Doney read part of his memorandum dated November 2, 1994, and stated the following four points summarized the Town Staff comments on the revised plan:

(1) The elimination of an "observation tower" and inclusion of "observation platforms" appears to have addressed the Town's desire to protect, as much as possible, the privacy of the residential properties at the north end of the Town. (Two observation platforms are proposed to be built at grade on the higher ground of Peanut Island as it exists today.)

(2) The general layout of the proposed park appears to have addressed the Town's concerns to the extent that it could accomplish both that objective and the objective of environmental sensitivity. (Although the Town's comments encouraged more emphasis on active park uses for the western and northern "sides" of Peanut Island, the park planners explained that the western "side" is dominated by a substantial mangrove area which they are planning to preserve and enhance. This has shifted some of the picnicking and other activity areas to the eastern "side" of the island.)

(3) The park planners appear to have addressed the Town's request for a dense landscaped buffer. (They are intending to use mature landscaping, combining some existing with some newly planted, to ensure that the spoil disposal areas and public activity areas are well buffered from each other and, to the maximum extent possible, from the surrounding residential areas).

Peanut Island Park

(4) The "Potential Snorkeling Area" as shown on the attached Conceptual Master Plan may cause the Town some concern, due to its location on the southeast "corner" of the island and its proximity to the shipping channel. (The Port of Palm Beach also is concerned about this aspect of the plan because of the potential conflict with the shipping channel. The park planners indicated at the October 25th meeting that the proposed snorkeling area should have been shown only as the small, cross-hatched cove and not as the much larger kidney shaped area.)

Mr. Doney said these comments were related by Mr. Elwell to the Port of Palm Beach, Palm Beach County and the Florida Inland Navigation District at the October 25 meeting. He requested that the Town Council and the Mayor concur with these comments or modify them to enable Mr. Elwell to prepare for the next meeting.

Mrs. Wiener, referring to item number 1, asked Mr. Elwell about the two observation platforms proposed to be built at grade on the higher ground and the height of that higher ground.

Mr. Elwell replied the grade or elevation was approximately 25 - 30 feet, but the plan was to construct a flat, wooden deck for viewing.

Mrs. Wiener asked if there was a way to discourage that plan, since a flat platform might encourage visitors to spend time viewing Palm Beach, and it does take away the privacy of some of the residents.

Mr. Elwell said the request to remove the observation platforms could be related to the meeting group, and the purpose of the platforms is to encourage people to stay there and enjoy the view.

Mrs. Wiener asked what assurances did the Town of Palm Beach have that the plan for well buffered areas including mature landscaping would be carried out?

Mr. Elwell said a landscape plan exists and the plan calls for a phasing in, over a period of time, the vegetation on the plan. He added this plan calls for the removal of some of the Australian pines and replant with native, mature vegetation, and no document or commitment exists except for the public statement of the planners.

Mrs. Wiener requested that the group would provide some serious assurances for the landscaping. She added, unless the plan is definitive, the Town of Palm Beach will be affected, and the Town needs to express its very strong concerns regarding the observation platform and the landscaping.

Mr. Elwell stated he has stressed previously the need for the observation platform to not be elevated, and offered to return to the meeting with the Town's suggestion that no observation tower be constructed on the east side. He added he would recommend a sufficient landscape buffer to be established so there would not be an impact on the residential area of the Town. Mr. Elwell requested the Mayor and Council supply comments to take back to the Committee; specifically, what sort of commitment, other than their verbal commitment, is needed from the Committee regarding the landscape buffering.

Mrs. Smith said two platforms are shown on the plan, one facing east and the other is facing southeast; both of which will impact on the Town of Palm Beach. Mrs. Smith asked why one of these platforms could not be located on the west side of the island, overlooking the mangrove area, which will be developed with walks through the mangroves? She stated her position would be to have one of the platforms located in that area on the west.

Mr. Elwell replied a small, floating dock is planned for that area where boaters could dock a boat. He added a wooden walkway would lead to the rest of the park from the floating dock.

Mrs. Smith said a new set of questions were raised with the possibility of boats with diesel fuel being allowed into a mangrove area, and she requested this issue be put into a written form with specifics including what the Committee will commit to for the Town, including the positions of the platforms. Mrs. Smith stated as the issue was discussed, she had additional concerns.

Mr. Goldsmith asked Mr. Elwell if the Town had any rights regarding the issue except for moral persuasion?

Mr. Elwell stated he was not aware of any rights the Town had, at this time, except to provide comments to the Committee.

Mr. Randolph said the Town of Palm Beach was an affected community and compared the issue to a comprehensive plan amendment, and adjoining communities have the opportunity to comment. He added, to the extent that adjoining communities are not taken into account, the Town would have the opportunity to challenge.

Mr. Elwell suggested that a planner or representatives of one or more of the three agencies that are planning the park could appear before the Town Council at the December meeting and answer questions.

Mrs. Wiener responded Mr. Elwell should inform the Committee of the wishes of the Mayor and Town Council and find out from them if they can grant these wishes or if the exercise is futile. She added the Committee should be informed that the Town is very concerned because of the impact this will have on some of the residents of Palm Beach.

Mrs. Royal asked Mr. Elwell what the position of the Port of Palm Beach is regarding this project?

Mr. Elwell replied the one area that the Port of Palm Beach expressed concern about is the snorkeling area and its proximity to the shipping channel; otherwise, the Port is supporting the central plan. He added that Palm Beach County and the Florida Inland Navigation District support the plan in its entirety. He added the three groups are developing the plan, and the specifics that were mentioned by Mrs. Smith do not exist.

Mrs. Smith said representatives from the three groups should not have to appear before the Town Council, but other interested groups will be registering concerns and objections about the landscaping, the landscape buffering and the safety and security of the mangroves as protected by the State. Peanut Island Park

Mr. Elwell stated at the first meeting many concerns were raised, and at the second meeting, many of the concerns were addressed somewhat or completely. He added one of the concerns addressed was the changing of an observation tower to an observation deck. Mr. Elwell reported that the planners received two sets of comments, and, in his opinion, substantial changes to the conceptual plan would not be likely.

Mrs. Smith suggested the observation platform be moved from the southeast side to the west side.

Mayor Ilyinsky said the observation platform, as shown on the plan, is way left of the Coast Guard Station and compared the platform to the second story of the Coast Guard Station. He added he doubted Palm Beach was barely visible from the Station or the platform, and considering latitude and longitude, the location of the second platform was by the Sailfish Marina.

Mayor Ilyinsky stated Peanut Island was a disaster before people of good will gathered together to save Peanut Island and every item this group is attempting to accomplish should not be criticized. He said Peanut Island was planned to be a spoil island, and muck from the dredging of the inlet was intended to be piled on Peanut Island. He added many people and groups, including the Coast Guard who donated a lovely building that should be landmarked, worked together to save the island. He said some of the Council's concerns are valid including the removal of all the Australian pines, but Peanut Island, when finished, will be one of the loveliest parks in the eastern United States. Mayor Ilyinsky stated the complaints concerning the Peanut Island project did not come from the Mayor's office, and if complaints are registered, they came from the Council not from the Mayor!

After discussion, Mrs. Wiener stated the Council had two items of concern--the moving of the platform from the southeast side to the west and the removal of the Australian pines. Mrs. Wiener added the Council's intention is to protect the residents on the north end of the island.

Mr. Elwell said he understood the comments from the Council included the relocation of the observation platform from the southeastern part of Peanut Island to the western side of the island and not all of the Australian pines be removed. Mr. Elwell said the removal of the Australian pines will be very slow.

A motion was made by Mrs. Smith to direct Mr. Elwell to express the Town Council's concern regarding the location of the southeast observation deck and the possible relocation of that deck to the west side of the island overlooking the mangrove area. Mr. Goldsmith seconded the motion. On roll call, the motion carried unanimously.

XII. NEW BUSINESS — NEW BUSINESS

A. Resolution

1. Resolution No. 56-94 - Commercial Solid Waste Collection Fees. — Res. 56-94

Mr. Randolph read Resolution Number 56-94:

THIS IS A RESOLUTION OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING COMMERCIAL SOLID WASTE COLLECTION FEES TO BECOME EFFECTIVE JANUARY 1, 1995.

Mr. Dusey stated these new fees were based on the budget adopted for this year and considered the fact that the Solid Waste Authority is charging differently for commercial customers and has reduced the disposal fee charged to the Town from \$46.00/ton to \$40.00/ton. He added the estimated revenues for the year will produce approximately \$460,000 compared to last year's estimate of \$499,000.

Motion made by Mr. Goldsmith to approve Resolution Number 56-94. The motion was seconded by Mr. Shaw.

Adrian Winterfield addressed the Council and said the new schedule as well as the old schedule treated the apartments the same, and this means one studio apartment of 200 square feet and another apartment containing 2,000 square feet, should be treated the same. Mr. Winterfield said this is highly inequitable, and considerations should be given to the fact that waste is generated in relation to the area in apartments as in commercial buildings.

On roll call, the motion carried unanimously.

B. Appointments — APPOINTMENTS

1. Golf Commission - Three Three-Year Terms to Expire November 1997. — Golf Commission

Motion made by Mrs. Royal to defer the appointments for a while and request the current Golf Commission to obtain additional names for the vacancies. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Appointments (Seaview Park)

2. Seaview Park Commission - One Three-Year Term to Fill Balance of Term to Expire February 1995.

Appointments (Seaview Park)

Motion made by Mr. Shaw to defer the appointment. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

C. Other

Update by Digby Bridges Architects Re: Designs of Royal Park, Flagler Mem., and Southern Blvd. Bridges

1. Update by Digby Bridges Architects Regarding Designs of Royal Park, Flagler Memorial and Southern Boulevard Bridges.

James Carmo, Architect - Digby, Bridges and Carmo, addressed the Commission and presented design sketches of the proposed bridgetenders quarters for the Flagler Memorial, Royal Park and Southern Boulevard bridges.

Mr. Carmo stated the criteria set up by the Landmarks Preservation Commission was that the bridgetenders' renovations reflect the architecture of the bridges themselves, not necessarily the architecture of Palm Beach. Mr. Carmo said the Flagler Memorial Bridge was built in the 1920's, and the Mediterranean Revival style used for the entrance gates to the bridge is reflected in the bridgetender's quarters.

Mr. Carmo continued with the Royal Park Bridge and said the architectural style was intended to reflect the modern era of the concrete design of the bridge.

Mr. Carmo stated the third bridgetender's quarters, the Southern Boulevard Bridge, reflect a feel for South Florida and will be painted white with a metal standing seam roof.

Mrs. Wiener replied she was satisfied with the Landmarks Commission's approval of these three designs.

