MINUTES OF THE TOWN COUNCIL MEETING HELD ON OCTOBER 12, 1993

Roll Call

I. CALL TO ORDER AND ROLL CALL - The October 12, 1993 Town Council Meeting was called to order by President Weinberg on October 12, 1993 at 9:30 AM in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Ilyinsky, President Weinberg, President Pro Tem Weiner, Councilwomen Douthit, Royal and Smith. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Moore, Mr. Dusey, Mr. Bowser, Mrs. Crozier, Mrs. Kelly, Mrs. Gorman, Mr. Zimmerman, Mr. Jakubiak, Mrs. Martinuzzi, Chief Terlizzese, Chief Elmore, and Mr. Elwell.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Invocation was given by Dr. Kirkman. Pledge of Allegiance was led by Mayor Ilyinsky.

Presentation

III. PRESENTATION

A. Presentation of "Certificate of Achievement for Excellence in Financial Reporting" for Fiscal Year Ending September 30, 1992, to Town's Elected Officials and Staff - Mr. Doney explained this if the fifth year that the Town has received this Award from the Government Finance Officer's Association and he congratulated Mrs. Crozier, the Finance Director, Mrs. Gorman and Mrs. Kelly of the Finance Department. He believed this also reflected well on the Mayor and Town Council requiring the type of financial reporting which is done in a clear format and he thought this Award was a very noteworthy accomplishment.

Comments of the Mayor

IV. COMMENTS OF THE MAYOR: "I would like to address some comments to those of our residents that did NOT have the good fortune of spending the summer in Palm Beach. Much has been accomplished during the past few months which briefly include.......the passage of our annual budget; purchase of additional Fire-Rescue Equipment; affirmation of the successful realignment of our Police Department; completion of our Artificial Reef installation; drafting of a tentative renewal on our potable water agreement with out neighbor, the City of West Palm Beach; renovations to our Town Docks and Marina; our Town Hall and the Center Fire-Rescue Station; replacement of deteriorated sanitary sewer pipes, sealing or resurfacing of many city streets pipes -- plus many other activities such as the creation of three Xeriscape demonstration projects for our Town water conservation program......all activities dedicated to keeping this Town in good repair and function.

Needless to say, our staff is diligently hard at work even when the days are long and extremely warm.

I would like to observe that we have moved forward in improving both the quality and quantity of our staff activities by using the gentle art of persuasion rather than the abruptness of direct confrontation.

Admittedly, this is a vast difference of style in the conduct of the Mayor's Office. Leadership by persuasion process a lower profile in executing my responsibilities. My activities are well served but NOT as public proclamations. I am more comfortable with results rather than thunderbolts."

Approval of Agenda

V. APPROVAL OF AGENDA -

APPROVED AGENDA (ITEMS VI. THROUGH VIII.) Motion was made by Mrs. Wiener, seconded by Mrs. Smith to approve the "Approved Agenda". with the removal of Item VIII.B.1 which will be put on the Regular Agenda as Item XIII.D.7 on insurance. Mrs. Wiener noted there are two Charitable Solicitations, one the Jewish Federation of Palm Beach County and the other, the Salvation Army who both will be spending some time at Mar-a-Lago, and one is a reception and not a fund-raiser and the second one is a charitable event, which is the Salvation Army, and she wanted to be absolutely sure the Mayor and Council were clear on this. Mrs. Smith pointed out a memorandum was furnished by Mrs. Peters which reported it very clearly.

On roll call, the motion carried unanimously for approval of the Approved Agenda with the changes.

Approval of Minutes

VI. APPROVAL OF MINUTES OF JANUARY 5, MAY 11 & 13, JUNE 8, JULY 13, AUGUST 10, AND SEPTEMBER 14 (5:01 P.M.), 1993

Licenses & Permits

VII. LICENSES AND PERMITS

Charitable Solicitations

A. Charitable Solicitations

1. American Heart Association; No. 6-94
2. Jewish Federation of Palm Beach County, Inc.; No. 22-94
3. The Jewish Guild for the Blind; No. 23-94
4. The Jewish Theological Seminary of America; No. 27-94
5. American Technion Society; No. 137-94
6. The Salvation Army; No. 197-94
7. Adopt-A-Family of the Palm Beaches, Inc.; No. 254-94
8. Center for Children in Crisis; No. 341-94
9. Epilepsy Association of the Palm Beaches; No. 344-94
10. Florida SIDS Alliance; No. 361-94

NEW BUSINESS

VIII. NEW BUSINESS

Bid Award

A. Bid Award

1. Sealed Bid No. 94-001 - Diesel Road Tractor for Public Works Solid Waste Division.

B. Other

1. Consideration of Addendum to Annual Property and Casualty Insurance and Claims Management Services for FY94

Consideration of Addendum to Prop. & Cas. Management

REGULAR AGENDA Motion was made by Mrs. Smith, seconded by Mrs. Douthit to approve the Regular Agenda with the following changes:

1. Add an item Under XIII.D.5 which is consideration of the Little Red School House and the insurance requirements, for which the Preservation Foundation is requesting consideration.

2. Under Any Other Matters, Mr. Doney had eight or ten items to be brought to the Council which are report-like items.

3. Add an item as XIII.D.6, Lake Worth Inlet Maintenance Dredging.

4. XVI.B.2 - Withdrawal of Variance 41-93 - Elizabeth Bertram, 200 Phipps Plaza.

5. XVI.B.1 - Deferral of Variance 40-93 - Howell Van Gerbig, Jr., 12 Via Vizcaya at the verbal request of Mr. Van Gerbig.

On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion, stating she was voting against the motion as she thought many of these items should have been put on the Agenda instead of being brought up under Any Other Matters.

IX. PUBLIC HEARING

Public Hearing

A. Request to Abandon Ocean Way North of Angler Avenue - Consideration of Resolution No. 39-93 - Deferred from August 10, 1993 Council Meeting -

Res. 39-93

Attorney Randolph recalled there has been pending before the Council for some time, a request for abandonment by Mrs. Bertles and Mr. Roddy. He advised the abandonment has been advertised and the representatives of the petitioners are here and they can no move forward with the public hearing on the abandonment.

Attorney Ken Bertles representing Helen Bertles Ferraro addressed the Council, noting this has been going on for eight months although he has just become involved in the case for his sister. He believed it was in the Town's best interest to abandon the property and get it onto the tax rolls and to remove it from potential liability and get rid of the potential health hazard which now exists.

Mr. Bertles understood that the Town does not really own this property and owns only an easement over the property and has only the right to use it. He stated the property itself belongs in fee simple and is owned by the adjacent land owners. He thought when the price is considered to cover the costs and what is a fair fee for the Town's discretionary abandonment of the easement, they should keep in mind that the Town does not own the property but only the right to use it.

He believed the fee as mentioned in the proposed ordinance would be prohibitive and the fee as drafted would result in property which the Town wishes to have abandoned never being abandoned as people will just not pay that much money for it. He stated the property is not being used now and there is no potential use for it as it is a dead end roadway used only to collect garbage and for people to park illegally and has no use to the Town at all and the petitioners are going to incur substantial expenses in the renovation of the property and tearing up the tarmac, installing the curbs at their expense and will landscape and grade the property in an attractive manner. He recalled at the last meeting, a proposal was made of between $5000 and $7500 which would be paid by the two adjoining property owners. He has talked to his client who is agreeable to pay $7500 and he believed Mr. Roddy was also agreeable to paying that amount which would give the Town $15,000 which would cover the out of pocket costs to record the abandonment, documents, and the easement document to establish an easement on the north side of the property and he asked this be considered.

Attorney Randolph noted when property is initially platted by the developer, it goes to the center of the roadway and the road is dedicated to the use of the public, and he wasn't sure he goes along with the fact that there is fee simple ownership. He advised that would not occur until after the abandonment. He indicated what they are abandoning is the use of the right-of-way for the public and that is why there is a "privilege fee" rather than a payment for the value of the land. He believed that in listening to the application, consideration needs to be given to the comments of the Public Works Department, as when this application first came forward, a determination was made that not half of the property could be abandoned and therefore Mr. Roddy was given the opportunity to file a petition for the remaining half and the Town advertised it. He thought if this was approved, they should do so subject to the considerations listed in Mr. Bowser's memo, as well as the payment of the privilege fee.

Mr. Dusey stated there is a memo to Mr. Doney from Mr. Bowser dated October 4, 1993, which has seven conditions which are their recommendations as being a part of the abandonment, if that is what the Town Council wishes to do.

Mrs. Smith asked Attorney Ord if his client, Mr. Roddy, was agreeable to the payment of $7500, to which Attorney Ord responded his client was willing to make the payment.

Mrs. Wiener moved that the Town Council grant the abandonment and the easements and the conditions as stated in the memorandum of October 1, 1993 to Mr. Doney from Mr. Dusey and Mr. Bowser be a part of the grant and that each adjoining property owner pay $7500. Mrs. Smith seconded the motion with an amendment that the $15,000 from the two property owners would be plus costs to which Mrs. Wiener agreed.

Mrs. Douthit felt this was precedent setting and she felt the privilege fee was much too low.

Mrs. Douthit asked if this property was on the tax rolls and these two adjoining owners were paying taxes on the property to which Attorney Bertles responded he did not believe it was.

The conditions were:

1. That the abandonment occurs only if both parties were in agreement.

Res. 39-93
(cont'd)

2. All costs associated with the preparation of the abandonment and easement dedication documents and recording of same in the courthouse shall be paid by the owners.

3. That a six foot utility easement be granted upon the northerly six feet of right-of-way being abandoned.

4. The property owners are responsible to pay for the removal of the existing pavement, base and curbing. Work to be completed within 60 days of the abandonment.

5. The property owners are responsible to pay for the installation of curbing along Angler Ave. Curb type and location to be approved by the Town Engineer.

6. Mr. Roddy shall grant an access easement to the Town to service the sanitary sewer manhole located in the northwest corner of his property.

On roll call, the motion carried 3-2 with Mrs. Douthit and Mr. Weinberg voting against the motion.

Attorney Randolph read the Resolution No. 39-93:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF OCEAN WAY ADJACENT TO 109 and 201 ANGLER AVENUE IN THE TOWN OF PALM BEACH, FLORIDA DEDICATING NEW UTILITY EASEMENTS ON PROPERTY LOCATED AT 109 and 201 ANGLER AVENUE IN THE TOWN OF PALM BEACH, FLORIDA.

Mrs. Wiener moved for adoption of Resolution No. 39-93. Seconded by Mrs. Smith. On roll call, the motion carried 3-2 with Mrs. Douthit and Mr. Weinberg voting against the motion.

Licenses &
Permits

X. LICENSES AND PERMITS

A. Charitable Solicitations

Charitable
Solicitations

Hadassah
Angel of
Mercy

1. Hadassah Angel of Mercy; No. 14-94 - Mrs. Peters reported the Results form was late in being returned last year and it is the second violation for this organization. Ms. Debbie Brass addressed the Council, noting it was a transition period as the woman who had done this before had done it for years. She noted their CPA is a volunteer and was out of town when the form should have been returned. She doesn't believe that she would have that problem next year as they have asked their solicitation to start later, which will allow them to get this done when everyone is in Town. Mrs. Wiener indicated to Ms. Brass they may be jeopardizing their permit if they would have to come before the Council a third time and suggested that they hire a CPA. Mrs. Smith asked how much money do they raise and where does the money go? Ms. Brass responded after expenses the amount raised was $221,867 and the money goes to youth programs in the U.S. and several programs in Palm Beach County and the primary money supports the Hadassah medical organization in Israel, which has educational programs, research, and a medical and nursing school. Mrs. Smith also suggested they go to a CPA firm and ask for their services on a volunteer basis or if that is not possible, hire a firm to do this work for them. She moved for approval of the application for Charitable Solicitation with the stipulation that a regular auditing firm be used. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Israel
Cancer
Research
Fund

2. Israel Cancer Research Fund; No. 308-94 Mrs. Peters reported there is no current audit available. Mrs. Irene Ostraff addressed the Council noting as soon as the 1992 Audit is completed, it will be furnished and the delay is due to the merger of Chapter and Executive Office accounting, because of the new tax laws. She believed the audit will be complete by November 1, and she will submit it as soon as she receives it.

Mrs. Douthit asked if any of the monies stayed in the U. S. to which Ms. Ostraff responded only the benefits stay here and that is the benefit of the research which she believed benefitted all mankind.

Mrs. Wiener did not think it was germane as to where the money does go and she would move that the permit for the Israel Cancer Fund Research be approved and asked Mrs. Ostraff to be kind enough to see that this does not happen again to which Mrs. Ostraff agreed. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

XI. COMMITTEE REPORT

Committee
Report

A. Ordinance, Rules, and Standards Committee Report of September 22, 1993 Meeting

ORS Report

<u>REPORT OF THE ORDINANCE, RULES AND STANDARDS COMMITTEE MEETING</u>

<u>SEPTEMBER 22, 1993</u>

Roll Call

I. <u>CALL TO ORDER AND ROLL CALL:</u> A meeting of the Ordinance, Rules & Standards Committee was called to order by Chairperson Douthit at 9:00 AM on September 22, 1993, in the Town Hall Council Chambers. Committee member Royal was also in attendance. Also attending were Mayor Ilyinsky and Council President Weinberg. Staff members attending the meeting were: Town Manager Doney, Mr. Jakubiak, Mr. Moore, and Ms. Reedy. Diane Christie, Director of System Development for Comcast Cable TV, also attended the meeting.

Approval
of AGenda

II. <u>APPROVAL OF AGENDA:</u> Agenda was approved as printed.

Cable Rates

III. CONSIDERATION OF PROPOSED ORDINANCE WHICH WILL ADOPT RULES AND ENFORCEMENT MECHANISMS TO REGULATE BASIC CABLE RATES AND CUSTOMER SERVICE STANDARDS IN COMPLIANCE WITH THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992.

Mr. Doney gave an overview of this issue and advised that the cable legislation is very complicated and lengthy, and Attorney Randolph will need to be consulted on some items. Mr. Doney generally addressed the following: Cable Rates

1. Evolving interpretations regarding retransmission, rates, and cable customer service standards.
2. Town should consider adopting an ordinance to regulate rates, and customer service standards. This ordinance would need to have a first reading at the October 12th Council meeting, and second reading at the November 9, 1993 meeting.

