TOWN COUNCIL MINUTES OF MEETING HELD ON OCTOBER 11, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL - The meeting was called to order at 9:30 a.m. by President Wiener. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Wiener, President Pro Tem Smith, Councilwoman Royal, Councilman Shaw and Councilman Goldsmith. Also attending for all or part of the meeting were Town Manager Doney, Town Attorney Randolph, Mr. Elwell, Mr. Dusey, Major Croft, Mr. Boggs, Mr. Moore, Mrs. Martinuzzi, Mr. Bowser, Mr. Crouse, Mr. Frank, Town Clerk Peters and Deputy Town Clerk Pollitt.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Father Reardon, St. Edwards Church. The Pledge of Allegiance was led by President Pro Tem Smith.

Memory of Conrad J. Johnson

Mayor Ilyinsky reminded those in attendance of the recent death of Conrad J. Johnson, Combination Inspector in the Planning, Building and Zoning Department, who had worked for the Town of Palm Beach since October, 1982. He requested all present to share a moment of silence in honor of Mr. Johnson and said that all his friends in Town Hall will miss him.

Presentations

III. PRESENTATIONS

A. Recognition of C. Gerald Goldsmith, Zoning Commission A plaque was presented to Mr. Goldsmith recognizing his service as a member of the Zoning Commission from 1991 to 1994.

B. Recognition of Martin E. Murphy, Zoning Commission- Mr. Murphy was not present at the meeting to receive his award.

C. Recognition of Scott Sloane, Code Enforcement Board - Mayor Ilyinsky presented a plaque to Mr. Sloane recognizing his years of service from 1992 to 1994 as a member of the Code Enforcement Board.

Comments of the Mayor

IV. COMMENTS OF THE MAYOR - Mayor Ilyinsky complimented the Public Works Department on the fine job they were doing completing projects before the Season starts. He added the projects are on time, and Mr. Dusey deserves credit for seeing these projects are nearing completion in a timely manner. Mayor Ilyinsky said the recently completed Brazilian Dock is magnificent and has been visited by people from all over the State.

Approval of Agenda

V. APPROVAL OF AGENDA.

Mr. Randolph requested that item VIII.A.1., the Resolution relating to Public Rights of Way Adoption of Standards, be deferred, because he has not completed his review of the resolution because after meeting with Southern Bell, two or three of the items in the resolution may be affected by possible amendments.

Mrs. Wiener stated the other utilities do not have a problem with the resolution, and asked Mr. Randolph if a special problem exists with Southern Bell?

Mr. Randolph replied there are two or three items that Southern Bell has a problem with, and the possibility exists these problems can be worked out. Mr. Randolph stated he has not come up with alternative language for the resolution at this point in time.

Mrs. Wiener said this is the Town's ordinance, and at some point, the Town should take a stand. She added courtesy and accommodation are fine, but the Town should not be led around by an outside organization.

Mr. Randolph replied, after completion of the review, it may well stand as it exists, but he agreed to definitely have the review completed by the November 9, 1994, Town Council meeting.

Mrs. Smith asked Mr. Randolph if AT&T does not like the final resolution, could they appear before the Council?

Mr. Randolph responded he planned to present his review at the November meeting suggesting a modification that the Town may or may not be satisfied with, and if AT&T is not satisfied at that point, they may present an appeal to the Town Council.

Mr. Doney requested item VIII.B.1., Mini-PERC, be deferred. Mr. Doney said due to the availability of the Mini-PERC panel members, they will not be able to meet until after the October 11, 1994, Town Council meeting, and their recommendation will not be forthcoming until the November 9, 1994, Town Council meeting.

Mr. Doney requested item VIII.C.3., Consideration of Strangler Fig Tree - Lagomar Road, be deferred until the November 9, 1994, Town Council meeting. He said some of the residents who live on Lagomar Road have not returned to Palm Beach and have not been contacted.

Mrs. Wiener responded the residents should be contacted using the normal mail procedures and not wait for them to return to Palm Beach. Mrs. Wiener said she would like to have a time certain, the November 9, 1994, meeting, to have recommendations for this item.

Mr. Doney requested item VIII.C.2., Appraisal for the Pike Road Property, be deferred until the November 9, 1994, Town Council meeting. Mr. Doney said the appraisal for the Pike Road property has not been completed.

Mr. Moore requested items XII.B.1. & 2., variances 25-94 and 26-94 for properties located at 456 - 460 Worth Avenue, be deferred until the December 13, 1994, Town Council meeting. Mr. Moore said a letter was received from Attorney Peter Broberg requesting a deferral due to the recent death of Mrs. McFarlane's husband.

Mr. Moore requested item XII.B.3., Special Exception 27-94 for 139 North County Road, be withdrawn without prejudice.

Mr. Moore requested item XII.B.4., Special Exception 28-94 for Hals Realty for property located at 401 South County Road, be deferred, as requested in a letter from Attorney Peter Broberg, to the November 9, 1994, Town Council meeting.

Mrs. Wiener asked Mr. Moore about the notification time for withdrawing or deferring the variances and special exceptions?

Mr. Moore replied the applicant(s) are entitled to one deferral by ordinance if the notification is received 7 days in advance. He added the request for the deferral of Special Exception 28-94 is the second request, and it is irrelevant when the notification is received; however, it is up to the Town Council if the item should be deferred.

Mrs. Wiener said this notification was received less than one week prior to the meeting, and the Town Council would like to have cooperation from the participants and asked Mr. Moore to remind them of the timeliness of notifications requesting deferrals or withdrawals.

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

APPROVED AGENDA (ITEMS VI. THROUGH VII.) Approved Agenda

VI. APPROVAL OF MINUTES OF SEPTEMBER 13 (9:30 A.M. AND 5:01 P.M.) AND 27, 1994.

VII. LICENSES AND PERMITS Licenses & Permits

A. Charitable Solicitations Charitable Solicitations

1. Peggy Adams Animal Rescue League of the Palm Beaches, Inc.; No. 7-95
2. March of Dimes Birth Defects Foundation; No. 12-95
3. Palm Beach County Chapter American Red Cross; No. 20-95
4. Children's Home Society of Florida; No. 60-95
5. Cystic Fibrosis Foundation-Palm Beach Regional Office; No. 72-95
6. The Henry Morrison Flagler Museum; No. 74-95
7. The Schepens Eye Research Institute; No. 107-95
8. American Technion Society; No. 137-95
9. The Joseph L. Morse Geriatric Center; No. 248-95
10. Comprehensive Aids Program; No. 337-95
11. The Sculpture Theatre; No. 356-95
12. South Florida Science Museum; No. 359-95
13. Compass, Inc.; No. 374-95
14. WJNO Children's Fund; No. 375-95
15. Graham Eckes Palm Beach Academy Foundation; No. 376-95

B. Beverage License

1. Consideration of Request for Application for a Transfer of a 4COP Alcoholic Beverage License by Dario Zagar/D & T Restaurant Corporation, d/b/a Tower Restaurant Located at 44 Cocoanut Row.

Motion made by Mrs. Smith to approve Items VI. and VII. of the Approved Agenda. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 4/1 with Mrs. Royal casting a negative vote.

REGULAR AGENDA Regular Agenda

VIII. OLD BUSINESS Old Business

A. Resolution

1. Resolution No. 36-94 - Adoption of Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach - Deferred from September Meeting - This item was deferred to the November 9, 1994, Town Council meeting. Res. 36-94

B. Appointment Appointment

1. Mini-PERC - One Four-Year Term to Expire September 1998 - Recommendation of Blue Ribbon Panel. This item was deferred to the November 9, 1994, Town Council meeting. Mini_PERC

C. Other Other

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

a. Consideration of Funding for FCC Form 393 and Form 1200 (Beck Professional Services Agreement).

b. Consideration of Request for Further Information from Comcast by R.W. Beck Cable Rate Consultants.

Mr. Randolph said it was premature to take action regarding the reconsideration of the results of the accounting, and the staff, in conjunction with Beck, was still requesting information from Comcast. He said Comcast has indicated their willingness to cooperate in providing information.

He added Mr. Beck has provided the Town with a list of the documents that he wishes to review prior to the completion of the matter. Mr. Randolph asked that the matter again be deferred until all the information can be received.

Comcast (cont'd)

Mrs. Wiener said Comcast has a much larger customer base in West Palm Beach than in Palm Beach and since Palm Beach is more or less dividing the cost of Beck's services with the City of West Palm Beach, she asked Mr. Randolph if the fees are based on the number of people subscribing or just the rates?

Mr. Randolph replied the number of subscribers was not taken into consideration during negotiations, but the original quote to the City of West Palm Beach for the service was $10,000, and West Palm Beach had already expended a large portion of that amount. He said Mr. Beck agreed to take on the Town of Palm Beach for an additional $2,000 which would make the total bill for the two municipalities $12,000. Mr. Randolph said the amount West Palm Beach had already spent was subtracted from that amount and $6,000 was allocated to the Town of Palm Beach. He added it was not based on the number of customers, and he was not sure the number of customers really determines the amount of work to be done. He said the amount of work to be done for each municipality is the same, since it is the same type of information that needs to be reviewed for the Forms 393 and 1200.

Mrs. Wiener said her concern was that the Town was paying about the same amount of money that West Palm Beach was paying, and West Palm has a much larger area. She added the City of West Palm Beach had contracted initially with Mr. Beck, and if the Town could save money, it would be desirable.

Mrs. Smith said during the conversation at the September 13, 1994, Town Council meeting the figure quoted for Beck's services was $1,500 to $2,500. She said the figure was now up to $5,000 plus out of pocket expenses for travel, food and lodging. She stated she voted against it at the September meeting and thinks it is too much money, too open ended--and monthly bills will be pouring in and no information is forth coming.

Mr. Randolph replied he did not remember quoting the $1,500 to $2,500 figure, but that figure may have been accurate for the remainder of the work to be accomplished for the Form 393. He stated that in addition to the Form 393, there is the Form 1200 review, and the $6,000 includes the remainder of the Form 393 plus the Form 1200. Mr. Randolph continued that prior to this meeting an additional $5,000 was allocated to have a local accountant do the Form 1200 review. He added that Beck's experience in the field is better than anyone available locally, and the additional $1,000, plus out of pocket expenses, over and above what was previously allocated, was a fair price for the Town under the circumstances.

Mrs. Smith quoted Mr. Randolph's remarks from the September 13, 1994, meeting stating that the Council had allocated funds for the review Form 1200 and the staff would like to have the discretion to use those funds for the purpose of completing the Form 393 and if funds were left over, to use the remaining amount for the Form 1200 review. Mrs. Smith said the figure is over $5,000 because out of pocket expenses for travel, food and lodging will be added and that is open ended.

Mr. Randolph replied Mrs. Smith was correct, and he had indicated he would like to use the $5,000 for that purpose, and the bid came back for $6,000 plus the out of pocket expenses, and that is the issue being presented to the Town Council.

Mrs. Wiener said, that since Beck will be serving two clients when traveling to this area, at the absolute minimum, the costs should be split.

Mr. Randolph replied the only purpose for the out of pocket expenses would be an appearance at a Town Council meeting, and if the Town Council meeting overlapped with a City of West Palm Beach Council meeting, then perhaps there could be a splitting of costs for those incidences. He added the costs Beck is talking about are related to his appearance at a Council meeting, and Mr. Randolph thought he would have to appear at a minimum of one Council meeting. Mr. Randolph offered to have a control on the out of pocket expenses and suggested allocating the $6,000 plus a one time fee for attending a meeting and leave the remainder for discussion at a later time.

Mr. Shaw questioned the $6,000 amount Mr. Beck would charge for the service since Mr. Beck's letter anticipated an additional $2,000 cost above and beyond what the City of West Palm Beach's program called for. He added the logical amount would be $2,000, and he did not think it is appropriate to pay $4,000 to off-set some of the West Palm Beach costs, since West Palm Beach has already contracted the amount of $10,000. He said a figure of $1,000 to $2,000 would be fair with the budget the Council has allocated.