Motion made by Mr. Shaw to approve the design of the three bridge drawings. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

FPL Request for Waiver to Construction Restrictions A-1-A & Sloan's Curve

2. Consideration of Request for Waiver to Construction Restrictions in Use of the State Road A1A Right-of-Way Between December 1st - May 1st by FPL Near Sloan's Curve.

Joe Gallagher, Florida Power & Light, addressed the Council and introduced Dick Klinger, Environmental Group, and Todd Ours, Planning Group. Mr. Gallagher requested permission from the Town to work on an additional cable crossing to the part of Palm Beach south of Sloan's Curve. He stated the company had anticipated having this circuit fully energized by this time, but due to the federal permitting delays, approvals were not received until the end of September, and bids had to be put out after September.

Mr. Gallagher said the existing cable does handle power to the south end of Palm Beach, and, if it would fail, restoration of power would be extremely difficult. He added with the second cable in service, either cable could handle the south end of Palm Beach. Mr. Gallagher said the work will be done in the green space next to the road; they do not expect to work in the road at any time, and the trucks will be parked in the green space. He stated Florida Power & Light wants to start work in early December, anticipating a break over the Christmas holidays and returning in January to finish the project. Mr. Gallagher said the start date may have to be in January.

Mrs. Wiener asked Mr. Dusey if an expert could be hired on an "as needed" basis who understood utilities and could advise the Town if something of this nature was absolutely necessary or if April 1st would be sufficient? Mrs. Wiener continued that this type of situation continues to happen in the Town, and the word of the utility company involved is taken, and perhaps it is a matter of fitting into a utility company's schedule.

Mr. Dusey responded he was not sure where such a person could be found, but someone should have the expertise.

Mrs. Smith asked Mr. Gallagher if an emergency had presented itself since the permitting process had begun nine months ago?

Todd Ours, Distribution Planning Engineer for Central Palm Beach County, responded there was nothing of an emergency nature that occurred that prompted Florida Power & Light to recognize the need for the project. He added the need for the project came as a result of the annual load studies conducted by FPL for the entire area. He said after reviewing the loading performance of the area circuits on an annual basis that reflect the changes in the areas due to the increased population and the increased loading of the facilities, FPL reviews to insure that the facilities have adequate facilities to meet the demands of the population on a normal basis and in the event of a system failure.

Mrs. Smith asked if this project could wait until April 1, 1995?

Mr. Ours responded the project could be delayed if there were no contingency failures elsewhere in the electrical system, the project could wait. He said FPL cannot predict when failures in the system will occur to the various components, and winter time is frequently a trouble period for the company due to the potential of a cold snap. He added the last major period of cold mornings occurred during the season of 1989-90, and this was an extremely difficult time for FPL.

Mr. Shaw said the usage has not changed during the last few years nor are changes anticipated from the residents in Palm Beach.

Responding to questions from Mr. Shaw, Mr. Ours explained the south part of Palm Beach is served by two submarine cables; one is at the location of the existing crossing near Sloan's Curve and the other one comes from Lantana to Manalapan and it serves a fairly large area before it crosses the Intercoastal Waterway and continues to Palm Beach. He added the problem is specifically with the circuits in the Delray Beach, Lantana, Boynton Beach area.

FPL - Waiver of Construction Restrictions (cont'd)

Mr. Shaw asked why a new cable could not be installed in the Delray Beach-Boynton Beach area to augment their feed in place of disrupting Palm Beach at this time of year?

Mr. Ours responded FPL has reacted to that situation and have added new circuits and upgraded cables and wires in that area. He added new lines could not be pulled through the existing subaqueous crossing, and the diameter of the bore for the cable is 6 inches.

Mrs. Royal made a motion to deny the request for Waiver to Construction Restrictions.

Mr. Goldsmith said he had concerns for the residents of the south end who would be endangered because the looping system to the south end would have to be taken out and service would have to be provided from another loop.

Mr. Gallagher responded if an outage occurred, the loop would be back fed to the largest extent possible, but a gap-out could occur for a fairly lengthy period.

Mrs. Smith asked if the working schedule was 28 working days or 28 calendar days?

Mr. Gallagher asked if the Town would allow the crews to work through the weekend?

Responding to a request from Mrs. Wiener, Mr. Shaw seconded the motion for purposes of discussion.

Mr. Gallagher said the existing cable is twenty years old and the new cable will parallel that one, and the twenty year old cable has been identified as being on the edge of its reliability status. He added, if it fails, FPL will not be able to restore service to the Sloan's Curve area. He stated FPL wanted this installed before the winter months.

Mr. Shaw noted that the area of A-1-A will be impacted mostly during the time of the cable pulling which would last five days. Mr. Shaw asked what prior preparations were necessary to make in Palm Beach before the cable is pulled?

Mr. Gallagher responded the 6 inch tubing is on 100 foot reels and is laid out on the grass across from Sloan's Curve. He said the actual time in Palm Beach could be cut down.

Mr. Shaw withdrew his second of the motion to deny. The motion died for lack of a second.

Motion made by Mr. Goldsmith to approve the Waiver to Construction Restrictions with the conditions that no blockage of the roadways be allowed at any time; the construction to begin no sooner than January 3, 1995; no work on Sundays, work to be allowed Monday through Saturday, hours 9:00 a.m. to 5:00 p.m. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Wiener noted that the Council wants the work to begin after the holiday season and to conclude as quickly as possible.

Mrs. Smith asked that any of the landscaping that is destroyed be replaced.

Mr. Gallagher responded a video tape will be taken of the area prior to the construction period, and the landscaping will be replaced according to the video tape.

3. Consideration of Paramedic Clinical Affiliation Agreement Between the Town of Palm Beach and Palm Beach Community College - Request Authorization for Town Manager to Execute Agreement.

Paramedic Clinical Affiliation Agreement

Mr. Doney requested approval by the Town Council for the annual agreement between the Town of Palm Beach and Palm Beach Community College for paramedic clinical practicums.

Mrs. Smith asked if the Town is paid for this practice of allowing the paramedic trainees from the college to train with the Palm Beach personnel?

Chief Elmore replied the Town is not paid for this service, and the Town actually pays the college because the Town's paramedics are being trained. He continued the program is set up to not allow ride time for the student with the agency where they work, and the Palm Beach paramedics will have ride time in another community.

Motion made by Mr. Shaw to accept the Affiliation Agreement between the Town of Palm Beach and Palm Beach Community College. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

4. Consideration of School Board of Palm Beach County and Town of Palm Beach for Vocational Education Programs - Request Authorization for Town Manager to Execute Agreement.

Vocational Education Programs Agreement

Mr. Doney said this annual agreement allows Fire-Rescue Department employees to receive training and education from South Technical Education Center, and Mr. Doney requested Town Council approval for the authorization to execute the agreement.

Motion made by Mr. Goldsmith to authorize the Town Manager to execute the agreement. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

5. Consideration of 1994-95 Palm Beach County Legislative Delegations Public Hearings.

Legislative Delegations Public Hearing.

Mr. Doney said the purpose of this item being on the agenda is to authorize the legislative delegation to be contacted, if the Council so wished, and that a Town representative either appear or that the Town Council authorize a written request be made to the legislative delegation on any particular item the Town Council would like to have the legislative delegation consider. Mr. Doney added this is an opportunity to add any local bill that should be considered by the Palm Beach County Legislative Delegation, and Staff has no particular items in mind.

No motion was made.

Governor and Cabinet's Coastal Armoring Policy

6. Consideration of Department of Environmental Protection, Division of Environmental Resource Permitting Proposed New Rules to Implement the Governor and Cabinet's Coastal Armoring Policy.

Mr. Doney reported that Scott Hawkins, Jones, Foster, Johnston & Stubbs, assisted Mr. Moore and Mr. Elwell advancing comments and recommendations to the Department of Environmental Protection to express the Town's concerns and recommended revisions. Mr. Doney said the two letters from Mr. Hawkins state the Town's opinions on the proposed rules, and the 51 pages of rules were attached to Mr. Doney's November 3, 1994, memorandum to the Mayor and Town Council.

Mr. Goldsmith noted that the fifty foot setback limit, along the coastal line, will not allow anyone presently occupying a residence along the coast to rebuild if anything is torn down. He added the Coastal Commission will have total control over the coast line.

Mrs. Smith asked if there was a new coastal construction setback line that has been agreed to?

Mr. Elwell responded, through a separate process, the State will be presenting to the Town a proposed relocation of the coastal setback line for Palm Beach County. He added additional studies have been conducted by the University of Florida.

Mr. Elwell noted that the rules submitted at this meeting do not relate to the specific location of the line but deal with "armoring", seawalls, revetments or other sorts of structures that protect coastal property. He added the relocation of the coastal construction line is not part of this package but has to do with the types of projects that can be done in the coastal area.

Mrs. Royal asked if the existing groins can be repaired under these rules?

Mr. Elwell replied he understood existing structures can be rehabilitated and these rules would apply only to new structures. He said since the Town is substantially armored, the maintenance activities should not be affected by these new rules.

Mrs. Smith asked if residents, under these rules, could obtain a permit to construct a sea wall?

Mr. Elwell replied, under certain circumstances, the answer would be "yes", and this issue was raised under the letters being sent to the State under the combination of the use of the word, "feasibility" by the State which was not defined. He said the State referred to a "feasible alternative project" such as relocation of an existing structure landward in place of building a seawall or some other coastal structure. He continued the combination of that with the fact that the State, under these rules, would not allow a coastal structure to be built unless the upland was vulnerable to a five year interval storm, and this was uncomfortable for the Town. Mr. Elwell added by the time the Town was vulnerable to a five year storm, with the planning required to put one of these projects in place, the storm could arrive before the project is completed. Mr. Elwell concluded the Town wanted a better definition for the word "feasible" and a longer lead time rather than a five year interval storm.

Mrs. Smith asked what measures can be taken to strongly protect the residents of Palm Beach who are affected by these rules?

Mr. Randolph replied, at some point, if the Town does not receive satisfaction, the Town could object to the rule and go through a 120 hearing process. He continued that whenever the State makes any rules, the municipality has the opportunity to object and appear before a hearing officer, state the case, obtain a ruling from the officer, and based upon the action of the State agency, the case could be taken to the 4th District Court of Appeals.

Mr. Goldsmith clarified his remarks stating that the Council should be aware that this rule making procedure is ongoing, and the State is definitely on the Coastal Control Commission.

Mr. Doney suggested that the outcome of the Council discussion would be the authorization for the President, Mrs. Wiener, to write a very strong letter to reiterate and emphasize the very serious concerns the Town's attorney has already related to the Department of Environmental Protection.

Motion made by Mrs. Smith to authorize President Wiener to write a letter to the Department of Environment Protection stating the Town's concerns. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Palm Beach Public School PTA Carnival

7. Appeal by the Palm Beach Public School PTA.

Mr. Doney explained that a request was made by Mr. Tom Pearson on behalf of the Annual School Carnival to be held on November 19, 1994.