COMMENTS BY MRS. CHRISTIE: Some channels have signed to rebroadcast, and Mrs. Christie expects they will have agreements with several other local channels by the October 6th deadline. There are 16 channels in the basic cable tier.

PRESENTATION BY MR. JAKUBIAK: Presentation by Jakubiak

a. Town will be certified in 30 days to regulate basic cable tier service rates.
b. Town will notify cable company that they are certified to regulate rates.
c. Cable company will have 30 days to advise the Town of its approach, either benchmark standards established by FCC, or cost of service showing.
d. Town will have ability to reduce rates by a maximum of 10%, but only if the rates exceed the FCC bench-mark standards.
e. Comcast is requested to provide the Town with a monthly activity report based on Town customers only.
f. Cable company will be penalized if standards are not met.

DISCUSSION OF ORDINANCE: After reviewing the proposed ordinance page by page, the Committee recommends that enforcement of the Ordinance should be through the Town's Code Enforcement Board. Change on page five, item "a", that the seven (7) business days allowed for installation of equipment be reduced to three (3).

Also, the Committee recommends that Mr. Randolph be consulted about the possibility of referencing item "c" on page four of the ordinance to item "b" on page 10, and to retain the recommended fines in the ordinance in lieu of free services for a period of time. Also, the Committee recommended clarifying item 3 on page 8.

IV. ANY OTHER MATTERS:

Mr. Doney reported he had received a call from Mrs. Smith requesting that the issue of the historic trees be brought to the attention of the ORS Committee. He said at the August 10th Council meeting, the issue of the historic trees and the recording of those trees in the public records of Palm Beach County was discussed. Mr. Doney said that Mr. Randolph is presently researching this issue which arose during the discussion of the tree at 160 Via Del Lago. Mr. Doney, and Mr. Randolph should have a report for the Council on this issue at the October Council meeting. Historic Trees

V. ADJOURNMENT: Meeting was adjourned at 10:50 AM. Adjournment

signed by Mrs. Douthit and Mrs. Royal.

Mrs. Douthit noted the cable industry is now being regulated by the Federal government and she would like to move that the Council do not accept the suggestion that the fees be increased.

Mr. Doney pointed out additional information is being offered as to the complaints that have been received and this should be considered later when they adopt the Ordinance.

Mrs. Douthit suggested another ORS meeting be held to discuss the standards.

Mr. Jakubiak noted two draft ordinances have been received and one Ordinance concerns the rate regulation for first reading today and it is their recommendation that the rate ordinance be adopted. He advised the Town should be certified and he will call the FCC to verify that.

He advised the other draft ordinance included both rates and customer service standards and it was his recommendation that the Ordinance encompassing the rates be the one adopted today. He noted one of the standards set by FCC is the phone needs to be answered within 30 seconds and Comcast has to comply with that standard at least ninety per cent of the time. He advised there are 96,000 subscribers and they could be meeting that standard most of the time.

Mrs. Wiener wondered if they could red flag the calls which come in from Palm Beach. Mrs. Douthit did not think that was possible as it is all done by automation. Mrs. Wiener asked if Comcast could tell the Council what they can do. Mrs. Douthit explained she would like to recommend the rate Ordinance be put in place and the ORS will discuss the regulations at a future meeting.

Mr. Doney suggested the report of the ORS be received. Mrs. Wiener so moved. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Royal suggested there be a workshop on this subject as Comcast has advised it will cost $11,000 a month to bring up their rate portage to the Town's request. She thought this should be deferred until the ORS Workshop. Mrs. Smith asked if Diane Christie would be available at the ORS Meeting to which the response was affirmative. Mrs. Royal moved that discussion on the letter received from Comcast on customer satisfaction be deferred until such time as the ORS Committee meeting is held. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

XII. OLD BUSINESS

A. Ordinances - Second Reading

1. Ordinance No. 19-93 - Proposed Abandonment of Easements and Rights-of-Way - Mr. Randolph presumed the Council did not want to adopt this Ordinance in the form it was presented at the first reading, because of the earlier discussion as if there is a price which is 80% of the assessed value of the land, they might be in a situation Ord. 19-93

Ord. 19-93 (cont'd)

where people will simply not abandon their property. He has alternative ordinances available for perusal if the Town Council so desires. Mrs. Wiener moved that this matter be sent back to the ORS Committee for further consideration. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Ord. 23-93

2. Ordinance No. 23-93 - Amendment to Water Conservation Ordinance - Mr. Randolph read Ord. No. 23-93 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING TOWN ORDINANCE No. 6-93 REGARDING WATER CONSERVATION AND THEREBY PROHIBITING THE OPERATION OF ANY LANDSCAPE IRRIGATION SYSTEM BETWEEN 9:00 AM and 9:00 PM; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Smith to adopt Ord. No. 23-93 on second reading. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Ord. 24-93

3. Ordinance No. 24-93 - Amendment to Taxicab Ordinance. Attorney Randolph read Ord. No. 24-93 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER X OF THE CODE OF ORDINANCES, AT ARTICLE 14, TAXICABS AMENDING SECTION 10-319 RELATING TO CONTENTS OF APPLICATION; AMENDING SECTION 10-326 RELATING TO REQUIREMENTS FOR A TOWN'S CHAUFFEUR'S PERMIT; AMENDING SECTION 10-327 RELATING TO SUSPENSION AND REVOCATION OF CERTIFICATES, PERMITS OR CHAUFFEUR'S PERMIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Douthit moved for approval of Ord. No. 24.93, seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Ord. 26-93

4. Ordinance No. 26-93 - Commercial Solid Waste Collection Fees - Attorney Randolph read the Ordinance No. 26-93 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 8 OF THE TOWN CODE OF ORDINANCES, GARBAGE AND TRASH, AT SECTION 8-7, RELATING TO FREQUENCY OF COLLECTIONS; SECTION 8-8, RELATING TO ESTABLISHMENT OF CHARGES FOR COLLECTIONS; PROVIDING THAT THE OWNER SHALL BE RESPONSIBLE FOR SAID CHARGES; AMENDING SECTION 8-9 RELATING TO BILLING FOR CHARGES AND NOTICES OF DELINQUENCY; AMENDING SECTION 8-13 RELATING TO A CHARGE FOR SPECIAL SERVICE; AMENDING ARTICLE II RELATING TO NON-MUNCIPAL COLLECTION AND DISPOSAL AT SECTIONS 8-31 AND 8-33 SO AS TO PROVIDE THAT THE TOWN SHALL BE THE SOLE PROVIDER FOR THE COLLECTION AND DISPOSAL OF GARBAGE AND PROHIBITING COMMERCIAL AND BUSINESS ESTABLISHMENTS FROM OPERATING THEIR OWN COLLECTION AND DISPOSAL SERVICE; RESCINDING SECTIONS 8-32, 8-34, 8-35, AND 8-36 S8-37; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Smith moved for approval of Ordinance No. 26-93, seconded by Mrs. Royal. On roll call, the motion carried unanimously.

B. Other

1. Mid-Town PEP Reef Project

PEP Reef Project

a. Consideration of Request by American Coastal Engineering, Inc. to Act as Agent for the Town During Three-Year Monitoring Period - Mr. Dusey addressed the Council noting he was requested to bring a recommendation regarding the role of American Coastal acting as agent for the Town during the monitoring period and in his memo to Mr. Doney of October 4, 1993, sets forth his recommendation that the Town should not employ American Coastal in this capacity.

Mrs. Douthit commented that they could always be called into the picture, if a situation should arise to which Mr. Dusey responded he would do so with the Mayor and Town Council's approval.

Mr. Dusey believed American Coastal would be involved on their own volition because of their interest in the testing. Mrs. Douthit asked who would be furnishing the Town the information on the performance of the reef, the University? Mr. Dusey responded the University will provide the information and American Coastal will be reviewing it on their own behalf and the Town will also be looking at it and making comments to the university. He stated American Coastal is not out of the process but the Town will not need them to act as our agent as they are not playing the role which they originally did.

Mrs. Wiener moved that the request by American Coastal Engineering to act as agent for the Town of Palm Beach during the three year monitoring period be denied, as per the staff recommendation. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

DNR Request for Survey Lines

b. Consideration of DNR's Request for Additional Survey Lines Between the Current North End of the Project and the Lake Worth Inlet - Mr. Dusey noted this item involves the Department of Natural Resources which is now the Department of Environmental Protection's suggestion that we provide monitoring of the Corps of Engineer's sand once it is placed at the north end of the island. He recalled at the last Town Council meeting the vote was taken to monitor the sand and he has the cost of the monitoring which is $50,000 for doing the survey work and approximately $20,000 for the reporting and analysis of that data, once it is obtained. Mrs. Douthit asked is this something that was in the original plan and DNR took it out and asked if this was in reference to that to which Mr. Dusey responded it is not identical but it is similar. Mrs.

Douthit believed they originally said it wasn't necessary and now they find it is. Mr. Weinberg believed there were state funds available to cover the cost. Mr. Dusey responded there still may be, but he is not sure.

DNR Survey Lines (cont'd)

Mrs. Wiener felt it was something that is necessary and she moved that the Town move forward with the $20,000 for the reporting and analysis of the data and the monies be from the Beach Protection Funds in the Capital Improvement Program. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Beautification Project

2. Consideration of Town Participation in Proposed Beautification Project by South County Road Association - Comments by Town Staff - Deferred from September 14, 1993 Council Meeting - Mr. Dusey advised the South County Road Association wishes to donate to the Town twelve receptacles for the same corridor which will have beautification with the trees. He noted there is a sketch of the proposed container as well as a letter from Mr. Steve Keidash of the South County Road Association. Mr. Dusey advised the staff has no objection with the Town accepting the donation with the proviso that the container be slightly redesigned in the front and there be a plastic container inside the container so it can be easily serviced.

Mr. Keidash addressed the Council indicating he had no problem with the redesign and the South Co. Road Assoc. would like to donate the containers in this corridor and requested the Town maintain them. Mrs. Smith asked how many trash containers are in this area at the present time to which Mr. Keidash responded there are none. Mr. Doney advised they are not having a litter problem but that doesn't mean they wouldn't serve a purpose.

Mrs. Smith moved for approval of the donation from the South County Merchants Association. Seconded by Mrs. Douthit. Mr. Keidash advised they wish to have a planter box on top of the containers. He noted they have contacted the Garden Club who are considering doing the perpetual maintenance as they all want them to remain very attractive. Mrs. Smith believed staff should take over from here and called for a vote on the motion. On roll call, the motion carried unanimously.

Mrs. Royal asked about the status on the grates which DOT is furnishing to go around the palm trees? Mr. Dusey responded they are looking at the timing as DOT requires an agreement be signed that if the grates are furnished, they will be installed and since this Council asked that this be put over to the next Fiscal year, they are stalled. Mrs. Douthit suggested they put it on a 24 month basis and the Agreement will be they will be used within the next 24 months. Mrs. Wiener didn't think they could do that as no-one knows what the next budget will be. Mrs. Douthit asked Mr. Dusey to check with DOT and see if this can be arranged that they be accepted and stored until monies are available and that should be within a 24 month period. Mrs. Smith asked Mr. Dusey to check with DOT and the Council will wait to hear from him on this subject.

Mr. Dusey requested authorization from the Council for the Building and Zoning Department to assist Mr. Keidash with the placement of the containers in the Town Hall Historic District and obtaining a Certificate of Appropriateness, to which the Council agreed.

Mr. Doney indicated another issue which needs to be addressed is the newspaper racks. Mr. Moore reported the Council has given authorization to move forward in investigating the probability with the newspaper companies to provide for enclosures, similar to those approved in Boca Raton, for the use in the Historic District, which has been approved by the Landmarks Preservation Commission. Mr. Randolph recommended that ORS give consideration to a modification in the Ordinance so as to allow them to move forward. Mrs. Smith recalled it has been approved by the Council and this is a gift to the Town and she didn't see why they needed to go back to ORS. Mr. Moore responded if that is the case, they can have an Ordinance before the Council at the November meeting, to which the Council agreed.

Status Report on Interlocal Agree. Re: Water Supply

3. Status Report on Proposed Interlocal Agreement Regarding Potable Water Supply with the City of West Palm Beach - Mr. Randolph reported the staff and he thought they were down to the point where they would be dotting the "i's" and crossing the "t's", however, when they had a final meeting to discuss the final changes, it was learned that there was adamant reluctance by the City Attorney to recommend approval of the things which the Town staff had thought were already negotiated, and those items being:

   1. The surcharge.
   2. The rate cap.
   3. Being involved in the rate making.
   4. Having improvements made to the system.

He advised the City of West Palm Beach Staff told them that they would not be recommendations from the City Attorney that the items be approved, and as a result of that, they didn't think it would be of any benefit to go back and continue to negotiate the Agreement and are before the Council for further direction on how they wished to move forward on this.

Mrs. Smith asked if he thought this was the new City Attorney flexing his muscles at the Town of Palm Beach as that is what is her view. Mrs. Douthit recalled it was all settled last January but then it fell through. Mrs. Wiener believed that three and a half years ago it could have been signed, sealed and delivered very quietly and she thought it was unfortunate as they are getting closer and closer to the time when this will expire and she agreed with the Town Attorney that it would be futile to continue the discussions as there is nothing to be done about it. She remarked on the other hand, however, they obviously can't through the Town out and we could go on for years and years without having a contract, if need be. She thought they maybe ought to tell this man that the City of West Palm Beach has more serious problems in the City of West Palm Beach than the water contract and they should get rid of those things which are simple and easy such as this contract, and get to their serious problems and the Town would be willing to cooperate with them on this and in that way it won't be confrontational as the Town is trying to help them, and she didn't see them in a good position if the Town gets so disgusted that they decide to go in another direction. She didn't think the City wanted the Town to do that nor did she think the Town wanted to do it. Mrs. Smith asked how would she propose they get it done as Mr. Randolph has told us they are not going to make recommendations to their City Council.

Mrs. Wiener reiterated what she meant was the City does have other major problems and they should be taking care of the little things that need attention and person to person, tell them that

Status Report on Interlocal Agreement Re: Water Supply (cont'd)

as they have a lot of things on their plate and a lot of them are more important to them. Mr Randolph responded he will go back to them with the message that these things which have been negotiated are important and it is the Council's desire to maintain those items within the Agreement and the Town will not move forward without those items contained in the Agreement. Mrs Douthit suggested it be carried back to the Mayor and the City Council and give it a broader view Mrs. Smith noted it seems to go back and forth. Mrs. Douthit did not believe the new attorney had the history of this project and the working together of the Town and the City staffs and for years the Town has contributed vastly to the Water Plant as we are a big user. Mr. Randolph recalled it was the City of West Palm Beach's attorney's feelings that he feared this agreement would be negotiating away statutory items and he did not feel he could advise his Council to do that. Mrs Smith asked the Town Attorney to request a response from the City of West Palm Beach attorney because the Town wants to move forward on this.