Mr. Randolph replied he looked at the proposal as an opportunity for The Town of Palm Beach and the City of West Palm Beach to share the costs, and the economy of having Mr. Beck work for both municipalities would allow that to happen. He said after looking at the figures and seeing what the City of West Palm Beach would have to pay in addition to the amount already paid, West Palm Beach's portion is $9,000. He continued the saving to West Palm Beach is $1,000 on the initial $10,000 bid. Mr. Randolph stated the decision is up to the Council, but he saw this as an opportunity to benefit both municipalities. He added if this company were working only for the Town of Palm Beach, the figure would be approximately $10,000. Mr. Randolph said he thinks the Town needs input from someone such as Mr. Beck, and he did not know of anyone else who could provide these services at the present time.

Mr. Shaw asked if the report by Mr. Beck for the City of West Palm Beach was public information?

Mr. Randolph replied it was public information, but did not know what party would analyze the information as it relates to the Town of Palm Beach.

Mrs. Wiener said the refund deadline runs out in December, and sitting and waiting for information precludes any refunds for the Town residents which is the reason the Council is considering this issue.

Mrs. Royal asked what was the refund estimate?

Mr. Doney replied that is not known at this time.

Mrs. Royal said the size of the refunds would determine the amount expended by the Council to research this issue and questioned the cost effectiveness of the issue.

Mr. Randolph replied that after the refund issue is settled, the issue becomes the rate schedule from this time forward.

Comcast (cont'd

Mrs. Royal said the Council can only regulate the first tier of rates and beyond that the Council has no control over the additional services provided by Comcast. She added that in the beginning she thought that the Town should regulate cable, but she is no longer sure that the results will be worth the time spent which includes staff hours.

Mrs. Wiener stated she agreed with Mrs. Royal about the time and money that has been expended on this project compared to the return for the Town residents. She added the Council thought, originally, this would be a simple task, and it has turned into a complicated project from the stand point of time and money. Mrs. Wiener said the Town Council has more important issues to concern themselves with than this one issue.

Mr. Doney said, based on his knowledge of FCC Forms 393 and 1200, if the Town Council wanted to continue in the path of rate regulation and subsequently to enact a customer service standards ordinance with possibilities of rate regulation under FCC rules, the Town needs someone like Beck to provide the needed credibility for the entire process. He said he is concerned, if the Town Council wishes to revisit the entire issue and not proceed further, that a de-certification process is required by the FCC. He said a newspaper article dated October 8, 1994, stated the FCC may allow cable companies to set the rates as high as possible, and the entire issue of cable rate regulation is constantly evolving. He added the Town Council agreed after the Ordinance, Rules and Standard Committee had reviewed the matter, the Town should have the ability to approve rates and set customer service standards.

Mrs. Wiener responded that was true, but the current situation is the Council is spending money on something that is very nebulous, that is without end and additional monies will have to be spent without knowing what the return will be. She added the Council could not have known what complications would arise when this was initially discussed. Mrs. Wiener stated the FCC is attempting to remove this rate question from their jurisdiction and have local governments assume the responsibility.

Mrs. Smith said if the FCC cannot determine its course, how can the Town determine the correct course? She suggested jumping ship, let the FCC have it and forget the entire thing.

Mr. Shaw suggested the approach might be to try to work with the FCC and reach a settlement, and although the Town refutes the rates provided by Comcast, the Town does not have the backup to provide different figures. He added if the Town wishes to pose the Town's position with Comcast so that all the subscribers in the community that they are providing service to which includes West Palm Beach, Boynton Beach, Palm Springs, S. Palm Beach, etc., are part of the approval process, or that the Town of Palm Beach will approve their forms subject to the similarity of compliance with the other communities, then the Town of Palm Beach has the right to control and has not given up its rights in the future. He added if the Town goes to de-regulation, then the Town has given up all rights and all forms of control. He said to go back and regulate after de-regulating may be a harder task than accepting what they now offer.

Mrs. Wiener asked Mr. Randolph if Comcast can treat Palm Beach differently than the City of West Palm Beach?

Mr. Randolph replied, yes, Comcast could treat Palm Beach differently, and they can regulate on the basis of per capita income. He added this provision is in the FCC regulations, and Comcast does have the right to charge Palm Beach residents different rates.

Mrs. Royal said the Palm Beach residents of condominiums, thanks to Arthur Silverman, do not pay the same rates as other Town residents, and Mr. Silverman negotiated with Comcast for a bulk rate for condominium residents.

Mrs. Wiener replied that every month the information seems to be a little worse, and it appears to be a money making scheme for everyone involved in the process.

Mr. Randolph said that Mrs. Wiener was correct, and the problem will not become easier but will become more complex as rate orders are issued, and the Town may have to be involved in appeals before the FCC.

Mr. Doney suggested before a motion was made to give procedural direction to Mr. Randolph, Mr. Jakubiak and himself regarding the FCC regulations, and also what it would take to re-enter the regulation of rates should the Town Council decide at a later date to regulate rates.

Mr. Goldsmith suggested the Council should not give up the rights to regulate the future, and said an agreement with Comcast Cable should be reached stating the Town of Palm Beach should not be discriminated against as related to any other system within the Comcast Cable system.

Mrs. Smith asked why the basic question--to regulate, or not to regulate--was not determined when the Town Council first considered this issue?

Mr. Randolph replied the rules have changed considerably since the Town Council first became involved with this, and he advised, if the Council decides to regulate the rates, the rules may change again and no one will be able to lay out, in advance, what those rules are going to be. He stated, in his opinion, it would be very premature of the Town Council to make a decision not to continue to regulate. He added the Town Council could decide not to spend any more money on this, but the issue of regulation is another issue.

Mrs. Smith stated she did not want to give Comcast the satisfaction of having free rein with the Town, and the Town should stay in the regulation process, but no more money should be expended on this issue until the status of the Town can be determined. She added if Mr. Randolph could have a report in November on the completion of the forms, she did not think it was necessary to spend $5,000 to complete a review of these forms that may be obsolete in one month.

Mrs. Wiener said she thinks the Town Council would like to stay in the game but not spend any more money.

Mr. Randolph asked if the Town Council could stay in the game with the amount of money that has already been allocated? Mr. Randolph continued that staff's hands will be tied regarding the review of the Forms 393 and 1200 if the staff does not have any ability to go forward.

Mrs. Wiener asked Mr. Randolph if the staff had no ability to go forward, would the Town still be in the game?

Comcast (cont'd)

Mr. Randolph replied if the Town Council decided after receiving the report that it does not wish to de-certify, the Town has been hurt because it has not kept up with the game by receiving the information needed to review and make the final analysis. Mr. Randolph stated there is no question that if the Town wishes to regulate, money will have to be spent. He added if the Town continues to regulate for the next 2 - 6 months, depending upon when a final decision is made in this regard, the Town may be behind the eight ball by not having the capability to go along with the process.

Mrs. Wiener stated the entire point of regulation was a financial one, and she questioned how long any savings in rates the Town could negotiate would equal the money spent already.

Mr. Shaw said since the Council has undertaken the question of rate regulation on behalf of the residents of the Town, and the Town is a spender of money and the residents are the beneficiaries of the Council actions, and if the Council abandons the mission at this point, does the Council have a responsibility problem?

Mr. Randolph replied that would be a policy decision if the Council decides to regulate the basic tier, since FCC has said they will no longer regulate the basic tier and that will be up to the local governments if they so choose. He added if the Town decides not to regulate, there will be no regulation of the basic tier, and the question becomes is the government responsible for regulating that basic tier?

Mrs. Wiener said other questions concerning regulations in other areas may become policy decisions also.

Responding to a question from Mr. Shaw concerning the expenditure of tax dollars compared to possible savings for the Town residents, Mr. Randolph replied that monies from franchise fees would be available to spend on the regulation, and the money does not have to come from ad valorem taxes.

Mr. Doney, referring to Mr. Randolph's October 6, 1994, letter, said the Town Council should be aware of Comcast's intention to raise rates to take into account inflation.

Mrs. Wiener responded the proposed increase would be approximately 15¢, and the Town Council should not forget that Comcast is, in one respect, a public utility and in another way, it is an entertainment outlet, and a private enterprise. She added the Town does not have a set policy on spending money which includes the staff's time for issues of this type, and the Town Council needed to make a decision as to which direction the Council wished to proceed.

Mrs. Smith asked if Comcast would step in and raise the rates to an unacceptable level, would the Town have the right to litigate?

Mr. Randolph replied appeals would be filed with the FCC including the recommendation of what the rates should be.

Mrs. Royal asked Mr. Doney how many of the Town's residents subscribe to Comcast's services?

Mr. Doney replied approximately 9,000.

Mr. Arthur Silverman, Ibis Isle, addressed the Town Council, and stated there are 3,000 residents residing in condominiums in the south end of Palm Beach, and he was able to negotiate with Comcast three years ago at a rate of $5.85 for each resident for one year with a $1.00 per year increase based on a five year period, and this contract is still in effect. Mr. Silverman stated Comcast was very supportive of the program, and he would like to negotiate on behalf of the condominiums separately if the opportunity presents itself, but he does not want the condominiums included in the rate increases mentioned at the Town Council meeting.

Mr. Shaw made a motion to approve the Form 393 as presented to the Town Council by Comcast. The motion was seconded by Mrs. Royal for discussion purposes.

Mrs. Royal said there was only one area on the Form 393 that the staff disagreed on, and the Town Council would not have gone too far amiss approving the form.

Responding to a question from Mrs. Wiener, Mr. Randolph stated the draft order presented to the Council contained more objections than the one.

Mrs. Royal replied, according to a memo from Mr. Jakubiak, the charge for installation was the only issue mentioned.

Mr. Shaw said the basic tier question was the installation charge; however, there were other issues involved.

Mrs. Wiener asked Mr. Randolph if there was any way to avoid Form 393 at this time--just ignore it?

Mr. Randolph replied if the Town Council did not take any action today, the Town will still receive information regarding the Form 393 which could be analyzed at the staff level and staff could report to the Council with a final recommendation and a proposed rate order. He added if the Council decides after looking at the rate order and other information gathered by staff, that the Town Council does not want to regulate or if the Town Council does not agree with the rate order and wants to approve Form 393 at that point, then it can be done. He said an alternative to approving the Form 393 at this meeting is to allow staff collect whatever information needed and report to the Town Council at the November meeting. Mr. Randolph said Diane Christie from Comcast said at the September meeting Comcast would cooperate and supply any information needed.

Mrs. Wiener asked Mr. Shaw if he would consider withdrawing the motion he made based on Mr. Randolph's comments and allow the staff to have another month on the project? Comcast (cont'd)

Mr. Shaw asked Mr. Randolph if there was a time constraint if the issue continues another thirty days?

Mr. Randolph replied the Town is in a position of abating the time because Comcast has indicated they will provide additional information, and a draft letter from Beck listing the information the Town should request from Comcast prior to making a ruling on Form 393 has been received by the Town.

Mr. Shaw said that Comcast should be notified of what is happening currently and at the November 9, 1994, Town Council meeting, they will have provided staff with the information needed, and the Council will make a decision at that meeting.

Mr. Randolph replied the Town Council may decide they will be prepared to make a decision at the November meeting; however, some of the information requested by the City of West Palm Beach from Comcast weeks ago has not been provided by Comcast to the City of West Palm Beach.

Mr. Shaw said he would like to withdraw his motion.

Mrs. Smith asked Mr. Randolph if there would be any input from the other seventeen municipalities serviced by Comcast with similar problems before the November meeting?

Mr. Doney replied, to his knowledge, the City of West Palm Beach and the Town of Lantana are the only other municipalities that are in the same mode regarding the time deadline for rate approvals for Form 393. He said he understood if the Town does not act on Form 393 that Form 1200 cannot be acted upon. Mr. Doney said Mr. Randolph has also obtained information from the City of Tallahassee.

Mr. Randolph asked the Town Council if they wanted to defer any final action on acting on the Form 393 until the November meeting?

Mr. Shaw made a motion to defer any action until the November meeting at which point the staff will have requested of Comcast to have answered the questions so a final determination can be made in November. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Wiener stated the request for money needed to be addressed.

Mr. Shaw made a motion to not go forward with any additional expenditures on behalf of the reviews, that the review will be at the staff level and will be finalized by the November 9, 1994, Town Council meeting.

