MINUTES OF TOWN COUNCIL MEETING
HELD ON OCTOBER 10, 1995

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order by President Smith at 9:30 A.M. on October 10, 1995 in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald, Councilmen Leslie Shaw, Sam McLendon, and Allen Wyett. Also attending were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director Marie Crozier. Assistant to the Finance Director Cheryl Somers, Director of Public Works Albert Dusey, Town Engineer James Bowser, Director of Planning, Zoning and Building Robert Moore, Fire Chief Vincent Elmore, Police Department Major Michael Reiter, Parking Control Manager Henry Marchman, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: The invocation was given by Dr. Kirkman from Royal Poinciana Chapel. The Pledge of Allegiance was led by President Smith.

III. PRESENTATIONS

A. Retirement of Walter Allison, Equipment Operator I/Streets, Public Works Department - 14 Years and 9 Months
A plaque was presented to Mr. Allison.

IV. COMMENTS OF THE MAYOR

It's that time of year again. Construction activity is occurring at a feverish pace all over Town. And this year, as I don't need to tell anyone, you can add the State's major restoration of the Southern Boulevard and Flagler Memorial Bridges. All of this adds up to a colossal inconvenience for this Town's residents and visitors.

I want to take just a moment to encourage everyone to remain patient as these important projects are completed. Please remember how hard the Town fought to keep the existing historic Intracoastal bridges rather than have giant new ones built to replace them; with that victory came the knowledge that major rehabilitation of the existing bridges would be needed. At the Mid-Town Beach area there is noise and visual disruption which will continue into the Season; but the end result will be the storm protection provided by a 100-foot-wide beach, stabilized by groins. In some neighborhoods, streets are completely torn up and daily life has been totally disrupted; but when these projects are done they will leave behind brand new streets with brand new water lines, sewer lines, etc. Such a project is undertaken on each street only about once every 50 years.

Also, all of this year's projects have had to overcome one of the rainiest summers in history, not to mention close calls from several hurricanes and a direct hit from Tropical Storm Jerry. I find it remarkable that they are not further behind.

So, please bear with the noise, mess, and inconvenience a little while longer. Remember that to maintain the Palm Beach quality of life we all cherish, we have to keep inventing in our infrastructure. And, to keep the Season free of such intrusions, we don't allow this type of work between December 1st and May 1st, so the summer and autumn months are particularly busy for the construction crews. Most of all, please remember that in exchange for this temporary disruption, we receive long-term improvements that hopefully help keep this Town the way all of you want it.

V. APPROVAL OF AGENDA

REGULAR AGENDA

Mrs. Smith added Architectural Committee (ARCOM) Review of Property to be put on the Agenda. Mr. Shaw made a motion to add ARCOM to the Agenda. Seconded by Mr. Wyett. On roll call the motion carried unanimously. This was added on page 8, under Development Review, Other D. 2.

Mr. Shaw made a motion that a Public Safety Meeting be held to discuss alternatives to traffic plans in the Town, at the end of the Water Meeting scheduled for October 11, 1995. Seconded by Mr. Wyett. On roll call the motion carried unanimously. This was added under New Business Other D.9.

Mr. Wyett made a motion to add reconsideration of previous Council approval of Special Exception 13-94, dated May 10, 1994 to the Agenda. Seconded by Mr. Shaw. On roll call the motion carried unanimously. This was added under New Business Other D. 10.

Mr. Wyett made a motion to amend the 6' limit on statues on private property to 10'. Seconded by Mr. McDonald. On roll call the motion carried unanimously. This would be considered under Zoning Matters.

Item XIV. C. 3. - Request for deferral to November 14, 1995. Mr. Shaw made a motion to defer this item to the November meeting. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

Item XIV C. 4. - Request for Withdrawal. Mr. Wyett made a motion to allow the applicant of Variance No. 31-95 to withdraw the request. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

Item XIV C. 5. - Request for Withdrawal of Variance 35-95. Mr. Shaw made a motion to allow the applicant to withdraw the request. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Item XIV C.6. - Request for deferral of Variance No. 42-95. Mr. Shaw made a motion to defer this item until the November 14, 1995 Town Council Meeting. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Item XIV C.8. - Request for withdrawal of Variance No. 48-95. Mr. Wyett made a motion to approval of withdrawal of Variance No. 48-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

Item XIV C.13. - Request for deferral of Special Exception No. 22-95 with Variance. Mr. Shaw made a motion to defer this item to the November 14, 1995 Town Council Meeting. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mrs. Smith stated that a letter had been received from Temple Emanuel asking to be heard. Mr. Wyett made a motion to add this item to the Agenda under New Business Other D. 3. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Wyett made a motion to approve the Agenda as amended. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

APPROVED AGENDA (ITEMS VI. THROUGH VIII.)

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

Mr. Wyett made a motion to approve the Approved Agenda. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

VI. APPROVAL OF MINUTES OF SEPTEMBER 6 AND 12, 1995

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. American Heart Association; No. 6-96
2. Leukemia Society of America, Palm Beach Area Chapter; No. 39-96
3. Visiting Nurse Association of Palm Beach County, Inc.; No. 166-96
4. The Joseph L. Morse Geriatric Center; No. 248-96
5. Simon Wiesenthal Center; No. 264-96
6. Food Relief International; No. 272-96
7. Dana-Farber, Inc.; No. 288-96
8. Hope House of the Palm Beaches, Inc.; No. 297-96
9. Adam Walsh Children's Fund; No. 314-96
10. YWCA of Palm Beach County, Florida, Inc.; No. 325-96
11. Center for Children in Crisis; No. 341-96
12. Sculpture Theatre; No. 356-96
13. South Florida Science Museum; No. 359-96

14. Boca Raton Museum of Art; No. 395-96

Other - Failure to File Results Within Prescribed Time - Administrative Processing Fee of $25 Paid

1. March of Dimes Birth Defects Foundation; No. 12-96

B. Beverage Licenses

1. Application for a Transfer of a 4COP-SRX Alcoholic Beverage License by Mr. Kevin Gerard Bogin/KDMB, Inc. for Olde Town Tavern at 160 Royal Palm Way

2. Application for a Transfer of a 4COP-SRX Alcoholic Beverage License by A. Howard Holder and Peter Beck for The Poinciana Club, Inc. at 70 Royal Poinciana Plaza

VIII. NEW BUSINESS

B. Other

1. Consideration of Amendment No. 4 to Tri-Party Agreement Between the Town, FDEP, and the University of Florida (Formerly for Mid-Town PEP Reef Monitoring; Now for Mid-Town Beach Restoration Project Monitoring)

IX. LICENSES AND PERMITS - None

X. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 23-95 - Amending Section 20-1, Regarding Filing of Plats and Replats -

Mr. Randolph read Ordinance 23-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 20 OF THE TOWN CODE OF ORDINANCES RELATING TO SUBDIVISION, AT SECTION 20-1, FILING OF PLAT AND REPLATS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 23-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

B. Other

1.Consideration of Phipps Ocean Park Hourly Parking Meter Rates

Mrs. Marie Crozier, Finance Director, addressed the Town Council, stating that she had recommended that Phipps Ocean Park meter rates be changed back to $.75 per hour.

Mr. Doney commented that the Town Council and Mayor had asked the Board of County Commissioners to increase the fee at Kreusler Park from $.75 to $1.00 and it had been refused. He stated that revenue had declined over a period of months, and Mrs. Crozier had identified that in her October 5, 1995 memorandum, and that he believed it would result in an increase in revenue. Mr. Doney said that this would be monitored on a continuing basis, and would be reported back to the Town Council.

Mrs. Smith said that the Council would like a report back one year from now.

Mrs. Crozier stated that she would be back to report in one year, and for further information she stated that the completion of the change of the rates from $.75 to $1.00 was completed in April of 1994, with monitoring beginning in May of 1994. During the 17 months of monitoring, 15 months reflected reduced revenue.

Mr. McLendon stated that he believed most of the reduction in revenue may be due to the quality of the beaches at the parks.

Mrs. Crozier stated that there was no fee associated with changing the meter rates back and forth, as the company maintaining the parks included this in the annual contract.

Mr. Shaw stated that he was not in favor of changing fees and that the rates should not be changed.

Mr. Wyett agreed with Mr. Shaw, saying that he had personally inspected the beach in November and there was actually no beach, and he did not think that the small decrease in revenue was significant enough to change the rates.

Mr. Shaw made a motion to deny the increase in hourly parking meter rates at Phipps Ocean Park. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

XI. NEW BUSINESS

A. Ordinances

1. Ordinance No. 17-95 - Adoption of 1994 Building Code with Amendments -

Mr. Randolph read Ordinance 17-95:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE 1A., "BUILDING CODE", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, SECTION 5-21, ADOPTING BY REFERENCE THE 1994 ADDITION OF THE STANDARD BUILDING CODE, INCLUDING THE ADMINISTRATION SECTION; PROVIDING FOR AMENDMENTS TO SAID 1994 CODE; AMENDING SECTION 5-9 FLOOR ELEVATIONS IN LOW AREAS; AND, AMENDING SECTION 5-11 TO PROVIDE FOR SITE SCREENING OF TEMPORARY JOB FACILITIES; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 17-95. Seconded by Mr. Shaw.

Mr. Robert Moore, Director of Building and Zoning, addressed the Town Council stating that all of the ordinances before the Council today were tri-annual, and that every three years the building codes were published and adopted as required by the State Legislature. In addition, Mr. Moore stated that several interim adjustments had been made which had been incorporated into the new code; fees would be increased from $36 to $40 for a minimum permit; other fees would be adjusted; and in anticipation of the need for revenue for plan examiners, a contract employee was being considered. Mr. Moore continued that there was one editorial change in the Plumbing Code.

Mrs. Smith asked about protection of a landmarked building being allowed to be destroyed by demolition as a result of neglect--she pointed out that in 104.1.7 Demolition Permits there was no reference to landmarked buildings.

Mr. Moore replied that a landmarked building would require Landmark approval before it could be issued a building permit, as a prerequisite.

Mrs. Smith clarified that there was then no need to mention it in this Ordinance.

Mr. Moore replied that would be redundant.

Mrs. Smith pointed out that it was mentioned in a short paragraph on page 21 and it said "add the following definition historic buildings," but there was nothing that said this would be governed by the Landmarks Commission.

Mr. Moore replied that the words "historic buildings" had been in the Ordinance for some time, and was not a new definition.

Mrs. Smith asked if there was reason to look at the Ordinance for improvement?

Mr. Moore replied affirmatively, however, he was not sure what could be done with it. He added that the Building Code did reference historic structures as being exempted from certain Building Codes if, in the opinion of the building official, health, welfare and safety were not involved and it could possibly destroy the integrity of a building.

Mr. Shaw asked Mr. Moore if there was anything dealing with work being performed on a property that had not been approved on a set of approved plans, as far as fines, etc.?

Mr. Moore replied that any unauthorized work would be red-tagged.

Mr. Shaw asked if there was a fine schedule for work that was not permitted on the permit?

Mr. Moore replied that was not included in the Building Code, but in the Code Enforcement Ordinance.

On roll call the motion to approve Ordinance 17-95 passed unanimously.