Proposed Agreement between the Town & First Union for Investment Management Services

4. Consideration of Proposed Agreement Between the Town and First Union National Bank for Investment Management Services for FY94 - Deferred from September 14, 1993 Council meeting - Mr. Doney recalled at the last meeting, First Union made a presentation and this matter was deferred to this meeting. He believed there was an opportunity to increase interest earnings on idle funds and this would reduce potential future ad valorem tax needs. He reported the reason First Union was recommended for consideration was because of the Town's daily banking services which are provided by First Union. He reported that from the Town's organization perspective and the way the existing banking relationship exists, it is his recommendation that when the banking service agreement expires in November of 1994, that the total banking service be put out to bid, which would include the day-to-day operation as well as the investment management services.

He noted if the Town Council wishes to discuss the Request for Proposals, they have analyzed that issue and he will be able to speak to that. He believed that it is important to hear from the First Union representatives as to how they would actively manage the investment management services. Mr. Weinberg commented since this is a complex issue and would take time to review and discuss and it will be his recommendation that this matter be referred to the Finance & Taxation Committee for their recommendations to the Council. Mrs. Royal so moved and it was seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Consideration of Request by AT & T for easement at Clarke Ave.

5. Consideration of Request by AT&T for Town to Grant Easement at Clarke Avenue Beach Area for Proposed Columbus 2 Cable - Deferred from September 14, 1993 Council meeting - Mr. Dusey addressed the Council noting an appraiser has evaluated the use of the Town's right-of-way and an Ordinance has been prepared for consideration on first reading at this time. He has not discussed the Ordinance as yet with AT%T. Attorney Randolph reported this matter originally came to the Council as a request to lay cable under one right-of-way and it is known that AT&T has other cables in several rights-of-way and as a condition of granting the right to lay this cable, they wished to enter into a licensed agreement relating to all of the cable that is in the Town. He did not believe there was any objection by AT&T to do that, but the fee has not been finally negotiated.

Mr. Randolph advised the proposed Ordinance would allow the Town to enter into a license agreement with AT&T and the fee proposed is an annual fee of $15,500. He has suggested there be an escalation clause on an annual basis based upon the Consumer Price Index and this item has been discussed with AT&T but they are not in full agreement. He advised the reason they are proposing this Ordinance at this time is that AT&T has made their arrangements to have the cable installed in the first part of November.

Mrs. Royal asked if there should be language in the Ordinance which will allow for future protection of the shoreline by having more artificial reefs. Mr. Dusey was not sure that these could be tied together as they did go round and round with AT&T, who have an easement to be where they are and they were willing to allow the Town to cross over their cables with the artificial reef if we did certain things, one being liable for one million dollars per hour if they were damaged, and the Town was not willing to do that. Mrs. Douthit asked if AT&T armored their cables to which Mr. Bowser responded he didn't believe they did. Mrs. Douthit suggested in their negotiations with AT&T they should be asked if in the future they would be willing to do so. Mr. Dusey recalled they did amour the cables that were already laid at their expense and he thought that it would be easier to armor it as it is being laid. Mrs. Douthit moved that Ordinance No. 28-93 be approved. Mrs. Smith asked why the Town was under pressure to accommodate AT&T? Mr. Dusey responded they are not, but it is known they have a ship coming in that will be here early November. Mrs. Smith asked if the streets would be torn up? Mr. Bowser responded it would be several days that South Ocean Blvd. may have to be torn up. Mrs. Smith felt there was something wrong here as the Town seems to be jumping to accommodate them, and an Ordinance is being proposed for adoption. Mr. Bowser responded they have to have the work completed by Dec. 1st and the boat cannot land before November 1st, due to the turtle season, so their window of opportunity is Nov. 1st to Dec. 1st. Mrs. Smith felt the people in the Town of Palm Beach need to be accommodated. Mr. Bowser responded AT&T has not made a permit application to do the crossing, as we have told them they have no right to cross the right-of-way as there is no agreement with them to allow this, and once the Ordinance is in place, there will be an application filed and at that time the permit conditions will be considered. Mrs. Smith didn't understand why they were looking at this today without the staff having an agreement in hand that they bring before the Council. Mr. Dusey responded these are concurrent activities, and the Town is recognizing there will be a cable ship coming this direction and several billion dollars have already been invested in the cable and he is trying to cooperate with them, as they were cooperative with the Town when the PEP Reef was laid and we don't wish to stand in their way, however they don't feel there is an obligation to give them anything.

Mr. Randolph advised this Ordinance does contemplate they will have to abide by the regulations of the Town so whatever regulations are set up by the Public Works Department, they will have to abide by them. Mr. Dusey noted the Ordinance does set up a fee of $15,500 on an annual basis. Mrs. Smith did not believe it was enough. Mr. Dusey responded it is considered to be legally defensible. Mrs. Wiener believed the $15,500 was a paltry sum and she wouldn't agree that this figure should be negotiated downward.

Mrs. Smith asked if the motion to adopt the Ordinance could be amended to include a figure of $20,000? Mrs. Douthit stated she would and suggested it be $50,000 which could be negotiated

Consideration of Request by AT&T for easement at Clarke Ave. (cont'd)

downward. Mrs. Wiener asked Mrs. Douthit if she would consider the figure to be at $20,000 to which she agreed. Mrs. Smith seconded the motion.

Mrs. Royal wondered if there should be some language which would take care of future activities in the event the Town would want to add on to the artificial reef. Mr. Weinberg called for the vote and on roll call, the motion carried unanimously.

Mr. Randolph read the title of Ordinance No. 28-93:

Ord. 28-93

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING A LICENSE TO AT&T COMMUNICATIONS OF THE SOUTHERN STATES INC. AT&T TO INSTALL UNDERGROUND CABLE EQUIPMENT IN CERTAIN PUBLIC RIGHTS OF WAY WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained the figure included in the Ordinance of $15,500 will be reviewed to $20,000.00. Mrs. Wiener moved for adoption of Ordinance No. 28-93 on first reading. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Consideration of Renewal of Computil Agreement

6. Consideration of Renewal of Computil Agreement for Collection of Parking Fines for FY94 - Deferred from September 14, 1993 Council meeting - Mrs. Crozier reported she has received collections for the month of July, August and September and she believed the matter has been taken seriously by Computil who have reduced their fees from 32% to 25% for FY94. She will continue to monitor this and report to the Council if there is any change. Mrs. Douthit moved the Computil agreement be renewed. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Consideration of PBIA Far Part Noise Study

7. Consideration of PBIA Far Part 150 Noise Study - Update Based Upon October 6, 1993 Technical Advisory Committee meeting. Also, Consideration of Board of County Commission Upcoming Meeting on Tuesday, October 19, 1993, at 5:00 P.M. - Mr. Jakubiak addressed the Council reminding them of the importance of attending the October 19, 1993 meeting before the County Commission. He stated at the TAC meeting, the Committee voted on a revised statement to be submitted at the upcoming meeting which talked about extending the east/west runway and the fanning issue. He stated the Town Council's direction has been to stick to their basic position in fanning all aircraft and secondly, against the expansion of the airport. He believed many people on the TAC Committee want the fanning to continue and in fact, there were a number of residents who spoke for the fanning of aircraft and the number voting was 18 in favor with 2 against.

Mr. Weinberg noted he is also a member of the TAC Committee and he has been working to get the TAC Committee together and at this moment, he believed they would be forming a Citizen's Committee if they can't get the TAC Committee together, but he wanted them to know they were for the fanning and against the extension of the east/west runway and they would continue to with those stands at the County Commission meeting and urged all of the members of the Council and the public to attend that meeting.

Mrs. Wiener noted the Noise Abatement Officer is employed by the Airport and is a County employee, and she has a great deal of trouble dealing with that as she does work for the County and a determination should be made as to whether or not she does the work of the airport as if that is the case, she should be paid by the airport and if it is someone who is doing the work of the County and representing the feeling of the people in the County, then they should be paid by the County. Mrs. Royal asked if there was any chance that the Department of Interior may step into the picture as not only is Mar-a-Lago a subject of interest but also the Flamingo Park area. Mr. Weinberg believed that would come under the auspices of the Department of Transportation in Washington, D. C.

Mr. Doney understood that after the public hearing is conducted next Tuesday, their decision on the fanning or no fanning will go to the FAA and at that time Mrs. Royal's concerns because of the Federal inter-agency involvement, there would be participation between the agencies and the City of West Palm Beach is also trying to be more active.

Mrs. Smith pointed out this is a National Historic Landmark so it would go to the national level and it is a fact that Mar-a-Lago is being damaged by the constant air traffic. Mr. Weinberg pointed out, there is a possibility that if it isn't resolved by all of the agencies involved, it could go to the President of the United States, the Secretary of the Interior and the Secretary of Transportation.

Mrs. Wiener noted that the new Executive Director of the Civic Association is in the audience and perhaps there will be some way whereby the Civic Association could advise its members of an alert to come out to the meeting at 5 PM on Nov. 19th and suggested that the Civic Association South of Sloan's Curve also alert their members. Ned Barnes, Executive Director of the Palm Beach Civic Association addressed the Council advising they are aware of all that is going on and plan to be in attendance next week and will be happy to get the word out to their members. Mrs. Smith suggested the Preservation Foundation should also make the effort.

XIII. NEW BUSINESS

A. Ordinances - First Reading

Ord. 25-93

1. Ordinance No. 25-93 - Amendment to Dune Removal and Alteration Ordinance - Mr. Randolph read the Ordinance No. 25-93 by title:

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING ARTICLE IV DUNE REMOVAL OR ALTERATIONS, SECTION 6-36 BEACHES, SUB-SECTION D.1.A; APPLICATION REQUIREMENTS - G, LICENSE PROFESSIONAL - I. SETBACK LINES; J.1.A WAIVERS AND VARIANCES PROCEDURES; PROCEDURES FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH;

PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR A REVISION DATE.

Mrs. Wiener moved for adoption of Res. No. 25-93. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

ORD. 27-93

2. Ordinance No. 27-93 - Cable TV Regulation of Rates and Customer Service Standards - Mr. Randolph read the Ordinance No. 27-93:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA PROVIDING FOR THE REGULATION OF BASIC SERVICE TIER RATES AND RELATED EQUIPMENT INSTALLATION AND SERVICE CHARGES FOR CABLE TELEVISION SERVICE; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Douthit moved for approval of Ord. No. 27-93. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

ORD. 28-93

3. Ordinance No. 28-93 - Authorization to Sign Telecommunications License Agreement with AT&T to Install Underground Fiber Optic Cable Equipment in Public Rights-of-Way Within the Town of Palm Beach (This Ordinance was adopted earlier in the meeting.

B. Resolutions

Res. 36-93

1. Resolution No. 36-93 - Readoption of Routine Dune Maintenance Guidelines - Mr. Randolph read the Resolution No. 36-93 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, READOPTING THE TOWN'S GUIDELINES FOR ROUTINE DUNE MAINTENANCE.

Mrs. Wiener moved for adoption of Res. No. 36-93. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Res. 40-93

2. Resolution No. 40-93 - Opposition to Unfunded Federal Mandates - Mr. Randolph read the Resolution No. 40-93 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING OCTOBER 27, 1993 AS NATIONAL UNFUNDED MANDATES DAY.

Motion was made by Mrs. Wiener to adopt Res. No. 40-93. Seconded by Mrs. Douthit. On roll call, the motion carried 4-1 with Mrs. Royal voting against the motion.

Res. 41-93

3. Resolution No. 41-93 - Opposing Senate Bill 1405 Regarding the National Flood Insurance Reform Act of 1993 - Mr. Randolph read Res. No. 41-93 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, OPPOSING SENATE BILL NO. 1405, REGARDING THE NATIONAL FLOOD INSURANCE REFORM ACT OF 1992 AS IT IS CURRENTLY WORDED, AND RECOMMENDING CERTAIN CHANGES WHICH WOULD MAKE THE PROPOSED LAW ACCEPTABLE TO THE TOWN.

Mrs. Smith moved the adoption of Res. No. 41-93. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

C. Bid Award

Bid Award

1. Sealed Bid No. 93-022 - South Fire-Rescue Station - Mr. Dusey reported the bids were opened on October 5, 1993 and came in higher than what was expected and over budget. He stated because of the amount of money available for construction, the recommendation is to reject all bids and authorization for this to be forwarded to the Public Safety Committee meeting and look at alternatives to reduce the scope of the project to bring it into line with the budget. Mayor Ilyinsky asked how much over budget was this to which Mr. Dusey responded approximately $500,000.

Mrs. Wiener asked if the bids received seemed to be in order? Mr. Dusey responded they believe they are in order as the contractors do establish the value of the work, as engineers and architects do the estimating so when this goes to bid, the contractors are the ones who establish the value of the work. He stated they had three bids and Mr. Dusey explained in an effort to get this done, they did rush the bidders and came up with a bidding schedule whereby they were competing with another project in the south county area of a similar magnitude. He believed the program may be a little too large for the monies that have been budgeted.

Mrs. Wiener asked if there was anything in the Plan which could be eliminated without any problems? Chief Elmore responded there is nothing that is unnecessary, however, based on the amount of monies that were budgeted and the bids that are coming in, they have to take a second look at the project and make a determination as to whether they wish to keep such things as the All Purpose Room, and the Maintenance Room. He explained about 3 years ago, he estimated a one million dollar cost for the construction and at that time, the market was a little softer than it is now and what one million dollars bought three years ago will not buy that today.

Chief Elmore advised that building a fire station so close to the ocean does raise the costs. Mrs. Wiener asked what the Chief would project would be the life of this fire station, to which the Chief responded it would be about 50 years. Mrs. Wiener felt the more they dally, the higher the prices are going to go and they will start cutting things, and they will have a mish-mush on their hands. She thought with a 50 year span or even a 40 year span, they needed to move forward.

Chief Elmore did not believe the problem was that this station was being overbuilt as he believed it was smaller than some of the newer fire stations that are being built today. He recalled this project was started several years ago and the market has changed, although an all purpose room has been added to it and he thought that was very valid.