Mr. Pearson addressed the Town Council and explained the Palm Beach Public PTA requested a permit to utilize the soccer area of the Recreation Center to do a demonstration with the Trauma Hawk helicopter. He stated his group went through the process of obtaining a permit, updating the insurance, meeting all the Town codes before someone pointed out a rule prohibited the landing of the helicopter. Mr. Pearson requested permission to land the helicopter for a 2-3 hour period maximum to do a demonstration, and the group would be responsible for any damage done to the soccer field. He added this request is for the school, and the only reason to purchase the $1,000,000 insurance policy was to land the helicopter, or to secure a permit.

Mr. Randolph replied, in his opinion, the Town Council did not have discretion to grant the landing of the helicopter since the Town Code has a prohibition concerning the landing and taking off of air craft except at specifically designated places. He added, as a discretionary matter, the Town Council cannot allow a variance from that provision of the code as this is not a provision of the Code that allows that.

Palm Beach Public School PTA Carnival (cont'd)

Mr. Shaw said he understood the Trauma Hawk helicopter has landed a number of times on that field during training exercises when it was first brought into the Town, and if this were used as a training program for the benefit of the Town and as a re-visiting of that training for paramedics, it could have a specific benefit.

Chief Elmore responded the paramedics have used that landing site for training procedures, and he offered to have training on that particular day as directed by the Council.

Mr. Randolph replied he stood corrected if that site is a duly designated site for that activity.

Chief Elmore said the site is not designated under that ordinance, and the site is strictly for an emergency issue as stipulated by the Council several years ago. He continued the training was done when the helicopter was originally put into service, because Chief Elmore did not want to bring the helicopter into Palm Beach the first time on an emergency basis.

Responding to questions from Mrs. Wiener, Chief Elmore said the helicopter is brought to Palm Beach 10 to 12 times a year for emergencies but not for training at this point.

Mr. Randolph said the issue is the same if this is not a designated site, then the Council does not have the discretion to allow for it. He added, since there is a need from time to time for the helicopter to land for emergency purposes, the Council made an exception to allow training for emergencies at the inception time.

Mrs. Wiener stated if the children at the school would like to see this helicopter, it should be done by way of a field trip.

Mrs. Smith said the Trauma Hawk was used for emergencies throughout the County and questioned the costs for the crew and the helicopter being used for exhibition purposes when it may be needed for life saving situation.

Mr. Pearson responded he understood this area was a landing site for the helicopter and the event was not intended to be a thrilling event for the children but intended to be part of an educational event including a drill or training for the paramedics.

Mr. Shaw pointed out the need for a training program should be addressed by the appropriate Town officials or health officials and not scheduled as part of a PTA carnival.

Chief Terlizzese stated many requests are made to have the helicopter land in the Town, and these requests have been prohibited for 25-30 years.

Mrs. Royal asked Mr. Randolph if Section 13.7 of the Ordinance should be revised to include the site in question for emergency landings or add a provision for emergency landings. Mr. Randolph replied the Ordinance allows for emergency landings in the Town.

Mr. Doney responded the Code of Ordinances goes back to 1958. Mr. Randolph added, in cases of emergency, the Town could not preclude landing a helicopter, and the Code could be amended to include such language, but it is not necessary.

Motion made by Mrs. Smith to uphold the Special Event Permit Number 3-94 with the conditions imposed and no landing of the Trauma Hawk helicopter at the Carnival. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 3-2 with Mr. Shaw and Mrs. Royal casting negative votes.

Mr. Doney added the second part of Mr. Pearson's appeal related to the return of the $150 application fee if the Trauma Hawk landing was denied since the school would not use any part of the Town's property.

Responding to inquiries from Mrs. Wiener, Mr. Randolph stated the $150 was intended to cover the administrative time and the advertising costs.

Mr. Doney said the misunderstanding including the Trauma Hawk was an honest mistake, and the Town has always had a very good relationship with school.

A motion was made by Mr. Goldsmith to return the $150 application fee to the Palm Beach Public School PTA. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Wiener commented that in the future, ways should be found to not go through the entire process.

XIII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR OCTOBER 1994

Approval of Warrant Registers & Funds

Mrs Smith made a motion to approve the warrant registers and funds expenditures report for October, 1994. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Communications from Citizens

Mimi Lambert spoke to the Town Council concerning the Sea Turtle Ordinances 4-94 and 16-87 that encourage ocean front landowners to prevent light sources visible from the beach. She said unfortunately this voluntary turtle protection ordinance has not worked according to the State report.

Ms. Lambert asked the Town Council to consider a stronger ordinance with teeth in it to provide the Police Department a means to fine violators. Ms. Lambert stated 85% of the new turtles were lost this season due to their attraction to the light, and 3,000 dead turtles were found in the north end of Palm Beach. She offered to provide a model ordinance for the Town Council to consider and responses to common questions concerning sea turtles and land.

Mrs. Wiener suggested this matter may be reviewed by the ORS Committee for review. Other Town Council members agreed.

Mr. Doney asked the matter be referred to Staff because through Countywide Beaches and Shores Council of which Mayor Ilyinsky is a member and Mr. Elwell is involved, and through the involvement of Mr. House, Code Enforcement, and John Fletemeyer, the Staff can provide input before it goes to ORS.

Mrs. Wiener suggested the Staff assemble the information and then submit it to ORS.

Mr. Doney noted the turtle nesting season is from April 1 to October 31, and the meeting could be scheduled by mid December.

Adrian Winterfield addressed the Town Council concerning the issue of Mar-A-Lago and questioned the possible violations of the Town Codes. Mr. Winterfield asked the Town Council to pay attention to the Town's agreement with Mr. Trump and the Club dated August 10, 1993. He stated certain specific requirements are incumbent upon parties to that agreement, and it is not clear that these requirements have been complied with.

Mr. Winterfield said informal statements have been made that the Club will open during the month of January. He requested the question of Mar-A-Lago be placed upon the December Town Council agenda; specifically, to determine if the owner has transferred title to the Club as required in the agreement and if Article 9 of the agreement, referring to the reversion provision and established requirements that the reversion terms be reflected in the Articles of Incorporation, By-Laws and membership documents issued have been complied with. He added the Council should ensure itself of the compliance with these requirements before a certificate of occupancy is issued.

Mrs. Sandra Goldburg addressed the Town Council regarding the CoTran revised route schedule and the possibility of providing a north-south bus route for Palm Beach going beyond Lake Worth Bridge. She said many elderly residents live on South Ocean Boulevard, and this proposed bus route would be a great service for these people.

Mrs. Goldburg commented the use of a yard trash chipper is a good idea and thanked the Council for looking into the matter.

Development Reviews

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of October 26, 1994 - Excerpt Available in Town Manager's Office.

A motion was made by Mr. Goldsmith to approve the Major Matters considered by the Architectural Commission at the October 26, 1994, meeting. The motion was seconded by Mr. Shaw. On roll call, the motion carried 4-1 with Mrs. Smith casting a negative vote.

The major matters were:

B72-93 - Modification of a pre-approved project of the First National Bank, 1330 North Lake Way - removed from the agenda.

B24-94 - Demolish and construct two-family dwellings at 353 Chilean Avenue for Barry Boyce, Trustee - removed from the agenda.

B52-94 - Addition for Paul Maddock, 215 Jamaica Lane - deferred.

B54-94 - Addition and remodeling for Mr. and Mrs. Peter Dupois, 315 Caribbean Road - deferred.

B56-94 - New residence for Mr. and Mrs. Lewis Rudin, 1 LaCosta Way - deferred.

B60-93 - Landscape plan for Dr. Michael and Virginia Longo, 1090 North Ocean Boulevard - removed from the agenda.

B61-94 - New residence for Stuart Scharaga, 288 Via Marila - deferred.

B64-94 - Addition and renovation for Dorothy DePaola, 124 Onondaga - deferred.

B69-94 - Remodel facade for Via Parigi Properties, 330 Worth Avenue - deferred.

B72-94 - Remodel facade for the Tishower Family Partnership (Cucino's), 257 Royal Poinciana Way - Approved.

B76-94 - Gates for George Milidrag, 445 Antigua Lane - deferred.

B77-94 - New residence for George M. Ross, 321 Tangier Avenue - approved with conditions.

B78-94 - Addition for J. William Weeks, 210 Jamaica Lane - approved.

B79-94 - Demolition for James Dunworth, 245 Seminole Avenue - approved with conditions.

B80-94 - Alterations and additions for Addison Development (Phipps Subdivision) - deferred.

B81-94 - Demolition for Ocean Bay Holdings, 910 South Ocean Boulevard - approved with conditions.

B82-94 - Demolition for George Welch, 254 Atlantic Avenue - deferred.

B83-94 - Remodeling for Mr. and Mrs. Aspenwall (Ruby Tuesday), 3000 South Ocean Boulevard - deferred.

B84-94 - Parking spaces for Mr. and Mrs. Danton, 146 Sunset Avenue - approved with conditions.

B. Variances, Special Exceptions and Site Plan Reviews

Old Business Old Business

1. Special Exception No. 28-94 - Hals Realty Association, 401 South County Road; to allow a restaurant to occupy 6,500 square feet (only 4,000 square feet approved previously), and to allow off-street parking on another commercial site within 500 feet of the proposed restaurant. C-TS District. Deferred from October Meeting. Spec.Excep. 28-94

Peter Broberg, Attorney representing Hals Realty Associates, addressed the Council and summarized that a year ago the Town Council granted permission to allow a 4,000 square foot restaurant to occupy the old Merrill Lynch space. He said the interior of the building presently has a mezzanine of approximately 1800 square feet plus a first floor area of 4589 square feet. He recalled the 4,000 square feet granted are on the first floor; however, an application submitted three months ago requested the use of the entire building. Mr. Broberg stated, at this time, the applicant would like to occupy the entire ground floor or an additional 500 square feet which would primarily be used for the restrooms.

Mr. Broberg said Franco Provodello from Canada will be the operator of the restaurant and would like to remodel the ground floor at this time and expand into the mezzanine area based on the success of the restaurant utilizing that area of wine storage or whatever.

Mr. Eugene Lawrence, Architect, stated he has reviewed the floor plan for a very upscale restaurant, and it would be very difficult to arrange the dining space and a functioning kitchen without the additional 500 square feet. Mr. Lawrence said 282 square feet on the first floor is used for a stairway and elevator to the mezzanine, and this would not be required as that area will not be utilized presently.

Mrs. Wiener recalled the original permission for this restaurant was granted in October, 1993, and the additional request was presented to the Council in September, 1994.