2. Ordinance No. 18-95 - Adoption of 1994 Plumbing Code with Amendments -

Mr. Moore stated that on page 4 of the Plumbing Code, under Chapter 7, Sanitary Drainage, Section 703, the wording currently was "soil and waste pipe for drainage system shall be cast iron, brass, or copper pipe." He stated that the word "pipe" should be omitted; in Chapter 6, Section 606, the wording currently was "approved backflow prevention devices shall be installed at the director." Mr. Moore stated it should read "direction of the City of West Palm Beach Utilities Department."

Mr. Randolph read Ordinance 18-95:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE IV., "PLUMBING", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES AT SECTION 5-164, ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD PLUMBING CODE EXCLUSIVE OF CHAPTER 1, ADMINISTRATION; AND AMENDING SECTION 5-165, AMENDMENTS; PROVIDING FOR SEVERABILITY, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 18-95. Seconded by Mr. McLendon. On roll call the motion passed unanimously.

3. Ordinance No. 19-95 - Adoption of 1994 Gas Code with Amendments -

Mr. Randolph read Ordinance 19-95:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE IV.5., "GAS CODE", THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-171, ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD GAS CODE, EXCLUSIVE OF CHAPTER 1, ADMINISTRATION, AND APPENDIX B, PERMIT FEES, ADDING SECTION 5-172, AMENDMENTS TO SAID CODE, PROVIDING FOR ADDITIONS, DELETIONS AND CHANGES TO SAID CODE, PROVIDING FOR SEVERABILITY, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 19-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

4. Ordinance No. 20-95 - Adoption of 1994 Mechanical Code with Amendments -

Mr. Randolph read Ordinance 20-95:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE V, "MECHANICAL REGULATIONS", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, SECTION 5-175, ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD MECHANICAL CODE, EXCLUSIVE OF CHAPTER 1, ADMINISTRATION, AND APPENDIX B, PERMIT FEES; AND AMENDING SECTION 5-176, AMENDMENTS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 20-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

5. Ordinance No. 21-95 - Adoption of 1993 Electrical Code with Amendments -

(Mr. Moore explained that the National Electrical Code was published on an off-year from the Standard Building Code, so the latest edition was the 1993 edition of the National Electrical Code).

Mr. Randolph read Ordinance 21-95:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE III, "ELECTRICITY", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, SECTION 5-76, DELETING OCCUPATIONAL LICENSE REQUIREMENTS; SECTION 5-101, ADOPTING BY REFERENCE THE 1993 EDITION OF THE NATIONAL ELECTRICAL CODE WITH PALM BEACH COUNTY-WIDE AMENDMENTS; AND PROVIDING FOR TOWN ADDITIONS AND DELETIONS TO SECTION 5-102, "AMENDMENTS", PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 21-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

6. Ordinance No. 24-95 - Adoption of 1994 Standard Fire Protection and Prevention Code with Amendments -

Mr. Randolph read Ordinance 24-95:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 7, FIRE PROTECTION AND PREVENTION, ARTICLE I., "GENERAL", ADDING SECTION 7-7, FIRE ALARM SYSTEMS, REQUIRING CENTRAL STATION MONITORING, AND AMENDING ARTICLE II., "FIRE PREVENTION", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, ADOPTING BY REFERENCE THE 1994 EDITION OF THE STANDARD FIRE PREVENTION CODE AND THE 1994 EDITION OF THE NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY CODE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 24-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

7. Ordinance No. 25-95 - Amendment to Dune Removal and Alteration Ordinance (See Item XI.B.1.) -

Mr. Moore stated that there was a Dune Protection Ordinance in the Town of Palm Beach, and there was a provision for the guidelines to be set out in a separate document which would be the Resolution. He added that from year to year the Ordinance is reviewed, and this particular change was an administrative change to the Ordinance, in order for the Town to recover funds necessary to pay a consultant to work with the applicants; the actual proposal was a permit application requiring a $500.00 fee for dune trimming and beach applications. For minor trimmings the fee would be $100.00.

Mr. Randolph read Ordinance 25-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 6, "BULKHEADS, PIERHEADS, GROINS", ARTICLE IV., DUNE REMOVAL OR ALTERATION, SECTION 6-36 (d) (2), INCREASING SOME CLASS 2 PERMIT APPLICATION FEES; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR A REVISION DATE.

Ms. Joan Wilmot, President of the Garden Club of Palm Beach, addressed the Town Council, stating that the Garden Club was very interested in doing maintenance and was willing to assist in some of the smaller projects mentioned in the Dune Management Program.

Mr. Shaw made a motion to approve Ordinance 25-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

8. Ordinance No. 26-95 - Amendment to the Occupational License Ordinance Regarding Penalties -

Mr. Randolph read Ordinance 26-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10, LICENSES AND BUSINESS REGULATIONS OF SECTION 10-5.1, PENALTY FOR NOT OBTAINING LICENSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph stated that during the codification process the penalty of twice the amount of the Occupational License fee had been removed, and this was not being put back in.

Mr. Wyett made a motion to approve Ordinance 26-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

9. Ordinance No. 27-95 - Amendment to the Code Enforcement Board Ordinance Regarding Penalties for Occupational Licenses -

Mr. Randolph read Ordinance 27-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, AT ARTICLE X, RELATING TO CODE ENFORCEMENT BOARD, AT SECTION 2-186, FEE SCHEDULE, INCREASING THE FEES FOR FIRST, SECOND, THIRD AND FOURTH OFFENSES FOR CONTRACTORS PERFORMING WORK WITHOUT A LICENSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT;

PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that the purpose of this Ordinance was to prescribe a specific fine for first, second, third and fourth offenses, for persons who do work without having an Occupational License, and he recommended that in the title the word "contractors" be removed, because this was not limited to simply contractors.

Mr. McLendon asked if there were provisions somewhere in the Code for doing work that had not been approved?

Mr. Moore replied affirmatively.

Mr. Shaw asked if the fines were based on a per annum basis, or per life of the contractor?

Mr. Brian House, Chief Code Compliance Officer, addressed the Town Council, stating that the word "contractor" was being removed from the Ordinance, and would address people who do business on a permanent basis in Town.

Mr. Randolph clarified that the fines would not be based on a per annum basis, but would be cumulative.

Mr. Shaw made a motion to approve Ordinance 27-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

B. Resolutions

1. Resolution No. 40-95 - Readoption of Routine Dune Maintenance Guidelines (See Item XI.A.7.) -

Mr. Shaw made a motion to defer this item to the November 14, 1995 Town Council Meeting, as the consultant on the project was not present. Seconded by Mr. Wyett.

Mr. Shaw pointed out that the Town guidelines were more restrictive than the State guidelines, because the State allowed pruning without permits, and he questioned whether that should be indicated.

Mr. Moore commented that the Town guidelines should stand alone in reference to the Ordinance, and there should be no reference between State and local in the Ordinance.

Mr. Randolph stated that he saw no reason to call attention to the fact of any difference in restrictions.

On roll call the motion carried unanimously.

C. Bid Awards

1. Sealed Bid No. 95-19 - Painting of North Fire-Rescue Station - Consideration of Resolution No. 39-95 -

Mr. Albert Dusey, Director of Public Works, addressed the Town Council, stating that award was recommended to Fleishers, Inc., in the amount of $16,000 for the painting of the North Fire-Rescue Station.

Mr. McLendon made a motion to approve Resolution 39-95. Seconded by Mr. Wyett.

Mr. Randolph read Resolution 39-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO FLEISHERS, INC., FOR PAINTING NORTH FIRE-RESCUE FIRE STATION.

On roll call the motion carried unanimously.

2. Sealed Bid No. 95-20 - Re-Roof over Third Floor Mechanical Room at Town Hall - Consideration of Resolution No. 41-95 -

Mr. Dusey addressed the Town Council, stating that the roof on the Town Hall had been repaired and replaced on a phase basis, and bids for re-roofing over the third floor mechanical room had been received and award was recommended to Therma Seal Roofs, Inc., in the amount of $19,650.

Mr. McLendon made a motion to approve Resolution 41-95. Seconded by Mr. Wyett.

Mr. Randolph read Resolution 41-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO THERMA SEAL ROOFS, INC. FOR THE TOWN HALL RE-ROOF OVER 3RD FLOOR MECHANICAL ROOM.

On roll call the motion carried unanimously.

3. Sealed Bid No. 95-21 - Slurry Seal and Coating Program - Consideration of Resolution No. 42-95 -

Mr. Dusey addressed the Town Council, stating that this contract was intended to pick up on the contract that had expired in September. The current contract would be good for three years, and the price will be held for a three year period.

Mr. Shaw made a motion to approve Resolution 42-95. Seconded by Mr. McLendon.

Mr. Randolph read Resolution 42-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO ADEL CONSTRUCTION COMPANY FOR THE 1995199 ROADWAY SLURRY SEAL AND PARKING LOT SEALCOATING.

On roll call the motion carried unanimously.

D. Other

1. Consideration of Comcast Cablevision Issues:

a. Proposed Settlement Agreement Between the Federal Communications Commission and Comcast Cablevision, Inc. Regarding Refunds to 184 Communities -

Mr. Dave Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that he would withhold his comments and allow Mrs. Christie to address this issue. He noted that this was a Settlement Agreement that was coming before the Town Council because franchise renewal negotiations would soon be taking place, and that the Settlement Agreement was for approximately seven million dollars and would entitle 184 communities to refunds because Comcast rates were deemed to be excessive prior to regulation.

Mrs. Diane Christie, of Comcast Cable, addressed the Town Council, stating that the issue had been confusing for everyone, so she would summarize some history in an effort to help everyone understand rate regulation. She continued that when regulation went into effect in September, 1993, the FCC came out with rules which divided regulation into two parts; the local franchising authority had the right to become certified and to regulate the first tier of rates; the Town Council in Palm Beach became certified, and those rates were approved months ago. The second set of rates, which were the satellite services (ESPN, USA, Cable Programming Rates) was regulated by the FCC. The FCC did not automatically take every cable operator in the U.S., look at those rates and decide to regulate, but it had to be generated by someone to call their attention to rates. As a result, the FCC came up with a 329 Complaint Form, allowing any municipality, official, or subscriber could write to the FCC to complain about rates. Every time there was a rate increase, a customer had 45 days to file the Complaint Form.

Mrs. Christie continued that in the first round of regulation, the FCC did not go by the 45-day time frame, and had said that from September of 1993 everyone would have until February 28, 1994 to fill out the 329 Complaint Form to evaluate the second tier of rates. In the settlement, Comcast was going back to that time period (September, 1994 - February, 1994). There were 184 communities that had filed Complaint Forms within that time period, and those communities were included in the Settlement Agreement.

Mrs. Christie explained that the FCC recently started reviewing rates between the September, 1993-July, 1994, and concerning the second tier of rates, Comcast included all satellite programming. The FCC ruled later that perhaps all of those satellite programs should not have been included; but only those satellite programs that were carried a minimum of 12-hours per day in that formula, however, there was no set rule on it. As a result, when the negotiations began, it was decided between the FCC and Comcast that there had been a misunderstanding, there were negotiations, and Comcast agreed to refund those customers in those areas that filed the Complaint that had actually had a problem with rates during that period of time. The refund liability to the two municipalities that had filed from Palm Beach County (West Palm Beach and Riviera Beach) would be about an $.80 - $1.00 one time credit to those residents. That was based on the time that the Complaint Form had been filed.