Mrs. Douthit believed it should be sent back to the Public Safety Committee. Mr. Dusey believed a significant impact on the cost could be from going from a two story to a one story building. Mrs. Smith felt they should work with the architects and there may be other things that could be done, such as the elimination of the tower, which could substantially reduce the configurations. Mr. Dusey agreed but did not think they could get down to the budgeted amount, however there are some things that can be done to pare the cost down.

Mrs. Smith asked if they could come back in a month with a one story building and some figures that would be workable to which Mr. Dusey responded affirmatively. Mr. Dusey stated they still would like to go back to the Public Safety Committee.

Mrs. Wiener commented she has had this subject before her more times than she cares to remember and they are committed to building it as the South end of this Town has never had a real Fire Station of which it can be proud. She stated she will give it one more month as if they start with a redesign, they will be four or five months down the road and the costs will continue to rise.

Mr. Doney suggested this be considered by the Public Safety Committee and they will prepare an agenda on this so they can focus on the items. He noted one item that has not been mentioned is the funding of the facility as three years ago it was at $750,000 which was appropriated from the Capital Improvement Fund which was funded from the annual operating budget. He pointed out that ordinarily a facility like this is funded from a General Obligation Bond Issue which would be a 20 to 25 year issue and that cost would be spread out for future individuals who would benefit by it.

Mr. Doney recalled the estimate of one million dollars was a rough estimate and the Town Council substantially changed the scope of the Fire-Rescue Station by enlarging the meeting room to accommodate both voting precincts and have made a number of other substantial changes and this matter should be resolved at a Public Safety Committee meeting.

Mrs. Wiener felt there does come a time when they have to be definitive and the time has come and she would give this one more month and she urged that at the November 9th Town Council meeting, they make a decision on this matter.

Mrs. Douthit stated she objects to a bond issue and asked that Mrs. Crozier check and see what could be transferred from the Capital Improvement Fund over a ten year period and see if the difference can be made up at that time.

Mrs. Smith moved that the South Fire Rescue Station building matter be returned to the Public Safety Committee with the stipulation that they be prepared to bring a final report to the Town Council at the November 9, 1993 Town Council meeting and at that time a final determination be made. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Luncheon break was taken.

Meeting was reconvened by President Weinberg at 1:45 PM.

D. Other

1. Consideration of Request by Breakers Hotel Regarding Maintenance Plan for Existing Groins - Mr. Dusey noted he had written a letter to Mr. Doney on this subject, but he wishes to change his recommendation, as when he read the original report from the engineer he was under the impression that the existing groins were severely deteriorated and were no longer capturing sand and that is not the case, and now he wishes to recommend, due to his concern about down-stream beaches, is that since there is an intensive monitoring plan proposed with this reconditioning, that any adverse effects that become apparent because of the monitoring plan, and the Breaker's have agreed to mitigate any damages.

Consideration of Request by Breakers re: maintenance plan for existing groins

Mrs. Wiener asked about the monitoring and who would pay for it? Mr. Dusey responded it is the Town's monitoring plus supplemental monitoring by the Breaker's. He advised if there is a problem downstream, the Breakers would be asked to mitigate that.

Mrs. Wiener moved that the Breaker's be given the authorization to do a normal maintenance repair on the groins on their property and they will pay for any additional monitoring that is required, with mitigation if it is necessary in the future. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

2. Consideration of Proposed Transfer of State Roads to Municipal Ownership by State Department of Transportation - Mr. Dusey advised there have been a number of studies done on the highway system with an intent of turning some of the roadways back to the municipalities and now they are at that point and it is the State's thinking that a large number of the highways should be under local jurisdiction and in the Town of Palm Beach's case, the roadway proposed to be given back to the Town for maintenance and repair is County Road from Royal Palm Way to Royal Poinciana Way and all of Royal Poinciana Way to the bridge with the State keeping the bridge under State control.

Consideration of proposed transfer of State Roads to Municipal ownership

Mr. Dusey advised there will be a cost involved as both of these roadways are in need of drainage improvements and if the Town Council does not agree, a letter should be written to DOT over an elected official's signature indicating the Town does not wish to take over these roadways. He noted the letter should state the Town's position on the proposed transfer; request a modification in the Table A02 as the A-1-A segment is divided and undivided and contains four lanes, not two as noted in their report; request that any transfer of highway ownership be accompanied by a funding mechanism to cover the cost of the maintenance; and that prior to any transfer, the DOT would bring the highway segment up to a minimum standard including adequate drainage.

Mrs. Douthit felt it was the State's responsibility to maintain the roadways and they have never helped with the drainage and she would like them to continue with the maintenance.

Mrs. Wiener agreed, noting that they may find themselves giving up an unfunded mandate as the State Highway Department is in terrible financial shape, but the Town cannot afford to put itself into that situation and she moved a letter be sent to the State DOT over the Town Council's President signature indicating such. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Consideration of potential appointment to WPB Water Catchment Area Advisory Comm.

3. Consideration of Potential Appointment to West Palm Beach Water Catchment Area Advisory Committee - Mr. Doney noted in his memorandum of Oct. 4, 1993 to the Mayor and Town Council, his recommendation is that Mr. Peter Elwell be appointed to this Committee as Mr. Elwell has been involved in the water resources matter and he believed it would be of value for the Town to be aware of what is being planned and what is being done at the Water Catchment Area. Motion was made by Mrs. Wiener that Mr. Elwell be the potential appointment to the West Beach Water Catchment Area Advisory Committee. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Amendment to Historic & Specimen Tree Ordinance

4. Report and Discussion Regarding Amendment to Historic and Specimen Tree Ordinance - Comments by Town Attorney - Attorney Randolph reported he was asked to look into the matter of having recorded the historic and specimen trees so that future property owners would be aware of their existence on the property. He noted the Ordinance adopted did not specify that the historic trees should be recorded. He thought the Ordinance should be amended in order to allow for this, but had a concern about going back, after the fact, and perhaps being accused of clouding the titles. He suggested the Ordinance be amended and secondly, perhaps for all but at least for those who have purchased the property after the designations, that they go through another Hearing procedure and everyone have an opportunity to speak to this and after that go forward with the recording. Mrs. Smith concurred, noting that the only way that a property owner would be notified is if they came to the Building Department and she moved that the Ordinance be amended and an update be made of the historic and specimen trees as started in 1973 and amended in 1982. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Insurance for the Little Red School House

5. CONSIDERATION OF INSURANCE FOR THE LITTLE RED SCHOOL HOUSE. Mr. Doney explained a request has been received from Mrs. Earl of the Preservation Foundation for the Town to consider assuming the insurance coverage for the Little Red School House, as currently the Preservation Foundation is to provide commercial property insurance insuring this building for storm, fire, lightning, building replacement, etc. He advised the reason for this request is the Preservation Foundation has been advised by their insurance carrier that they will no longer be able to provide the insurance. He advised the Preservation Foundation has been able to find another carrier for the insurance but the premium would be $1100 whereas they have been paying $100.

Mrs. Wiener stated her concern about the fact if there was an accident, the Town would be liable. Mr. Randolph responded this is not related to the liability insurance and this relates only to the property insurance and not liability, as the Preservation Foundation will continue to hold that insurance. He did not think if the Town took over the property insurance, it would have any effect on the liability insurance.

Mrs. Barbara Martinuzzi, Risk Manager, addressed the Council noting there is a lease with the Preservation Foundation on the Little Red School House and the coverage can be provided through the Town with no increased cost to the Town. She noted the liability would still be the responsibility of the Preservation Foundation.

Mrs. Polly Earl, Executive Director of the Preservation Foundation advised they will continue to maintain the liability insurance for the programs that are carried on at the Little Red School House. Mr. Randolph asked if his understanding was correct that the Preservation Foundation was not asking for the property to be insured for liability but only that the Preservation Foundation be relieved of the responsibility of having to insure the property and the decision as to whether or not it should be insured will be up to the Town. Mrs. Earl responded that is correct as the increased premium was exceedingly high. Mr. Randolph explained all they are doing is relieving the Preservation Foundation of the responsibility of maintaining insurance on the Little Red School House. Mrs. Wiener noted they are modifying the agreement to relieve them of providing insurance on the building and she moved that the Preservation Foundation be relieved from the part of the Agreement with the Town concerning the Little Red School House property insurance and authorizing that the lease on the Little Red School House be amended accordingly and all other insurance required remain in place. Seconded by Mrs. Smith.

Mrs. Royal asked if the building is demolished in a storm, would anyone have the responsibility to rebuild it to which Mr. Weinberg responded they would not.

On roll call, the motion carried unanimously.

Lake Worth Inlet Dredging

6. LAKE WORTH INLET DREDGING. Mr. Doney reported they have been in receipt of a telephone call from the Corps of Engineers from Mr. Duke, an assistant to Mr. Bonner, regarding the maintenance dredging which is upcoming and Mr. Peter Elwell will address the Council. Mr. Elwell advised he received a call a few weeks ago advising the Corps of Engineers would be requesting a modification to their water quality permit and if the State grants the modification, it would allow them to make the beach somewhat wider than they are currently allowed as right now they are restricted to 125' and there is a lot of material to be dredged and the 125' would not be sufficient to take all of the material which is currently available and the balance would have to go into ten feet or less in the water, which is not preferred. He stated Mr. Duke was looking for the Town's support of the Corps' request and would like to have as much material as possible put onto the beach rather than into the shallow water. He stated Mr. Duke advised him today that the Corps has submitted their application to the State, which is pending at the Department of Environmental Protection. He is seeking a reiteration from the Council on their position that the preferred option is for as much of the beach quality sand to be placed directly onto the Beach. He advised the Corps is trying to accomplish and seeking the Town's support for increasing the percentage of that sand which will be directly onto the Beach rather than in the water.

Mr. Weinberg reported the cost of this dredging for approximately 180,000 cubic yards will be in the neighborhood of one million and five million dollars. Mrs. Wiener suggested they reiterate their stand as outlined by Mr. Elwell and she asked them to move forward in that direction. Mr.

Doney believed they should go on record over the signature of Mr. Weinberg reciting specifically what has been authorized so there is no misunderstanding.

7. CONSIDERATION OF ADDENDUM TO ANNUAL PROPERTY AND CASUALTY INSURANCE AND CLAIMS MANAGEMENT SERVICES FOR FY94. Mrs. Douthit noted this is a small increase in the insurance premium to which Mrs. Martinuzzi responded it is an increase of $5,849.26. Mrs. Douthit noted it has been voted upon and it went through the budget process, and she doesn't know why they want to talk about it any further. Mrs. Martinuzzi explained there were some items on which they were negotiating last month with the insurance carriers and she didn't think it would result in additional premium, but that was not the case. She advised the main coverage they were negotiating was the medical malpractice for the Town's Occupational Health Clinic as there is a nurse and a doctor under contract who works at the clinic two days a week. She stated that is where the additional premium came from. She advised the insurance carrier has now agreed to pick up the medical malpractice exposure in the Clinic which resulted in the additional premium. Consideration of Addendum to Annual Property & Casualty Ins. and Claims Man. Services for FY94

Mrs. Wiener asked what the additional premium was for the coverage for committees and boards? Mrs. Martinuzzi responded it was raised from five million to fifteen million per occurrence and that additional premium on the Public Officials Liability was an additional $67,000 and on the General Liability, an additional premium of $60,000. Mrs. Wiener asked if Mrs. Martinuzzi would remind the Council about that next year as this Council had no problem with sitting here with the five million but this covers the numerous people who sit on Committees who have never been approached for anything, and she had a real problem with spending that kind of money on this issue and she asked this be on the agenda next year of the Finance & Taxation Committee.

Motion was made by Mrs. Wiener to approve the addendum as presented by Mrs. Martinuzzi. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

XIV. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR SEPTEMBER 1993 - Motion was made to approve the Warrant List and Fund Expenditures for September by Mrs. Wiener, seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

XV. COMMUNICATIONS FROM CITIZENS - None.

XVI. DEVELOPMENT REVIEWS Development Reviews

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of September 22, 1993 - Excerpt Available in Town Manager's Office - Motion was made by Mrs. Wiener, seconded by Mrs. Royal to approve the matters considered by the Architectural Commission on September 22, 1993. On roll call, the motion carried unanimously. Major Matters - Arch. Comm.

The major matters were:

B27-93 - Parking Deck for J. Grace, 230 Sunrise Avenue. Removed from agenda.
B60-93 - New residence for Dr. Michael and Virginia Longo, 210 Colonial Lane. - Deferred.
B11-93 - New residence for Mr. & Mrs. Joseph Rimoni/Agnes Rosenthal, 218 Miraflores Dr. - Approved conditionally.
B59-93 - Entry and Garage for Mary K. Coffin/Neil Elliott, 222 Miraflores - Approved.
B65-93 - Demolition and new residence for Dr. & Mrs. Ross Stone, 230 Clarke Avenue - Approved conditionally.
B68-93 - New South Fire Station, 2185 South Ocean Blvd., Approved conditionally.
B69-93 - Demolition and New residence for Solcon, 1332 N. Ocean Blvd. - Deferred.
B23-93 - Revisions and update for Richard Limehouse, 215 Mediterranean - Approved conditionally.
B55-93 - Addition to residence of Harvey and Rosemary Cove, 309 Tangier Ave. - Approved.
B71-90 - Addition/Remodel residence of Mr. & Mrs. K. Wolofsky, 129 Clarendon Ave. - Approved.
B72-93 - New residence for James H. Kimberly & 1st Nat'l Bank as Trustees, 1330 N. Lake Way - Deferred.
B73-93 - Demolition of residence of Greg Holloway, 1574 S. Ocean Blvd. - Approved conditionally.
B74-93 - New Residence for Mr. & Mrs. Kramer, 1295 S. Ocean Blvd. - Deferred.
B75-93 - Demolition of residence of Renate and Thomas McKnight, 310 Clarke Ave. - Approved with conditions.
B76-93 - Gates for residence of Howard Gittis 810 S. Ocean Blvd. - Approved.

Mrs. Smith asked about B59-93, noting the work was done before it had the Architectural Commission's approval and without a permit and the penalty would be double fees for all work that will now be permitted and she wondered what was the penalty on the work that has been completed? Mr. Moore stated the normal way they handle this is to charge a double fee for all the work that has been done. Mrs. Smith believed it should be looked into as it should depend on the size of the job and the Code allows them to charge triple the fee.