Mr. Shaw, responding to Mrs. Smith's question, stated the $5,000 would not be spent.

Mr. Randolph asked if the $5,000, previously approved, is being taken away?

Mr. Shaw replied the $5,000 is still there; however, it is not being spent. He added if the Town owes Mr. Beck for a preliminary review of correspondence, obviously the Town will pay for that. He said the Town Council is basically going to stay within the guidelines, and there is $5,000 that was previously allocated for review, to be used by the staff, but it is not going to be used for outside expenses.

Mrs. Wiener said the Town Council is in a quandary as to how many tens of thousands of dollars the Council will have to expend in an attempt to do a simple little job that is no longer a simple job. She added if the Town Council were going to spend money, an expert like Mr. Beck would be used, but the motion is not to expend any further funds until the November meeting.

The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mr. Doney read a statement from Mr. Randolph's letter, dated October 6, 1994, which said, "In the event the Mayor and Town Council are in agreement with the position taken by staff in this regard, it is my recommendation that they so state publicly at the October 11, 1994, meeting and that the staff be directed to advise Comcast in the appropriate manner." Mr. Doney said Mr. Randolph's statement related to a proposed action on the proposed rate increase, and Mr. Doney requested authorization by the Town Council for the Town Attorney and the Town Staff to take whatever other actions need to be taken before the November 9, 1994, meeting in order to protect the Town's options.

Mrs. Royal asked Mr. Doney if limited service is the same as basic service or was Comcast proposing to increase the rate in an area the Town cannot regulate? Mrs. Royal said the reference is from Mrs. Christie's letter to Mr. Jakubiak dated September 27 where it was stated Comcast planned to increase the rate for limited service.

Mrs. Wiener said the Council is trying to keep open the options and go with staff's suggestions that the Town Council is opposed to the rate increase until the Form 1200 review is completed.

Mrs. Smith made a motion to go along with the staff's recommendation to say the Town Council is not in favor of a rate increase. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. Consideration of Potential Sale of Town-Owned Property on Pike Road (West of West Palm Beach in Unincorporated Area of Palm Beach County) - Deferred from September Meeting - This item was deferred to the November 9, 1994, Town Council meeting. Pike Road Property

Strangler Fig (deferred)

3. Consideration of Strangler Fig Tree - Lagomar Road - Deferred from September Meeting - This item was deferred to the November 9, 1994, Town Council meeting.

Potable Water

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

Mr. Dusey reported the Town has contracted with three engineering firms, and the first firm will supply information regarding the possibility of Riviera Beach supplying eight million gallons of water per day and sixteen million gallons per day including the transmission cost to a point on the island at Mediterranean Road. He said another consultant will look at the possibility of Lake Worth supplying either eight or sixteen million gallons of water per day including the cost of transmission to the island near the Lake Worth Bridge. Mr. Dusey said the third engineering consultant is looking at the modification of the Town's distribution system to accept either eight or sixteen million gallons of water per day from Riviera Beach or Lake Worth.

Mr. Dusey said these studies are nearing conclusion and the information will be used to obtain a preliminary rate structure for comparison to the costs of water from West Palm Beach.

Mrs. Wiener asked if Mr. Dusey could provide any indication as to the preliminary information received at this point?

Mr. Dusey responded it is premature to offer any information; however, as expected, the numbers are big.

Mrs. Wiener asked Mr. Dusey to have the report for the November 9, 1994, Town Council meeting, and he agreed to do so. Mrs. Wiener said if the numbers are unreasonable then the Town Council will not want to spend additional monies endlessly on consultants and experts.

Mayor Ilyinsky asked Mr. Dusey if the study includes conversations with Lake Worth?

Mr. Dusey replied it did, and the study included Lake Worth and Riviera Beach.

Mr. Shaw asked Mr. Dusey if the study included the possibility of a dual distribution opportunity?

Mr. Dusey replied it did not, and that option may be viable if the Town Council decides to move forward after hearing the report. He added the first priority is to provide the residents of Palm Beach water when it is needed, then the issue of dual piping could be looked at.

Mr. Shaw said it may be better to look at two sources, including the dual piping, because if a distribution system is designed predicated on a sole source, the system may have to be redone at a higher cost. He added the Council should know what the cost would be to set up a dual distribution system.

Mrs. Wiener stated Mr. Dusey had been given specific guidelines by the Town Council and those are not changed since the end of the study is imminent. She added if the project is viable, then stage two can be implemented and the items Mr. Shaw mentioned may be investigated at that time; however, if the initial information is not viable, then additional time and money should not be spent.

Mrs. Smith said she remembered Mr. Dusey was instructed to start with the initial stage, and if the cost of the single system is prohibitive then Mr. Dusey will not go forward with hydraulic studies and engineering studies. She added the idea is to keep the cost down and find the best answer.

Mrs. Royal said a study implies that more than one source will be looked at, and the Council could be penny wise and pound foolish if the cost of a dual piping system is not considered initially.

Mrs. Wiener said the Council made the determination and staff has acted on that determination. Mrs. Wiener thanked Mr. Dusey for the report and expected to hear the report at the November 9, 1994, Town Council meeting.

Sand Transfer Plant

5. Sand Bypassing at the Lake Worth Inlet - Status Report Regarding Restoration of Existing Sand Transfer Plant

Mr. Dusey said this is not a project the Town is responsible for, but the project is being handled by the County. Mr. Dusey said he has received correspondence from Mr. Richard Walesky stating the County is attempting to contract for the piping which is the most expensive element for the restoration. He added a proposal should be received by the County from the new insurable subcontractor soon, and the County has ordered some of the pumps. He said he would like to see the project move forward more quickly, but the County is making progress.

Mrs. Smith asked Mr. Dusey if the proposal from Dames and Moore had been received by the County that was due on October 10, 1994, for the piping under the channel?

Mr. Dusey replied he did not know if that proposal had been received, but he will find that out this week.

Mrs. Smith said that, in spite of the fact there are obstacles to the process, it was moving forward rather quickly. She said the boom at the plant, according to the letter from Mr. Walesky, will be installed after the Sea Turtle Season. Mrs. Smith asked Mr. Dusey if he had received the Lake Worth Inlet Management Plan in the last month or so?

Mr. Dusey responded a very rough draft has been received that has to be reviewed by the State, the County and the Town, and after the review, the draft has to be returned to the consultant within approximately one month. Mr. Dusey said further information will be available for the December 13, 1994, Town Council meeting.

Mayor Ilyinsky reported he had received a letter from a resident of Singer Island congratulating the Mayor on the painting of the Sand Transfer Plant.

IX. NEW BUSINESS

New Business

A. Resolution

1. Resolution No. 54-94 - Readoption of Routine Dune Maintenance Guidelines

Res. 54-94

Mr. Randolph read the resolution stating the purpose of the ordinance is to readopt the routine dune maintenance guidelines.

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

Mrs. Smith asked about restoration planting as covered in the guidelines and if it covers the destruction that occurred last winter when the dredging of the Lake Worth inlet was done. Mrs. Smith said her question concerns a statement on page three, under the heading Class II, Permitted Activities, sub paragraph A., Restoration Planting, Restoration planting may be required following removal of exotic plants, the addition of sand or in conjunction with the trimming of viewing windows. She asked why the stipulation regarding the destruction of the dunes such that occurred with the pipes was not included in this paragraph?

Mr. Moore responded this was an action taken by the Corps of Engineers through their contractor when they were dredging the inlet. He added this would be for private property owners and governmental agencies.

Mrs. Smith said she did not mean to specify that dredging be added but destruction of the dunes by person or persons known or unknown could be added.

Mr. Moore replied that certainly could be added, and the language could be modified.

Mrs. Wiener responded that she thought this was an excellent idea and asked for responses from the Town Council members.

Mr. Randolph replied that Class II permitted activities are permitted and this particular activity is one that is not permitted and a penalty clause could be inserted that allows the Town to direct that something be done in the event that the permitting procedure has not been followed. He added he was not sure this was the proper way to handle the problem.

Mrs. Smith stated the issue needed to be addressed since the Guidelines are either being adopted or amended.

Mr. Moore said that this particular issue is the Guidelines, and the other issue is the ordinance itself. Mr. Moore stated the staff is not proposing any changes in the ordinance, but the ordinance could be amended, if the Town Council wishes, by bringing it back for a first and second reading. He added the conditions of the ordinance itself required that the Guidelines be reviewed and readopted annually. He said the reason for the resolution is the readoption of the Guidelines, and the issue of the permitting or the destruction of the dunes is in the actual ordinance which is attached to the Guidelines.

Mrs. Wiener asked Mr. Moore if both the Guidelines and the Ordinance could be changed?

Mr. Doney stated the Ordinance already contained the language to accomplish this type of correction dealing with corrective actions.

Mrs. Wiener said, if the Ordinance included the language, why could not the Guidelines be amended?

Mr. Moore responded the Guidelines could be amended to reflect the language, and he requested the adoption of the resolution be postponed until the November 9, 1994, Town Council meeting.

Motion made by Mrs. Smith to defer the readoption of the Guidelines until the November 9, 1994, Town Council meeting to allow amendment under Class II, Permitted Activities Restoration Planting. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

B. Bid Award

Bid Award

1. Sealed Bid No. 95-001 - Printing of Fiscal Year 1994 Annual Report and Calendar for 1995.

Sealed Bid No. 95-001

Mr. Doney stated sealed bids were opened on October 5, 1994, for the printing of the Fiscal Year 1994 Annual Report and Calendar for 1995, and based on bids received, the staff recommends awarding the project to MDH Graphics of West Palm Beach for a total of $6,995. He said the budgeted amount for this project was reduced from $18,000 to $15,000, and some additional expenses will be incurred over the MDH Graphics bid. Mr. Doney said the Recreation Department had worked with the company previously and was satisfied with the quality of work.

Mrs. Royal asked Mr. Doney if the printing shop were union. Mr. Doney responded this was not a specification in the bid, and he did not have this information available.

Mr. Shaw asked Mr. Doney why the calendar was projected to have a five year life span as listed on the bid application?

Mr. Doney responded this was an estimate of how long the material itself would last.

Motion made by Mr. Shaw to approve Bid 95-001 for the printing of the Fiscal Year 1994 Annual Report and the Calendar for 1995. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 4/1 with Mrs. Royal casting a negative vote.

Mrs. Wiener, responding to Mr. Doney's question regarding any input from the Town Council members, stated any information included in the calendar should be Town related.

Mrs. Ann Herman addressed the Town Council and asked when the calendar would go to print and if any of the commissions could provide information for it?

Mrs. Wiener replied that staff makes the determination as to the information used in the calendar.

Mr. Crouse responded that the first draft is currently being prepared for the printer.

Mr. Doney said the anticipated distribution date to the public will be mid December.

Appointments

C. Appointments

Code Enforcement Board

1. Code Enforcement Board - One Three-Year Term to Fill Balance of Term to Expire April, 1995.

Motion made by Mr. Goldsmith to defer the appointment until the November 9, 1994, Town Council meeting to allow time for additional candidates to come forward. The motion was seconded by Mrs. Smith.

Mrs. Smith said the ordinance requires the appointee to be a general contractor to fill the vacancy, and this will need further input from staff.

On roll call, the motion carried unanimously.

Zoning Commission

2. Zoning Commission - One Three-Year Term to Fill Balance of Term to Expire February, 1996 and One Three-Year Term to Expire February, 1997.

Motion made by Mr. Goldsmith to defer this item to the November 9, 1994, Town Council meeting. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Other

D. Other

SFWM - test wells

1. Consideration of South Florida Water Management District's Offer to Drill Test Wells into the Florida Aquifer.

Mr. Doney said Mr. Dusey and Mr. Bowser will comment on the issue; however, a representative, John Lukasiewicz, Staff Hydrologist, was available to answer any questions the Town Council members had.