Mrs. Christie stated that Comcast was obliged to disclose in their billings that if the customer did not agree with the rates, there was the opportunity to complain to the FCC.

Mrs. Christie commented that there was a filing deadline that the Town of Palm Beach did not meet, based on the settlement time period. However, she said that the Town could file the Complaint Form after the rate adjustment today, which could be filed within 45-days after any rate adjustment.

Mr. Wyett clarified that because the Town failed to file form 329, residents would not receive a $1.00 refund.

Mr. Jakubiak responded with a quote from the FCC response in relation to a Washington Post article: "the paper reported wrongly that regulation of those rates would be lost if complaints were not filed by February 28. The date is actually the end of the six month period when the September, 1993 rates could be challenged, so no one loses rate regulation protection relating to new increases in the upper tier." Mr. Jakubiak stated that there had always been an argument that the Town could challenge the programming tier. In fact, he added, every time Comcast came forward they had said that the programming tier could not be challenged by the Town, and that the FCC had to be involved. He noted that Diane Christie had now correctly pointed out that the programming tier can be challenged by filing the form, however, the FCC would not come to the Town of Palm Beach and offer to challenge the service for them. Mr. Jakubiak referred to the Town Council Minutes of the past, showing repeated misrepresentations as far as Comcast rates and staff interpretation of Comcast actions.

Mayor Ilyinsky commented that there must be some way of settling this matter, and asked how long the contract for Comcast had run?

Mrs. Christie replied that it would expire next year, and it had been for 20 years.

Mr. Doney stated that technological changes made a shorter term advisable in the future.

Mr. Wyett clarified that there was a token dollar in this settlement, as he saw it. He stated that he believed there were 10,000 subscribers to the system in Palm Beach, and asked that Ms. Christie go back to her superiors and have them voluntarily, as a goodwill gesture, offer Town residents the same refund as if they had filed Form 329 in a timely fashion.

Mrs. Christie agreed that it would be a goodwill gesture, but she was sure that Comcast would not have reached this settlement with the FCC if the FCC had required that they give all eight million customers a refund. They had decided to base the settlement on just that group of people that had a problem with the rates. She added that Comcast felt they were right, and that a limited number of people and a limited amount of money allowed the reaching of a settlement. She noted that the press release did say that Comcast did not claim any wrong, but she stated that it was an interpretation of the rules. Mrs. Christie said that the issue had been a very confusing matter for everyone. She pointed out that the article Mr. Jakubiak quoted from was incorrect, but in addition they were talking about certification of the basic tier, and had been confused about the February 28 deadline. She said that once the rules and time frames are mixed up confusion results.

Mr. McLendon stated that he shared the sentiment of the Mayor, and would like to see an agreement reached.

Mr. Shaw suggested that Comcast provide a local 24-hour radar weather access, as he thought that would be beneficial to the Town.

Mr. Jakubiak stated that staff felt that a Settlement Agreement for 184 communities, totaling seven million dollars was a big issue with Comcast, complicated by four rate increases by Comcast in a one-year period of time. When the first increase was made, Mr. Rozek was quoted in the minutes as saying that he did not anticipate that this would be done on a quarterly basis, although the FCC did permit that. Mr. Jakubiak stated that Comcast rates today are higher than they were at the start of regulation.

Mr. Doney added that Mr. Jakubiak had done a good job of identifying cable issues for elected officials, and if the Town Council believed that it did not wish to have these issues brought before them that was their prerogative, however, the alternative would be to let Town residents who are Comcast customers go directly to the FCC rather than coming through the Town. He added that the first portion of this issue did not require an action, but was reviewed in order to give the Town Council the background to consider part b in this matter.

Mrs. Smith stated that since a new franchise agreement would be entered into soon, this was something the Town Council must deal with. She pointed out that Mr. Wyett had made a suggestion of a goodwill gesture, and that Mrs. Christie could take that back to her superiors for consideration.

Mr. McDonald commented that he would like to commend the Town staff, and that all of the time and effort the staff took to keep the Town Council apprised of these issues was deeply appreciated.

b. Proposed New Rate Increases -

Mrs. Christie stated that rates would be going up in November, ($24.53 for everything) and since January of 1993 to the present there had been a $.30 increase in rates. She also pointed out that a number of channels had been added within that time. The rate increase scheduled for November was two part:

1. The first tier was going up from $8.11 to $8.34. This rate adjustment was based on inflation under the FCC rules and guidelines.

2. The second tier would be going from $13.86 to $14.78, based on inflation and programming, according to

FCC rules and guidelines. Comcast has added the Food Channel, Bravo, and Comedy Central.

Mr. Jakubiak stated that the rates had increased four times since November of 1994 and at that time Mr. Rozek had stated that even though it could be done quarterly, he did not believe the company was going to do that. Mr. Jakubiak pointed that rates could get very excessive if this trend continued.

Mrs. Smith asked Mr. Jakubiak when he anticipated the Cable Franchise Draft Agreement and the Customer Service Standards Ordinance would be ready for review by the Town Council in a public meeting?

Mr. Jakubiak replied that the draft was currently being reviewed by Mr. Randolph, and once his comments were added it would go to Comcast for review, producing a working draft document for the Council to consider in a pubic meeting.

Mrs. Smith asked when the contract was up and when a franchise agreement would have to be renewed, so that there was no interruption to the customers in the Town?

Mr. Jakubiak replied the contract was up in October of 1996 and had to be renewed by that time.

Mr. Wyett stated that Comcast had, up until this year, a monopoly on cable services, and he was concerned about the added services each year, and considered it a back door way of raising rates above and beyond the inflation factor. He noted that there were satellite services available to Town residents.

Mr. Jakubiak stated that he wanted to go on record that he completely disagreed with the statement that the Town staff failed to file Form 329. An appeal would have been made to the FCC on the rates, but an attempt was being made to work with Comcast. Mr. Jakubiak stated that there were many statements of misrepresentation throughout the regulation process, and when Comcast did file their rates with the Town, the filings were incomplete and did not even meet the standards set by the FCC. Based on that, Mr. Jakubiak stated that staff felt the FCC could have ruled in favor of the Town.

Mrs. Smith stated that a Franchise Renewal Agreement was coming up, and the Council was not happy with the continuing increases in the rates, and will be directing Town residents that there are alternative methods of television reception, however, the Town Council anticipated negotiations with Comcast on Franchise Renewal, with alternative measures being looked into in the meantime.

2. Consideration of Request for Storm Drainage Easement for Mizner Court Apartment Building, 184 Sunset Avenue -

Mr. James Bowser, Town Engineer, addressed the Town Council, stating that Dick Barber, the Plumbing Inspector on this property, had noted that a sump pump was connected to the Town sanitary sewer, which was against Town code, and the roof leaders may also go to the sanitary sewer, which was typical of the older buildings in the Town. Mr. Bowser stated that it would be necessary to connect to the Town sanitary system, with the only logical way being to run down the Town right of way with the drainage pipe, and that was not in keeping with Town policy. Mr. Bowser stated that staff recommended that the drainage easement be granted, conditioned upon a utility easement being recorded for the benefit of the property; that an agreement will be recorded which described terms and conditions under which the drainage line will be maintained and completed; and that the owner shall operate and maintain the line in accordance with Town standards. If the property owner failed to operate and maintain, the Town would have the opportunity to repair and make a lien on the property, and the property owner would indemnify and hold harmless the Town for any damages caused by the line. Mr. Bowser mentioned that staff recommendations were to put the line underneath the sidewalk and a request had been made by the applicant that the line be put in a grass strip, which is further out into the road right-of-way.

Mr. Ron Dixon, Professional Engineer for the project, addressed the Town Council, stating that he was concerned with placing the line underneath the sidewalk, since the sidewalk would have to be torn up all along Sunset Avenue, which would be very expensive and disruptive. He noted that the building was quite old and was built quite close to the property line, so there was simply no room between the property line and the building line to put the storm line in. He asked for consideration on the request.

Mr. Reynolds, the trustee for the owner, addressed the Town Council, stating that at one time they had requested to have a dryer in the basement, and had been told that they could do that if there was a 7 ft. ceiling in the basement. Since there was only a 6 ft. ceiling in the basement, the floor was lowered in response to the request of the Town. After that, the Town had indicated that extra power would have to be supplied, and $15,000 later there was enough power to the basement. When the permitted job was almost finished, the inspector asked that they stop work because they were pumping storm water into the sanitary sewer. He noted that the pump had been there for 70 years doing the same thing, and no one had changed or altered the pump, and that is where they stand now. He emphasized that just from moving a washer and dryer in the basement there had been a cost of over $50,000. He understood that it was good to bring everything up to Code, but at some point it was excessive and he believed it was near that point in this case. He noted that at one time storm sewers used to go straight north from the building into a line that came down Sunset, but some years ago the Town had cut the line and it had been left that way, thus when it rains the storm gutters fill up and the roof puddles and begins to leak. What they were now requesting was to reconnect the storm line into the storm sewer. Mr. Reynolds displayed some exhibits to show the building and surrounding street and sidewalk. He emphasized that using the grassy strip area would be much less expensive, much less disruptive, and much less noisy.

Mr. Bowser explained that these type of situations were happening more and more often, and there was a concern that unprotected lines, as this would be if it were in the grassy strip area, would be subject to damage by the utility companies. It was the preference of the staff to have the line as close to the building as possible and staff believed the line would be protected there and present no problem to anyone.

Mr. McLendon asked if this was going to be a gravity line?

Mr. Bowser replied affirmatively--he believed it would be pumped to a gravity line.

Mr. Reynolds stated that the manhole was the most expensive way to go, with going under the sidewalk next, and going into the grassy strip the next alternative.

Mr. McLendon stated that he had no problem with going either under the grass or concrete.

Mr. McLendon asked what the cost difference was between the grass and the sidewalk area?

Mr. Bowser replied that he could not quote a difference in price at this time.

Mrs. Smith asked if the price differential was considered when the Town staff looked at an application such as this?

Mr. Bowser replied affirmatively; that was why they were not insisting on the manhole.

Mr. Albert Dusey stated that his concern in putting the line into the grass was that there was a process to mark utilities out when excavations took place, and when private services were put into the areas, there was no marking out until they are dug up. If the line was put closer to the house it would minimize the chance that anyone would disturb it or cause a problem in the future. Mr. Dusey explained that the grassy strip was used for utility purposes, so there was no method to have someone mark that out.

Mrs. Smith stated that if they put the line in under the grass, they would have to sign a hold harmless clause that the Town would not be responsible if there was an accident.

Mr. Bowser replied that was in the recommendations.

Mr. Ron Dixon stated that the General Contractor, Mr. O'Deum was present and may be able to address the cost issue.