Mr. Zimmerman stated the application for this meeting is separate from the original application grated in October, 1993. He added the original approval is still valid, but this application, if approved, will supersede the previous one. He stated an extension to the 1993 approval was granted at the October, 1994, Town Council meeting.

Mrs. Smith remembered that Mr. Broberg had stated in 1993 that no changes were planned for the approval he received at that time.

After discussion concerning the square footage of the first floor plan including the configuration of the restrooms, Mr. Zimmerman stated the Building Department's suggestion was, if the Town Council approved this request, to apply the same conditions as pertained to the last approval including the additional off-street parking, the provision for Town-serving proof at the end of the first operating year, and the other condition for naming the tenant and receiving an occupational license has been met.

A motion was made by Mr. Shaw to deny the request for the additional 500 square feet over the approved 4,000 square feet. The motion was seconded by Mrs. Royal. On roll call, the motion carried 3-2 with Mr. Goldsmith and Mrs. Wiener casting negative votes.

2. Special Exception No. 31-94 - Lawrence Cummings, 217 Clarke Avenue; to allow kitchen facilities in the guest house to remain. R-B District. Deferred from October Meeting. Spec.Excep. 31-94

Mrs. Wiener asked for someone to address the Council, and no one was present.

Mr. Zimmerman responded the applicant was advised by mail to appear at this meeting, and this kitchen has existed in the guest house for at least 10 years; however, Mr. Cummings is the new owner of the property.

Mrs. Wiener stated many of these requests, such as this one, are normal and acceptable and to deny this request because no one is present at the meeting is not acceptable.

Motion made by Mr. Shaw to move the item to the end of the meeting. After discussion, the motion was withdrawn.

Motion made by Mr. Goldsmith to approve Special Exception Number 31-94 to allow the kitchen to remain in the guest house. The motion was seconded by Mr. Shaw.

Mrs. Wiener stated the applicant must appear at the meeting to present his case.

Mr. Goldsmith withdrew his motion on that basis.

Motion made by Mr. Shaw to move the item to the end of the agenda with the proviso that if the applicant is not present, Mr. Zimmerman should notify him by telephone to appear at the December meeting. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

New Business New Business

3. Variance No. 54-94 - Peter Dupuis, 315 Caribbean Road; to allow construction of addition providing a 4'6" rear yard setback in lieu of 10' as required. R-B District. Var. 54-94

Peter Dupuis, owner of the property, addressed the Council requesting permission to enlarge the existing garage from a one car garage to a two car garage. He added the structure does not conform to the present code; however the neighbor to the north who is affected most by the proposed construction has no objections.

Mr. Zimmerman stated this property is peculiar and for all practical purposes is a corner lot with a driveway extending through and around the property to each street. He added the new construction does align with the existing garage with a 4'6" setback, and the Staff has no objections.

Motion made by Mrs. Smith to approve Variance Number 54-94. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Var. 55-94

4. Variance No. 55-94 - Cidalina Henriques-Balasco, 136 Woodbridge Drive; to allow construction of an addition to the second floor at 10' side yard setback in lieu of 15' required, and to allow a two-story addition providing a 33.5' front yard setback in lieu of 35' required. R-A District.

Mr. James Ashley, Architect representing Mr. Belasco, requested a variance for the second floor addition and explained the proposed addition using an architectural drawing. Mr. Ashley said the garage is located 30 feet from the front property line, and the reason for the 1.5 foot front yard setback request is to allow room for the stairs to be turned around on the inside of the residence.

Mr. Ashley said he contacted the neighbor to the west, and he had no objection. Mr. Ashley stated much of the flat roof area around the house is being reduced and, a Spanish style roof is being added.

Mr. Zimmerman responded the area of construction is on the east side and that is adjacent to the vacant property as addressed by Mr. Ashley. He added the addition in the rear lines up with the existing structure; however, the front addition projects 1.5 feet further than it should but it is still behind the existing garage line. Mr. Zimmerman said Staff recommends approval.

Mrs. Smith asked for photographs of the residence, and Mr. Ashley presented them to the Council. Mrs. Smith noted that Mr. Ashley was changing the architectural style of the property, and asked if the garage doors could be screened from the street. She stated the proposed change is an improvement to the property.

Mr. Shaw asked Mr. Ashley to clarify the details of the additions as shown on the plans presented to the Council.

Responding to questions from Mrs. Smith, Mr. Ashley stated the hardship was the configuration of the interior stairs, and no other interior location was feasible for the location of the stairs.

Motion made by Mr. Goldsmith to approve Variance Number 55-94. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Var. 56-94

5. Variance No. 56-94 - Fred Keller, 225 Dunbar Road; to allow construction of a 425 square foot second floor addition at 9.5' from the east side yard property line in lieu of 15' required. R-B District.

Mr. Goldsmith asked Mr. Randolph if he should abstain from voting on this issue because his house backs up to Mr. Keller's property.

Mr. Randolph replied Mr. Goldsmith did not have to declare a conflict since no financial benefit is involved.

Mr. Fred Keller explained to the Council the proposed construction is actually 16 feet from the lot line, because an easement exists between the adjacent property and this property, and the driveway is presently located on that easement. He added the owners to the east and the rear have been informed of the proposed construction, and they have no objections.

Mr. Zimmerman reported that Staff had no objection to the variance request primarily because of the easement that Mr. Keller spoke about, and, from a visual standpoint, the impression is that the building has a proper setback. He asked that Mr. Keller elaborate on his hardship.

Mr. Zimmerman added that another issue came to the attention of the Building Department when reviewing this project since other construction concerning an accessory building at the rear of the property had been done without a Town permit. Mr. Zimmerman asked Mr. Keller to explain the building.

Mr. Keller responded he was appearing before the Council to request the second floor addition only, and the accessory building was constructed when he purchased the property. He stated previous owners had written letters certifying the structure was there when he bought the property. He offered to have his attorney meet with Mr. Zimmerman to resolve Mr. Zimmerman's questions, but, as far as he was concerned, the issue was dead. He added nothing has been heard from the Town in the last two years, and he is requesting the addition relative to a hardship. Mr. Keller stated the hardship exists because the configuration of the property does not permit the construction of an addition in another area.

Mr. Randolph replied the previous issue is a separate matter, unless it ties in with the present request regarding lot coverage.

Mr. Zimmerman responded he did not know what the lot coverage is, because he does not know the exact size of the rear building, but his opinion was that the lot coverage was not a problem. He indicated he had not seen a survey showing all that information.

Mr. Keller stated he did not have a plot plan or a survey showing the rear building.

Mrs. Wiener suggested the project be deferred for one month to allow time to resolve the situation concerning the rear accessory building before the issue of the addition is addressed.

Mr. Keller responded he wanted a ruling one way or another on the issue and did not want the postponement, because that issue had nothing to do with this request.

Mr. Shaw questioned the hardship of taking the second story, moving it over and setting it on columns, and then build a first floor addition to deal with the second floor if additional space is needed. Mr. Shaw suggested the addition could be constructed complying with the setback requirements if it were set further back.

Mr. Keller responded that plan made no sense.

Mrs. Royal asked Mr. Zimmerman if the current building is nonconforming, would the new addition be a continuance of the nonconformance? Mr. Zimmerman responded it would, and that is the reason for the variance request.

After discussion concerning the hardship for the project, a motion was made by Mr. Shaw to deny Variance Number 56-94. The motion was seconded by Mrs. Smith.

Mr. Shaw stated no hardship existed for the land and ample space existed to offset the second story.

On roll call, the motion carried 4-1 with Mr. Goldsmith casting a negative vote.

6. Variance No. 57-94 - Chilean Avenue Estates, Inc., 353 Chilean Avenue; to allow construction of a pool with a 10' front yard setback in lieu of 25' required, providing no side yard setback in lieu of 10' required, and a 4' side yard setback in lieu of 10' required. To allow construction of two boundary walls with a height of 7'6" and 8' in lieu of 6' and 7' as allowed. R-C District.

Var. 57-94 Chilean Ave. Estates

Ron Kolins, Attorney representing Chilean Avenue Estates, addressed the Council and stated the requested changes to the approved plan are for the following reasons:

1. Side loading garages and the entry to those garages since the corner property must comply with two front yard setbacks.

2. The heights of the pads of the building in relation to the center line of the street given the flood elevation requirement of 7.5 feet.

Mr. Kolins said the requests are for wall heights and setbacks. Mr. Kolins, using a colored site plan, explained the three basic areas where he requested wall height changes. He said the first area is approximately half of the north/south distance of the property as it interfaces Cocoanut Row. He continued the second is certain segments of walls on the back of the property which faces the side of the Chesterfield Hotel with an alley separating the two properties. Mr. Kolins identified the third wall area as the internal wall between units "B" and "C". He stated the primary reason for the variance request is the height of the building pad which is 4 feet higher than the center line of Cocoanut Row which means an allowed six foot wall has a two foot impact on the units.

Mr. Kolins stated the Chesterfield Hotel had written a letter supporting the requests, and the area will be fully landscaped. After Mr. Kolins presentation, utilizing drawings to show the areas of the requested variances, he offered to answer any questions.

Mr. Zimmerman said the Staff had reviewed the project carefully to determine the legitimate hardship question. He stated, looking at the walls first, the elevated floor is a problem, but the applicant could have privacy by using hedging in place of walls with no limit whatsoever on height. He continued the requested eight foot internal wall between the two units is not objectionable to the Staff.

Mr. Zimmerman stated unit "A" does have a hardship from the standpoint of having two front yard setbacks, but the two adjacent pools in the center of the property, one has a "0" setback and the other has a 4 foot setback, should have some amount of setback from a construction standpoint or common sense issue to build the pool slightly off the wall. He suggested the pools could possibly be re-shaped to cut down on the variances requested.

Responding to a question from Mrs. Wiener, Mr. Kolins reported the sizes of the pools ranged from 14 feet to 15 feet wide by 22 feet long.

Responding to questions from Mr. Goldsmith, Mr. Zimmerman responded a variance was granted on the property to allow the construction of two duplexes because the property was slightly too small to support the two - two family dwellings, and the property would support 3+ units without a variance. He stated the size of the plot was 125 feet by 200 feet.

Mrs. Wiener requested the items be considered individually starting with the walls.

Mr. Kolins reported each unit contains approximately 3300 square feet in response to a question from Mrs. Royal.

Mrs. Smith asked why the wall along Cocoanut Row was cut out and not straight? Mr. Kolins replied the cut out was for design reasons. Mr. Kolins continued the internal wall was allowed to be constructed to a height of seven feet according to Code; the request was for one additional foot to a height of eight feet; and the wall would not be eight feet all the way across.

Mr. Zimmerman, answering Mr. Shaw's question, stated the part of the wall would be measured from the crown of Cocoanut Row center line and part from the Chilean center line.