Mr. Dusey stated the Town received a letter in late August from South Florida Water Management District requesting the use of Town owned property to install three exploratory wells into the Florida aquifer. He said the wells would be approximately three hundred feet apart and each well would occupy an area approximately 200 feet by 200 feet. Mr. Dusey said the use of the wells would occupy a six to nine month period to obtain hydrogeologic information about the deep aquifers underlying the barrier island. He added the question before the Town Council is if the Council would like to hear from South Florida Water Management District to ascertain if the project is feasible from a quality stand point.

Mrs. Wiener stated the first order of business is to determine if the Council has any interest in this proposed project and hear from the representatives from South Florida Water Management if the Town Council expresses interest.

Mr. Dusey replied the representatives from South Florida Water Management were at the meeting on their own and not by invitation of the Town. He added the original intent was to present the subject to the Council.

Mr. Dusey stated the benefit to the Town would be if the Town was interested in an aquifer storage and recovery system and constructing a reverse osmosis system, then this well drilling project would save the Town approximately $500,000 that would have to be spent at that time. He added the primary benefit to the Town at this point in time is the good will built with South Florida Water Management.

Mrs. Wiener replied the purpose of the Town Council is to protect and take care of the Palm Beach residents and have their good will. She added the Town is not going in this particular direction at this time, and other barrier islands exist where this information may be obtained. Mrs. Wiener stated she saw nothing in the report that would make it proper or correct to put many of the Town residents in the situation where they are listening to terrible noise for months on end as well as the disruption of the aesthetics of Palm Beach.

Mrs. Smith stated it was intolerable to think that the residents of the Town would be submitted to drilling for nine months for rigs operating possibly thirty-six days in a row. She added the structures look like oil rigs.

Mrs. Smith made a motion that the request to drill for water in the Town of Palm Beach by South Florida Water Management be denied. The motion was seconded by Mr. Goldsmith.

Mrs. Wiener opened the issue for discussion.

Mr. Shaw questioned the long term benefit to the Town. He said the Town is looking for an alternative water supply, and if this proves to be a potential storage facility, then a long term gain for the Town is in order. He said the $500,000 could be a future saving, and he suggested the possibility the drilling site could be placed in the area where the old South Fire Station is located after it is removed. He added the primary issue is the noise and a large generator would be used. Mr. Shaw suggested Florida Power and Light could provide power to the site thus eliminating the need for a diesel generator thus eliminating the noise. He added he would like to know the maximum contribution South Florida Water Management would make to alleviate the burden on the Town.

Mrs. Wiener responded this is just not the type of program that the residents of the Town of Palm Beach should have to tolerate. She added she is inalterably opposed to this program.

Mrs. Royal asked that the representative from South Florida Water Management describe their experiences drilling in an urban site in Broward County. SWFM - test drills (cont'd)

Mrs. Wiener replied that if the majority of the Council does not want to move forward with the idea, a great deal of time should not be spent on the discussion of the project.

Mrs. Smith stated her negative response to the project was based on the information in the report submitted prior to the Town Council meeting, and the project is noisy, visible, disruptive, runs thirty-six hours at a time, will be in place for five years and the noise level from the various areas where drilling has taken place have been totally disruptive. She added Palm Beach is a residential community and this was the reason for her motion denying the project.

Mrs. Goldsmith said he agreed with Mrs. Smith and the entire project would be totally inappropriate to the living conditions of the residents of the affected area.

John Lukasiewicz, South Florida Water Management, addressed the Council and stated a project had been completed in Broward County along the C-13 Canal, and this project was surrounded by condominiums. He stated in the nine months the drilling lasted, no complaints were received concerning the noise; however, one resident did complain about the dust factor. He stated he did not want to misrepresent the facts, and the rig is noisy, obtrusive, and a certain amount of tolerance by the residents would be required. Mr. Lukasiewicz said that the rig would not run thirty-six days and nights, but as outlined in the letter, the rig would run thirty-six hours nonstop approximately once a month.

Mr. Lukasiewicz said sound barriers could be constructed to reduce the noise levels and the Florida Power and Light hook up could be substituted for the generator. He added very few of these types of projects are available for municipalities, and the Town of Palm Beach was chosen as a site for the project since the Town had explored alternative water sources and this project could provide basic information for an alternative source.

Mrs. Wiener said the Town has spent a great deal of money exploring these possibilities in the past.

Mrs. Royal asked, under the best possible scenario if the drilling were noiseless, painless and invisible, if the wells after five years of monitoring by South Florida Water Management would become the property of the Town of Palm Beach?

Mr. Lukasiewicz replied the ownership of the wells would have to be worked out with SFWM legal staff. He added the wells are approximately eight inches in diameter and yield 500 gallons per minute assuming that the well characteristics are similar.

Mayor Ilyinsky stated the Town of Palm Beach has been on the cutting edge of certain technologies such as the reef and other things, but to inflict this type of structure plus the noise and sound would be absolutely reprehensible. He added this cannot be done in Palm Beach, but he appreciated South Florida Water Management's offer. He said he would be absolutely staggered if the Town Council voted in favor of a project of this type.

On roll call, the motion carried 5/1 with Mr. Shaw casting a negative vote.

2. Consideration of General Liability Insurance on PEP Reef and Proposed Amendment to Contract. PEP Reef Insurance Contract

Mr. Doney stated Mrs. Martinuzzi's memorandum of October 7, 1994, recommended that the Construction Contract between the Town of Palm Beach and American Coastal Engineering, Inc. be amended to remove the extended insurance requirement form Article VII - Indemnification and the Town Manager be authorized to execute same.

Mrs. Martinuzzi said that during the month of August she read in a trade journal article that the insurance carrier that has been providing the general liability coverage on the P.E.P. reef for the Town of Palm Beach had gone out of business, and the Town was left virtually uninsured for its liability exposure on the reef. She stated she was unable to proceed to obtain coverage on the reef because of the existing contract the Town has with American Coastal Engineering, and that contract requires that American Coastal Engineering secure extended insurance coverage for a period of 36 months.

Mrs. Martinuzzi stated the Town can secure general liability coverage on the reef at their premium cost with substantially greater limits of liability. Mrs. Martinuzzi requested the Town Council authorize the Town Manager to execute an amendment to the contract between American Coastal Engineering and the Town of Palm Beach to remove the insurance requirement from the contract and allow the Town to secure coverage.

Mrs. Wiener asked Mrs. Martinuzzi if American Coastal Engineering advised the Town that the insurance they were contracted to procure for the Town and the Town was paying for had lapsed?

Mrs. Martinuzzi replied American Coastal Engineering had not notified the Town. She said she notified the broker and sent a copy to American Coastal Engineering, but did not receive any response that the broker was aware of the situation. She added the broker indicated they were not interested in pursuing a replacement at this time and wanted to wait until the December expiration.

Mrs. Wiener asked Mr. Randolph, if since American Coastal had a legal, contractual requirement with the Town, could a refund be requested from American Coastal Engineering?

Mr. Randolph replied the Town would have to prove that the Town did not have coverage for a period of time, and the Town would be entitled to a rebate for that period. He added this could be looked at.

Mrs. Wiener stated she had a problem with the fact the insurance company had the opportunity to secure insurance costing the Town money when the Town could have had better coverage for no cost.

PEP Reef (cont'd) (Insurance Contract)

Mr. Randolph replied, in retrospect, since the Town was paying for the liability coverage, the Town should have been able to choose the professional liability coverage.

Mrs. Smith asked Mrs. Martinuzzi if the liability coverage the Town could obtain thus saving $12,700 would be ample?

Mrs. Martinuzzi replied the policy provided by American Coastal Engineering was a $1,000,000 per occurrence policy, and the insurance brokers that the Town uses are capable and agreeable to absorbing the reef exposure within our existing package which has $10,000,000 per occurrence at no additional premium cost. She added the Town has excess insurance over and above the American Coastal policy, and since the P.E.P. reef is owned by the Town and is Town property, the broker was instructed by the Town to include excess coverage over and above the American Coastal policy. She added, although the contract with American Coastal required $1,000,00 per occurrence, the amount was insufficient to protect the Town from an insurance stand point. The Town's program had been providing excess coverage all along and essentially the carrier is dropping down to pick up the exposure that was previously provided by American Coastal.

Mr. Goldsmith said he remembered that Council had made an advance payment to the Reef people, and asked if the Town could recover any money?

Mrs. Wiener asked Mr. Randolph to address the issue.

Mr. Randolph said the Town must first determine if any loss has occurred to seek a rebate against the money. He added he was not sure that the Town suffered a loss, since the Town had an indication from a trade journal that something had happened to American Coastal and an indication from the Risk Manager that the coverage may not be good. He said he did not know if a statement had been made that the Town did not have coverage during that period of time. He stated the Town would have to make an indication that the Town suffered damages before a claim could be made. Mr. Randolph suggested the Town require a certificate of insurance for projects of this nature except the Town was paying for that with this project.

Mrs. Wiener replied there was not anything the Town was not paying for in this instance, and the Town has incurred a loss of the insurance money over a period of time.

Mr. Randolph said the possible loss of insurance money can be investigated; however, the contract does need to be amended and take out the provision that allows American Coastal to choose the insurance company.

Mr. Goldsmith asked Mr. Randolph if he could look into other payments and advances that were paid to American Coastal to see if there are any recourses against this contract.

Mr. Shaw asked if the policy could be cancelled now prior to the termination of the circumstances and have two months of premiums returned?

Mrs. Martinuzzi responded she had received unclear information from the broker representing this insurance carrier and the largest refund would be the pro rata balance of the policy term from August until December. She added she does not know if the company who purchased Anglo-American would honor the policy or honor the claims, and, unfortunately, this is a London syndicated market which means several companies are involved in the situation.

Mr. Shaw said if the Town's policies will cover the Town in the future and have covered the Town in the past, then a letter is needed from the existing carrier stating the Town is and was covered in the past. He added then the coverage could be cancelled in the current contract.

Mrs. Wiener replied a contract has been signed, and Mr. Randolph needs to make the determination on that issue.

Mr. Randolph stated he did not think it would be wise to cancel at this point until the amendment has been completed. He suggested that direction be given to the Risk Manager to obtain the needed coverage and then amend the contract once the coverage is obtained.

Mrs. Martinuzzi responded she did not think there is anything to cancel because the company is out of business and there is no policy. She added the unknown is the company who purchased Anglo-American and is a London market company. She said the company may or may not honor the American-Anglo policy, and she has been unable to obtain any responses from the broker after sending certified letters. Mrs. Martinuzzi said she does not recommend asking for a full refund from December 3 until August 11 because the Town has paid the premiums as specified by the contract. She added the Town was not instructed to obtain coverage at that time, and she suggested the period from August 11, 1994, until the end of the contract which is December 3, 1994, could be the period in which the Town is entitled to a refund.

Mrs. Martinuzzi said if a claim were filed for an incident that occurred four months ago, the existing carrier would provide coverage on an excess basis.

Mrs. Wiener said the issue was becoming over complicated, and the Town should take care of the existing insurance coverage and have Mr. Randolph address the question of recovering any part of the money paid for the coverage in question.

Motion made by Mrs. Smith to instruct the Risk Manager to obtain the necessary insurance for the Reef and to amend the present contract, removing the contractor's requirement to name the insurance broker. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Wiener asked Mr. Randolph to investigate the possibility of receiving a refund and convey the message to the company that the Town is displeased with the way the situation has been handled.

Mr. Randolph said he would send a proposed amendment to the contract and ask that the company execute the amendment and advise the company of the Town Council's response to having a lapse of coverage during a period of time, and the Town would like to discuss the satisfaction of that matter with them.

3. Consideration of Request by CoTran for Revised Routes Within the Town of Palm Beach.

CoTran - revised routes

Mr. Doney said CoTran sent a letter to the Town dated September 19, 1994, proposing to expand and revise the routes within the Town of Palm Beach. He said Mr. Jerry Brian, Manager of CoTran's Project Development, will present the request to the Town Council and to answer questions. Mr. Doney stated Police Chief Terlizzese had reviewed the proposed routes and had no objections. He added that Mr. Dusey reviewed the material which proposed increasing the frequency of service for the two existing routes in Town and adding a third route between West Palm Beach and Lake Worth Beach via A1A and did not foresee any problems concerning signage, weight restrictions or technical issues, but did suggested this is an opportunity to review the design of the routes.