Mr. Michael O'Deum of O'Deum Construction, addressed the Town Council stating that it would cost approximately $10,000 to remove the sidewalk, put the line in, block the road, build ramps, etc. He added that the public safety of taking the sidewalk up was a further consideration.

Mr. Bowser stated that there would be less than 500 sq. ft. of sidewalk and he believed the cost estimate of Mr. O'Deum was wrong, as well as the contingencies mentioned were exaggerated.

Mr. McLendon asked how far it was from the building to the property line?

Mr. Dixon replied that it varies, because the building was skewed to the property line--it got as close as 10 inches in one place.

Mr. Wyett asked Mr. Dixon if the contractor could approximate the total cost, including the installation of the line, under each of the proposals?

Mr. Dixon replied that a cost estimate had not been run on the manhole alternative, but that it would be frightfully expensive.

Mr. O'Deum estimated that the plumbing end alone would be more than $10,000 to put the line down if the sidewalk alternative was used. He said that he had not figured the estimate of going through the grassy area, although it would be considerably less.

Mrs. Smith asked what the total costs would be for doing the project under the sidewalk and under the grass?

Mr. O'Deum stated that it would cost $10,000 for the sewer lines, and $8,600-$10,000 for the sidewalk. The grassy alternative would approximate $2,000-$3,000 for cutting the sidewalk areas in small places, and digging up that area; therefore, the costs would be $20,000 versus $13,000.

Mr. McLendon suggested that approval be based on the recommendations of Mr. Bowser, and if the applicant had a major problem with that he could come back before the Council with definitive prices and hardships. He made a motion to approve the project as proposed by Mr. Bowser, the Town Engineer, with the conditions he had stated. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

3. Consideration of the Palm Beach County Intergovernmental Coordination Executive Committee Meeting on October 16, 1995, and Issues Forum Meeting on November 13, 1995 - Determination of Town Policy Position Regarding Palm Beach County School Board's Proposed One Cent Sales Tax Dedicated to School Construction, as well as, School Concurrency -

Mrs. Smith requested that Mr. Tim Frank speak to the issue.

Mr. Frank said nearly all of the issues have been submitted to the Committee. He reported that the Committee denied a motion to receive feedback from the other committees regarding the proposed one cent sales tax dedicated to school construction. Royal Palm Beach requested that the issue be discussed at the upcoming meeting under "Issues Forum." He said the issues will be clearer after the Executive Committee meets.

Mr. Wyett stated that as he and Mr. McLendon were the delegate and alternate delegate respectively to the Committee, he would like to have instruction from the Council concerning voting directions. Mr. Wyett said his opinion was to oppose the one cent increase as it is counter productive to keep increasing the sales tax, and the tax would be terribly unfair to lower income people where the tax burden should not be placed.

Mrs. Smith asked Mr. Frank if the Committee wanted the input from the delegates or is the meeting to be an Executive Committee meeting only?

Mr. Frank replied the meeting was just an Executive Committee meeting, and the feedback from the communities was denied; although the Issues Forum will be used to bring the comments from the communities back rather than directly asking. He said it would be appropriate for the Council to make a decision for the delegates.

Mr. McLendon mentioned that he and Mr. Wyett had different views on the one percent sales tax for school construction, and it was important that the Council provide direction.

Mayor Ilyinsky declined to comment; however, he stated he was opposed to the raising of any type of taxes. On the other hand, education maybe the only solution for the future.

Mr. Shaw and Mr. McDonald declined to comment.

Mr. Doney said the issue required Town Council policy group direction because, not only is it important at the Issues Forum meeting which is on November 13th, the Town Council will not meet again until November 14th. He said the second issue of school concurrency as it relates to the Comprehensive Planning effort is also important. Mr. Doney continued that from a zoning and planning perspective and a Town land development regulation perspective, it is important that concurrency be complied with. Otherwise, the School Board would be exempt or above what is important, as far as regulations at the local level are concerned within the 37 municipalities in the County. Mr. Doney said it was important that the School Board comply with local zoning and planning land development regulations to allow the development process to proceed in a proper and orderly fashion. He cited the recent example of the Palm Beach County School Board's position that they were exempt from the Town's ability to regulate the landmark designation of the property in Town.

Mr. Doney recommended that the Town Council advise the Issues Forum, with Mr. McLendon as the delegate and Mr. Wyett as the alternate delegate, that all issues of concurrency, as it relates to the local government comprehensive planning and land development regulation act, be complied with, and they comply with all local government, municipal, zoning and planning regulations.

Mr. Frank said that the issue was introduced at the Intergovernmental Plan Amendments Review Committee (IPARC) meeting, the Planner's Committee, and the issue has been passed on to the Issues Forum. He said the local issue centers around portable and temporary classrooms. Mr. Frank identified the question was if the School Board should adhere to all of the Comprehensive Planning, zoning, landmark regulations, etc. for the Town. Mr. Frank said he believed the School Board should comply with local issues.

Mrs. Smith said she was sure that when Mr. Frank, as head of that committee, spoke on the issues, he was speaking for the Town.

Mr. McLendon stated he was for concurrency.

Mrs. Smith asked that the two issues be considered separately.

Mr. Wyett stated concurrency was the only local control, and he was in favor of it.

Mr. Shaw said he was for concurrency.

Motion made by Mr. Wyett to approve concurrency. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith stated that she was opposed to the second issue to be considered, the one cent increase in sales tax.

Mr. Wyett said he was opposed to any increase in sales tax. He said these taxes were not tax deductible on a Federal return; thus making the tax higher than one cent. He cited an example of $10,000 where $100 would be the one cent sales tax increase, and that would equate to $140 when no tax deduction is taken into account. He said, from a philosophical point of view, this is a regressive tax and is felt most by the under privileged.

Mr. McLendon stated he had an opposite view. He said he had tried to think of a way that property taxes could be more fair and find new sources of revenue in lieu of property taxes. He continued that making the assumption the School Board would properly spend the funds obtained from the increase, this tax was one way to have the school tax borne by people who are not paying any of the property taxes now, and he would be in favor of the one cent sales tax for school construction.

Mrs. Smith said she found that the School Board was fiscally irresponsible, and the idea of putting any more money in their hands when they waste hundreds of thousands of dollars on personality fights, school directors, elimination of target and special after school programs is a disgrace. She said she could see money going to the schools but not when it is left to the discretion of the School Board.

Mr. McDonald declined to comment.

Mr. Shaw said he concurred with Mrs. Smith's sentiments, and the School Board has shown little care in how the money is spent. He continued that the School Board facility is an example of wasting money. He would not want to see an increase that would give them more funds to build with. Mr. Shaw said the real issue is to go back to the people who run the School Board and have them tighten up their ship. He said they should be more accountable for the millions of dollars they are already collecting.

Mr. McLendon said he could not conceive that if the school construction is vitally needed that it would not happen. He noted that if the construction happens, he would rather see the funds come from sales tax revenue as opposed to property taxes.

Mr. Shaw said he thought the sales tax was an out that would give the School Board a chance at another source of revenue. He said the School Board has to be responsible, and if this works, next year the School Board will come up with another special taxing district or another way of getting money. Mr. Shaw stated the School Board is receiving too much money currently and producing too little.

Mr. Shaw made a motion that the Town Council does not endorse the one cent sales tax to be dedicated for school construction. The motion was seconded by Mr. Wyett.

Mr. Wyett commented that the waste in the school department, as reported in the Palm Beach Post last year when they had a $500 million bond issue, included the disappearance of $200 million for which there was never a proper accounting according to the paper. Mr. Wyett said if all the communities vote for the one cent increase in the sales tax, the tax will never come off, and the School Board will find an unending source of money which they will find an unending way of spending.

Mrs. Smith asked for any additional comments. There were none.

On roll call, the motion carried unanimously.

Mr. Frank thanked the Town Council for the direction and mentioned that his term as chairman of I Park expires in October. He said in the future, the Town will have to depend more on the representatives, Mr. McLendon and Mr. Wyett, at the meetings since he will no longer be part of the Committee.

Mr. Doney added that, as the Council directed, a letter will be prepared for Mrs. Smith's signature advising of the Council's decisions.

4. Consideration of Proposed Christopher Columbus Statue on Peanut Island -

Mrs. Smith stated that she had written a letter of objection expressing the position of the Town in regard to the 414 ft. statue of Christopher Columbus being placed on Peanut Island, with the peace and tranquility of residents being the concern. She had additionally received a letter from County Commissioner Marcus also in opposition to the statue. Mrs. Smith stated that she felt the Town Council would take the appropriate action necessary to stop the placement of the statue.

Mr. Wyett made a motion to oppose the placement of the Statue of Christopher Columbus. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

5. Consideration of Proposed Date and Program Details for Dedication of the New South Fire-Rescue Station - .

Chief Ken Elmore addressed the Town Council, stating that two dates had been suggested for the dedication of the New South Fire-Rescue Station; December 1 or December 8, 1995. The Town Council recommended the date of December 8, 1995 at 3:00 P.M. for the dedication.

Mr. John Matich, Co-Chairman of the Citizens Association South of Sloan's Curve addressed the Town Council, stating that they were very happy to see the new Fire-Rescue Station, and would be sure that all residents were aware of the dedication date. He added that the Association would be happy to assist with contributions to food for the dedication.

6. Consideration of 1995-96 Palm Beach County Legislative Delegation Public Hearings -

Mr. Doney referred to his memorandum dated October 3, 1995 in this regard, stating that this was an annual opportunity for input from local elected officials. He noted that one project that the Town Council may consider was the funding assistance request to the State for the Lake Worth Inlet Management Plan implementation. Mr. Doney noted that the Legislative Delegation Public Hearings were scheduled for October 16, 25, November 8, or December 12, 1995, and that the Town Council could authorize attendance at these meetings. Mr. Dusey would address the particulars of the Lake Worth Management Plan.

Mr. Albert Dusey, Director of Public Works, addressed the Town Council, stating that the Town had an application before the State for the upcoming fiscal year asking for State funds of $761,000, and that in order to have any chance of obtaining those funds, the municipality must go before the local delegation to obtain support, and explain what was being done with the funds. Mr. Dusey explained that two weeks notice of attendance at the meetings would be necessary.

The Town Council designated Mayor Ilyinsky and President Smith attend the Legislative Delegation Public Hearing on November 8, 1995, in Belle Glade, Florida.

7. Consideration of Attendance at the Florida League of Cities' 35th Annual Legislative Conference on November 16-17, 1995, in Tampa, Florida -

Mr. Doney stated that there were several policy direction items before the Town Council for consideration, and the first was whether or not the Mayor or any member of the Town Council would attend the upcoming Annual Legislative Conference in Tampa. Authorization from the Town Council as to who would be attending was needed as well as naming a designated representative and voting delegate.

Mr. Shaw stated that as part of this meeting was a continuation of the standing committees of which he was a member of the Intergovernmental Relations, and it was his understanding that he had been authorized to attend the meeting on November 16, 1995.

Mrs. Smith asked who had authorized this?

Mr. Shaw stated that he believed the Town Council had.