Motion made by Mrs. Smith to approve Variance Number 57-94 to allow construction of the two boundary walls with a height of 7'6" and 8' in lieu of 6' and 7'. The motion was seconded by Mr. Shaw. On roll call, the motion carried 4-1 with Mrs. Royal casting a negative vote.

Mrs. Wiener stated the setback portion of the variance would be considered next.

Mrs. Smith asked if the pool located on the Cocoanut Row side belonged to the smallest unit of the four units? Mr. Kolins responded all the units are approximately the same size. Mrs. Smith asked if the pool on the west side could be narrowed by a foot or two? Mr. Kolins responded the pool could be made smaller, but it is a lap pool presently.

Mr. Kolins added another problem complicating the configuration of the pools is the height of the house which sits higher than the pool, and someone using the pool would have to step down into the pool area; therefore, a patio area is necessary to allow for the slope.

Mrs. Wiener stated a corner property has been treated as a hardship issue in the past.

Mrs. Royal stated she did not want to help a project that is helping to increase density in an area that is particularly fragile, and if the applicant had elected to build three units, this additional request for variances would not be necessary.

Mrs. Smith said she voted for the approval of the townhouses, because it is an improvement for this area, and the house was moved to West Palm Beach showing the Town can adapt to these situations.

Motion made by Mrs. Smith to approve Variance Number 57-94 with the condition the pool on the Cocoanut side be narrowed by at least one foot. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 3-2 with Mr. Shaw and Mrs. Royal casting negative votes.

Var. 58-94
U.S. Trust Co.

7. Variance No. 58-94 - U.S. Trust Company of Florida, 334 N. Woods Road; to allow construction of tennis court providing a 2' setback from Lake Trail in lieu of 25' required. To allow gates and posts at a 14' height in lieu of 8' allowed, and to allow perimeter walls at a 6' and 9' height in lieu of 4' and 7' allowed. R-B District.

Mr. Goldsmith declared a conflict of interest. He has a business relationship with the ultimate owner of the property. A conflict of interest form is on file in the Town Clerk's office.

Paul Prosperi, Attorney representing U. S. Trust Company, stated the hardship consisted of the uniqueness of the shape of the property. He continued the property is bordered on three sides by pedestrian easements that create a security concern, and these easements are on the applicant's property. Mr. Prosperi added these easements are on the north and south sides, easements to Lake Trail; and on the west side of Lake Trail itself.

Mr. Prosperi presented photographs and described the cross section of the north/south perimeter and noted that the drawings reverse on the north side. He continued that the north side has a minimum ten foot tall ficus hedge, and on the south side the hedge is somewhat higher on the property line. Mr. Prosperi proposed to install a matching minimum 10-11 foot high ficus hedge which would be 10 to 11 feet back from the property line and inside the second hedge which would be 11 to 12 feet back from the property line, a proposed 8 foot high wall.

Mr. Prosperi referred to drawing number two and identified an existing 14 to 16 foot ficus hedge in that location and the applicant would like to construct an 8 foot wall inside the ficus hedge to match. He continued, on the Lake Trail side, the applicant would like to build an 8 foot wall behind the existing hedge. Mr. Prosperi pointed out, in each case, the existing hedges are higher than the proposed wall.

Mr. Zimmerman responded when the Staff first looked at this plan, the walls on the north and south sides of the property were on the property lines and the presented plan shows those two walls have been moved inside the easement as opposed to being on the line, and that eases the situation. He added the Code would allow 7 foot high walls in that location; however, the Town has been fairly strict concerning the wall height along Lake Trail, and eight feet above the Trail is one of the higher ones found in the area. He continued the wall is screened by hedge along the Trail, and the wall would not be seen.

Mr. Zimmerman noted that a proposed 8 foot wall that would separate the two properties bordering this property on the east side could be built to the seven foot height allowed by the Code, and the Staff did not see the hardship for this wall section.

Mr. Prosperi, responding to questions from Mrs. Smith, stated the hardship on the east which is a side yard has one part of the wall that borders a motor court on one side and a swimming pool on the other side. He added the neighbor has not responded to this request.

Mr. Shaw asked, if the walls are being built for security and they are covered by hedges, could a gated structure rather than a solid wall be built? Mr. Shaw noted other fences like that exist along Lake Trail and it lightens the effect.

Mr. Prosperi replied the wall is six feet high in that location.

Mrs. Smith made a motion to approve Variance Number 58-94 for the walls to the west, to the north and to the south. The motion was seconded by Mrs. Royal.

Mr. Shaw asked which side of the east wall the 14 foot high ficus hedge was? Mr. Prosperi replied the hedge is on the applicant's property, but it has widened over the years. He added the plan is to have a hedge on either side of the wall, and the wall is to be there as a security barrier.

On roll call, the motion carried 3-1 with Mr. Shaw voting negative and Mr. Goldsmith declared a conflict of interest.

Mr. Prosperi explained the second part of the variance request was for the construction of a tennis court requiring a two foot setback in lieu of the 25 feet required along Lake Trail.

Mr. Zimmerman stated the Staff had not identified a hardship for the tennis court.

Mrs. Smith recalled when the plans for the residence were presented to the Town Council, Mr. Prosperi had said there would be no tennis court.

Mrs. Royal remembered Mr. Shaw had inquired about the tennis court, and Mr. Prosperi responded the family was into gardening and not tennis.

Motion made by Mrs. Smith to deny the part of the Variance Number 58-94 requesting a 2 foot setback in lieu of the 25 feet required for construction of a tennis court. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mr. Zimmerman noted the issue of the gates and the gate posts had not been resolved.

Mr. Prosperi said he understood two feet was allowed over the top of the wall for the gate posts. Mr. Zimmerman responded this was correct, and the two feet was permitted over the allowable wall height.

After discussion concerning the heights of the gate posts and gates on the east side, Mr. Prosperi decided to use the 8 feet allowable, and no motion was necessary.

8. Variance No. 59-94 - Zdzislaw Ciomek, 254 Atlantic Avenue; to allow construction of a two family residence on 10,000 square foot lot in lieu of the 13,333 square foot minimum required. R-C District. Letter dated November 8, 1994 from Ronald Kolins requesting deferral to January meeting.

Var. 59-94 Zdzislaw Ciomek, 254 Atlantic Ave.

This item was deferred to the January Town Council meeting earlier in this meeting.

9. Variance No. 60-94 - Jay Dewing Jr., 156 Dolphin Road; to allow construction of an addition providing a 10.5' side yard setback in lieu of 12.5'. R-B District.

Var. 60-94 Jay Dewing Jr. 156 Dolphin Road

Peter Broberg, Attorney for Mr. Dewing, requested a variance to allow a 10.5 foot side yard setback in lieu of the 12.5 feet required. Mr. Broberg explained an original garage had been turned into a bedroom by a previous owner, and the building needs to be squared off to accommodate a reconstructed garage area. Mr. Broberg quoted Section 5.17 of the Code states that a nonconforming structure can be expanded if it does not violate the bulk and side yard setbacks. He continued another section of the Code states it cannot be done if the square footage is such that it would not be allowed under new construction which covers this request.

Mr. Broberg stated the hardship exists in this case because a preexisting structure is being remodeled, and a car cannot fit into a space that was originally the garage.

Mr. Zimmerman stated the Staff considers this a very minimal request, and a garage would be re-established on the property. He continued the new construction aligns with the existing building, and the Staff recommends approval.

Motion made by Mrs. Royal to approve Variance Number 60-94 to allow construction of an addition providing a 10.5 foot side yard setback. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

10. Variance No. 61-94 - American Farm Investment Corp., 1260 South Ocean Boulevard; to allow construction of a tennis court providing a 20' front yard setback in lieu of 35' required. R-AA District.

Var. 61-94 Amer.Farm Investment Corp., 1260 South Ocean Blvd.

Peter Broberg, Attorney for the applicant, requested a variance to allow the construction of a tennis court for the reason that the lot has a very restrictive building code that allows only 70% of the lot to be built on. He added the lot has a large amount of landscaping along South Ocean Boulevard, including large trees, that need to be saved. Mr. Broberg continued the site on the lot chosen for the tennis court is the only logical place for the construction of the tennis court. He stated precedence has been set in this area for the construction of tennis courts, because a tennis court has been built directly across the street ten feet from South Ocean Boulevard, and this request is for a tennis court to be built twenty feet from South Ocean Boulevard.

Mr. Zimmerman replied precedent was set by the granting of a variance directly across the street for the construction of a tennis court. He continued no residents would be affected by the tennis court, and based on the requirement that a tennis court be completely screened by a hedge, the Staff would have no objection.

Mrs. Royal noted a further request will be heard later in the meeting under "C. Other 2." and questioned if both should be considered at the same time?

Mrs. Wiener responded the agenda had been approved earlier in the day as it is, and the agenda should be followed.

Mrs. Smith requested that Mr. Broberg display the site plan to show the actual location of the tennis court.

Mr. Broberg explained the buildable setback area, and offered to have the architects for the project speak to the Council.

Mrs. Smith commented that the interior section, as shown on the site plan, was a parking lot, and the tennis court appeared to be joining onto the wall of the parking lot on the southwest corner.

Mr. Michael Goldman, Architect, responded the area was a garden - courtyard adjoining the tennis court, and the landscaping was not shown on the site plan presented to the Council. Mr. Goldman explained the large trees were retained while attempting to solve an on-site overflow parking situation arising from large parties.

Mrs. Smith asked Mr. Goldman if the reason the tennis court could not be moved farther to the west and the reason for the variance request was the location of trees or because of the planned formal gardens or parking?

Mr. Goldman responded those reasons were all part of the request, and the optimum site for the tennis court was selected keeping in mind all the needs of the applicant.

Mrs. Royal stated she had no objection to the tennis court, but was concerned about the upcoming request for permission to build on that portion of lot 7 that is currently prohibited.

Mrs. Royal made a motion to approve Variance Number 61-94 to approve construction of a tennis court. The motion was seconded by Mrs. Smith.

Mrs. Smith asked Mr. Randolph if the granting of Variance Number 61-94 implied the Council approves the amendment to the amended subdivision on lot seven when the driveway issue is addressed?

Mr. Randolph responded it did not.

On roll call, the motion carried unanimously.

Var. 62-94
Palm Beach
National Bank
& Trust Co.
125 Worth Ave.

11. Variance No. 62-94 - Palm Beach National Bank & Trust Company, 125 Worth Avenue; to allow applicant to occupy an additional 739 square feet on the first floor, abandoning the second floor square feet approved as Special Exception No. 8-93; total approved square feet would remain the same at 9,981 square feet. C-WA District.