B. Variances, Special Exceptions and Site Plan Reviews

Old Business

1. Variance No. 40-93 - Howell Van Gerbig, Jr., 12 Via Vizcaya; to allow installation of driveway gates in the front yard setback 4' in lieu of 15' required. R-A District. Deferred from September 14, 1993 Council meeting - Deferred to the November meeting. Var. 40-93

2. Variance No. 41-93 - Elizabeth M. Bartram, Unit Owner A-6, 200 Phipps Plaza; to allow relocation of AC equipment from the 2nd floor terrace to the Seaview Avenue side of the Phipps Plaza Building, together with sufficient sight-screening, providing a 4' front, side yard setback in lieu of 10' required. C-TS District. Deferred from September 14, 1993 Council meeting. Letter received October 11, 1993 from Elizabeth M. Bartram requesting withdrawal. - Withdrawn. Var. 41-93

New Business

3. Variance No. 50-93 - Alex Lee Wallau, 66 Middle Road; to allow a second kitchen to remain in guest house. R-B District. - Mr. Gene Pandula, Architect stated his clients have been year round residents for many years and about a year ago, the property next to them became available for sale with a single family residence on it Var. 50-93

and they acquired the property with the intent of utilizing it as part of their main residence. He advised it has been linked with the main residence by a coverage walkway and a Unity of Title has been executed and the request is to allow the kitchen that was in the 54 Middle Road property, the acquired parcel to remain. Mrs. Douthit asked if his clients would be willing to execute the Standard Kitchen Agreement? Mr. Moore stated staff has no problem with this if they do execute the Kitchen Agreement. Motion was made by Mrs. Douthit to approve Variance No. 53-93, with the necessary Kitchen Agreement being executed. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Var. 51-93

4. Variance No. 51-93 - Joyce & John Alban, 422 Australian Avenue; to allow installation of a carport awning providing a 3.6' side yard setback in lieu of 10' required. R-C District. - Mr. Alban addressed the Council, indicating he and his wife bought this house in 1992 and have renovated it as it was a duplex and they turned it into a single family home and there was an awning that used to be there and their request is for authorization to have it replaced.

Mr. Moore explained there was an awning there and they wish to replace it and staff has no objection. Mrs. Smith moved for approval of Variance No. 51-93. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Var. 52-93

5. Variance No. 52-93 - Clementina & William Flaherty, 315 Chapel Hill Road; to allow installation of a 2.5 high aluminum fence on an existing 4' masonry wall, for a total height of 6.5 in lieu of 4' maximum height permitted. R-A District. Tom Floyd representing the Flahertys addressed the Council indicating his clients bought a half lot adjoining their property and have installed a pool house and there is an existing fence behind the main house and they would like to continue the fence for the length of the property along the property line. Mrs. Wiener moved Variance No. 53-93 be approved. Seconded by Mrs. Royal. Mrs. Douthit asked if there was a Unity of Title for this lot? Mr. Floyd stated he was not sure. On roll call, the motion carried unanimously.

Var. 53-93

6. Variance No. 53-93 - Harold L. Yoh Trust, 333 Peruvian Avenue; to allow a real estate office on the first floor, in lieu of second floor as required by Section 4.20 of the Town Zoning Ordinance. C-TS District. - Attorney Frank Lynch on behalf of the Yoh family addressed the Council, indicating the Yohs purchased this property and an adjoining property approximately 20 years ago. He stated they are here to seek a variance to obtain the Town Council's consent to allow a real estate brokerage to go in a first floor space. He stated this is a mixed use and there are several real estate brokers within 200' of the property. He recalled variances of this type have been granted, specifically Testa's on Royal Poinciana Way and another one is Linda Gary at 205 Worth Avenue. He advised when he was preparing for this, it appeared to him that this probably should be a Special Exception Use that would better address this, and specifically, it allows offices and professional services which the real estate brokerage is defined as such in the Code; and secondly, it is located on the first floor. He noted the Code section states: "provided such use" and speaks to the "use" and not the property. He noted the space is approximately 60' back from the sidewalk and the area between the sidewalk and the use is private property owned by the Yoh family and he believed this could be a valid hardship for the Council to consider.

Mrs. Douthit asked if they would be paving the area for parking? Mr. Lynch responded they would not as the idea is to leave things basically as they are, although there will be changes to the sliding glass door but no additional paving.

Mrs. Smith asked if the former owners, the Tripps, had given up the shop to the Yoh family? Mr. Lynch responded it has been 20 years that the antique store has been there. Mrs. Smith asked if they were going out of the antique business and into the real estate business. Mr. Lynch responded Mrs. Yoh's daughter is not as they will have a tenant of McCann, Coiner & Clark. Mrs. Smith asked if the wall which presently exists remain on the property to which Mr. Lynch responded that wall will remain.

Mrs. Wiener stated her concern about the 60' being a hardship recalling the Council has turned down some applicants who wanted to move office space downstairs in a via. Mr. Moore responded the vias are considered public ways and he didn't believe this property was classified as a via. Mrs. Wiener stated that is not what she is saying but if 60' from the sidewalk is going to be the hardship, then anytime someone wants to do the same thing in a via, that has never been thought of as a hardship, and she thought they may be opening a whole can of worms.

Mr. Moore stated the only exception is vias are considered as public ways and the sidewalk would be the same as a via and they have considered them as such for many years.

Mrs. Royal asked how much parking did they have to which Mr. Lynch responded there is probably room for at least ten cars. Casey DeVault, the daughter of Mrs. Yoh, addressed the Council noting up to 12 cars have been parked in the circular driveway and on the side and the rear of the building there is parking.

Mr. Moore recalled in their initial review, they did not identify the 60' as a hardship, but Mr. Lynch has raised that as an issue in his presentation and the Council can consider it because of the intent of the Ordinance which is to promote pedestrian retail browsing and shopping. Mrs. Wiener commented she would like to keep it retail as that is the character they are trying to build on Peruvian Aveoue.

Mr. Lynch read from the Code which states the purpose of this District is to create, preserve and enhance areas of attractive, small scale retail, personal and professional business services.

Mr. Moore responded those locations would be on the second floor and the uses are not prohibited from that area but it would have to be above the first floor. Mr. Lynch responded there are other real estate offices on the first floor within two hundred feet in that neighborhood. Mrs. Wiener recalled they have been there prior to this provision going into the Code and what the Council is trying to do is avoid doing that on the entire street and moving into a retail direction. Mr. Lynch responded the Special Exception may apply as well as the entrance to this property does not go onto a sidewalk as there is 60' of private property which needs to be crossed to get to the sidewalk.

Var. 53-93 (cont'd)

Mrs. Douthit suggested it be deferred until it is figured out if it is a Special Exception or a Variance. Mr. Moore responded they will look at it however he doesn't want to give Mr. Lynch the impression that it is a Variance and not a Special Exception. Mrs. Douthit did not believe a Special Exception involved a hardship. Mr. Moore pointed out they would have to be Town-serving as a Special exception to which Mr. Lynch responded he didn't have a problem with that. Var. 53-93 (cont'd)

Mrs. Smith asked if there was anything to stop them from expanding the property to closer to the sidewalk? Mr. Lynch stated he didn't know that there is. Mrs. Smith noted the hardship is the fact that they are 60 feet back from the sidewalk and the store could be moved further forward. She didn't believe it was a problem when it was an antique shop.

Mrs. Royal asked if they attempted to find a retail shop to go into this space to which Mrs. DeVault responded they have had several people interested in taking it over and all of them have backed out at the last minute as they thought it did not have enough street exposure. She stated the antique shop was her Mother's hobby and it has been supported for years and it hasn't been a flourishing business as they don't get enough walk-in traffic.

Mrs. Wiener asked if there were other similar properties of this type in that area to which Mr. Moore responded the House of Kahn would be one. Mrs. Wiener stated she has a serious problem with this and she moved that Variance No. 53-93 be denied due to the Town Plan calls for retail space on the ground floor of that street. Seconded by Mrs. Douthit.

Attorney Lynch asked if the location of the space within the present building make a difference as they could locate it further back, as there is an area in the house where it could be relocated on the west and it would incorporate a portion of the space they are talking about and the property would be an "L". Mrs. Wiener asked how much would be included? Mr. Lynch responded there would be none, noting there is a large tree in front of the section which would be incorporated into the office.

Mrs. Smith commented they evidently anticipated there may be a problem and had a compromise. Mrs. Royal asked if this building were demolished, how much larger a building could go in its place as she envisoned they could have a lot more second floor offices and shops on the first floor. Mr. Moore responded a redevelopment of the property would allow more square footage and there would be more density but parking would have to be provided on the property.

Mrs. Wiener asked if they pushed this space back, it would be approximately 90' from the sidewalk to which Mr. Moore agreed. Mrs. Smith asked what is on the second floor to which Mrs. DeVault responded it has a large apartment and there are two smaller apartments located in the downstairs area. Mrs. Wiener asked if there could be some kind of agreement that the remainder of the building would be retail, she would withdraw her motion. Mr. James McCann addressed the Council pointing out the antique business currently occupies the entire first floor and it is the Yoh's intention to continue to have the antique store occupy a portion of the ground floor at least at this point of time.

Mrs. DeVault stated if they went with the compromise, they would have no other option except to keep the front part of the building as a retail space, as they couldn't rent it out as an apartment as it has no bathroom nor kitchen.

Mrs. Wiener wanted to be assured that a year down the road they wouldn't come back and ask for additional office space because a retailer didn't want to be next to this real estate office space. Mrs. Smith noted this change would not allow them to use the apartments on the first floor. Mrs. DeVault advised she is representing a trust. Mrs. Smith asked if she wanted a deferral. A ten minute break was taken.

Meeting called back to order.

Mrs. Wiener withdrew her motion to deny the Variance No. 53-93 and the seconder withdrew her second.

Motion was made by Mrs. Wiener to approve Variance No. 53-93 with the proviso that a document is received in recordable form which showed the portion of the property adjoining the yellow space marked on a survey to which she referred to as Plan B, to the street, be retail space.

Mr. Moore asked for this tenant only? Mrs. Wiener did not think they could bind a future Council. Mr. Randolph stated with the recordable agreement, they could bind it and the question is whether the granting of the variance for that portion of the building to be used as office space is for this tenant only or perpetually.

Mrs. Wiener continued with the motion that this office space be for this tenant only and for any change in tenant, they would have to come back to the Town Council. Seconded by Mrs. Smith.

On roll call, the motion carried unanimously.

7. Variance No. 54-93 - Stephen Myers, 460 Worth Avenue; to allow construction of a 8'-7" high trellis with no north side yard setback in lieu of 15' required, and no west side yard setback in lieu of 10' required. The trellis would increase the lot coverage from 49% to 53.5%; 30% is the current maximum lot coverage permitted for this two story residence. R-B District. Attorney Robert Deziel addressed the Council on behalf of his client and exhibited pictures of what is seen from Mr. Myers' deck and they wished to install a trellis which would increase the lot coverage. He noted there is a public parking lot next to the property and they would like the trellis to be on the north side of the property from the house to the pool cabana and then southerly along the deck of the home. Var. 54-93

Mr. Moore advised there were four homes in this area with irregular shaped lots and this piece of property has been renovated and received variances for the second floor portions with regards to setbacks. He recalled that as construction proceeded on this property, it became evident the

Var. 54-93 (cont'd)

building had fallen into great deterioration and they came back for another variance in order to be reconstructed in the same footprint. He noted there is lot coverage in excess of what would be permitted in the R-B District, 30%. He believed this was an unique piece of property and if the Town Council wishes to grant this, it should be done with conditions that the trellis always remain a trellis and this not be a first step towards having an expanded cabana and an enclosure. He stated another condition is that there be a recordable agreement so any subsequent purchaser would be made aware that an agreement is in force.

Mrs. Wiener asked about the depth of the walkway and will it be covered. Mr. Deziel stated it will be covered and the dimensions are on the north side, the width is 8' from the wall going south; then at the pool cabana it will be 7' and when they are around the pool cabana, and heading towards the Intracoastal, it will be 12'. Mrs. Wiener wondered if it was a bit much, noting she had no problem with the trellis being covered by a few feet, and she thinks it needs to be reduced.

Mrs. Royal noted the trellis on the south of the cabana doesn't aid the owners from being seen from the parking lot as it is on the other side of the cabana. Mr. Deziel agreed, noting there are two problem visual areas, one being the parking lot and that is what the northern trellis area is for. He noted that section of the trellis doesn't help shield out the parking lot, but it wasn't intended to as it was intended to screen out the boats that appear to be in the backyard of this home.

Mrs. Royal noted the boats have always been there and even before this residence was bought. Mrs. Wiener noted for the record that the docks were there when Mr. Deziel's client purchased the property so he was aware of it. She thought they were stretching it to ask for a variance of this size.

Mrs. Douthit viewed it as a pergola as there is no roof on it. Mrs. Smith noted there was only one area designated for a planter and wondered where they were going to plant the landscaping that would shield the pergola. Mr. Deziel stated the plantings would be hanging from the trellis and it would be vines which would grow around the trellis work and it would be along the different bases of the trellis work. Mrs. Smith asked if it would be possible to space the plantings at two feet instead of one foot?

Mr. Don McNally, of First Florida Development, addressed the Council noting the spacing of the trellis was to accommodate bougainvillea and there will be open planters around the columns and he believed if they spread out the plantings at two feet, he didn't think it would spread out as they planned over the top of the trellis.

Mrs. Smith stated she would like to see the light coming through the planting as that is what makes it the pergola look as it will not criss cross on top. She thought if the beams were spaced out the whole look of the pergola would be more effective. She believed that bougainvillea would cover any area. Mr. McNally felt to keep them in position during their growth could be a problem and additionally, the property is on the water and is exposed to winds and there would be much more maintenance.

Mrs. Smith commented she had a problem with a 12' beam located on the water and she thought it should be reduced so there is more of a shaded area on the northwest corner as at 12', it appears to be much too large. Mr. McNally noted the total width of the property on that side is 100 lineal feet and 12' is the cabana itself.

Mr. McNally noted there was an existing planter between the pool and the wall adjacent to the parking lot and there are four columns which come out of that to support the trellis work above and the plants will be rooted in the existing planter. Mr. Deziel indicated the lines that represent the trellis work do not extend beyond the pool area and that is the significance of the 8' dimension and to go any less than that would be like creating a catwalk between the pool and the pergola.