Mrs. Smith replied "not necessarily." She said that they were certainly here to discuss it, and that the October meeting had come up because Mr. Shaw volunteered to serve on that Committee and the Council had authorized him to go to Orlando. She stated that this was now a different matter and she would like to hear input from other members of the Council. The Mayor, past Council Members, and she had attended the Florida League of Cities Convention, and this was a different thing from the Convention that was held in August, as this was the conference as opposed to the State Convention. She stated that this was something that the Council would decide as to what would be done. She said that she remembered saying at the last meeting that she was opposed to any per diem and that she understood the travel expenses and a room would be reimbursed, but she was not comfortable with the per diem for food.

Mr. Shaw said that at this time he was questioning if he was going on the 16th of November.

Mrs. Smith clarified that Mr. Shaw was asking for authorization from the Town Council for attendance at the Committee Meeting on November 16th.

Mr. Shaw replied that was correct, and if he was going to attend (which he thought had already been approved since he was a member of the Committee and assumed that he was not going to just one out of the two meetings), and on the basis that he was already there on the 16th, the question was did the Council want representation at no additional cost, other than to stay over a night.

Mr. McLendon stated that he thought approval of attendance had been made at the last meeting.

Mrs. Smith replied negatively, that authorization had been approved for the October meeting.

Mr. Doney clarified that there was some confusion, because there were three meetings of the Intergovernmental Committee: The Committee Meeting that Mr. Shaw had recently attended; the Annual Legislative Conference which was November 16-17; and then in the early summer there was an annual business meeting of the Florida League of Cities. At each of those meetings the Intergovernmental Committee meets, as does all of the policy committees of the Florida League of Cities. This was the formal meeting of the Florida League of Cities so that policy direction and a policy statement and positions could be identified for the entire League. Any of these meetings could be attended by the Mayor and Council Members, and sometimes the Town Manager, but in each case the matter was brought before the Town Council on a case by case basis so that the Town Council could say who would like to go, and then authorize the voting delegate and who would attend.

Mrs. Smith stated that the expense involved also had to be authorized, since Town money would be spent.

Mr. McDonald made a motion that Mr. Shaw be appointed to go to the Conference in November, and that he be reimbursed for the expense, and that he be designated as the voter. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mrs. Smith asked how much the last trip had cost?

Mr. Shaw replied $100.00

Mr. Doney then went into the other three policy items, beginning with the signing of letters and/or appearing in Tallahassee during the Legislative Session. He explained that as the Legislative session proceeded, often issues would change rapidly overnight, and he was requesting an authorization by motion that the Mayor, Council President, and/or Town Manager, send letters officially advising of the Town's position on legislative matters as they are considered during the 1996 Legislative Session.

Mr. Shaw noted that one issue that had come up at the last meeting was the fact that the Florida League of Cities did need some communication from local municipalities to help support some initiatives that had been vetoed or tabled in Tallahassee. One of those was the State Agency Rule Making. The Florida League of Cities took the position that would be beneficial for local municipalities and was requesting support in contacting representatives to try to get the Administrative Procedures Act Bill reintroduced.

Mr. Doney explained that Mr. Shaw was referring to an October 1, 1995 memorandum wherein a number of policy considerations were identified.

Mr. McDonald made a motion to authorize the Mayor and the President of the Town Council, and the Town Manager, to write letters stating the position of the Town on governmental issues. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Doney requested Town Council authorization for staff to prepare a list of legislative concerns for the Town of Palm Beach for 1996 for the review of the Town Council, to be presented at the December 12, 1995 Town Council Meeting.

Mr. Doney addressed the need for Town Council authorization for the use of the special assistance of Attorney Ronald C. LaFace in Tallahassee, who specializes in legislative law, and would be used on an as-needed basis. Mr. LaFace had been used by the Town only rarely in the past few years.

Mr. McDonald made a motion to authorize the use of the special assistance of Attorney Ronald C. LaFace on an as-needed basis. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

8. Consideration of Appointment as an Alternate to the Treasure Coast Regional Planning Council for the Palm Beach County Municipal League - .

Mrs. Smith recommended that Mr. McDonald be named as the alternate for the Palm Beach County Municipal League. Mr. Wyett made a motion to name Mr. McDonald as the alternate for the Palm Beach County Municipal League. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

9. Consideration of date and time for a meeting of the Public Safety Committee -

Mr. Wyett proposed that the Public Safety Committee Meeting be scheduled for Wednesday, October 11, 1995 at 3:00 P.M., following the Water Committee Meeting.

10. Reconsideration of Previously granted Variance and Special Exception for the Poinciana Club -

Mr. Wyett stated that he was concerned that there may have been some misrepresentations made in May 10, 1994, relative to the application of the Poinciana Club. He had discussed it with Mr. Randolph and asked if there was time to see how the Poinciana had handled themselves, and that if the Council did not act now, it could not act later, so he was merely bringing this matter up so that the ability to review was kept alive. Mr. Wyett continued that he thought everyone on the Council, including himself, wanted to see the Poinciana Club open, however, it must be certain that the Club operated in the manner which had always been expected.

Mr. Shaw stated that the matter had been gone over, and each time the minutes of the prior meetings had been brought up as to use as definition, and that opinions had been issued based on what took place at each meeting, and to go back over everything would be counterproductive.

Mr. Wyett stated that there was evidence that could be brought forward, if necessary, to show that there was misrepresentation, and there would have to be a hearing and proper notification.

Mrs. Smith stated that she did not think it was appropriate to go into the details of the Poinciana Club when they were not present. She added that the owners were not present, so any discussion should be held at the November meeting, if the Council so moved today.

Mr. McLendon seconded the motion of Mr. Wyett to reconsider the Poinciana Club at the November Town Council Meeting.

Mr. McLendon stated that recently the request for approval was based on one issue, and that was the change of ownership. Mr. McLendon asked Mr. Randolph if the Town Council had the right to reopen some previous approval?

Mr. Randolph stated that he believed that he had indicated that what had happened at the previous meeting in regard to the granting of the Special Exception was not relevant to the issue regarding change of ownership. Therefore, consideration was not given to that item when approval on the change of ownership was given. He continued that it had been discussed at that time that it was thought there was any misrepresentation made to the Town Council that would have to be the subject of another hearing, and that if that was made the subject of another hearing, notice would have to be given to the applicant, and notices would have to be sent out again in much the same manner as had been done with the initial Special Exception Application. Mr. Randolph clarified that what Mr. Wyett was asking for was that notice be given that the matter would come back before the Town Council at the November Town Council Meeting.

Mr. McLendon stated that as he understood it, the misrepresentation would have been to the previous Town Council, in 1994.

Mr. Wyett asked Mr. Randolph if he was correct in thinking that if the investigation was not approved to be added to the next Town Council Agenda, then the Council would be precluded from bringing it up at some future time.

Mr. Randolph stated that he thought that the longer the issue was let go the more jeopardy the Council would put itself in--once an "alleged" misrepresentation was known, the time allowed to go by could create an equitable estoppel situation against the Council in regard to what happens. He added that there was danger that had occurred already. They had gone forward in regard to prior approvals, and he was sure there would be an argument along those lines by the applicant.

Mr. McLendon asked Mr. Randolph how the Town Council could be aware of all information on this issue, so that intelligent votes could be made?

Mr. Randolph replied that he thought the Council was aware of enough information to make a determination as to whether more information was needed. That is what would be done at a subsequent meeting. Mr. Randolph stated that he did not think it was appropriate to discuss the substance of this at the current meeting without the owners present.

Mr. Moore stated that, for the benefit of those who were not present in May of 1994, this issue had been a Special Exception with a variance, and what the Special Exception was for was an extension of a deck area with an awning to be built within a 10 ft. setback of the actual bulkhead. Mr. Moore added that the use of the club was a grandfathered use--in other words, the Council would not be able to rehear the fact if the use could be permitted or not; this was not an application for a new club, but an existing Club. He emphasized that there should be no confusion that if the intensity of use issue was discussed, it would be related to the covered deck, and not the actual use of club. He urged that confusion between the two did not occur; there was a grandfathered use, but what was before that Council in 1994 was the expansion outward to the west within 10 ft. of the bulkhead for a covered dining area only. He added that the inside and the use itself was established, and there was no question about that.

Mayor Ilyinsky asked if there had been a caveat that they could not increase the number of members in order to fill the extra tables?

Mr. Moore stated that there was no limitation on the number of members, however, there was a limitation on the seating, which was 330.

Mayor Ilyinsky clarified that inside chairs would be placed outside and outside chairs placed inside, but the number of chairs would not be increased.

Mayor Ilyinsky asked Mr. Randolph how this could be justified as not being equitable estoppel?

Mr. Randolph replied that he could not argue the applicant's position in this regard, but that the Council would have to hear from them. He added that he was sure that there would be arguments like that raised, in the event that the Council tried to take anything that was previously given. He clarified that as he understood it, the issue was being proposed to be brought back before the Council because of a concern that there may have been a misrepresentation, and that what the Council granted was granted upon reliance of what was stated at that time.

Mr. McDonald stated that since the issue was only concerning the outside area, and that the seating was still 330 whether the inside or outside was used, he did not know if it was worth bringing back to only discuss the outside area.

Mr. Wyett stated that it could not be discussed at this meeting, but there was justification to discuss it and the Council had been precluded from discussing it at the two previous Council Meetings, and he was trying to get a clarification as well as some protection for the Town.

Mr. McDonald asked Mr. Randolph if there was enough concern to involve the Town Council and to bring it back on the agenda?

Mr. Randolph stated that he did not know the answer to that because he did not know what the intention of the Town Council would be in bringing it back, and he did not know what would come out at a further hearing, and what the Council would be dealing with would be the specific application which was made at that time, which would not necessarily relate to the use of the property.

Mr. McLendon asked if the approvals that Mr. Moore spoke of went back beyond May of 1994?

Mr. Moore replied affirmatively; that the Club had been in existence since 1974.

Mrs. Smith asked Mr. Randolph if the outside seating was the only thing that could be discussed, how would the Town Council find a forum to address the concerns that Mr. Wyett was referring to, without stipulating today what they actually were?

Mr. Randolph stated that it was very difficult to speculate on what the Town Council might do, but he said that the action that would be contemplated was that if something had been granted on the basis of a misrepresentation, and that was a material misrepresentation to the Council in regard to the approval of that seating, that the ultimate action that could be taken would be to take away the variance that was granted at that particular time. He added that what would then come about was speculative.

Mrs. Smith stated that she did not believe that Mr. Wyett was concerned over 20 seats on the outside terrace, but she believed that the discussion should not go any further since questions of impropriety and misrepresentation had been raised today and that the owners of the Club had a right to defend themselves before the Council. Mrs. Smith said that it was not known, from what Mr. Beck told the Council at the last meeting, that there was anything wrong.

Mr. McLendon asked what the procedure was if a Club did not do what they were supposed to do, and that he thought perhaps he should withdraw his second of the motion.

Mr. Wyett stated that if this Council should find that there was misrepresentation it could rescind the terrace area, and then re-pass and give it back to the Club at the same meeting if assurances were given that the Council may ask for.

Mr. McDonald stated that if there was a sitting Council member who felt that there was misrepresentation or impropriety, then he would second the motion.