Mrs. Wiener stated she has a conflict of interest with this project since she is a member of the Board of Directors of Palm Beach National Bank. A conflict of interest form is on file in the Town Clerk's office.

Mrs. Wiener passed the gavel to President Pro Tem Smith.

Mr. Goldsmith stated he also had a conflict of interest with the project as he is a member of the Board of Directors. A conflict of interest form is on file in the Town Clerk's office.

Mrs. Smith asked Mr. Prosperi if he would like to proceed with the presentation of the project with only three members of the Council hearing the project, and three votes are necessary for an approval? Mrs. Smith advised Mr. Prosperi he will be facing a similar situation at the December Town Council meeting since President Wiener and Councilman Goldsmith with again declare conflicts of interest.

Mr. Prosperi responded he would like to request a deferral in an attempt to rework the request for a minimal variance. He added he would like to defer the item until the December meeting.

Motion made by Mr. Shaw to defer Variance Number 62-94 to the December 13, 1994, Town Council meeting. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Amendment to
Spec. Excep.
13-86 -
The Colony
Hotel

12. Amendment to Special Exception No. 13-86 with Variances - The Colony Hotel, Maisonette (Surfside Hotel) a part of The Colony Hotel, 155 Hammon Avenue; to allow temporary supplemental parking on site until previously approved parking is completed; to allow a variance relocation of approval of 8 apartments to a conforming building east of the Waller House; to allow a time extension to commence work on Phase 2, hotel addition and parking facility until May 13, 1998. R-C and R-D(2) Districts.

Paul Prosperi, Attorney for The Colony Hotel, said the request was presented as a modification of Special Exception Number 13-86, and that Special Exception permitted The Colony to convert the existing Maisonette building from 23 to 10 multi-family units. He continued this request is to reduce the 10 units to 8 units; demolish the existing building and to relocate the building in a conforming structure adjacent and east of the Waller House. Mr. Prosperi stated the overall density on the south side of Hammon overall to 15 units compared to 17 units. He continued the new building would be built within two years to avoid abandonment of the use under Section 8.15.a. of the Code, but the variance is requested for a nonconforming use although the building will be conforming. Mr. Prosperi stated this application meets the requirements of the Code because this is a hotel or residential use of more than 15 years standing which has been compatible with the neighboring uses. He continued that rezoning or including this use as a special exception would open the possibility of encouraging incompatible uses, and the variance sought is for the continuation of the same use, and in this case, it is for the continuation of the same use at a lesser density.

Mr. Prosperi stated the second part of the request will allow The Colony to construct an interim parking lot on the site of the existing Maisonette or Surfside Hotel building as temporary, supplemental parking until the previously approved permanent parking facility is completed. He added, if for any reason the permanent parking facility were not completed, the temporary parking would remain, and the parking lot would be completed buffered and landscaped.

Mr. Prosperi recalled The Colony is required to build a new parking facility on the site in connection with the building of an extension to the hotel on the north side of Hammon Avenue, and this parking facility is required to be built before the extension to the hotel is started.

Mr. Prosperi requested that an extension of time be granted to complete the three story addition to the hotel and the parking facility. He continued, although the process has been lengthy, benefits have accrued to the hotel and the neighbors.

He offered to immediately demolish the building on Hammon, and to replace it with parking, adding 94 parking spaces in lieu of the required 74 spaces. Mr. Prosperi added 16 spaces will be on the site of the proposed 8 unit building and can be utilized until that building is constructed providing a total of 110 spaces. He suggested this would alleviate considerably the current parking congestion on Hammon Avenue.

Mr. Zimmerman stated the Staff believes the interim plan has some benefits to the Town, and would demolish a nonconforming building which is also nonconforming regarding density. He continued the reconstruction of the building would be conforming except for density on a proper location, and the overall gain to the Town is a reduction of two units and a conforming building. He added the immediate effect is the addition of 20 parking spaces that would help but not solve the parking problems of the hotel. Mr. Zimmerman said the Staff favors the approval of the project with the condition when the applicant constructs the eight unit dwelling and/or the addition to the hotel, the underground garage-parking facility be started at that time.

Mr. Prosperi responded that condition would be favorable to The Colony.

Mrs. Smith asked if the swimming pool shown on the site plan belonged to the Maisonette?

Continuation of Amendment to Spec. Excep. 13-86 - The Colony Hotel

Mr. Prosperi responded it did not, and he explained the configuration of the site plan including the proposed underground parking garage which will be constructed under the parking lot.

Mr. Eugene Lawrence, Architect, reported that the underground parking garage should be built during the summer months.

Mrs. Smith pointed out the Maisonette building could not be demolished until the Architectural Commission reviewed the project and a permit was issued.

Mr. Lawrence noted the parking lot could be put in as soon as the building is demolished; however, this part could be constructed during season.

Adrian Winterfield addressed the Council and stated this project was approved eight years ago and one of the first elements of this complicated variance was the conversion of the Waller House. He continued the specific condition was that the Waller House not be operated as part of the Hotel, and he maintained that condition has not been respected and as a result none of the remainder should be considered until The Colony Hotel is in compliance. He continued, in view of the time constraint, it would be appropriate not to grant any further extensions, and invite the Colony to return to the Council when they are ready.

Mr. Winterfield stated The Colony said they would not commence construction before 1998, and that is a long time.

Mr. Seymour Fox, owner of 129 and 129 1/2 Hammon Avenue, property adjacent to The Colony Hotel, addressed the Town Council and complimented the Town Council on the job they do controlling the issues in Palm Beach.

Mr. Fox said that prior to the time the convention center was built, a serious parking problem existed in the area and the result was that people who live in the area, including Mrs. Mary Exter who was present at the meeting, have seen the parking problem increase over the years. Mr. Fox continued the individuals who operate and maintain the hotel have forgotten there has to be a reasonable amount of space for parking. He added Hammon Avenue is a scene of havoc and chaos at night time when guests are arriving at the hotel with the valet parking and the guests looking for parking spaces. He continued the residents who live on the street have no space to park.

Mr. Fox noted that in 1993 the hotel was going to expand and build a convention center, but as the expansion continued the parking spaces did not. He said the underground parking garage is planned to alleviate the parking problem but no assurance is given by the hotel that the underground parking will ever be constructed. Mr. Fox reported that the understanding was that two underground parking structures would begin construction by the spring of 1995; however, between 1993 and the present, the hotel concluded that the underground parking would not be constructed by that date and there is no assurance that it will be built. Mr. Fox asked what would happen to the residents of Hammon Avenue during the three years before the underground parking structures would be built? He added that 210 people are allowed at the hotel now per event which means at least 105 additional cars will be looking for parking spaces on any given evening.

Mr. Fox reported the employees of the hotel have no parking facilities which used to exist on the site of the new convention center, and employees must search for parking in the area. He continued the demolition of the building and creating the parking lot will cause additional parking problems with the construction people parking their vehicles in the area.

Mr. Fox commended The Colony Hotel for the planned improvements, but a more reasonable plan for the parking and consideration of the residents should be addressed. He added certain standards should be adhered to before the hotel is allowed to proceed with the projects planned by the hotel, and these projects should be compatible with the community and the residents who live in the community.

Mr. Fox said the courts have said nuisances are not allowed and the hotel's condition has to be buffered so it does not affect residents, and in this area there is no doubt in this situation that no buffers exist. Mr. Fox continued the courts have ruled these projects should not hinder the use of other people's property, and this situation is unusual. Mr. Fox requested that an impact study be undertaken to find out what is going to happen in the area with the new construction, as well as the existing conditions.

Mr. Gene Lichter, Attorney representing Mr. Fox, addressed the Town Council and noted that the approved Special Exception for Phase 2 calls for the building of the underground parking lot prior to or simultaneous with Phase 1 of the project and Phase 1 has been completed and Phase 2 is not. He said this raises a flag for the Town Council as to why the construction has not been completed and why the time extension is needed? He continued the proposal adds 20 - 25 spots and does not address the solution, and posed these questions to the Council to find some answers.

Mrs. Wiener asked for the representatives from The Colony Hotel to offer suggestions to correct the situation.

Mr. Prosperi reported a letter from Mr. Zimmerman, dated July 7, 1993, to Mr. Royce in connection with the June 8 action of the Town Council modifying the special exception which makes it clear that the underground parking facility does not have to be built until the last phase of the project which is the construction of the addition to the hotel facility and not with the construction of the meeting room.

Mr. Prosperi stated he understands the problems that were raised concerning the problem on Hammon Avenue, but the attempt is to improve the situation not to make it worse. He continued The Colony Hotel may be inadequately parked but at the moment parked in excess of the requirement, and this request is to increase the excess of the requirement. Mr. Prosperi noted Mr. Fox's property is parking deficient, but this request is an attempt to alleviate the situation.

Continuation of Spec. Excep. 13-86 The Colony Hotel

After discussion concerning the number of parking spaces, Mrs. Wiener stated the problem is, with the provided parking spaces, a problem exists, and if construction commenced sooner, it would be more tenable. She suggested providing employee parking in another area and asked for help to determine a solution to the existing problem and planning for any future problems.

Mr. Prosperi said The Colony Hotel has responded by requesting to demolish a building and provide additional parking spaces and not to start further construction until the underground facility is built, but in the interim The Colony is doing what the Council is requesting.

Responding to a question from Mr. Shaw, Mr. Lawrence stated the maximum parking spaces in the area will be 122, and those figures were included in the various construction phases.

Mr. Shaw stated he was attempting to determine a ratio of cars to hotel rooms; employee cars and cars generated by the Convention Center.

Mr. Lawrence said he understood, with each phase of the construction, the intensity of the use of the hotel property was lowered, and the new parking facility is completely screened and buffered. He added presently the parking area is not screened and buffered.

Mr. Prosperi reiterated, when the parking facility is constructed, only 10 parking spaces will be added, and at that time The Colony Hotel will be entitled to add hotel rooms.

Mr. Goldsmith stated The Colony Hotel has an existing building that has been approved, built and generated an abundance of traffic. Mr. Goldsmith suggested a traffic study be conducted to see if a something can be done to correct the traffic situation, and the number of spaces are not materially going to change.

Mrs. Wiener responded one solution may be the addition of valet help, and the previous approvals do not guarantee the results are correct. She said the situation needs help plus give and take. Mrs. Wiener suggested the underground garage would make it easier for the cars to go into an underground garage than to enter three separate lots including the valet parking.

Mr. Goldsmith suggested studying the one way pattern as a possible solution.

Mrs. Smith recalled when permission was given for the additional hotel rooms and the underground parking was discussed, she was not aware that only 10 additional spaces were being offered for the additional hotel rooms. She said she does not understand why the underground facility will add only 10 additional spaces.