Mrs. Wiener asked Mr. Moore if the top of the trellis would be considered as ground coverage to which Mr. Moore responded affirmatively. Mrs. Wiener advised she will not vote for the 8' under any set of circumstances as it is asking for the maximum. Mrs. Douthit believed they were asking for the maximum, however, she thought it was attractive and recalled that not one of the Lakefront properties along this area do abide in any way with the Town's zoning as they can't. Mrs. Wiener noted she could not vote for it and believed there may be another way of handling it without asking for the additional lot coverage, as it is already over that figure now.

Mr. Deziel responded from the pool area, the major reason the figure is at 8' is because it is 8' from the pool to the wall and to do a six foot would create a two foot little catwalk. Mrs. Wiener felt they could handle it in some other fashion. Mr. Deziel stated they could reduce it to six feet and then continue on to the area east of the cabana and that should also be at six feet; and then the proposed 12' area would be reduced to ten feet. He pointed out this is the only home in the Town located next to a public parking lot and dock. Mrs. Wiener responded the fact of the matter is they built it that way and she didn't mind granting them something but she wouldn't go along with this kind of massive coverage.

Mrs. Douthit pointed out this is all open and she doesn't consider it as lot coverage. Mrs. Wiener noted that under the Town Code, it is considered lot coverage.

Mrs. Royal asked what one would see from the parking lot? Mr. Deziel responded it would be the 5.6' wall and the trellis would be 8' with the beams on top six or seven inches higher. Mrs. Royal noted they could see the trellis from the parking lot and from the water. Mr. Deziel reminded all his client could build a wall at seven feet and what he is trying to do is build something more aesthetically pleasing. He added when the vines are mature, they will see the vines hanging down.

Mrs. Royal suggested he plant 7' high trees which will provide the screening. Mrs. Wiener believed there was a meeting place between putting up a seven foot high wall with no covering versus putting up a trellis, pergola, with 8' of covering.

Mr. Weinberg believed what they were doing was putting in a porch with a cover on top of it and it is awfully wide for the purposes for which it is intended as a trellis should be able to handle the planting but when they cover it over there will be a walkway with a roof over it.

Mrs. Smith asked if it was possible to have the beams at least two feet apart to which Mr. Deziel responded it was possible. Mrs. Smith moved approval with the condition that the walkway on the north side of the Property and the walkway attaching to the cabana be reduced from 8' to 6'; and that the pergola be reduced from 12' to 8' and that the spacing of the beams be at two feet as opposed to one foot; that there be no cover over this other than natural vegetation. Seconded by Mrs. Douthit who asked to amend the motion from twelve feet to ten feet on the south side of the cabana. Mrs. Smith did not agree to the condition. Mrs. Douthit stated she will second the motion as stated by Mrs. Smith. Mr. Moore asked if the motion was to include the provision for a recordable agreement that this remain in this state in perpetuity? Mrs. Smith agreed to make that a part of her motion to which the seconder agreed. Var. 54-93 (cont'd)

On roll call, the motion carried unanimously.

8. Variance No. 55-93 - Sidney Kimmel, 1236 South Ocean Blvd.; to allow construction of a two-story dwelling at a height measured from the existing site elevation of 22.5' in lieu of 7.5' as required, and to permit a second floor ceiling height of 27.5' in lieu of 25' maximum. Additional variances are requested to permit a second and third kitchen installation, to construct garden walls exceeding height restrictions by 6' with gate post 2' above the wall height (Re: Sections 5.36a and 5.36b of the Town Zoning Code). R-AA District. - Attorney Paul Prosperi addressed the Council on behalf of his client. He advised his client has bought this piece of property which is approximately 300 feet running along the Atlantic Ocean and South Ocean Blvd. and approximately 700' in length and if his client can receive the Council's permission as well as ARCOM, he intends to build a large Spanish structure within a few feet from where the existing house currently sits. He advised the Site Plan shows they will utilize the existing driveway and the entrance court will remain much the same with the house running north and south and there is a pool, pool house, a tennis court and pavilion and a gazebo close to the seawall. He noted there are some variances needed. He advised the hardship is the existing topography of the land which rises from the ocean and reaches a primary crest, then dips and rises again to the 22 1/2 feet and then slopes down to 7.5 at South Ocean Blvd. He advised they would like to build at the 22 1/2 which is where the new Cramer House will be going and where the existing house is now located. Var. 55-93

He advised another variance requested is to construct two auxiliary kitchens, one in the service wing which is semi-attached and the second one in the pool house.

Attorney Prosperi noted the property is approximately five acres and the reason for the variance for the kitchens is because of the size of the property. He pointed out this could have been subdivided into four separate lots, as this is being developed into a single family parcel and they would be willing to enter into the Kitchen Removal Agreement.

Attorney Prosperi reported the third variance request is to construct the house so that some of the principal rooms of the house would have the second floor ceiling height is at 27'6" which exceeds the maximum permitted of 25%. He advised the external dimensions of the house would not be increased by this request.

Mr. Prosperi noted the last part of the variance is the wall and they are proposing to have gateposts at the service gate on the right hand side and this would sit back approximately 35' and would be 15' from the street and they would like to have the gateposts at 10' rather than 8' as permitted. He stated the reasons are because of the characteristics of the neighborhood and the height of the existing greenery and shrubbery around the gates. He advised this will be a 300' long wall and they want to keep it in proportion as most of the existing properties in this area do have massive gateposts.

Mr. Moore gave the staff comments noting they have no objection to the measurement from the grade of the property instead of the crown of the road as they have been granted in the past. He commented on the interior ceiling height which is a study item for the Zoning Commission this year to raise those and he has no objection to that.

He noted on the gateposts, he didn't believe the height should exceed those of the surrounding neighbors. He has no objection to the two kitchens although it is unusual to have two extra kitchens.

Mrs. Douthit asked how far back from the road would the gateposts be set? The architect responded from the front of the wall, they would be set back 22' and from the edge of the pavement it would be 27'.

Mrs. Wiener asked if these could be addressed individually to which Mr. Weinberg agreed.

Mrs. Wiener moved that with regards to Variance No. 55-93, the part of the request which pertains to the second and third kitchens, she moved that be granted with the execution of the usual Kitchen Removal Agreement.

Mrs. Royal asked if there were any complaints from any of the neighbors to which Mr. Moore responded he received a phone call from the neighbor to the south who asks if this is granted, that there be substantial sightscreening in the service drive.

Mrs. Smith asked if there would be a wall installed going from east to west to which the architect responded that is not the plan at this point in time. Mrs. Douthit found that two accessory kitchens are a bit much, as she doesn't remember having two granted in the past. Mr. Prosperi responded there are already three kitchens on the property now. Mrs. Wiener did not see any problem with it.

Motion was seconded by Mrs. Royal. On roll call, the motion carried 3-2 with Mrs. Douthit and Mrs. Smith voting against the motion.

Mrs. Wiener noted she had no problem with the inside heights variance as long as the outside height is not exceeded. Mr. Moore advised this is in order as presented. Mrs. Wiener moved to allow the construction of a two story dwelling at a height measured from the existing site elevation of 22.5' in lieu of 7.5'. She recalled this has been something that has been granted many times in the past.Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Wiener moved approval be granted to the inside interior ceiling of 27.5 in lieu of 25' as this will not go beyond the outside measurement. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Royal moved to approve the service gate posts with a two foot variance in their height. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Var. 56-93

9. Variance No. 56-93 - H. Loy Anderson, 3000 South Ocean Blvd.; to allow conversion of a non-conforming office use to a 6,500 sq. ft. restaurant pursuant to Sections 8.11 and 10.13 of the Town Code. R-D(1) District. - Attorney Paul Prosperi addressed the Council representing Mr. H. Loy Anderson, as contract purchaser of the property known as 3000 South Ocean Blvd. He noted Mr. & Mrs. Aspinwall, the property owners are also in the room. He noted this was a radio station and they wish to convert it to a restaurant use which would be 6500 square feet of the existing building. He advised the property is currently zoned RD-1. He indicated the property has been in commercial use since 1941 as a radio station. He stated the property is approximately 550' east to west and bordered on the east by the right-of-way of Old Ocean Blvd.; on the west by South Ocean Boulevard and 40' of the former 100' frontage north to south is owned by the Town and utilized as a sanitary sewer pumping station. He believed that he could safely say that the main frontage of this property fronts a 600 parking space parking lot and access drive to the City of Lake Worth's Municipal Casino and Pool, Pier and public rest rooms, two restaurants with a bar and another establishment serving food and other retail space. He reported to the south is the 50 unit non-conforming Beachcomber Hotel property.

Mr. Prosperi stated their hardships are the existence of the sanitary sewer pumping station; the existence of the 600 car parking lot, commercial public use, to the north. He noted there is a computerized log of the City of Lake Worth's Police Dispatch to this location since April 1, 1993 and he summarized the log by stating there were 47 robberies, thefts or burglaries; 39 trespasses, criminal mischief or resisting arrests; 22 batteries, aggravated and simple and disturbances of the peace; 17 suspicious persons; 5 hit and run accidents; two narcotic arrests; one weapons arrest; 284 traffic offenses and this averages out to three police instances per day at this location.

Mr. Prosperi noted he also has a traffic count at three different locations, one at the intersection of South Ocean Blvd. and the Lake Worth Bridge on March 2, 1993, there were 20,638 vehicle trips; on July 28, 1993, there were 15,931 vehicle trips. He advised 100' south of this location, which would be just north of the north border of this property, on March 2, 1993, there were 13,849 vehicle trips and 7,951 on July 28, 1993. He reported 100' north, which would be opposite the Howard Johnson's Motor Lodge, there were 11,336 vehicle trips in March of 1993 and 6,059 vehicle trips in July of 1993.

He recalled this property has been in continuous commercial use for 53 years, since 1941 and is impacted severely by the existence of the sanitary sewer parking station and on the north by the parking lot, two restaurants and a take-out establishment; public changing rooms; a major bus stop; which would generate in season over 20,000 trips per day and from April 1, to October 1, 420 police were dispatched.

Attorney Prosperi thought they could take this existing use and improve it be installing a restaurant, which would improve the physical appearance of the property, achieving some sort of economic use for the property, and providing a good transition buffer use from whatever Lake Worth decides to do with their property to the properties to the south. He thought this could possibly could result in terminating some of the traffic trips that continue north on South Ocean Blvd. in search of a good meal during the season or otherwise.

He recalled the City of Lake Worth does have a Plan to redevelop their Casino site, which would include the development of a two story parking garage which would be adjacent to the applicant's property, which would further indicate that there would be a hardship to use this property as a residential use. He asked for some recognition of that with the continuation in concept of a commercial use for this property.

Mrs. Smith wondered who would want to open up a restaurant with an ultimate dining experience in this area with the hardships as just enumerated - the sanitary sewage statement, a two story garage and a high crime area. Attorney Prosperi noted there is John G's and other restaurants which exist on the Lake Worth Casino property and his point is if they might stop for a sandwich but no-one would want to live there.

Mr. Moore gave a history of the property, noting the radio station was WPBR for many years and the occupational license was not renewed in 1991. Mr. Prosperi noted the transformer is still operational and it is still currently a radio station.

Mr. Moore believed this was the first time this section of the Ordinance has been utilized and what they are saying is there is a non-conforming use existing and the applicant wants the Council to entertain another non-conforming use on this subject property. He noted they did have the right to do this under the variance request, however, the size of the building is 6500 square feet, just like any other grandfathered use.

He recalled while this was still operating as a radio station, there was a request for rezoning from RD-1 to a commercial Town-serving use and that request was denied. He noted it is before them today for consideration of another non-conforming use to replace the existing non-conforming use which is on the property now.

Mr. Moore stated the closest permitted use would be an office use. He noted the Town measures intensity of use by parking requirements and office use requires one space for every 250 square feet of useable area. He advised restaurant use is the most intense of the commercial uses and requires one parking space for every three seats and one for every additional 300 square feet of storage area in the rear of the property. He informed the Mayor and Council this would be the most intense use of the property as a restaurant. He stated the staff feels if this is looked upon favorably, it be conditioned with a Site Plan Review and full review of a proposed tenant so the Council could be assured of the style of operation, as well as the parking arrangements, and such things as scrubbers on the vent system so there would be no odor. He thought the Council needed to look at the specific tenant so they could look at the operation and make their decisions on the total operation.

Var. 56-93 (cont'd)

Mrs. Smith asked if the applicant was going to let the Council know the name of the tenant to which Mr. Prosperi responded they would not, but his client is willing to agree to any conditions that the Town Council sees fit to put on the application. He pointed out there is adequate space to fully park the facilities contemplated on site, so they would not be seeking any variance from the full parking requirement.

Mrs. Smith noted there was a letter from the City of Lake Worth who have some problems with the application and asked how they would address that concern? Mr. Moore read the letter noting the City of Lake Worth has no objection to Special Exception No. 22-93 but Variance 56-93 does concern them as the City has been drafting a plan to improve the Casino area and their present plans call for moving the upper level parking and these spaces will be replaced by creating a second level over the western parking lot with boardwalks to the new upper level recreational area and requested the Town Council to either postpone action to gather additional information to address the City of Lake Worth's concerns. He advised the City of Lake Worth was concerned about the ingress and egress to the proposed restaurant pus potential parking requirements. He reported the letter states the Town Council of the Town of >Palm Beach recently rejected a rezoning of this property to allow a restaurant. Mr. Moore noted that was not true as the rezoning was for a parking lot. Mr. Moore continued with the letter sent by the City of Lake Worth which stated they are now looking for this same use except by another means, in order to avoid the rezoning procedure and requested denial or additional information on the concerns they have raised.

Mr. Moore stated the rezoning was for C-TS and for a parking lot and this application is not another means to achieve a restaurant as indicated. Mrs. Smith noted the City of Lake Worth did have the incorrect information when they wrote the letter.

Mr. Prosperi noted their concern was on ingress and egress and the parking and they would be willing to accept the condition that the Site Plan would be subsequently reviewed which would solve their concern and they would stipulate they would provide the full parking as required by the Town Code.

Mr. Weinberg asked if the restaurant would be a fast food restaurant to which Mr. Prosperi responded negatively indicating they would be willing to come back with the name of their tenant. Mrs. Smith stated that would be a condition along with the Site Plan Review.

Mrs. Wiener believed they basically want conceptual approval of a restaurant. Mr. Randolph commented he would not recommend a conceptual approval be granted and if the Council gave an approval, it would be an approval of the variance subject to the final approval of a Site Plan Review and in the event that is not approved, the variance would no longer exist.