Mrs. Smith stated that the only members of this Council that were sitting on the Town Council in 1994 were Mr. Shaw and herself, when the project for the outside terrace came before the Council. She noted that it was a question of an increase of seats at that time, but a question of moving some seats outside. She said that the reason for seconding the motion was to give the applicant a chance to respond to some of the innuendoes that had been raised today.

Mr. Wyett stated that in 1994 the Club had asked for a transfer of seating from the existing premises out to the outside deck, and some representations had been made (which were printed in the minutes) that are not correct in today's practice, and whether the Town Council wanted to condone that or not should be the subject of an open hearing. He added that issues were not allowed to be discussed at the previous two Council meetings; the Poinciana Club took the position that they did not want the Council to discuss it and took a legal means to prevent discussion, and therefore he believed it should be discussed in an open forum.

Mr. Moore stated that if the vote was to bring them back, re-notice would have to be made of the entire Special Exception with variance and advise the applicants that they would be requested to come back.

Mr. Randolph stated that this was more than an opportunity for the applicant to come back and address an issue; it was indeed a situation where they were being put in jeopardy of losing what they had, and Mr. Moore would have to go through the full process of notifying property owners, as he would do with an initial application for Special Exception and Variances.

Mr. Wyett stated that there was another issue at point; if the Council was deceived and it was established that was a fact, then encouragement was being made for future applicants to do the same thing.

Mr. McDonald stated that he would be inclined to let the Club open to see if they did violate any agreements, except for Mr. Randolph's comments about the estoppel argument. However, he added if there was a valid estoppel argument then he questioned whether it should wait until the Club opened.

Mr. Randolph stated that he did not think it was the position of the Town to argue the estoppel, but that was an issue that would need to be raised by the applicant.

Mr. Moore stated that he did not have the current phase of completion regarding the Club, but if there was a request for a Certificate of Occupancy between now and the November meeting he would need direction. He pointed out another alternative: if the Club did not come back and if there was in fact a misrepresentation of the facts put out in May of 1994, there was the Occupational License issue. He noted that the Occupational License had been issued, but for cause the Council could review whether or not the Occupational License should be suspended. He said that the matter would have to be looked into.

Mayor Ilyinsky stated that the Club was innocent until proven guilty, and he thought a Pandora's box was being opened.

Mr. McLendon asked Mr. Randolph what a notice to an applicant and any interested parties would have to say?

Mr. Randolph replied that there would be a notice that the Town Council would reconsider the application for Variance and Special Exception which had been granted in May of 1994. He added that it would reopen the issue.

Mr. Wyett stated that he had asked Mr. Randolph if he could wait until the Club had been in operation to see if there was an estoppel problem, and he had been told that by that time the right to bring them back would not be in effect. Mr. Wyett said that he would prefer to let them operate and if they were doing what the old Poinciana Club always did, and operated in that fashion, then there would be no case. Mr. Wyett added that he did not want to make a case and wanted the Club to open and everyone to enjoy it, but he also wanted the Town protected against some potential dangers that exist with the fact that there was absolutely no protection on several issues which would not be mentioned today.

Mr. Randolph clarified that the more time allowed to go by once an issue is known, and not addressed the weaker the case would become in regard to estoppel.

Mr. Shaw asked Mr. Randolph if there was any reason why the Town Council could not address an issue if one Town Council had granted a Special Exception and later found out that a portion of the Special Exception was not complied with?

Mr. Randolph replied that there were opportunities to bring the violation in front of the Code Enforcement Board, but he could not guarantee that would give relief. He added another option was the Occupational License issue, which he would need to examine.

Mrs. Smith stated that she hoped the decision was not political, and she asked that the question be called. She asked Mrs. Pollitt to read the motion.

Mrs. Pollitt read the motion as follows: This motion was to approve the reconsideration of placing the Poinciana Club on the November Agenda for the Town Council Meeting.

Mr. McLendon asked Mr. Randolph if the Town Council would be opening itself up for any liability by falsely accusing anyone?

Mr. Randolph stated that he did not think there had been any false accusation, but that there were some concerns as to whether there had been misrepresentations, and that the concern was to have those matters addressed. He added that once the matter was brought back before the Council and a determination made to take away something that had been previously granted, then there would be a liability.

Mr. McLendon stated that if everything was okay, would the applicant be able to claim any costs from the Town?

Mr. Randolph stated that he did not know what actions would be taken by the Town, and that anything to which the Club was entitled to would not be jeopardized. He added that he could not predict what action may be taken by the applicant in regard to any decision made by the Town Council today, and he would not want to represent that there was no liability and then find out that a claim was going to be made.

Mrs. Smith stated that the Town Council would be hearing from Mr. Montgomery.

Mr. Wyett stated that Mr. Montgomery was the one that suggested that if there were concerns they should be taken up separately. He noted that there was no guarantee that the Town Council would take any action next month, but that the issue would be put out in the open and a determination could be made at that time.

Mr. Randolph stated that the motion really was for reconsideration of the previously granted Special Exception and Variance; therefore, that opened up the entire issue to a point where the applicant would not know what they could rely upon, and from that standpoint the applicant may argue that they were facing some jeopardy.

Mrs. Smith stated that there was no question that the entire question would be reopened, and that the applicant would come in having no idea of what they could expect from the Town Council. She suggested that would give them a lot of concern.

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

XII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR SEPTEMBER 1995 -

Mr. Shaw made a motion to approve the Warrant Registers and Funds Expenditures Report for September 1995. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

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

Mrs. Hermine Wiener, 324 Garden Road, addressed the Town Council, stating that the Town's agreement states that Peanut Island is a passive island and questioned current uses for the island, recommending that the Town Council look into the matter. Mrs. Wiener also requested that the issue of the middle bridge opening on demand should be questioned during the time that the north bridge is closed.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of September 27, 1995 - Minutes Available in Town Manager's Office -

The Major Matters were:

B61-95 Selective demolition of and addition to existing residence at 35 South County Road requested by Mr. Louis B. Hager, Jr. - approved.

B62-95 Demolition of existing residence at 317 Via Linda requested by Eugene and Marcia Applebaum - approved.

B64-95 Demolition of existing residence to build new residence at 1076 North Ocean Blvd., requested by Vivien M. Lopata - approved.

B65-95 Demolition of existing residence at 535 Island Drive requested by Marvin S. Rosen - approved.

C21-95 Parking area landscaping at Royal Poinciana Plaza requested by Robert Spiegel - approved.

C46-95 Second story addition at 234 Queens Lane requested by Susan Leas - deferred.

B63-95 New two Story Residences at 200 El Vedado, requested by Whittmann Building Corporation - approved conditionally.

B65-93 Revisions to previously approved two-story residence, requested by Dr. & Mrs. Stone - deferred.

C28-95 Two front entrance gates at 7 LaCosta Way, requested by Mr. & Mrs. Lewis Rudin - deferred.

C31-95 Twelve foot high wall at 180 Barton Avenue, requested by James Harpel - deferred.

C33-95 Two story addtion at 320 Polmer Park, requested by Kenneth Newberger - removed from agenda.

B54-95 New two-story residence at Emerald Lane, Lot 36, requested by Mr. & Mrs. Mark Katzenberg - approved conditionally.

B33-95 Addition to residence at 209 Wells Road, requested by Mr. Gregory Holloway - deferred.

B43-95 New single family residence at 180 Atlantic Avenue, requested by Mr. & Mrs. Paul Pellitieri - approved conditionally.

B44-95 Remodel existing residence and add a partial second floor at 127 Ocean View Road, requested by Palm Beach Development Group Limited III, Inc. - approved conditionally.

Mr. Wyett made a motion to approve the Major Matters considered by the Architectural Commission at its meeting of September 27, 1995. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

B. Time Extensions

1. Variance No. 56-93 with Site Plan Review - Aspinwall Property, 3000 South Ocean Boulevard; request by Mr. James R. Brindell for a One-Year time extension (Deferred from September 12, 1995 Meeting) -

Mr. James R. Brindell, on behalf of Valerie Aspinwall, addressed the Town Council, stating that there had been a discussion about this request at the last meeting, and it had been asked if Mrs. Aspinwall would consider dropping the pending lawsuit if an extension would be granted. Mr. Brindell had been unable to give an answer at that time, because his client was not available to confer with, but since that time he had consulted with her, and she would be willing to dismiss the lawsuit if an agreement could be reached for a time extension. Mr. McDonald made a motion to approve the time extension for six months, until April 30, 1996. Seconded by Mr. Shaw. On roll call the motion carried, with Mr. Wyett casting a negative vote.

C. Variances, Special Exceptions, and Site Plan Reviews

<u>Old Business</u>

1. Consideration of Zoning Study Items and Calendar for the 1995/96 Zoning Season -

Mr. Robert Moore, Director of Building and Zoning, addressed the Town Council, referring to his memorandum of October 4, 1995, listing the study items that had been approved at the September 12, 1995 Town Council Meeting. There were two additional items that had been identified by Mr. Adrian Winterfield, which had merit for consideration. Mr. Moore suggested that those be added as Study Items 28 and 29 through Town Council approval. Mr. Moore also noted that Mr. Wyett had an additional item to be approved, which would be added as Study Item 30.

Mr. Wyett explained his concern was that a property owner who wanted to display artwork outside presently had to take his chances of buying it and then finding out it was not allowed, or take his chances that the artwork may not be available. He proposed that the Zoning Commission study Site Plan Reviews for artwork.

Mrs. Smith asked if Mr. Moore had any responses to the questions raised by Mr. Adrian Winterfield about the process for choosing items to go on the Zoning Agenda?

Mr. Moore replied that items identified by the Town Council and/or the Zoning Commission were brought before the Town Council for final approval during the May Town Council Meeting. Mr. Moore explained that through the course of the year some item may be identified that required Zoning Commission review, and those are brought before the Town Council for review and discussion. Mr. Moore stated that some of Mr. Winterfield's suggestions were interesting and some had been before Zoning Commissions and Town Councils before, however, at the present time he did not believe that there were any additional items necessary to be studied this year.

Mrs. Smith stated that one of the suggestions that had been made was that names be put on the individual items as they were submitted, and she objected to that on the basis that someone might feel that there was preferred behavior given to items proposed by present or past members of the Town Council.

Mr. Moore stated that staff, at direction of prior Town Councils, did not indicate who had submitted items so that there would be no prejudice one way or the other.

Mrs. Smith asked if there were any other zoning matters that any member of the Town Council would like to bring up?

There were none.

Mr. McDonald made a motion to approve the three Study Items 28,29, and 30 to be added as Zoning Study Items. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

2. Consideration of Report by Town Attorney John Randolph Concerning Property Rights Law Per Letter (With Enclosure) Dated July 25, 1995 (Deferred from September 12, 1995 Meeting) -

Mr. Randolph stated that he had provided a copy of the new legislation relating to the Property Rights Act to the Town Council, along with various treatises and editorials in regard to the issue. Mr. Randolph gave a comprehensive brief overview of the information: The new act was quite a revelation in property rights in the State of Florida. The case law as developed in this area basically provided that in order for a property owner to be compensated as a result of a regulation imposed by a municipality, that property owner would have to show that there was a taking--loss of all beneficial use of the property. Certain property owners and politicians had felt that standard was too strict, and because of the development of the law, the thought was that change could take place only through legislation. The State of Florida had changed the standard, by way of the adoption of this new property rights legislation.