Mr. Jerry Brian, Manager of Project Development for CoTran, addressed the Council and stated CoTran is in the process of expanding the transit system County wide with the passage of the 6¢ gas tax by the Board of County Commissioners of Palm Beach County. He said CoTran has conducted over 50 public meetings in the County in the last 6 months, and this proposed system will not start up until August, 1996. He stated the questions he has for the Town Council include the level of service from two to three routes and any suggestions the Council may have for the routes. Mr. Brian reported the new route will run from the downtown West Palm Beach area over to A1A, south to Lake Worth Beach, serving the Town of Palm Beach and the Town of South Palm Beach, and will operate from 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. Mr. Brian stated one small bus will operate on that route between those time periods, but the frequency has not been decided. Responding to questions from Mrs. Wiener, Mr. Brian stated, although the schedule for that route has not been established, he anticipated the bus would make hourly trips to Palm Beach.

Mrs. Wiener said the existing CoTran route to the north end of the island has a bus that makes a round trip to the island approximately two times per day, and this proposed third route projects a much busier bus schedule.

Mr. Brian replied he projects 2-3 trips in the morning and 2-3 trips in the afternoon.

Mrs. Wiener asked Mr. Brian if the Town Council could be assured that the trip frequency will not be any greater than stated?

Mr. Brian replied that is one of the reasons he was present at the meeting to determine the wishes of the Town Council.

Mrs. Smith asked when the schedule of the new route is in place have the areas to be used as bus stops been determined?

Mr. Brian replied a draft has been made showing the locations of the bus stops, but he did not bring that information to the meeting.

Mrs. Wiener said she assumed that Mr. Brian is working with the Town of Palm Beach Police Department to make sure that the bus stops are in appropriate places and will not be the causes of traffic problems. Mrs. Wiener requested that Major Croft of the Police Department could provide information.

Major Croft stated the Police Department attempted to obtain the schedule of the proposed bus stops and did not receive that information. Major Croft reported he had attempted to telephone for this information, but the information the Police Department did receive consisted of the current routes and the proposed routes.

Mr. Brian said he was not aware of contact from the Palm Beach Police Department requesting that information, but CoTran will work with them.

Mrs. Wiener stated she had a problem with CoTran because the Council did not know what they are proposing with the times and the locations of the bus stops. She added the Council cannot give a blanket okay on a project lacking that information.

Mr. Brian replied he will work out with the Police Department the location of the bus stops immediately.

Mrs. Smith stated the information given at the meeting is too open ended, and the transportation system is very important to the residents living in the south end of Palm Beach and the requested information is needed to assure that those residents are not disrupted. Mrs. Smith asked this project be deferred until CoTran works out the details with the Police Department.

Mr. Brian replied CoTran does have standards for the placement of bus stops assuring safety considerations, etc.

Mrs. Wiener stated the Town of Palm Beach makes the decision concerning the bus stops, and she told Mr. Brian to return to the November meeting with a definite schedule, after meeting with the Police Department, including how many times the bus will come across the bridge and go to the south end of Town and the schedule for the north end of Town.

Responding to a question from Mrs. Smith, Mr. Brian stated the signage will be worked out with the Town for the bus stops.

Mr. Shaw asked Mr. Brian to explain the difference between routes 41 and 42 as shown on the map presented to the Council by CoTran.

Mr. Brian replied that route 41 goes to Lake Worth Beach and route 42 goes to the inlet.

Mr. Shaw said he reads the map that all three routes will be traveling on South County between the two bridges. He requested CoTran's presentation at the November meeting include the times the three routes will be at specific locations during the route in Palm Beach.

Mr. Brian said CoTran has the routes planned and the service frequency planned.

Mrs. Royal asked Mr. Brian if the buses will stop on demand:

Mr. Brian responded the buses will stop on demand, but CoTran is desirous of having designated stops.

Mr. Randolph said the Town will make the determinations for the places the buses will be allowed to stop to receive or let off passengers.

Mr. Brian added the one route, route 43, will be running all day, and the other two routes will be running at peak hours.

Mr. Brian said the current bus fare is $1.00, and CoTran does not anticipate a fare increase.

Police Dept. Steps

4. Consideration of Police Department Steps - Proposed Tile for Step Risers by Preservation Foundation of Palm Beach, Inc. Mr. Doney said the issue has been considered by the Landmark Commission, and Town Council input is needed to proceed from this point.

Mr. Moore stated an offer was received from the Preservation Foundation to fund the tiling of the steps for the Police Facility. He added the re-working of the steps is necessary before the tiling is started and is included in the capital improvement program for this year. He added the problem is the selection of the tile to be used for steps, and the Landmarks Commission is the reviewing body, and they do not wish to select what they are to review. Mr. Moore requested the Town Council either appoint a person or group to select the tile.

Mrs. Wiener replied the Preservation Foundation should select the tile, make a couple of recommendations, and these should be presented to the Landmarks Commission. She added this project was very important to the late Barbara Hoffstot, and the Town Council is committed to seeing that her wishes are carried out. Mrs. Wiener said that Mrs. Hoffstot and she agreed that the steps needed to be corrected before the tile is installed.

Mr. Dusey said the Town budgeted sufficient funds to replace the front steps at the Police Department and the work will be completed in the summer of 1995.

Mrs. Smith said it was important to Mrs. Hoffstot that this be a Town project and school children and various organizations should be included as part of the renovation. She added it was appropriate that the Preservation Foundation select the tile.

Mrs. Polly Earl addressed the Town Council and stated the minutes of the April Town Council meeting directed the Landmarks Commission to proceed with the project. She added Mrs. Hoffstot was adamant that the Police Department was a Town building, and someone who represented the Town should select the tile. Mrs. Earl said the Preservation Foundation will select two tile choices and present them to the Landmarks Commission for approval.

Mrs. Jane Volk, Chairman of the Landmarks Commission, addressed the Town Council and stated when Mrs. Earl requested the Landmarks Commission make a decision concerning the tile, knowing that the Landmarks Commission is a review board, Mrs. Volk felt it would be better if the Preservation Foundation made the selection. Mrs. Volk added the Police Department stairs are an unfortunate part of the architecture of that building and applying tile to the risers simply pointed out that point unless the remodeling was accomplished before the tiling.

FL. League of Cities Annual Conference

5. Consideration of Florida League of Cities Annual Legislative Conference - November 17-18, 1994 in Orlando.

Mrs. Wiener asked the Town Council members who would like to attend the meeting?

Mr. Shaw responded he will be attending the meeting.

Mrs. Royal asked if Mr. Shaw could represent the Town of Palm Beach since he had made plans to attend the meeting?

Mrs. Wiener responded Mr. Shaw could represent the Town, and since no other Town Council members indicated they will attend the meeting, Mr. Shaw will be the one representing the Town.

Motion made by Mr. Goldsmith designating Mr. Shaw the voting member from the Town of Palm Beach attending the Florida League of Cities Annual Legislative Conference. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mr. Doney requested the Town Council authorize a representative to send letters or appear in Tallahassee if that should be necessary during the legislative session. He stated the representatives are usually the Town Council President and the Mayor.

Motion made by Mr. Goldsmith to approve the Mayor and the President of the Town Council to write letters on behalf of the Town regarding legislation coming out of the 1995 legislative session. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously. Mrs. Royal was not present for the vote.

Mr. Doney said from time to time legal assistance in Tallahassee may be necessary from Mr. Ron LaFace who is an attorney in Tallahassee, although nothing is planned at this time. He added it is important that the Town Attorney and the Town staff be able to contact Mr. LaFace and have him appear on behalf of the Town if the need should unexpectedly arise.

Motion made by Mr. Goldsmith to authorize the Town staff and the Town Attorney to approve Mr. Ron La Face as the Town's representative in Tallahassee to appear before the State Legislature if necessary. The motion was seconded by Mrs. Smith for purposes of discussion.

Mrs. Smith asked Mr. Doney the amount of money Mr. LaFace receives from the Town annually?

Mr. Doney replied that nothing was spent last year.

On roll call, the motion carried unanimously. Mrs. Royal was not present for the vote.

X. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR SEPTEMBER 1994. Approval of Warrants

Motion made by Mrs. Smith to approve the warrant list. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously. Mrs. Royal was not present for the vote.

XI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE.

There were no comments from citizens.

XII. DEVELOPMENT REVIEWS Development Reviews

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of September 28, 1994 - Excerpt Available in Town Manager's Office.

Motion made by Mr. Shaw to approve the Major Matters of the September 28, 1994, Architectural Commission. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously. Mrs. Royal was not present for the vote.

B. Variances, Special Exceptions and Site Plan Reviews.

Old Business Old Business

1. Variance No. 25-94 - Cathleen McFarlane, 456 and part of 458 Worth Avenue; applicant proposes to purchase a portion of 458 Worth Avenue creating a west side yard setback of 0 in lieu of 15' required. To allow the cubicle content to be 5.28 in lieu of 4.25 required, and to allow 8' high property line wall to match existing in lieu of 7' allowed. R-B District. Deferred from September Meeting. Var. 25-94

This item was deferred to the December 13, 1994, Town Council meeting.

2. Variance No. 26-94 - Stephen Myers, 460 and part of 458 Worth Avenue; applicant proposes to purchase a part of 458 Worth Avenue in adding this parcel to 460 Worth Avenue an angle of vision of 122 degrees in lieu of 100 degrees will be created. Additionally, applicant proposes to construct a guest house at a lot coverage of 43.4% in lieu of 30% maximum allowed with a cubic content of 7.45 in lieu of 4.5' allowed. To allow an 8' high property line wall to match existing in lieu of 7' allowed. R-B District. Deferred from September Meeting. Var. 26-94

This item was deferred to the December 13, 1994, Town Council meeting.

3. Special Exception No. 27-94 With Variance - John Serafini, Paramount, 139 North County Road; in conjunction with a proposed 2,000 square foot, 85-seat restaurant, to allow outdoor seating pursuant to section 6.61 of the Town Zoning Code, with a variance to the provisions prohibiting an increase in capacity. A variance to the required 23 parking spaces is requested. C-TS District. Deferred from September Meeting. Spec.Excep. 27-94

This item was withdrawn.

4. Special Exception No. 28-94 - Hals Realty Association, 401 South County Road; to allow a restaurant to occupy 6,500 square feet (only 4,000 square feet approved previously), and to allow off-street parking on another commercial site within 500 feet of the proposed restaurant. C-TS District. Deferred from September Meeting. Letter Dated October 5, 1994 from Peter S. Broberg Requesting Deferral to November Meeting. Spec. Excep. 28-94

This item was deferred to the November 9, 1994, Town Council meeting.

5. Consideration of Request for a One-Year Time Extension for Conditionally Approved Special Exception No. 23-93 - Hals Realty Associates, 401 South County Road - C-TS District. Letter Dated September 19, 1994 from Peter Broberg, Esquire. Spec.Excep. 23-93

Peter Broberg, Attorney for the applicant, requested a one year extension of the conditional approval and stated this is the first time an extension has been requested.

Mrs. Smith asked Mr. Broberg if any changes to the original approval are anticipated.

Mr. Broberg replied none are to be made.

Motion made by Mrs. Smith to grant the requested one year time extension for Special Exception Number 23-93. The motion was seconded by Mr. Shaw for purposes of discussion.

Mr. Shaw said he understood that no concrete plans have been made for the space.

Mr. Broberg replied definite plans have been made for the space.

Mr. Shaw stated it appeared that a special exception was granted for speculation rather than a concrete project.

Mayor Ilyinsky said the questions concerning speculation and the reasons why a project is delayed or changed are not the concerns of the Town Council, and the Council simply addressed the issue of the postponement.

On roll call, the motion carried unanimously.

New Business

Var. 45-94

New Business

6. Variance No. 45-94 - William Told Jr., 201 Bermuda Lane; to allow construction of a swimming pool providing an 8' west side yard setback, in lieu of 10' required. R-B District.