Mr. Prosperi responded the parking facility will be built on the land currently containing 70 spaces and these will be replaced with approximately 120 spaces. He continued the parking problem precipitated the request for demolition of the building and the addition of the temporary parking.

Mrs. Smith stated Mr. Prosperi had not given a reasonable answer to the parking congestion problem on Hammon Avenue.

Mr. Lawrence added that Michael Brown, Manager of The Colony Hotel, has agreed to retain a consultant to study the existing traffic problem including the tight corners.

Responding to questions from Mr. Shaw, Mr. Prosperi stated the first priority is to demolish the building for the parking lot.

Mr. Fox asked how many employees are at The Colony Hotel who require parking places? He added if this were known, the scope of the problem may be identified.

Mr. Brown stated the hotel provides shuttle service for many of the employees, and for the most part a problem for parking of the employees' cars does not exist. He continued when situations occur, the employees have options--some come to the shuttle stops, some park their own cars or the hotel pays for 1/2 of their parking costs at the Esplanade, directly behind the hotel.

Mr. Brown continued the parking confusion is not constant on Hammon Avenue, and until this meeting, he was not aware that the neighbors were not happy with the parking situation. He stated the last thing The Colony wants to do is hinder anything that has to do with the flow of traffic or to harm or put anyone in danger from a pedestrian standpoint. He added The Colony wants to have a good relationship not only with the Town but with the neighbors, and he assured Mr. Fox, that whatever the outcome of this meeting, he will address Mr. Fox's concerns.

Mr. Brown responded that at the busiest time, approximately 20-25% of the employees complain about the parking.

Mrs. Wiener stated the pavilion has been successful, more so than anticipated, and that has created the parking problem. She added that a plan must be constructed to address the parking problem.

Mr. Brown replied the plan presented at this meeting will provide additional spaces immediately, and the temporary parking will suffice until the underground parking facility is built, which will hopefully eliminate any problems. Mr. Brown added The Colony is willing to give up density on the south side of Hammon and is trying to increase off street parking. He said this is not the final solution, but the parking facility will be built because the hotel will be so successful, the parking will be needed. He continued the hotel will immediately provide additional parking and decrease density on the south side of Hammon Avenue.

Mrs. Royal asked that Henry Marchman from the Police Department be involved with the traffic review and at the time of a special event, Hammon be made a one way street.

Mrs. Wiener responded a traffic expert will be hired, give recommendations and that will be presented to the Council.

Mr. Goldsmith made a motion to approve the Amendment to Special Exception 13-86 for the interim parking on the Maisonette site. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve the amendment to Special Exception Number 13-86 as follows:

1. The Maisonette building will be demolished.

2. 110 parking spaces will be added to the site of the demolished building and landscaping and buffering will be installed.

3. The use of 8 units will be relocated to a site east of the Waller House but this will not be initiated until the parking garage is constructed and the Town Council is provided with a traffic study that will be initiated as soon as possible. Continuation of Spec. Excep. 13-86 The Colony Hotel

4. The use of the Waller House and the 8 unit building will be totally independent of the Colony Hotel.

The motion was seconded by Mr. Goldsmith.

Mrs. Smith questioned the approval of the relocation of the use for the 8 units without the Council receiving a traffic study.

Mr. Prosperi stated The Colony Hotel presently has approval for 10 units in the building to be demolished, the building will be demolished and a parking lot will be constructed to add approximately 36 spaces and that will take place immediately. He continued The Colony does not want to demolish the building with the 10 units because they would lose their rights to them until an agreement is reached with the Town to construct 8 units on the south side of Hammon Avenue. He added that would not be started nor would any additional hotel rooms be added until the permanent underground facility is built.

Mrs. Smith stated the new 8 unit building will be in a new location that will be to the benefit of The Colony, but she wanted to see a traffic study.

Mr. Prosperi suggested a compromise of demolition of the building now; provide additional parking on that lot and The Colony will agree not to construct any other buildings until the permanent parking facility is in place nor will any additional buildings be constructed until a traffic study is presented to the Town Council.

Mr. Winterfield re-addressed the Council and stated the Council would be within its authority by saying The Colony had violated a condition of the first part of the variance and would hear nothing additional until that is remedied. Mr. Winterfield asked what policy Council has regarding the use of the Waller House?

Mr. Randolph responded the condition that was placed on the Waller House was similar to the condition requested by Mr. Moore in his October 24, 1994, letter and that was the Maisonette Apartments be operated totally independent of The Colony Hotel.

Mr. Winterfield replied he was speaking of the Waller House, and when authorization was given to reconvert it, there was a specific condition that it not be operated as part of the hotel. He continued the apartments may be rented on a long term basis, but they are rented with hotel facilities. He said this is an annex of the hotel.

Mr. Randolph stated he was not aware that the Town has information that indeed there has been a violation.

Mr. Zimmerman added the letter from Mr. Prosperi also makes reference to the Waller House stating that The Colony is very much aware of the requirements that the Waller House and/or the Maisonette cannot be operated as a hotel. He clarified the issue concerns hotel services to the residents of the Waller House.

Mr. Winterfield stated he contacted the receptionist at The Colony and was told, although they were full for the time being, they do provide services to the occupants.

Mr. Brown denied The Colony is providing a hotel type atmosphere for the Waller House as that would be a transient use and a direct violation of the 1986 Special Exception. He continued these units are rented on an annual basis and are allowed to be turned over three times in one year. He stated the residents have their own phone systems, contract labor for maid services, swimming pools, kitchens and all facilities for self-contained, multi-family uses.

A roll call vote was taken on Mr. Shaw's motion, and the motion carried 4-1 with Mrs. Royal casting a negative vote.

Mr. Prosperi requested a deferral of the part of the variance regarding the extension of Phase 2, hotel addition and parking facility until May 13, 1998, to allow for the completion and submission of a traffic study.

Motion made by Mrs. Smith to defer the request for a time extension of Phase 2 until a traffic study can be completed. The motion was seconded by Mr. Shaw. On roll call, the motion carried 4-0 with Mrs. Royal being absent from the room.

13. Special Exception No. 33-94 with Variance - Paine Webber, 440 Royal Palm Way; to allow relocation of space from 11,000 square feet on the second floor to 16,088 square feet on the third floor. A variance of 16 parking spaces is requested. C-OPI District. Spec. Excep. 33-94 - Paine Webber, 440 Royal Palm Way

David Shaw, Attorney representing the applicant, addressed the Council and noted that Paine-Webber is moving from its second floor space to its third floor space and would like to occupy space currently leased by a law firm, the entire third floor. He continued the special exception use is for a financial institution to occupy space in the C-OP1 district, and the institution has presented its Town Serving affidavit having been at the same location for two years.

Mr. Shaw stated the request for the 16 parking spaces is based on 80 spaces or 1 parking space for every 200 square feet which is the stated code requirement for financial institution use. He noted, based on Paine-Webber's experience at this site, they anticipate they will not need more than 64 spaces. He continued this building has 230 parking spaces and is the most heavily "parked" building in the area.

Mr. Zimmerman stated, for clarity, that Paine-Webber has already been granted a variance for 11 parking spaces and this request is for 5,000 additional square feet of occupancy plus a variance for 5 parking spaces. He added the Staff has found that financial institutional usage in this district does not generate traffic, and Paine-Webber has documented they are 60% Town Serving, and based on the requirement they provide the Town Serving status on an annual basis, the Staff recommends approval.

Motion made by Mrs. Smith to approve Special Exception Number 33-94 with Variance. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Spec. Excep. 34-94 - Dean Witter, 440 Royal Palm Way

14. Special Exception No. 34-94 with Variance - Dean Witter, 440 Royal Palm Way; to allow applicant, a stock brokerage firm, to occupy 6,500 square feet on the second floor. A parking variance of 7 spaces is requested. C-OPI District.

David Shaw, Attorney for the applicant, addressed the Council and stated Dean Witter is attempting to occupy a portion of the space formerly occupied by Paine-Webber. He recalled that Dean Witter had received approval to occupy 12,600 square feet in another location, but later decided they did not need that amount of space and preferred this location. Mr. Shaw stated a Town Serving affidavit has been submitted, and based on their existing client base, they are approximately 62% Town Serving. He added the requested variance of 7 parking spaces, based on the client data, will handle the needs of the business.

Mr. Zimmerman stated the Town Serving affidavit was submitted and based on the requirement for the annual verification, the Staff recommended approval.

Motion made by Mr. Goldsmith to approve Special Exception Number 34-94 with Variance. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

C. Other

Request for Waiver - Hrs. of Consruction by Stephan A. Yeckes for work at the Mondi Store, 238 Worth Ave.

1. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Stephan A. Yeckes, Architect, for Work at the Mondi Store at 238 Worth Avenue.

Stephan Yeckes, Architect for the project, addressed the Council, and requested an extension of work hours to complete the project because the establishment had to be operational during the construction period and the scheduling of various building inspections had to be coordinated with the store hours and the needs of the staff and customers. He continued by November 15, most if not all the heavy work will be completed; however, the ordinance does not allow work beyond that time and the contractor needs until November 30 to complete the finish work, including cabinetry, painting and flooring.

Mr. Zimmerman responded the problem has existed because of the owner's desire to keep the store open and the work has progressed very slowly; however the work is located in the rear of the store, and from the street area, no construction is apparent.

Mr. Goldsmith questioned the parking of construction vehicles on Worth Avenue during the construction period.

Mr. Yeckes replied trucks will not be parked on Worth Avenue at any time, and the major material deliveries have already been made. Responding to questions from Mrs. Smith, Mr. Yeckes explained Mondi's did request a time extension for last year at this same time, and he agreed to have materials delivered in the mornings before the store is opened at 10:00 a.m.

Motion made by Mrs. Smith to approve the extension of "Hours of Construction work" to November 30 with the condition materials be delivered prior to the opening of the store at 10:00 a.m. and there be no work on Sundays or holidays. The motion was seconded by Mr. Goldsmith.

Mr. Shaw asked if work time extensions had been granted on the Avenue after 4:30 p.m.? Mr. Yeckes replied they did not want to do this with residential apartments upstairs, and he preferred a longer period of time with fewer hours.

On roll call, the motion carried unanimously.

Request for Amendment to First Amendment of the Blossom Estate Sub.

2. Consideration of Request for Amendment to the First Amendment of the Blossom Estate Subdivision Agreement by Peter S. Broberg, Esq.

Peter Broberg, Attorney for the applicant, addressed the Council, and summarized the background on this particular piece of property. He said this lot is part of the Blossom Estate, developed by Mike Burrows, and Mr. Burrows appeared before the Council twenty-five consecutive times before receiving approvals for his subdivision. Mr. Broberg continued stating that the original subdivision agreement stated there would be no development of any kind on lot 7. He said the developer at the time found a buyer for the property who wanted to build part of his residence on lot 7, and in 1985 appeared before the Town Council, receiving an approval to join lots 7 and 8 with a unity of title. The predominance of the construction would be built on lot 8, and lot 7 could have up to 7% of the lot covered with construction, and there could be no construction outside of a buildable envelope which was attached to the subdivision agreement.