The new act had two parts: the first part was the Bert Harris Property Rights Act, providing a method and manner for property owners to be compensated for regulations imposed on their property. No longer would a property owner need to show that they have lost all reasonable beneficial use of the property in order to be compensated. Now, they simply needed to show that by way of the regulation, their property has been inordinately burdened. No one knew what "inordinately burdened" meant at this time, as the definitions were very general and vague and it would not be until a Court of Law interpreted the legislation that the effect would be known. Basically, the property owner could now come in on any new regulation imposed subsequent to May 11, 1995, with an appraisal showing that their property had been inordinately burdened as a result of the legislation. They would have 180 days from the time that the action is taken in order to file this.

There was some question as to whether or not this act applied to actions that were taken subsequent to October 1, 1995. Mr. Randolph stated that, quite frankly, there were experts saying that as long as an ordinance was adopted prior to May 11, 1995, that there would be no relief entitled to an applicant under this act, because this worked prospectively only, and not retroactively. Any ordinance in place prior to that time would not come within this act. It was clear that if any amendments were made to that ordinance that a person would be entitled to relief under this statute specifically as it related to the amendment. The underlying ordinance, existing prior to this legislation, could not be attacked, but the amendment could be attacked. What was not clear, and was subject to debate, was whether or not an action that might be taken based upon an ordinance that existed prior to the adoption of this legislation would be subject to the Bert Harris Property Rights Act. In other words, if a Special Exception, or a request under that ordinance would be denied, and that action came after the adoption of this act, the question would be whether or not people would be entitled to relief. There was a large percentage of people saying they would not be entitled to relief, because the ordinance existed prior to adoption of this act. Other people said that it was a rule or regulation under the definition of the statute which was imposed subsequent to the adoption of this act, so relief would be entitled. The answer was debatable, and would have to be resolved in a clarification of the legislation or by a Court of Law. Basically, a person would not lose the right to attack a taking in law, much the way of the past, but would take advantage of this much more liberal legislation. Mr. Randolph stated that once a property owner filed a complaint, the municipality had a right to get back to the property owner and offer something in return, or deny the request. In the event that a resolution was not reached, the property owner could go to Court and it would be up to the Court to first determine whether or not there had been an inordinate burden placed on the property as a result of the governmental action. If the Court would determine that there had been an inordinate burden, then this would go to a jury who would determine the amount of compensation due the property owner. Mr. Randolph offered to answer any questions in regard to the first part of the act.

Mr. McDonald stated that he had concern about the act, as he felt there was potential for a lot of liability and it would change the way Ordinances and Variances were reviewed. He asked Mr. Randolph what procedure should be followed, and should the Town Council be negotiating these matters as they come up, or should a Committee negotiate these matters?

Mr. Randolph replied that staff should start giving consideration as to what recommendations could be made to Town Council in the event of an attack regarding this legislation. He stated that he believed it should be examined by staff and a report made to the Town Council.

Mr. McDonald made a motion that staff examine the issue and report to the Town Council. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Randolph continued that the second part of the act was simply a dispute resolution process which did not involve the opportunity for anyone to assess damages against the Town, and the inordinate burden language did not apply here; however anyone who felt that they had been treated unfairly as a result of a rule or regulation imposed by the Town, may employ the dispute resolution process. He quoted the language: "an owner who believes that government action is unreasonable or unfairly burdens the use of his real property may refer this to a Special Master for information dispute resolution." Mr. Randolph said that under that the opportunity existed for the issue to be referred to a Special Master, who had 165 days in which to work with the affected property owners and the Town Council to come to a resolution of the problem. He would recommend the solution, and the municipality then had the opportunity to act on that non-binding recommendation, and in the event that the Town Council decided to go along with the recommendation, that would be the end of it. In the event that the matter is not resolved in that way, then relief may be sought in Court by the individual. Mr. Randolph stated that this part of the act offered an opportunity for the municipality and property owners to resolve problems in an amicable way, and that his hope was that people would take advantage of this process.

Mr. Randolph explained that, under the law, the Town Council must follow its criteria as it related to variances, and not grant variances unless they meet the criteria.

3. Variance No. 28-95 - Mr. & Mrs. Lewis Rudin, 7 La Costa Way; to allow installation of two driveway gates in the front yard, setback 6' from the pavement, in lieu of 15' required per Section 5.36(b) of the Town Code. R-B District (Deferred from July 11, 1995, August 8, 1995, and September 12, 1995 Meetings) - **Request for Deferral to November 14, 1995, per letter dated October 3, 1995, from Mr. Robert E. Deziel - DEFERRED TO THE NOVEMBER 14, 1995, TOWN COUNCIL MEETING.**

4. Variance No. 31-95 - James Harpel, 180 Barton Avenue; to allow construction of 12' high wall at County and Barton in lieu of 6' maximum allowed per Section 5.36(a) of the Town Code. R-B District (Deferred from July 11, 1995 and September 12, 1995 Meetings) - **Request for Withdrawal per letter dated October 2, 1995, from Mr. A. Paul Prosperi - WITHDRAWN.**

5. Variance No. 35-95 - Jeffrey J. Collins, 410 Chilean Avenue; to allow construction of two-family structure on a lot 6,250 sq.ft. in lieu of 13,333 sq.ft. required; said lot is 50' wide in lieu of 75' minimum required. Applicant proposes to provide 10' side yard setbacks (both) in lieu of 12.5' required. R-C District (Deferred from August 8, 1995 and September 12, 1995 Meetings) - **Request**

for Withdrawal per letter dated October 3, 1995, from Mr. Gregory S. Kino - WITHDRAWN.

6. Variance No. 42-95 - Bankers Trust Co. Of Florida, 350 Royal Palm Way; to allow a business sign to be located on a side wall of the building (the western facade) which is not the main wall (facing a right-of-way) as required. C-OPI District (Deferred from September 12, 1995 Meeting) - **Request for Deferral to November 14, 1995, per letter dated October 6, 1995, from Ms. Kimberly M. Anderson - DEFERRED TO THE NOVEMBER 14, 1995, TOWN COUNCIL MEETING.**

7. Variance No. 44-95 - Lowell & Marla Paxson, 780 South Ocean Boulevard; to allow a 513 sq.ft. conversion of crawl space into habitable space, thus creating a third story. R-A District (Deferred from September 12, 1995 Meeting) -

Mr. Dick Weinstein, representing the owners of the property, addressed the Town Council, stating that Susan Delegal would be making the presentation, but that he had some comments. Mr. Weinstein stated that this request was really technical in nature, but uniquely applicable to the property because of its topography and the way the building had been constructed. He explained that it was a request that occurs with a very important landmarked building in Palm Beach, which had been treated with great respect by the owners as well as the former owners. Mr. Weinstein stated that all of the criteria had been met and the application should be granted because it applied to the property alone, and to no other property, and could not be precedental.

Mrs. Smith asked if any member of the Town Council had ex-parte communication regarding this application?

Mr. Wyett stated that he had a communication from Mr. Weinstein, the attorney representing the client. Mr. McLendon stated that he, too, had a communication from Mr. Weinstein. Mayor Ilyinsky had not had any communication. Mrs. Smith said that she had spoken to Mr. Weinstein and Mr. Smith. Mr. McDonald stated that he had spoken with Mr. Weinstein. Mr. Shaw stated that he had spoken with Mr. Weinstein.

Susan Delegal addressed the Town Council, stating that the request was for a variance, the purpose being to seek approval to excavate approximately 2-3 ft. of a very limited area in the cellar of the house, comprising approximately 513 sq.ft. A plan view was placed in the packet of information given to the Town Council, and Ms. Delegal pointed out the area of excavation on the exhibit. She stated that the Paxsons wished to make a media room out of the area. She emphasized that this was a technical situation--there was a two story height limitation in the Town of Palm Beach, and for the reason that excavation was downward slightly it was considered that a third story area was being added, however, there was no increase in the height of the structure, and absolutely no change to the appearance of the structure. She continued that the granting of the variance would not be contrary to the pubic interest, because there were special conditions, the enforcement of which would create a hardship to the property owner.

Ms. Delegal stated that the request of this variance would serve a public purpose for the property. She displayed photographs of the property and described them to the Town Council. Ms. Delegal stated that there was a unique topography to the property--the eastern portion of the property was approximately 10-12 ft. higher than the western portion. The house had been designated as a landmark in 1990 and it was important to the Paxsons to maintain the integrity of the home. Ms. Delegal addressed the hardship criteria:

1. Special circumstances and conditions peculiar to the land, and not applicable to other lands in the same zoning district. The property was unique in grade, was a land marked property, and there would be no outward changes on the property.

2. Special circumstances and conditions did not result from the actions of the applicant. The home had been bought as it presently was. The house must be adapted to a way that would fit the lifestyle of the owner. She corrected one aspect of her written presentation--a portion of the property was now 5' in height and a portion was 8' in height; not 90% of the property being at the 8' standard as she had written.

3. Granting the Variance Request would not confer a special privilege that had been denied to others. This was an existing situation, home, and structure, and the owner was trying to work within the confines of the property.

4. The literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by others, and would work an unnecessary and undue hardship on the applicant. The owners were attempting to make a better use of property that was already existing.

5. This was the minimum Variance required.

6. The granting of the Variance would not be injurious to the public. This property would be enhanced for the benefit of the property owner and the public at large, and would uphold the integrity of the Zoning Code.

Mr. Moore pointed out that more information regarding the hardship had been needed, and the application was within the existing walls of a landmarked structure. He explained that the area concerned was a basement area that already had habitable space, and staff did not believe that there was a problem with this application.

Mr. Wyett made a motion to accept Variance 44-95. Seconded by Mr. McLendon. Mr. McDonald explained the difference in elevation of the land created a hardship. On roll call the motion carried unanimously.

Mrs. Pollitt swore in anyone speaking on Special Exceptions and Variances.

Mr. Shaw asked if it would be appropriate that any articles or presentations included in these discussions be attested to as being accurate within a reasonable period of time.

Mrs. Smith asked Mr. Moore if the Building Department ascertained the validity of documents submitted in this regard?

Mr. Moore replied that when a document was submitted it was taken on face value that it was correct, and that if it turned out that it was not, then the Town would be misled.

Mr. Shaw suggested that when documents are submitted to the Town Council, it should be stated that they are current and accurate.

Mr. Weinstein addressed the Town Council, affirming that the documents submitted in regard to Variance 44-95 were current and accurate, with the exception that Ms. Delegal had pointed out.

Mr. Shaw pointed out that a photo at one Town Council meeting had been used that was two years old.

Mrs. Smith pointed out that the photo had been questioned during the presentation.