Mrs. Smith asked if they could move approval of the variance with the condition and leave out the conceptual part? Mrs. Wiener thought they needed to examine it more closely as if they approved it and they have put in a lot of time and expense, they may find there is a noose around their necks. Mrs. Smith reminded the Council would be granting it conditionally and the Site Plan is something completely different.

Mrs. Wiener indicated the Council has no idea of whom they are dealing with and as far as she is concerned they have the right to present everything to the Council and that is one thing and then the Council can say yes or no, and she is not comfortable in saying one hundred per cent "yes" and she thought they should give it another name if they didn't like "conceptual". Attorney Randolph suggested they could indicate to the applicant that they would give consideration to this upon a Site Plan Review, so they know they are not wasting their time in coming forward, however, he would hesitate in having the Council pass a motion giving conceptual approval as it ties it down too much.

Mrs. Wiener did not believe they had any right to say no or yes to an applicant once they have passed all the State requirements and the Council has no right to state what kind of a restaurant the Council wanted to have there. Mr. Randolph agreed and stated they could defer this until the applicant came back with a Site Plan Review. Mrs. Wiener and Mrs. Smith felt they needed to give some type of an indication as they have been before the Council on the rezoning and she found this restaurant use to be a good use. Mr. Weinberg agreed it would be an improvement.

Mrs. Smith stated she had no problem with the variance but it would be that only with no guarantees that the Council will approve a Site Plan Review. Mrs. Royal noted if the Site Plan was not approved, the variance would no longer be in effect by default. Mrs. Smith agreed noting her approval of the variance did not mean she would automatically approve the Site Plan as she has to know what the conditions are.

Mr. Moore advised what the staff and the Town Attorney are saying is that the word "conceptual" is a difficult one and what they need is to either pass the Variance request with a condition that it is not effective until such time as the Site Plan Review has been approved by the Town Council.

Mrs. Wiener commented that they can give a conditional approval and the fact of the matter is that once they state a restaurant is agreeable and acceptable when they meet all the Town requirements to which Attorney Randolph agreed. Mrs. Smith understood what she was saying but didn't agree with anything that says it is "conditionally" approved, as she has to know what the conditions are and she has no problem with the Variance. Mr. Randolph advised if the fear is granting something today which they won't have the opportunity to take back at a later time when the Site Plan is reviewed, the alternative way to approach that would be:

1. Defer it until they come back with a Site Plan Review; or

2. Without making a motion giving conceptual approval, each of the Council members can indicate they have no problems individually with them moving forward with a Site Plan Review and that would give them the assurance that they are not beating their head against the wall by coming forward as they did get an indication from the Council individually that they should take that next step.

Mr. Moore advised the Site Plan Review would be a condition applied to the variance and there is no other requirement to bring them back to the Council unless the variance is granted with that stipulation. Mr. Randolph agreed that they would be deferring final action with the applicant on

Var. 56-93 (cont'd)

the variance with the instructions that if they wish to proceed on it, they would have to come back for a Site Plan Review.

Mrs. Wiener believed the applicant is looking for some amount of comfort before they expend monies and move forward with this and they need something definitive. Mr. Randolph did not believe the Council would send them away and ask for a Site Plan Review if the Council didn't feel that there was a likelihood that their variance was gong to be favorably considered.

Mrs. Royal asked if there was a mechanism within the Site Plan Review which would guard the Council against a restaurant that the Town may not want, such as a fast food franchise? Mr. Moore did not believe the Council could dictate the type of restaurant although they can look at the operations and if there is a huge traffic flow, there could be some control over that as that is part of the Site Plan Review process, as there are a multitude of items which must be addressed to which Attorney Prosperi has already agreed.

Attorney Randolph recalled the Council members at the other end of the table have a concern that if the applicant meets the requirements of the Ordinance, the Town is obligated to grant it or the burden shifts to the Council to show why those requirements have not been met, and that is a good point that has been raised as if the Variance is granted, and there is an argument that the applicant has met their burden, the burden would be with the Town Council to show why this should be granted, and they could be opening themselves up to something before they want to and he suggested that final action on the variance be deferred until such time as they come with a Site Plan Review and he didn't think it was incumbent upon them to first grant a Variance before they have considered the Site Plan Review.

Attorney Prosperi noted sub section (g) of Section 1013 states the Council has to make a finding that the variance will be in harmony with the general intent and purpose of the Ordinance and would not be injurious to the area involved or otherwise detrimental to the public welfare. He read in granting any variance, the Town Council may prescribe appropriate conditions and safe guards in conformity with the Ordinance. He believed that given that is in the Ordinance, he doesn't see how it would do violence to the Ordinance to put a condition that they come back and make a showing that the proposed tenant would not be injurious to the area involved or otherwise detrimental to the public welfare and prescribe any other appropriate conditions the Council may see fit to put in the variance approval.

Mrs. Smith asked if they would be prepared to come back with their client next month to which Mr. Prosperi responded negatively, stating he would be prepared to come back within ninety days.

Mrs. Wiener commented this brings them back to whether or not the Council believes that this is a good idea to have a restaurant there. Mr. Randolph stated they could individually indicate that they do or don't but that it won't be approved until the Site Plan Review is finally approved.

Mrs. Wiener asked if anyone had a problem with the individual polling and on which the applicant could rely? Mr. Randolph stated they could not rely on that as it would be an indication but it would not be binding on the Council. Mrs. Wiener asked what could they do that is binding without giving the whole show away indicating she has no problem with a restaurant being there, but she is concerned that all of the pieces be put together one hundred per cent and if they are all not there, then the Council wouldn't finally approve it. She would like to give them something to hang their hat on and then move forward with a client they have in the wings.

Mrs. Smith stated she had a problem with it without having the details of the Site Plan Review and the attorney has told them the variance cannot be granted without giving them an indication that the Site Plan would be in order. Attorney Randolph advised he has informed the Council that they could grant the variance with a condition and he would like a clear acceptance from the applicant that if this is done with conditions, the Site Plan Review would have to be approved and if it was not, the Variance would not be approved ultimately if the Site Plan Review is not approved.

Mrs. Smith moved for the granting of Variance No. 56-93 with the condition that if the subsequent Site Plan Review is not approved, the Variance would not be approved. Mrs. Wiener felt that put the onus on the Council. Mrs. Smith did not agree feeling it put the onus on the applicant to come back with a Site Plan. Mrs. Douthit agreed noting they would have to come back with a Site Plan Review. Mrs. Wiener commented if the Council doesn't like the Site Plan Review, then the variance would not be in existence. Mrs. Smith noted there would be no guarantee that they will like the Site Plan and this is not conditional approval or conceptual approval but is the granting of the variance, changing it from non-conforming office use to restaurant use.

Mr. Moore reported the burden would be on the applicant to present a Site Plan Review that is acceptable to the Town Administration and ultimately the Town Council.

Mr. Randolph cautioned that the Council should keep in mind there is indeed the chance that the applicant could come back at a later time feeling the requirements for the granting of the variance have been met and they may think the Council may be unreasonable in denying the Site Plan Review and he would like the applicant's attorney to indicate for the record that the full object of this condition is fully understood and the Variance hinges upon the Site Plan Review.

Attorney Prosperi advised the Council there is a chance if the Variance is deferred or denied, the Aspinwalls whom he doesn't represent here could get mad and state the Council is denying them any economic use of this property and the fact is that the Ordinance states that in granting any variance the Council may prescribe appropriate conditions and safeguards and Attorney Prosperi stated he was having a problem why all of a sudden they are hesitating in putting a condition on the granting of a variance as they do it all the time. Mr. Randolph responded the Council does not know what the conditions may be and he thought in some sense, Mr. Prosperi's arguments work against him as the Ordinance that is recited states we can put conditions on the granting of the variance, however, the specific conditions will not be known until the Site Plan Review is seen.

Mr. Prosperi felt they were focusing on some legalistic argument that could be made by the attorneys in the future that they didn't look at the criteria necessary for the granting of a Site Plan, but they are not limited to setting a condition for the Site Plan Review and they could set any appropriate condition such as "would not be injurious to the area involved" and a finding could be made that a fast food restaurant would not be allowed as it would be injurious to the area.

Mrs. Jane Volk addressed the Council indicating she is here to speak historically as there was a beautiful restaurant just north of this property in the forties called the South Ocean Club and a fire destroyed that and it was never rebuilt. Mrs. Smith noted there are other restaurants in the area and they are not having a problem with the restaurants. Mrs. Wiener stated her problem is and she likes the idea of a restaurant but if a majority of the Council people should decide they didn't like the Plan and money keeps being spent and what she is trying to do, if the majority believes that a restaurant is a good idea for this particular location, that something is done which will allow the applicant sufficient comfort to know that if the Plan encompasses all the things that the staff recommends, they will get approval, and she would like to give them something that would allow them to move forward and not spend great sums of monies in the preparation of the Plan for naught. Mrs. Smith wished to see the Plans and hoped the Council would have the opportunity to look at these plans and would meet with the applicant before it is presented to the Council and they are not being run around the track on this, particularly since the Council has already indicated they are in favor of a restaurant in that area. Var. 56-93 (cont'd)

Mrs. Douthit reminded all it was not up to the Council to write their recipe as they must come back with a Plan. Mrs. Smith did not believe anyone was trying to be arbitrary and she is in favor of the Variance with the condition that the Variance would be withdrawn if for some reason, the subsequent site plan was not approved by the Council,as she doesn't want them coming in with a purple building with a pink roof and just cannot give any additional comfort to the applicant's attorney until she sees the Site Plan. Mrs. Smith moved to approve Variance 56-93 to allow conversion of a non-conforming office use to a restaurant, pursuant to Section 8.1 and 10.13 of the Town Code and if the building is not turned into a restaurant, the Variance will not go into effect. Seconded by Mrs. Royal.

Mrs. Wiener asked if she could change the motion to have a more valid reason to which Mrs. Smith responded any reason coming from the Council is a valid reason. Mrs. Wiener stated that is not always so.

Mr. Randolph clarified that the Council did not mean that it had to be turned into a restaurant but it was conditioned upon a Site Plan Review for the restaurant being finally approved by the Council to which the Council agreed. Mr. Moore reported offices would be a Permitted Use for that property and it is residentially zoned for ten units per acre. On roll call, the motion carried unanimously.

10. Special Exception No. 22-93 - Asset Management Group of America, Inc. (d.b.a. Murray's P.B.), 2880 South Ocean Blvd.; to allow modification of prior approvals SE4-91 and SE16-93 by converting a 350 sq. ft. outdoor dining area to indoor by constructing an addition. C-TS District. John Metts, President of Asset Management Group addressed the Council indicating they operate Murray's Palm Beach Diner. He requests permission to modify a Special Exception received some time ago to build an outdoor dining facility and he would like to partially enclose that facility because they have had problems with the rain, as the hanging curtains do not keep out the driving rain and they are unable to use that facility whenever it rains. He advised they would like to enclose it with sliding glass windows and he believed the Building Department would prefer there be a fixed roof, however, he would like to keep the canvass roof, as they are interested in keeping this as an outdoor dining facility. Spec. Excep. 22-93

Mr. Moore advised this is a Special Exception and not a variance and they have no objection to the request to enclose this area in with the same number of seats.

Mrs. Wiener recalled when they were here before a major consideration was that this area would not be enclosed. Mr. Metts responded that is what he wanted originally as he wanted the outdoor dining feeling and that is why he would like to have the canvass roof, however, whenever it rains, this area just cannot be used. Mrs. Wiener recalled a deal was made and several people did ask him at that time if he was planning to eventually close it it to which Mr. Metts responded he was not planning to enclose it at that time and he acknowledges that.

Mrs. Douthit noted the area could not be air conditioned if they were planning to keep the canvass roof. Mr. Metts stated he would rather not air condition this area.

Motion was made by Mrs. Wiener that Variance No. 22-93 be granted with a permanent roof. Seconded by Mrs. Smith. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

11. Special Exception No. 23-93 - Hals Realty Associates, 401 South County Road; to allow a 6,500 sq. ft. restaurant, and to allow required off-street parking within 500' pursuant to Section 6.21(d)(1) of the Town Code. C-TS District. - Attorney Peter Broberg addressed the Council on behalf of his client, Hals Realty Associates. He advised his client wishes to place a restaurant at 401 South County and it exceeds 2000 square feet and the second request is with regards to the off-street parking. He advised the applicant does have parking at the Bank lot and the parking off the existing premises would only come into play when there was an excess of parking on the bank lot and they have arranged to have the excess off premises parking at the Apollo Lot. Spec. Excep. 23-93

Mrs. Wiener asked if the Bank was in agreement to allow this parking to which Mr. Broberg responded the Bank is not open in the evening.

He advised the restaurant is a Permitted Use and this building has a history of restaurant use. He gave a history of the building, noting it was built in 1927 and was a showroom for cars; in 1954 it became offices; 1961 it was a pancake house; and then it became a stockbrokers office until the present time. He referred to a restaurant survey which states that over 50% of the clientele of restaurants do come within a five mile radius and he believed that would be the case here. He believed that this restaurant would be Town-serving.

Mr. Broberg indicated the Comprehensive Plan clearly speaks to commercial establishments exceeding 2000 square feet, if two criteria are met and they are it must be Town-serving and there is sufficient parking.

Spc.Excep. 23-93 (cont'd)

Mr. Moore reported the Town Staff have reviewed the plan and the Police Department want to have some control over the valet parking and how it would be handled. He stated the staff's biggest problem is the tenant and who it will be in order that the Town serving aspect can be demonstrated. He noted they wish to exceed by three times the allowable square footage and in order for them to do that, Mr. Broberg needs to meet the most crucial test and that is that 50% of the patrons would be Town-serving as defined by the Ordinance. He recalled Mr. Broberg has attempted to answer this question by statements of his industry survey and if that is how he intends to have a phantom client prove their capability, the Council must find that they will be Town-serving.

Mrs. Wiener asked if this particular data has ever been used in the past for the meeting of the criteria to which Mr. Moore responded he did not recall but he viewed it as an innovative approach as many have been used since 1980. Mr. Broberg recalled the restaurant Tete a Tete was granted its Special Exception, they used this study. Mr. Moore recalled that was denied and they had to start out at the 2000 square feet. Mr. Broberg recalled it was a Special Exception also for the joining of the commercial and residential properties and the handling of the parking.