Betsy Burden, Attorney representing Mr. Told, addressed the Town Council and requested approval for the construction of a swimming pool extending two feet into the required ten foot setback on the side yard. Ms. Burden stated the survey, which she distributed to the Council, showed the configuration of the pool, and 201 Bermuda Lane is a corner lot thus requiring 25 foot set backs on two sides. She said the request for the lap pool meets all seven criteria for granting of a variance, and no neighbors have objections.

Mr. Moore stated the pool could be reduced in size; however, these requests for corner lots are usually for pools to be set in the street side yard set backs. He said this is a reverse where the pool is to be built on another portion of the property, but the staff has no other objections.

Mr. Shaw asked Mr. Moore if there is a standard size normally used for a lap pool?

Mr. Moore responded a lap pool could be 8 feet wide, 10 feet or even 12 feet, but there is no set dimension just that it be rectangular.

Ms. Burden said the location of an existing patio determined the proposed location of the pool, and several contractors recommended the proposed location.

Motion was made by Mrs. Smith to approve Variance Number 45-94. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 4/1 with Mr. Shaw casting a negative vote.

Var. 46-94

7. Variance No. 46-94 - Peyton Estate, 614 Tarpon Way; to allow construction of a single family residence on a lot 144.82 deep in lieu of 150' required. R-A District.

Alan Polinga, Attorney representing the Peyton Estate, requested a variance for the depth of the lot which is 144.82 feet deep. He stated the lot does meet the requirements for the square footage of the lot and the width. He said the shape of the lot bordering the Intercoastal Waterway determined the depth of the lot at that point.

Mr. Moore said the staff has no objections to the application, and, as stated, the Intercoastal Waterway precludes the owner from buying any additional land to add to the depth of the lot.

Mr. Randolph asked Mr. Moore if a house presently exists on the lot?

Mr. Moore responded there is a house on the lot.

Mrs. Smith asked Mr. Polinga if the plan is to demolish the existing residence and divide the existing one lot into two lots?

Mr. Polinga replied that is the plan, and the Architectural Commission approved the demolition of the existing house. He said the one acre lot when it is divided into two lots does not meet the minimum depth requirement, and showed a survey outlining the proposed two lots.

Mrs. Smith said since there is an existing residence on the property, she does not see evidence of a hardship.

Mr. Polinga replied that the property is unsaleable with the current house on it, and the property has been on the market since Mrs. Peyton's death. He said that one contract on the house stipulated that the demolition of the house be approved and the lot be subdivided into two buildable lots.

Mayor Ilyinsky asked Mr. Moore if the bulkhead were straight, and not curved, would a variance be needed?

Mr. Moore replied that is probably correct, and the length of the property is approximately 270 feet.

Mr. Polinga said that one of the lots will conform to the Zoning Code after the split, and one will not unless this variance is granted.

Mrs. Wiener asked Mr. Moore to confirm her statement that a hardship exists with the land due to the curve on the west border along the Intercoastal Waterway.

Mr. Moore replied the request lies with the depth of the property and that speaks for itself.

Motion made by Mr. Shaw to approve Variance Number 46-94. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried 3/2 with Mrs. Royal and Mrs. Smith casting negative votes.

Var. 47-94

8. Variance No. 47-94 - Peter Tigges, 800 South County Road; to allow construction of second story addition providing a 14' side yard setback in lieu of 15' required. R-A District.

Michael Johnson, Architect representing Mr. and Mrs. Peter Tigges, said the landmarked residence has a first floor elevation below 7.5 feet. He stated when the residence was remodeled six or seven years ago, there was evidence storm waters had risen five to six feet inside the house. Mr. Johnson stated the Tigges' wish to build an emergency generator at this time, and the most compatible location for the generator is a second floor addition above a utility building. He added the second floor would start at approximately eight feet, higher than previous flood waters had risen. Mr. Johnson said the utility building already has air conditioning units on top of it and although the space is very tight, he thought the emergency generator could be installed in that area. He added, since the home is landmarked, a structure would be built to encompass the generator and would compliment the existing structure.

Mr. Moore stated the staff had no objections to the project since they are requesting a minimum variance one foot into the set back area, and the building exists.

Mrs. Royal asked Mr. Moore if any of the neighbors objected to noise levels.

Mr. Johnson replied that one of the conditions regulating the installation of the generator is the requirement to meet the noise ordinance, and a sound enclosure will be constructed around the generator made out of vented concrete blocks. He added the baffle will be pointed toward South County Road, 250 feet away, and this area contains heavy landscaping. Mr. Johnson said the generator will be running only 15 to 20 minutes once a week.

Mr. Johnson said some landscaping and concrete would interfere with the removal of one foot from the building to comply with the Zoning Code.

Motion made by Mr. Shaw to approve Variance Number 47-94. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

9. Variance No. 48-94 - Oleda Casscells, 756 North Lake Way; to allow construction of a two-story guest house by enclosing existing carport and adding a second story addition on a 19,110 square foot lot in lieu of 20,000 square feet required, and providing a 8'8.5" side yard setback in lieu of 15' required. Said second-story structure would be built to a height of 36.98' above the street, in lieu of 26' maximum allowed. R-B District. Var. 48-94

Ron Kolins, Attorney representing Mrs. Casscells, said the Casscells need adequate living quarters for an assistant who will live behind the main house to help with the care of Dr. Casscells. He said Dr. Casscells is infirm and his various infirmities require virtually constant care beyond the ability of family members. Mr. Kolins said the main problem Dr. Casscells has is an orthopedic degeneration of the spine.

Mr. Kolins said the structure that is the focus of the proposed renovation is basically a carport with a bath in it; however, there is no driveway leading to the carport making it relatively worthless. He stated if the requested variance is approved, a second story would be added to the existing structure and provide an adequate facility for the live-in assistant. Mr. Kolins said the size of the existing structure is 18 feet by 12 feet. He added the lay of the land creates a hardship for any first floor addition.

Mr. Kolins said the rear elevation, facing the new residence Dr. Kantor is building, has a three foot high wall and a required six foot hedge will be higher than the wall obscuring the rear of the Casscells property with landscaping. Mr. Kolins said the impact will be zero on the neighbors.

Mr. Moore said the staff does not have an objection to the point of measurement, but would point out that the side yard variance being requested is next to the property owned by the City of West Palm Beach, the water storage area, and the variance for the square footage of the lot to allow the building of a second story addition is a very small request.

Mrs. Wiener requested clarification of the neighbors affected by the request for variances.

Mr. Moore replied Dr. Kantor would be the neighbor to the west, and there is no variance request for that area.

Mr. Shaw requested Mr. Kolins show the set back variance request on a plot plan presented by Mr. Kolins. He also asked Mr. Kolins to explain the configuration of the building since the first floor of the carport structure is within three to four feet of the property line.

Mr. Kolins said an existing two foot roof overhang will be removed on the west side, and a second floor addition will be added.

Mrs. Smith asked Mr. Kolins if a separate tea house stands on the property presently?

Mr. Kolins replied there is a gazebo structure on the property, but it is not usable as it is in a state of dramatic disrepair.

Mrs. Smith said the existing bathroom is located in the back of the open breezeway structure referred to by Mr. Kolins as a carport, and questioned the reason the gazebo structure was not shown on the site plan.

Mr. Kolins, pointing out the location of the gazebo on the over-all site plan, said, to his knowledge, that was the only item not included in the site plan.

Mrs. Royal asked Mr. Moore how many accessory structures are allowed on a 20,000 square foot lot?

Mr. Goldsmith asked Mr. Moore how many square feet did the house have plus the out buildings?

Mr. Moore responded there is no code restriction on the number of accessory buildings allowed on the lot; the principal structure and any number of accessory structures may be built as long as they conform to the zoning codes.

Mr. Zimmerman replied the overall square footage of the main house and accessory buildings is extremely low and falls well below the code requirements, falling in the area of 15%.

Mrs. Smith asked if the carport could be expanded as a one story structure and not have a second story addition?

Var. 48-94
(cont'd)

Mr. Kolins replied the land configuration prohibits that since the ground level drops off dramatically.

Mr. Goldsmith asked Mr. Kolins if the neighbors had any objections?

Mr. William Cudahy, 742 North Lake Way, addressed the Town Council and stated he is the neighbor directly to the south of the Casscells and highly approves of the proposed project. Mr. Cudahy said the landscape plan he presented at the meeting showed the heavy planting on Dr. Kantor's lot to the rear of the project. Mr. Cudahy noted the project will not be seen from Dr. Kantor's property since Dr. Kantor's project was approved with a deed restriction requiring the landscaping to be in place.

Mr. Goldsmith mentioned a nine page letter received from the neighbors, Richard and Isabel Furlaud, 745 Hi Mount Road, objecting to the project.

Peter Broberg, Attorney representing Dr. George Kantor, 765 Hi Mount Road, addressed the Town Council and stated Dr. Kantor objects to the project. Mr. Broberg said when this project was presented at a previous meeting, Mr. Moore stated his concern was that the application presumed the existing structure was a legitimate first story and the photographs presented at that meeting indicated it was not. Mr. Broberg said, regardless of how the package was presented, the request was for the same structure, and he said the photographs he presented to the Town Council showed the first story was not legitimate. He added any second story addition to the north of the structure will require that a very large tree will have to be removed.

Mr. Broberg said the current plan requests two additional feet into the set back than did the plan presented two months ago, and no variance is requested on the west side because the existing nonconformity is already five feet. He added the proposed second story addition would be built on a retaining wall that is two feet closer to Dr. Kantor's property.

Mrs. Wiener requested that Mr. Moore explain this situation.

Mr. Moore asked Mr. Broberg to point out this discrepancy on a site plan.

Mr. Broberg, using a site plan, said the roof overhang will be removed, the second story will be set back ten feet, but the wall on the first story will be built on the retaining wall, not the existing wall. He added this will move the structure closer to the west property line.

Mr. Kolins said Mr. Broberg was wrong, and the first floor wall will be built on the support wall of the existing structure.

Mrs. Wiener asked that Noe Guerra respond to the question of the change in numbers mentioned by Mr. Broberg.

Noe Guerra, Architect for the project, said the survey stated the side yard set back was 8.8 feet, not 10 feet as stated in the first presentation. He said nothing has been moved, but the numbers have been corrected.

Mrs. Wiener asked Mr. Broberg if he would accept those numbers?

Mr. Broberg replied that on the plan the wall shown is closer to Dr. Kantor's property, and he pointed out the box with an "X" in it denoted the supporting beam.

Mr. Moore stated, after looking at the survey, that the set back in question was ten feet.

Mr. Zimmerman said that the survey indicated 3.9 feet of set back from the west property line to the retaining wall of the property, and the cross sections prepared by Mr. Guerra show that number. He added a set back of 5.4 feet was noted from the property line to the area of the carport known as the bathroom.

Mr. Guerra, using the cross section drawing, said the dark line was the rear retaining wall, the red dash line was the existing roof over the covered breezeway, the existing enclosed area was shown beyond that, a second dash line was the west wall of the existing shower and this wall was set back 3'10" from the property line, and another existing wall was set back 5' from the property line. He added the proposed second floor wall is set back 10' from the property line.

Mrs. Wiener asked Mr. Moore if staff agrees with Mr. Guerra's numbers and representation?

Mr. Moore responded those numbers are reflected on the survey.

Mr. Shaw questioned the position of one wall which was the retaining wall.

Mr. Broberg said he heard nothing that indicted that something would not be built on top of the retaining wall and closer to Dr. Kantor's property than indicated.

Mr. Moore replied the retaining wall was actually shown under the overhang that will be removed on the site plan, and this was the point of confusion.

Mr. Broberg said that the zoning ordinance speaks to non conformities, and the intent of the code is to not to expand or intensity the non conformities. He added restoration can take place in non conforming uses, but the structure must be used as it was before. He said two sections of the code state the building must be used as it was before, and the carport was never habitable. Mr. Broberg stated the Casscells are attempting to enlarge and increase a non conforming use and trying to change the use. He added the code states a non conforming use is not to be encouraged.

Mr. Broberg stated the height of the proposed second story building would be 37 feet from the crown of the road to the ceiling of the second floor but 5.9 feet will be added for the roof, and the total height above the crown of the road will be 42.9 feet. He added a large Banyan tree occupies a large amount of canopy space in this area of the second floor addition, and the canopy will be destroyed that screens Dr. Kantor's property.