Mr. Broberg noted that when the Town agreed to the amendments, an amendment to the subdivision agreement was entered into by the Town and the developer, and Mr. Broberg requested an eleven word amendment to be approved to the subdivision agreement.

Mrs. Wiener asked if Mr. Broberg had a signed agreement from each resident of the subdivision, and he responded each one, after reviewing the plans, has sent a letter stating "no objections".

Mr. Broberg stated the amendment requested is:

Continuation of Request for Amendment to First Amendment of the Blossom Estate Sub.

2.B (vi) The setback exhibit indicates by darkened areas the buildable envelope upon which improvements may be constructed. Developer of any future owner agrees that no improvements of any kind will be built upon any portion of lot 7 contained within the buildable envelope of lot 7, (the following is new language) EXCEPT FOR THE DRIVEWAY AND PRIVACY WALL SHOWN ON EXHIBIT A.

Mr. Broberg stated this is simply a way to enter into the property and includes the logical extension of the privacy wall. He continued that the Department of Natural Resources, DERM in Palm Beach County and the appropriate agencies have been contacted regarding construction of a residence on this property and those permits have been issued. He said these permits have been forwarded to the Town's consultant, George Gann-Matzen, and he has indicated there is no problem with the proposed project. Mr. Broberg offered to have the architects for the project address the Council.

Mr. Zimmerman asked Mr. Broberg if the driveway would be gravel as indicated, and stated the Code prohibits gravel driveways and parking areas.

Michael Goldman, Architect, stated the design of the driveway was in the early design phase and the specifications have not been finalized for construction documents. He added the driveway topping may be the equivalent of gravel, but whatever is chosen will comply with the Town's codes.

Mr. Zimmerman responded the Town does allow Chattahoochee stone driveways placed on a base.

Mr. Zimmerman stated that the determination was made that the agreement stipulates that no improvements should be built except in the buildable envelope, and that was interpreted to mean a driveway which explained the need for the request to the Town Council. He continued the driveway and wall are located on the property outside of the sensitive mangrove area, and the closest point of the driveway area is approximately 27 feet away from the mangroves. He added the Staff does not think this would be detrimental to the site and do not have any objections to the proposal.

Mrs. Wiener stated she understood an agreement was made after much discussion over a sensitive issue, and the Building Department's determination at this point does not affect the fact that a prior determination was made. Mrs. Wiener stated she would not go along with the change.

Mr. Broberg replied other agreements have been altered during the course of the Council meeting.

Mrs. Wiener responded that when an agreement was made as to the land that was considered sensitive by the experts, that agreement stands. She suggested if the applicant would like to have the approved tennis court in that location, another way of entry could be designed to reach it, and the sensitivity of this property was known.

Mr. Broberg stated plans for the project have been submitted to the Department of Natural Resources and permits have been issued, and this is not a sensitive area, since it is an upland area, and has no trees on it except for one on lot 8. He continued this is a way to save the trees and build the house around them.

Mrs. Smith recalled that on September 25, 1979, the Comprehensive Plan for the Town of Palm Beach was adopted and the plan stated " .... mangroves once lined most of the estuary shore. Today few viable stands remain on the main island. One which does and should be preserved for its value as a rich wild life habitat and an outstanding example of a mangrove system as well as other native trees lies near Southern Boulevard to the west of A1A. This includes lot 7 on the Blossom property. With less than 10% of the Town undeveloped, remnants of native vegetation take on special importance. The Town of Palm Beach in conjunction with other organizations identified the trees on page 6 of the Comprehensive Plan and states the Town is currently studying Area 3 which includes the west side of A1A including the Blossom property as a potential preservation conservation area which could hopefully be acquired by the Town of Palm Beach." Mrs. Smith added this was how important this particular area was.

Mrs. Smith continued that in 1980, the Audubon Society of the Everglades opposed the developer's plans for this piece of property, and in July, 1982, the developer and the Town signed an agreement and subsequently this agreement was recorded with a restriction on lot 7. She added in 1985, the developer returned to the Council and asked that a unity of title be granted for lots 7 and 8 and after many meetings and many months, an amendment was agreed upon and re-recorded with a very carefully defined buildable pocket. She added this was all accomplished to preserve this particular pocket of Palm Beach. Mrs. Smith said the plans and the house are beautiful; however the lot is very large and the restrictions were in place when the owner bought the property and the plan could be re-designed. Mrs. Smith added she is strongly opposed to another amendment to an amendment that should not have been granted in the first place.

Mr. Broberg responded that Mrs. Smith's statement in these minutes was that her concern was strictly for the mangroves; they were not being harmed and the Garden Club withdrew its objections at the time.

Mrs. Smith replied that statement was true; however, the Garden Club was looking at the replatting of the property at that time and offered to discuss the entire issue which was lengthy. She added the Garden Club withdrew the objection on the basis that no portion outside the buildable pocket on lot 7 would be built upon.

Mr. Broberg said the people who directly benefit from the agreement are the people who purchase property in that subdivision, and that is the legal opinion. He added these residents have vested rights in that document.

Mrs. Smith replied the agreement cannot supersede the Town. Mrs. Wiener agreed with that statement.

Mr. Randolph, responding to a question from Mrs. Royal, stated the Audobon Society was aware of this proposed amendment and the Audubon Society was directed to contact Mr. Zimmerman for additional information. Mr. Zimmerman stated he did talk to the Audubon Society and their concerns were with the tennis court and not the driveway.

After discussion concerning the layout of the driveway and the tennis court, Mrs. Wiener suggested the project may be redesigned and submitted at the December meeting or ask for a vote on the subject; however, two of the Council members have stated they object to this design.

Mrs. Smith stated the Council was not concerned with the hypothetical house but was concerned with the two lots that were joined by a unity of title and that the house could be designed in such a way as to follow the conditions as provided in the subdivision agreement.

Motion made by Mrs. Smith to defer the request for an amendment to the First Amendment of the Blossom Estate Subdivision Agreement to provide the applicant time to either redesign the project or if the redesign is within the definition of the agreement, then Council permission would not be necessary. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Request for Waiver to ORD. 6-94 by Eugene Lawrence for work at 206 Worth Ave.

3. Consideration of Request for Waiver to Ordinance No. 6-94 of the Town Code by Eugene Lawrence, Architect, for Work at 206 Worth Avenue

Eugene Lawrence, Architect for the applicant, stated LaCoste recently bought back its license in the United States and plans to open a series of boutiques across the country, and the Palm Beach store will be the first one. He added LaCoste did not complete lease agreements until the 19th of October, and the proper permits and approvals have been obtained for the outside of the building and this work will be completed by November 14. He continued this request is for two weeks working time inside the building to finish the remaining work, and complete access is available to the building from the parking lot. He stated an upscale shop in that location would be preferable for the season rather than an empty space.

Mr. Lawrence said the two neighbors on either side have no objections. He asked that the 7:00 a.m. to 6:00 p.m. working hours be extended until 9:00 p.m. only until November 14.

Mr. Zimmerman responded that since the work can be accomplished accessing the building from the rear and based on Mr. Lawrence's statement that the windows would be screened during construction, the Staff has no objections.

Mr. Lawrence said, although the extended hours request is for three days, the contractor needs that time.

Motion made by Mr. Shaw to approve the Request for Waiver to Ordinance Number 6-94 to extend the hours of construction until 9:00 p.m. until November 15 and construction will be allowed after November 15 to November 30 with the condition site screening be provided from the street and all access to the building be conducted from the rear parking lot. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Any Other Matters

XIV. ANY OTHER MATTERS

Mrs. Wiener requested that Mr. Zimmerman contact Lawrence Cummings, 217 Clarke Avenue, Special Exception Number 31-94, and request he or a representative appear at the December meeting.

Adjournment

XIII. ADJOURNMENT

The meeting was adjourned at 8:40 p.m.

Mary A. Pollitt
Deputy Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME GOLDSMITH, C. GERALD	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council
MAILING ADDRESS 220 WELLS RD	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: [ ] CITY [ ] COUNTY [X] OTHER LOCAL AGENCY
CITY COUNTY PALM BEACH, FL 33480	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED 11-9-94	MY POSITION IS: [ ] ELECTIVE [X] APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

F YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

, C Gerald Goldsmith, hereby disclose that on Nov 9, 1994:

a) A measure came or will come before my agency which (check one)

___ inured to my special private gain; or

___ inured to the special gain of ______________________, by whom I am retained.

b) The measure before my agency and the nature of my interest in the measure is as follows:

Business relation with owner and previous knowlege and participation in design + planning of this house.

Nov 9, 1994

Date Filed

C G Goldsmith

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

2

LAST NAME—FIRST NAME—MIDDLE NAME GOLDSMITH, C. GERARD	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council
MAILING ADDRESS 220 Wells Rd	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: [ ] CITY [ ] COUNTY [X] OTHER LOCAL AGENCY
CITY COUNTY Palm Beach, FL 33480	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED 11-9-94	MY POSITION IS: [ ] ELECTIVE [X] APPOINTIVE

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PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

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You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, C. Gerald Goldsmith, hereby disclose that on 11-9, 1994:

a) A measure came or will come before my agency which (check one)

✓ inured to my special private gain; or

___ inured to the special gain of ______________________, by whom I am retained.

b) The measure before my agency and the nature of my interest in the measure is as follows:

DIRECTOR OF APPLICANT

amended
Sp Ex 13-86

11-9-94
Date Filed

C. G. Goldsmith
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME WIENER HERMINE L.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE TOWN COUNCIL
MAILING ADDRESS 324 GARDEN ROAD PALM BEACH	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: [X] CITY [ ] COUNTY [ ] OTHER LOCAL AGENCY
CITY PALM BEACH COUNTY	NAME OF POLITICAL SUBDIVISION: PALM BEACH
DATE ON WHICH VOTE OCCURRED 11/9/94	MY POSITION IS: [X] ELECTIVE [ ] APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

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In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

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- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, HERMINE L. WIENER, hereby disclose that on NOVEMBER 9, 1994:

(a) A measure came or will come before my agency which (check one)

✓ inured to my special private gain; or

___ inured to the special gain of ______________________, by whom I am retained.

(b) The measure before my agency and the nature of my interest in the measure is as follows:

VARIANCE FOR PALM BEACH NATIONAL BANK & TRUST CO. ON WHOSE BOARD OF DIRECTORS I SIT.

Amended Spec Ex 13-86

NOVEMBER 9, 1994
Date Filed

[signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.