Mrs. Smith asked Mr. Broberg if they had a client for this space. Mr. Broberg stated he did not know the name of the client but there is one under negotiation. Mrs. Smith noted it was not yet final and asked how many seats the restaurant would have? Mr. Broberg stated they are asking for 200 seats which the parking will sustain. Mrs. Smith asked if there was another Plan whereby the restaurant would not occupy so much space. Mr. Broberg responded with regards to the Town serving, they would be willing to return in a year and show the Council that they are in fact Town-serving. Mrs. Wiener asked if this has every been done before to which Mr. Moore responded the Town Council makes the policy and they are the ones that must make a decision as there have been many innovative approaches used to demonstrate the Town-serving and that burden must be demonstrated by the applicant.

Mrs. Douthit noted the request is over three times of what would be allowed and she thought they needed to go back to the drawing board and see if could be reduced somewhat. She indicated they are starting off with no record and she thought it was much too much.

Mr. Broberg requested the Council to not lose sight of the fact that the applicant could open three 2000 square foot restaurants without Council approval, and recalled Mr. Brisson submitting to the Zoning Commission a suggestion that restaurants in C-TS zones be allowed to be 5000 square feet.

Mrs. Smith thought the restaurant use was an excellent use for the property and she had a concern about the Town-serving nature but the more the square footage is reduced, the more palatable it does become.

Mr. Moore recalled the recommendation of Mr. Brisson was for Council's consideration and it was turned down by the Council. He asked to correct the record as Mr. Broberg states he could put in three 2000 square foot restaurants and that is true, providing there was the proper parking.

Mrs. Wiener asked if they would do a portion of this and build their kitchen but then have a restaurant of 35000 square feet and asked if that would be something that could be worked out? Mr. Moore recalled permission has been granted to several restaurants at the 2000 square foot figure and then they came back with the Town-serving figures and they have been allowed to expand further. Mrs. Wiener asked what kind of a kitchen would they have? Mr. Broberg was sure that every restaurant wished they would have a bigger kitchen. Mrs. Douthit recalled they always think in terms of seating first and then think about the kitchen.

Burton Handlesman addressed the Council advising to build a restaurant one has to conform to all of the ADA regulations with regards to bathroom facilities, etc. and in order to do that, monies must be expended and in order to make the restaurant sustain itself during the season, the 5000 square feet would be necessary as there will only be 3000 square feet of seating at best. He stated they needed to have a lobby of sorts, so there will be very little. He stated he is contemplating a service restaurant and if they drop below that kind of figure, they would encourage a fast food operation which is what no-one would want. Mr. Moore stated it is a question of whether or not the Council wants to consider a higher number over the 2000 figure and consider whether or not the evidence of Town-serving has been provided.

Mrs. Smith asked if they would be willing to compromise and start out at 4000 on the one floor? Mr. Handlesman stated he would agree to that. Mrs. Smith moved that the Special Exception 23-93 be granted on the condition that they would start off with 4000 feet and they would return in a year with Town serving documentation.

Mrs. Royal asked Mr. Handlesman if he would be willing to lease the remainder of the space as office space? Mr. Handlesman stated he believed the community could use another good restaurant as there is an overflow situation during the season. He believed the highest and best use for this property would be a table service restaurant. Mrs. Royal asked if he would turn away a perspective client to which Mr. Handlesman responded he would not.

Mr. Weinberg suggested they set up the kitchen as a separate corporation.

Mr. Randolph asked if the Council was satisfied with the statement that Market Surveys show that all patrons will come within a five mile radius or would the Council like that to be a part of the record.

Mrs. Douthit asked that this be submitted. Mrs. Smith recalled he stated he would present that as evidence of the Town-serving. Mrs. Douthit stated she would not second the motion as she viewed this as being too big.

Mr. Weinberg handled the gavel to Mrs. Wiener to chair the meeting and seconded the motion.

Mrs. Royal asked if they had proved they had adequate parking? Mrs. Smith stated they will eliminate the use of the second floor and the use of 1000 square feet on the main floor and there will be valet parking and the conditions they have for parking at the Apollo Lot.

Mrs. Royal asked how they knew they would be allowed to use the parking at First Union. Mr Broberg stated they don't have it right now but it can be shown to be in hand.

On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

12. Special Exception No. 24-93 - Thomas Campaniello, 288 South County Road; to allow a 4,000 sq. ft. restaurant (use was abandoned), providing no parking where 18 spaces are required. C-TS District. Attorney Robert Deziel on behalf of Mr. Campaniello addressed the Council. He stated the application is a Special Exception with Variance and one more issue he wishes to add is that this has been before the Code Enforcement Board for some exterior facade painting deficiencies and a sign that was on the building without the business being in the building operating. He stated they have agreed to commence the restoration of the exterior by October 15, 1993 and he submitted a contract with the painting contractor who have agreed to commence and complete the job. Spec.Excep. 24-93

Mr. Deziel advised a second item which was agreed to before the Code Enforcement Board was to remove the sign and his client admitted he has let the situation get out of hand. Mr. Deziel reported the sign is gone and the building restoration is now underway.

He indicated the application before them is the Special Exception which is to allow a restaurant in excess of the 2000 square feet permitted by the Town and the variance is for parking spaces.

He advised his client had an agreement with an operator to operate the restaurant and it didn't work out and the two year period has lapsed and they are here today to ask for the prior use to be allowed to be returned in the same location with the same use and no increase in the space or the intensity. He advised the restaurant will reopen under a different name.

Mr. Randolph advised the item of Town-Serving needs to be presented. Mr. Deziel stated they have the same business and the same space was closed down for extended restoration and now his client wishes to resume that prior use which was Town-serving and as a practical example, he offered the location and that is one of the reasons they need a variance as it doesn't have the parking.

Mrs. Wiener believed it was grossly unfair to the other merchants in this area to do this type of work at this time of year in that particular area and to have all the parking spaces blocked off and she didn't know how long it would take for them to do this but it was a matter of accommodating the other people who work there and she thought they needed a larger crew there to get the work completed.

Mrs. Wiener asked if this is granted would his client be willing to provide valet service in the evening hours. She asked how soon did they expect to have the work completed? Mrs. Royal noted the letter states the painting will be completed by the end of the month. Mr. Deziel stated the two man crew is doing the preparation work and they are using high pressure sprayers and there will be a larger crew when the painting starts.

Mrs. Wiener asked if there was any parking available? Mr. Deziel stated there was not. Mrs. Wiener stated that with valet parking in place and doing the work as rapidly as possible so that other merchants on the street are not inconvenienced, she moved Special Exception No. 24-93 be approved with the Town-serving aspects to be demonstrated within a one year period.

Mrs. Royal noted there seems to be a lot of restaurants starting up and she wondered if they were not successful, what kind of liability would there be for the Town with regards to ugly vacant buildings. Mr. Moore did not believe the Town would be sticking their necks out as there always will be vacant offices and restaurants.

Seconded by Mrs. Smith.

On roll call, the motion carried unanimously.

13. Flood Insurance Variance No. 1-93 - Edward W. Cook, 210 Via Del Mar; to allow renovations to residence which has floor elevation of 7.4 feet in lieu of 7.5 feet as required. R-A District. - Attorney Broberg addressed the Council on behalf of Mr. Cook, who is a contract purchaser for the property at 210 Via Del Mar which is in a flood zone and the house is 1.2' below the 7.5 required by the Town and is 3.8' above the Federal regulation and he requested the variance be granted. Mr. Moore commented the floors of this house are of a unique historical value and that is the hardship and staff has no objection. Mrs. Douthit moved for approval provided the normal Hold Harmless Agreement is furnished. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Flood Ins. Var. 1-93

C. Other

1. Consideration of Terms of Mr. Randolph's Letter Dated September 24, 1993, Regarding Mortgagee's Consent/Mar-a-Lago Club - Attorney Randolph reported this comes as a report with regards to the progress that has been made in regard to the agreement. He has written a letter under date of September 24, 1993 which sets forth the circumstances and there is no action required by the Council, as the agreement has been agreed to between the parties. He noted the mortgagee's consent was not obtained and he has told the applicant that this will need to be obtained but it would not be necessary if the mortgage were paid off, or if there was a subsequent mortgage who would be willing to give consent. He wished the applicant to be aware that in moving forward with this Agreement that one of those three things would have to happen to which Mr. Trump agreed and he did sign the letter stating he understood. Mortgagee Consent/Mar-a-Lago Club

Mr. Randolph stated that Mr. Trump does understand he cannot go forward with final approval on the Club unless one of those three things do happen.

2. Consideration of Request for Waiver to Section 12-51, "Hours for Construction Work," of Town Code by Doyle Rogers for Interior Work at 256 Worth Avenue Attorney Tim Hanlon addressed the Council to have extended working hours at 256 Worth AVenue for First Palm Beach Boutique, Inc., d/b/a Giafranco Ferre, and the reason for the request is to complete the construction before the holiday season. He advised all of the work will be inside the premises. He stated before 8AM and after 6PM, there Waiver to Sect. 12-51

will be a concerted effort to have the lightest work done as possible. He indicated there are no residential units adjacent to this building. Mrs. Douthit commented there have been an inordinate number of these requests and she thought it was outrageous as if they wanted to complete the work, they should have started sooner.

Mr. Moore recalled this is probably the eighth or ninth request this year. He stated the delay is not due to the fault of the contractor but the cabinets are being made in Italy and have been delayed.

Mrs. Smith moved that approval be given to do the work, but not until 10 PM only until 9 PM and there be no work on Sundays or on Thanksgiving Day and they do not block the area there with deliveries during the daytime hours. Seconded by Mrs. Wiener. On roll call, the motion carried with 4-1 with Mrs. Douthit voting against the motion.

Study Items for 93/94 Zoning Season

3. Consideration of Study Items for 1993/94 Zoning Season - Mr. Moore explained he sent a memorandum on September 29, 1993 which identified items received from Zoning Commissioner Robert Deziel to study this year and there are four items.

Mr. Weinberg asked if the items were submitted by the Chairman of the Zoning Commission to which Mr. Moore responded negatively.

Mrs. Douthit noted these are all items which have come up during the last year. Mrs. Royal asked if they would place a burden on the staff to include these items on the Zoning Calendar to which Mr. Moore responded it would not. Mrs. Smith and Mrs. Wiener asked the items be included and Mrs. Wiener moved to add the items submitted by Commissioner Deziel to the Zoning Study Item List. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Wiener asked if another item could be added to the list with regards to the size of restaurants as she didn't think it made any sense for a restaurant to be the same size as a store that sells lipsticks. Mr. Moore stated it would be too late for this year, however it can be included next year.

Tax Abatement for Historic Properties

4. Consideration of Ordinance Regarding Tax Abatement for Historic Properties - Comments from Town Attorney and Staff - Attorney Randolph recalled that the Council decided to wait until another community had come up with an Ordinance and that has now happened. He needed to have several questions addressed and he recommended this be referred to the Ordinance, Rules and Standards Committee with the proposed Ordinance so the questions can be addressed, and Mrs. Wiener so moved. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Urban Form STudy

5. Consideration of Request for Presentation by Palm Beach County Planning Division Regarding Urban Form Study - Mr. Moore reported the County has sent information on their Comprehensive Plan and they are willing to come and put on a presentation for the Council if they so wish. Mrs. Wiener and Mrs. Smith did not think it was a good idea. Mrs. Douthit and Mrs. Royal believed they wanted to hear the presentation as it might impact the Town. Mr. Moore reported he will find out where they will be making the presentation and be in touch with the Council people who want to hear the presentation. Mrs. Royal suggested perhaps the Civic Associations would like to attend the presentation also.

Interlocal Agreement Intergov. Coordination Program

6. Consideration of Appointments to Committees and Annual Membership Fee for Implementation of the Interlocal Agreement Between the Town and Palm Beach County for the Intergovernmental Coordination Program Mr. Moore stated this has been dealt with as they have budgeted the $500 for the fee. After discussion, Mr. Timothy Frank was recommended for appointment to the Interlocal Plan Amendment Review Committee; Robert J. Doney was recommended as the individual with whom to file the Notice of Intent to Object; the Town Council will retain the authority to make a formal objection; and recommended as the representative to the Issues Forum as the voting member was Mrs. Royal and Mrs. Smith as the alternate. Mrs. Wiener moved the recommendations as stated by Mr. Doney be authorized. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Greasure Coast Regional Planning Council Boat Facility Siting Plan

7. Consideration of Proposed Treasure Coast Regional Planning Council Boat Facility Siting Plan for Palm Beach County - Mr. Moore reported the Treasure Coast Regional Planning Council wishes to take over the siting for boat docks and staff recommends this be opposed as it is viewed as usurping of the Town's ability to regulate its own boat docks. Mrs. Douthit moved the Town take the position of opposing this proposal. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

XVII. ANY OTHER MATTERS

A. Mr. Doney announced there will be a Finance & Taxation Committee meeting on Thursday, October 28, 1993 at 10 AM.

Flagler MEm.Bridge tender bldg.

B. Mr. Doney reported the Department of Transportation has asked for comments on the renovation proposed to the Flagler Memorial Bridge tender's building. Mr. Dusey addressed the Council and exhibited renderings and after discussion, the Town Council selected the second rendering. Mr. Dusey commented he will submit that preference with a fall back to a barrel tile roof with stucco.

1994 Calendar & Ann.Report

C. 1994 CALENDAR AND ANNUAL REPORT: Mr. Doney noted the 1994 Calendar and Annual Report will be ready for final proofing in November, and there is a conflict with the Town Council meeting and Election Day in February. He suggested the Town Council meeting be postponed to Feb. 15, 1994. After discussion, a motion was made by Mrs. Wiener to hold the February, 1994 Town Council meeting on February 10, 1994. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Nat'l League of Cities

D. NATIONAL LEAGUE OF CITIES. Mrs. Wiener moved that Mrs. Royal be the voting delegate for the National League of Cities Meeting. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

E. LEGISLATIVE ISSUES. Mr. Doney requested that the Town Staff be authorized to use Mr. Ron LaFace on an as-needed basis as it has been done in the past, to which the Mayor and Town Council agreed. Legislative Issues

F. MUNICIPAL CODE CORP. Mr. Doney advised it has been budgeted for the Municipal Code Corp. to review the Code for archaic and inconsistencies and this is in the process of being done. Mrs. Royal suggested it be put on a computer disc also, to which the rest of the Council did not agree. Municipal Code Corp.

XVIII.ADJOURNMENT - There being no further business, the meeting was adjourned by 6:55 PM. Adjournment

Grace T. Peters
Town Clerk