Mrs. Wiener ask Mr. Moore to address the issue of the second story addition.

Mr. Moore replied that the use is not non conforming but it is an existing accessory use in a residential property so the use of it is not non conforming. He added the structure is non conforming and the applicant is requesting variances to rebuild the structure. Var. 48-94 (cont'd)

Mr. Broberg said the second story is being moved closer to the north property line, building a wall on top of a retaining wall and building a structure 42 feet into the air, and it will impact on the light, air and foliage in the area. He added neighbors are very concerned about these factors, and he requested the Town Council consider their concerns. He stated no hardship has been shown since an accessory structure could be built in another area of the property.

Mr. Goldsmith asked if anything other than the foundation would be retained of the accessory building?

Mr. Moore responded that a structural analysis was completed by a registered Florida engineer, and the study stated a second floor could be added to the structure as it exists.

Mr. Kolins, responding to Mr. Broberg's objections, said he had attempted for thirty days to contact Mr. Broberg and the Furlaud's attorneys to discuss the issues and none of the parties would meet with Mr. Kolins. He added the reality is that neither of those neighbors will be impacted by the proposed project.

Mrs. Wiener requested that Mr. Kolins restrict his comments to the Casscells project only as each project stands on its own merits.

Mr. Kolins stated that Dr. Kantor's residence is situated to the north of the Casscells' property and the entire area along Dr. Kantor's east property line is required by the Town to be permanently buffered so nothing will be visible from Dr. Kantor's lot. He said the Furlaud's residence is situated to the southwest of the Casscells' and no part of the Furlaud's residence is visible from the Casscells' property, even at the highest point because of the existing foliage and the octagonal building on Dr. Kantor's property.

Mr. Kolins stated, replying to Mr. Broberg's points, that no further encroachment into the property lines on any side of the structure will be made; only the lines of the existing structure will be used. He added by removing a portion of the overhanging roof on both the north and west sides of the structure, the encroachment is lessened. Mr. Kolins stated a copy of the structural engineer's report is available for anyone to read and confirms the structural integrity of the building for the second floor addition. Mr. Kolins said the Banyan tree will not be cut down, and only one limb of the tree will be taken off. He stated a landscape architect inspected the tree, and he submitted a signed report stating the Banyan tree will not be endangered as a result of the proposed pruning. Mr. Kolins stated only Section 8.21 of the Zoning Code applies to this structure, and that section states the land area that the structure covers cannot be increased. He added this building's footprint will not be enlarged.

Mr. Kolins said the height of the building is 42.9 feet to the top of the roof, and this was stated on the application. He said there are two methods used to measure height variations in the Town of Palm Beach, and the code requires a maximum of 25 feet from the crown of the road to the top of the top floor. He added the second method used is from the crown of the road to the top of the roof, and the code allows 35 feet and the request for this variance is 42.9 feet. He said the lay of the land required this variance, and Dr. Kantor received a height variance for the very same reasons.

Mr. Kolins summarized that the staff fully understands the situation, and the variances requested will improve the property. He added no property owner will be impacted, and the variances would assist the family in the care of Dr. Casscells.

Mr. Broberg asked President Wiener if Dr. Kantor, who recently arrived at the meeting, could address the Council.

Mrs. Wiener replied Dr. Kantor could summarize his remarks and not repeat any of the information already presented.

Dr. George Kantor addressed the Town Council and stated he had not requested any set back variances for his residence currently under construction, and Mrs. Casscells opposed everything, including the design of the residence, that Dr. Kantor proposed. Dr. Kantor said he had gone to great lengths to save all the trees on his property and any addition on the Casscells' property would require that trees be taken down. He added he had no problems with the height of the addition, but the set back requirements were grandfathered in. He said the three feet from the property line does not allow for the installation of vegetation to screen the structure.

Mrs. Wiener replied that each individual application is considered separately, and Dr. Kantor's application was considered on an individual basis. Mrs. Wiener said it was unfortunate that the two neighbors who are obviously feuding, have two projects that require Town Council action in a short period of time, but the cases are not related to each other and the merits of each case are considered.

Mr. Moore stated the three feet between the Casscells' structure and the property line could be planted unless rock exists below the area. He added each property has to stand on its own merit as far as the buffer requirement is concerned.

Mr. Guerra stated there is enough existing top soil to plant a hedge along the property line between the Casscells and Dr. Kantor.

Mr. Kolins offered to have a buffer included as a requirement if an approval was granted.

Mrs. Wiener asked that each of the three requests for variances be considered one at a time.

Mrs. Royal asked Mr. Kolins the number of square feet in the main residence? Mr. Kolins replied approximately 3,000 square feet. She asked if the guest house for a live in companion would be half the size of the main residence? Mr. Kolins replied the main residence cannot accommodate a live in person, and the guest house would contain approximately 738 square feet.

Mr. Shaw stated he understood the intent of the two story structure with two bathrooms was to be used as a companion - care taker facility, but he questioned what is being built. He said if some of the footage were removed on the second floor which is 14 feet deep, the second floor could comply with the set back requirement.

Var. 48-94 (cont'd)

Mr. Kolins replied the sizes of the rooms were modest and the configuration of the building would be awkward if that suggestion were followed.

Mrs. Smith asked if the existing 12' x 18' structure could be reduced by 5' to comply with the set back regulations? She said the site plan showed the enclosure of an existing opening along the wall. Mrs. Smith suggested that an area planned for the stairway to the second floor could be utilized with an addition to the east of the first floor area and a second floor addition would not be necessary.

Mr. Guerra replied that the existing electrical panels and electrical room located in the first floor area precluded using that space for living area.

Mr. Moore said that the existing set backs on the first floor, as shown on the survey, are 5'9" and 3'9".

Mr. Kolins stated that a pool deck existed from the eastern most part of the building to the retaining wall, and this would interfere with any first floor addition.

Mrs. Smith said she attempted to make the addition conforming by these suggestions.

Mrs. Wiener requested that the items be considered one at a time.

Motion made by Mr. Shaw to approve Variance Number 48-94 to allow construction of a two-story accessory building on a 19,110 square foot lot in lieu of 20,000 square feet as required. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to approve Variance Number 48-94 to allow height of 36.98 feet requested in lieu of the 26 feet maximum allowed from the crown of the road. The motion was seconded by Mrs. Royal for discussion purposes.

Mrs. Royal asked Mr. Moore to explain the height of 42.9 feet that was stated to be the total height?

Mr. Moore replied the 42.9 feet is measured to the top of the roof and the 36.98 feet is measured to the top of the second floor beam. He said the proposed addition would be higher than the one story accessory structure on Dr. Kantor's property.

On roll call, the motion failed 4/1 with Mrs. Smith, Mrs. Royal, Mr. Goldsmith and Mrs. Wiener casting negative votes.

Motion was made by Mr. Shaw to deny Variance Number 48-94 requiring a 15 yard set back and requesting a 8'8.5 " set back. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Var. 49-94

10. Variance No. 49-94 - Gruntal & Company, 120 North County Road; to allow installation of a .75 meter (approximately 30") satellite dish on the roof which is prohibited by Section 5.51(f) of the Town Zoning Code. C-TS District.

Mr. Vic Risso, representing United Service Company, the installers of the satellite dishes, stated this dish would not be visible from North County Road. He said the dish would be set back on the roof.

Mr. Moore said the staff had no objections as long as the dish was sight screened and not visible from the street. He added an existing dish on the roof belongs to Gruntal and this is a second dish.

Motion made by Mrs. Smith to approve Variance Number 49-94. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Var. 50-94

11. Variance No. 50-94 - Blossom Estate, LTD., 10 Blossom Way; to allow the newly constructed wall along Ocean Boulevard to remain at 7.7' to 8.7' above the crown of the road and not 6' above the crown of the road as required. R-AA District.

Mr. David Shaw, Attorney representing The Blossom Estate Ltd., stated George Straub and his wife plan to move into the house that is currently under construction at this location upon its completion. Mr. Shaw apologized for the existence of the wall, and he said a letter from the contractor assumed the responsibility of constructing the wall to its present height. He said the contractor built the wall six feet from the grade and not six feet from the crown of the road. He added the property goes downhill from north to south, the grade stays the same and the crown of the road follows the property.

Mr. Shaw stated the wall, on the west edge of the property, serves as a buffer for the tennis court, and the tennis court will be adequately landscaped inside the wall. Mr. Shaw offered to enter into a recorded agreement with the Town requiring the hedge level to be maintained so that the wall is invisible in perpetuity.

Mr. Shaw said the neighbor to the west, Mr. Edwards, 1275 South Ocean Boulevard, supported the variance application and suggested the hedge be planted on the exterior, the west side, of the wall. Mr. Shaw stated the hedge has already been planted on the exterior side of the wall and will be maintained.

Mr. Moore said that staff concluded this was an honest construction error; it was not done intentionally, and other walls exceed the height of this particular wall in the area.

Mr. Shaw asked if the wall were encroaching on the right-of-way?

Mr. Moore replied that it does not encroach on the right-of-way, and one of the requirements of the variance received for the construction of the tennis court was that it be site screened from South Ocean Boulevard.

Motion made by Mrs. Smith to approve Variance Number 50-94 on the basis that it was an honest construction error. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

12. Variance No. 51-94 - Patterson Swanson I Corp., 560 South Ocean Boulevard; to allow construction of a two-story residence with the point of height measurement being elevation 21.5 feet in lieu of 15.12 feet (crown of Ocean Boulevard), and further, to allow residence to be built at a height of 30' in lieu of 25' maximum allowed; to allow construction of an accessory structure with the point of height measurement being elevation 14.5 feet in lieu of 11.11 feet (crown of Middle Road). R-A District. Var. 51-94

Mr. Carlos Martin, representing Patterson Swanson I Corporation, stated the applicant wishes to construct a two story residence on the lot. He said the first floor elevation would be 21.5 feet which is the same established height of the old residence which was demolished. He added the property has natural contours ranging from 41 feet at South Ocean Boulevard, and the existing grades throughout the property range from 18 to 20 feet, higher than the crown of the roads.

Mr. Martin stated the adjacent residences have finished floor elevations ranging from 21'6" to 24'2" and showed cross sections of the structures with the different heights to the north and south and to the east and west. He said the contours of the new driveway will be the same as the previous residence and the property extends from Middle Road to South Ocean Boulevard.

Mr. Martin said the hardship for the variance is the topography of the land.

Mr. Moore said the staff reviewed the variance and identified two variance requests: one for the excessive height over the crown of Middle Road and one for the excessive height over the crown of the road on South Ocean Boulevard. He said this is not a typical variance request, and the proposed residence will be 4 to 5 feet higher than the neighbors' residences. He stated the staff does not consider this variance request appropriate and other residences in the neighborhood have been built without seeking variances.

Mrs. Royal asked what the square footage of the proposed residence would be?

Mr. Martin replied the house would have approximately 10,000 square feet and the guest house would have 700 - 800 square feet. He said the house that was demolished had approximately 10,000 to 12,000 square feet. He added the height of the previous residence was lower than the proposed new one.

Mr. Moore said a possible compromise could be the new residence would not exceed the beam height of the two homes, exclusive of the tower on the north side, to the houses on either side of the new residence.

Mrs. Wiener said the Town expects when a new residence is constructed on a property where an existing residence was demolished, that the new residence will meet the codes.

Mrs. Smith stated she did not understand why a residence was demolished and variances are requested to construct a new residence. She added she did not see any hardship nor any reason to grant variances.

Motion was made by Mrs. Smith to deny Variance Number 51-94. The motion was seconded by Mrs. Royal.

Mr. Martin said the previous residence was actually 28 feet high.

Mrs. Wiener replied that if the new residence cannot conform to codes, the Town expected the old residence, although it may have not conformed to codes, would have been remodeled or repaired and not demolished.

Mayor Ilyinsky asked if the project could be deferred?

Mrs. Wiener replied a motion and a second have already been made.

On roll call, the motion carried 3/1 with Mr. Shaw casting a negative vote. Mr. Goldsmith excused himself from voting, because he had long discussions concerning this project before his appointment to the Council.

Mr. Randolph said if Mr. Goldsmith had ex parte communications which in any way prejudiced his vote at this meeting, then Mr. Goldsmith could declare a conflict of interest on this item. He said this is not the standard conflict of interest based on financial consideration but Mr. Goldsmith had ex parte communications before his Council appointment, and it is a legitimate conflict.

Mr. Goldsmith declared a conflict of interest, and a form is on file in the Town Clerk's office.

13. Variance No. 52-94 - Susan Polan, 249 South Woods Road; to allow construction of an addition providing a 10.05' side yard setback in lieu of 15' required. R-B District Var. 52-94

Mack Guerra, representing Susan Polan, requested a variance for 10.05 feet in lieu of the required 15 feet. He stated the reason for the request was to allow the expansion of the master bedroom. He said another part of the house had a 10.05 foot side yard set back, and the request is consistent with other residences in the neighborhood.

Mr. Moore stated the proposed addition is in line with the existing construction, and the staff has no objection.

Motion made by Mr. Shaw to approve Variance Number 52-94. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Var. 53-94

14. Variance No. 53-94 - Gunster, Yoakley & Stewart, P.A., 333 South County Road; to allow occupancy of the first floor for law offices in lieu of second floor as required, and allow occupancy of 2,847 square feet thereby exceeding the 2,000 maximum allowed. C-TS District.

Kenneth Beall, representing Gunster, Yoakley & Stewart, addressed the Town Council and introduced Jim Brindell. He stated Mr. Brindell and he represented the owner of the property, Mero Susnar, in addition to the law firm. He said the law firm would like to re-open a law firm in the Town of Palm Beach.

Mr. Moore stated the staff does not see an existing hardship for a location variance and there are no special circumstances for the use, and it conflicts with the zoning ordinance. He said these were the views of the planning position, and the hardship issue must be addressed by the Building Department, and the Special Exception must demonstrate that it is town-serving. Mr. Moore said the use of the first floor for a law firm conflicts with the zoning requirement that these types of offices be above the first floor. He asked that Mr. Beall and Mr. Brindell demonstrate the uniqueness of their hardship request.

Mr. Brindell stated the hardship is due to the physical situation that exists along South County Road, and the location of the property in the area of the Town hall, the police station and the post office lends itself to functions related to those buildings. He added the space has been difficult to lease since most retail tenants want to be with other retail operations and not in that particular location. Mr. Brindell stated the hardship is due to the lack of pedestrian traffic that would normally support retail activities.

Mr. Moore replied that Mr. Brindell addressed the issue of the destination vs. strolling hardship, and if retail does not exist in the immediate area, as in this case, the hardship as expressed by Mr. Brindell could be considered in the request for a variance.

Mrs. Royal said, after speaking to several realtors who lease commercial space, there is 60,000 to 70,000 square feet of office space in the Town of Palm Beach presently. She asked Mr. Brindell why this particular location was chosen when other spaces may have been open and needed no variances?

Mr. Beall replied the firm had looked in the area for office space and this space suited their needs. He said the firm plans to keep three lawyers in the Palm Beach office which also has plenty of parking space, and the bulk of the office staff will be in West Palm Beach.

Mr. Randolph stated the law firm is requesting a variance and a special exception, and the Town Council needs to have evidence presented relating to the town-serving nature of the law firm. He said that the applicant has provided information for the variance due to the unique nature of the property, but the town-serving evidence was not provided.

Mrs. Wiener asked Mr. Beall and Mr. Brindell why the firm wished to be located on the first floor of a building, knowing the Town has this zoning requirement and other property exists in Town that could be leased?

Mr. Beall replied the location is convenient, near other commercial institutions and is an attractive building.

Mrs. Smith stated she had a problem with approving the location because of the volume of side walk traffic in a historic district and another type of tenant may be suited to the area.

Mr. Beall stated the main function of the practice of the firm in this location would be estate planning and real estate.

Mrs. Smith stated this would set a terrible precedent with the introduction of a law firm into an area where the ordinance was written specifically calling for retail space, and it is in the Town Hall Historic District.

Mr. Beall replied a law firm would relate well to the public civic activities in the area including Town Hall, the Police facility and the Post Office. He added, given the parameters of the area, this space is no longer a very desirable retail space, and this should be considered.

Mrs. Wiener said her concern is that the sign on the building will infer that particular firm has special privileges.

Mr. Moore replied Mrs. Wiener's concerns are part of the issue, but the variance request may be considered before the special exception is addressed.

Mr. Beall responded the law firm does not wish to have a large sign to call attention to the firm. He added a law firm presently exists directly across the street from Town Hall with a first floor location.

Mr. Shaw said the issue is whether or not the Town Council wishes to grant the variance and the law firm has not provided proof that space is imperative to the success of the firm's Palm Beach office in lieu of another or other locations. He stated the variance does not conform to the zoning. Mr. Shaw made a motion to deny Variance Number 53-94 to allow occupancy of the first floor for law offices in lieu of the second floor as required. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Spec. Excep. 29-94

15. Special Exception No. 29-94 - George Kantor, 765 Hi-Mount Road; to allow installation of a kitchen in an accessory structure per Section 5.51(b)(5) of the Town Zoning Code. R-B District.

Peter Broberg, Attorney representing Dr. George Kantor, addressed the Town Council and requested a special exception to install a kitchen in a garage apartment. Mr. Broberg stated there would be no paying guests, and only family members will use the facility. He offered to enter any agreement the Town wishes.

Mrs. Wiener asked if Dr. Kantor would provide the usual written agreements the Town requires?

Mr. Broberg responded he would.

Mrs. Smith stated Dr. Kantor has returned to the Town Council more than once requesting variances or special exceptions. She asked Mr. Broberg if the issue of a kitchen was forgotten in one of the previous appearances?

Mr. Broberg replied the kitchen has been planned for a few months but is being presented at this meeting. He added the kitchen is in the garage apartment and not the landmarked octagonal building.

Mrs. Royal asked if any of the neighbors had objections?

Mr. Moore replied the standard agreement required by the Town would allow any family members to use the kitchen in the garage apartment and any employees of Dr. Kantor.

Motion made by Mrs. Smith to approve Special Exception 29-94 with the Standard Kitchen Agreement. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

16. Special Exception No. 30-94 - Gray's Mobil Station, 340 South County Road; to allow modification to a special exception use by converting a portion of the building to a convenience store. C-TS District. Spec. Excep. 30-94

Mr. Ames Bennett, Architect representing Mr. Gray, stated nothing would be added to the structure or the roof. He said one of the four bays would be closed in to enlarge the store area for use as a convenience store with a delicatessen.

Mrs. Wiener asked if any other modifications would be done to the station?

Mr. Bennett said the mechanical work that is currently conducted in the front of the building will be moved to the rear of the building, and the customers of the convenience store will park in the front. He added the parking of cars in the rear would not encroach on the set back area.

Motion was made by Mrs. Smith to approve Special Exception 30-94. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

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

Mr. Moore stated this is a renewal of an existing kitchen, but no one was present to represent the applicant. Mr. Moore said 217 Clarke Avenue has a new owner and that owner must apply to Town Council to retain the existing kitchen in the guest house. He said he would contact Lawrence Cummings and have someone appear at the November 9, 1994, Town Council meeting.

Mrs. Smith asked that Special Exception No. 31-94 be deferred until the end of the agenda.

18. Special Exception No. 32-94 - Citicorp Trust N.A., 400 Royal Palm Way; to allow Citicorp Trust to relocate to 6,556 square feet of the third floor of 400 Royal Palm Way abandoning the 4,263 square feet presently occupied at 140 Royal Palm Way. A Variance to the parking requirement of 32.7 parking spaces is requested; applicant will provide 26.2 parking parking spaces. C-OPI District. Spec. Excep. 32-94

Mr. Bill O'Day, President of Citicorp Trust, addressed the Town Council and stated the Citicorp Trust Company celebrated its tenth anniversary in the Town last April. He said ten years ago the company employed five people and today they employ nineteen utilizing the same space. He added the space is over crowded and they wish to relocate to a third floor location. Mr. O'Day said the trust business does not require a ground floor location.

Mr. Paul Prosperi, Attorney representing Citicorp Trust, said this is in the C-OPI district. Mr. Prosperi said a survey had been conducted that showed very few of the trust customers actually visit the site, and parking spaces would always be available for visitors.

Mr. Moore said the parking issue was addressed by Mr. Prosperi, and the town-serving annual statement should be filed. He added the Town staff had no objections.

Motion made by Mrs. Smith to approve Special Exception 32-94. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Randolph reminded President Wiener that the variance for Citicorp had to be voted on separately.

Motion made by Mrs. Smith to approve Variance 32-94. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

XIII. ANY OTHER MATTERS Any Other Matters

Mr. Doney said the September 13, 1994 minutes, page 23, a statement at the bottom of the page stated, "Mrs. Royal asked the Finance Committee the next time it meets to look at the possibility of invading the funds raised by the Golf Course and transferring those funds to the General Fund. Statements made in TC Minutes of 9-13-94

Mrs. Wiener stated this was a violation of the State statutes because this was a chartered amendment and they cannot be changed. Mrs. Wiener said all the Town Council members had voted on these rates and this was the reason the resolution was drawn up."

He said Mrs. Royal had questioned the accuracy of the first sentence of the preceding paragraph. Mr. Doney said he conferred with Mrs. Wiener, and the statement was recorded correctly but the statement was not accurate. He stated the Town's records should be noted accordingly.

Statements made in TC Minutes of 9-13-94 (cont'd)

Mrs. Wiener asked for Mr. Randolph's comments on the issue.

Mr. Randolph said the minutes speak for themselves and are a reflection of what was said at a meeting, if indeed that statement was said, there would be no correction to the minutes. He added if the attempt is to clarify a statement that was made in the past by someone, the Town Council has the right to do that. He said the question becomes if a clarification is going to be done every time a statement is made by someone and that statement is researched to see if it is factual.

Mrs. Smith said the Town Council does not correct misinformation, and the minutes stand the way they are. She added the minutes should not be corrected.

Mr. Randolph replied the minutes reflect what was said, and the question is if the Council wishes to make a record of a misstatement in a previous set of minutes.

Mr. Doney responded his intention was to correct the Town records not the minutes.

Mr. Randolph stated the issue is the importance of a misstatement at a previous meeting and if a clarification should be made at a later meeting.

Mrs. Wiener commented that in the seven year period she has served on the Town Council, she has heard a great deal of mis- information, but nothing has been done about that.

Mrs. Royal said she had requested Mr. Doney look into the matter and her intention was the Town take an action that, by Mrs. Wiener's remarks, would have been a violation of State statutes. Mrs. Royal said the action she suggested would not have been a violation of State statutes, and therefore she wanted it corrected.

Mr. Randolph stated that the minutes of this meeting, without the Town Council taking any action, will reflect the discussion regarding this issue that a misstatement was made concerning the green fees at the Par 3 Golf Course. Mr. Randolph said no action is necessary as this discussion will become part of the minutes.

Mrs. Royal added if she had not brought this issue to the attention of the Town Council, it would have never have been brought up again.

Mrs. Smith said no one was pointing a finger that this was a major crisis, and the issue is resolved.

Boat Parade

Mayor Ilyinsky reported that West Palm Beach is reinstituting the annual boat parade, and this event is enjoyed by many of the Town's residents. He added that West Palm Beach requested that the Town of Palm Beach participate, either monetarily or in other ways, in this event. Mayor Ilyinsky suggested the Town may wish to do small things to show good will.

Mrs. Wiener replied that part of the 25% surcharge that West Palm Beach receives on the water bills could be allocated to the boat show.

Island Publishing Co.

Mr. Shaw reported that correspondence was received from Island Publishing Company who plans to distribute, free of charge, a directory to all Palm Beach residents and businesses, and the company requested a Palm Beach photograph be included in the publication.

Mrs. Wiener replied that this issue was handled administratively.

Adjournment

XIV. ADJOURNMENT - The meeting was adjourned at 4:20 p.m.

PREPARED BY MARY A. POLLITT
DEPUTY TOWN CLERK