New Business

8. Variance No. 48-95 - William Deitz, 1305 North Ocean Way; to allow construction of a second floor addition to an existing two-story residence at a point of measurement elevation of 10.5' in lieu of 7.5' NGVD required. R-B District. - **Request for Withdrawal per letter dated October 6, 1995, from Mr. Ames Bennett - WITHDRAWN.**

9. Variance No. 49-95 - Palm Beach Development, 222 Phipps Plaza; to allow a newly constructed "hobby room" addition, onto a 2-family residence at a 9.9' north side yard setback in lieu of 12.5' required, to remain as constructed. R-C District -

Attorney Kent Huffman, on behalf of Palm Beach Development, addressed the Town Council, stating that the request was for a variance from the side setback to permit the completion of construction of a portion of a building, designated as a hobby room. Mr. Huffman stated that he had provided each member of the Town Council a drawing that showed the location of the structure, the condition of the structure, with the 2'7" x 13' section that the Variance was for highlighted. Mr. Huffman explained that the house is adjacent to the six-story building and parking garage located at 251 Royal Palm Way, so that two sides of the property were exposed to the bad end of the six story building. The current owner bought the house, and came before the Town Council requesting a Variance on the same north side setback to permit the construction of a powder room, which had been approved. At some later time, the owner submitted a second application for a Variance requesting to construct a breakfast room on the south side of the house and to construct the hobby room on the north side of the house. The hobby room application contained two requests; it contained a request for the breakfast room on the south, and the hobby room on the north. The application was submitted by the architect for the owner, and after it was submitted the architect received a call from Town staff, saying that the application appeared to be a repetition of the previous request for the powder room. The architect informed staff that had nothing to do with the powder room, and staff then modified the original of the application to delete the request relative to the Variance and setback on the north side of the property. The architect made his presentation, discussed the reasons for granting the application for both the breakfast room and hobby room. The application had been granted, and the architect left with a clear understanding that construction was permitted, and that a Variance had been granted for both rooms. Construction then commenced and continued to the point that the room was ready for drywall, when someone noticed that, according to Town records, the particular Variance for the particular 2'7 x 13' strip on the north side of the building had not been permitted. At that point, construction was stopped with respect to that room. The application that was now before the Town Council was prepared and filed.

Mr. Moore stated that the explanation by Mr. Huffman was fairly accurate, however, there were two areas where staff would disagree.

Mr. Paul Castro, Zoning Administrator, stated that he had contacted the architect concerning the second request on the second application, because it was his understanding that what had been submitted for the second variance was only the kitchen nook. Upon talking to the architect, Mr. Castro asked about the language concerning the 9.9' in lieu of the 12'6" required, pointing out that the powder room had already been approved and questioning why the language was still on the application. The architect said that it had been a mistake and could be taken off. Mr. Castro then took that language off of the application. Mr. Castro stated that at the time, he did not have plans to review to see exactly what the request was, and when the plans were submitted to the Building & Zoning office the hobby room was not identified as being part of the request for the second Variance Application. The breakfast nook alone was identified as being highlighted or shaded in, along with the powder room that had been approved by Variance the month before.

Mr. Moore stated that Mr. Huffman had not expanded on the submittals that were granted for the first powder room at the February Town Council Meeting. At that meeting, the owner, Mr. Ross, had approached the Town Council after a request for deferral because the breakfast nook needed a Variance also. At the request of Mr. Ross, the Town Council graciously heard the request in February, based partly on the predicate that the Building Department had already issued a permit. It was late in the evening and the computers were not available, however, it was established that the permit was issued for patios only at both the powder room and breakfast nook. It was readvertisied, and Mr. Castro advised of his conversation with the architect about the same powder room Variance being requested for the breakfast nook Variance that was put over to the March Town Council Meeting.

At the first meeting in February, no indication of a hobby room existed on the set of plans. At the March meeting the word "hobby room" appeared, but no walls delineating it. Mr. Moore said that interestingly enough, at the March Landmarks Commission Meeting, a set of plans showing not only the walls, but elevations of a room, called a hobby room, was presented, which was the very next day after the Town Council Meeting in March. The Landmarks Commission did approve those plans, showing a full room that had never received a Variance Application. Mr. Moore stated that when it was pointed out that there was a question on this matter, work was ceased on the job. The Building Department talked to the contractor, owner, and architect. The architect realized his error, and submitted fully his orders to the contractor to remove the illegal construction, and provided a check, although the amount was in dispute as to whether it was enough to perform the work, and ordered the contractor to build it to the approved set of plans that he submitted as a revision. Mr. Moore said that had not been done, and the applicant was now before the Town Council for a Variance Request instead.

Mr. Huffman stated that he had not intended to suggest that staff had done anything inappropriate, but he suggested that there was a good faith misunderstanding between staff and the architect. He emphasized that there was no intention to building something that was not permitted, and it was implausible to think that anyone would think that they could get away with building some unpermitted construction in the middle of a landmarked residence that is around the corner, and three doors down from Jeff Smith's office.

Mr. Moore stated that the application that came to the Landmarks Commission the day after the Town Council Meeting in March showed the hobby room as an existing room, not a room to be constructed. Landmarks, therefore, thought they were approving an existing room.

Mr. Huffman stated that the architect had prepared dozens of versions of this residence to attempt to accommodate the neighbors, Landmarks, ARCOM, and the Town Council. There had been a multitude of revisions of these documents, and in fact, Mr. Huffman stated that in preparing to come to this hearing he had a sea of paperwork on this. Mr. Huffman suggested that there had been no attempt to bamboozle the Council.

Mrs. Smith asked Mr. Huffman if he was implying that the wrong set of plans had gone to the Landmarks Commission?

Mr. Huffman said that it was his understanding that drawings were prepared for submission to the Town Council in a rush, at the last minute, and that those drawings were not complete. He added that it was also his understanding that the architect, Eugene Fagan, had conversed with staff on this matter, and had confessed to staff that it was his inattentiveness to these plans and to their submission that caused the situation.

Mr. Randolph pointed out that this was an application for a Variance, and he had not heard a presentation as to why a variance should be granted.

Mr. Huffman stated that there was a good faith misunderstanding between architect and staff; that good faith misunderstanding resulted in some existing construction which apparently was not permitted. Mr. Huffman added that this particular site was in the shadow of a six-story parking garage, and a six-story office building. Mr. Huffman said that the site had limitations which no one would want to live with. Secondarily, Mr. Huffman pointed out that it was a landmarked residence with a wide variety of restrictions as a result. Mr. Huffman said that he had previously submitted to the Town a letter from the adjacent owner to the north, which had nothing but glowing reports for the Town about everything being done; not only did they like it, they encouraged the Town to grant the Variance. Mr. Huffman stated that he had submitted two letters from neighbors to the Town Clerk which said the same thing. Mr. Huffman stated that the fact that it was an existing building living within landmark constraints, the fact that it is adjacent to a six-story parking garage, presents a site that does not allow much flexibility. Mr. Huffman said that the existing space creates a room which is not used for any purpose, and the addition of the additional 2'7" would permit the room to be used in a way that makes sense and does not deprive the owner of the property of the use of that space. Mr. Huffman stated that the text attached to the application sets forth in precise detail the exact legal criteria.

Mrs. Smith asked if there had been any ex-parte communication in regard to this application?

There had been none.

Town Clerk Pollit confirmed that Mr. Huffman had submitted two letters today; one from Mr. McCranie and one from Mr. and Mrs. deSousa.

Mrs. Smith stated that the applicant would not have been denied the use of the space if it had not been constructed illegally.

Mr. Huffman stated that the architect had come to the client and said the variance request had been granted and the room could be built.

Mr. Wyett stated that the applicant's action for relief was not with the Town Council, but was with the architect. Mr. Wyett stated that Mr. Huffman's client had more problems of memory and more problems of confusion than all other petitioners since he had been in the Town.

Mr. McDonald stated that he had difficulty understanding the hardship, and he thought all of the reasons listed existed at the time the client had purchased the property.

Mr. Huffman stated that at the time his client had purchased the property there was an existing residence there, and that existing residence was in a condition that was not susceptible to reconstruction, and contained a variety of hazardous materials.

Mr. McDonald questioned whether all of those conditions existed at the time the client had purchased the property, or had the conditions developed subsequent to the purchase?

Mr. Huffman replied that the site conditions existed at the time his client had purchased the property.

Mr. Shaw asked if the granting of a variance, specifically the 2'7", would solve the hardship to the property?

Mr. Huffman replied that the construction was there now, so granting the Variance would eliminate that particular hardship. Mr. Huffman repeated that the hardship was created by a combination of the existence of the six-story adjacent parking garage, and by the fact that the existing residence was landmarked, and that the existing residence was encroaching, and therefore nonconforming.

Mr. Shaw asked how a 2'7" excess to a 12' room would alleviate the hardship?

Mr. Huffman responded that the hardship was that, through no one's fault, certainly not the owner's fault, construction had progressed, inspected by the Town, passed and approved, up to the point that drywall is ready to be installed, and now suddenly there is nonconforming construction.

Mr. Shaw stated that the grounds for the hardship had nothing to do with the 2'7".

Mr. Huffman stated that the hardship in this particular instance was that construction commenced under a misunderstanding, and that now it would be a silly waste to cause demolition of that construction, and the adjacent owners were in favor of the Variance.

Mr. Shaw stated that there had been no hardship proven.

Mr. Huffman responded that the application should be viewed as a pre-existing, nonconforming use. He stated that the building was existing, and the owner had proceeded to build in good faith, with the understanding that he was permitted to do so. He pointed out that the Town had inspected it eight or ten times and everyone was happy. He suggested that the application be viewed as the hardship being the existing nonconforming construction.

Mr. McDonald made a motion to deny Variance 49-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

10. Variance No. 50-95 - Palm V Associates, 238/240 Worth Avenue; to allow construction of an addition to a nonconforming building, a variance from Section 8.21 of the Town Zoning Code. C-WA District

Attorney Peter Broberg, on behalf of Palm V Associates, addressed the Town Council, stating that this was really a request for a one-year extension on a previous approval, and by a docketing error the June 14, 1995 deadline passed, the Variance was not acted upon, and an application for renewal was not filed. Mr. Broberg said he was requesting consideration of the previous approval, and indicated the space being used through exhibits.

Mr. Moore stated that the original application was for 150 sq. ft., and asked Mr. Broberg if this was still the same?

Mr. Broberg stated that the application the first time stated that the area would include removal of 180 ft., and adding 170 ft.

Mr. Moore said that it was probably a typographical error.

Mr. Moore continued that this matter had missed the time frame for requesting an extension, and the same notation and comments would apply as they had for the original application. Mr. Moore stated that all of the buildings on Worth Avenue were nonconforming in one way or another, and in the past small areas had been considered for transferring square footage on the same piece of property. The staff had no objections on the present application, providing that the same conditions apply--which were that it not be used by Nature's Way or any other restaurant.

Mrs. Smith clarified that the area was 170 sq. ft., not 180 sq. ft., and that the 150 sq. ft. was a typographical error.

Mrs. Smith asked if there had been any ex-parte communications regarding this item? There were none.

Mr. Wyett made a motion to approve Variance 50-95. Seconded by Mr. McLendon. On roll call the motion carried 4/1, with Mr. Shaw casting a negative vote.

11. Variance No. 51-95 - Bruce Helander, 221 Ocean Terrace; to allow construction of a 2-story addition using the present 12.5' elevation as a point of measurement in lieu of 7.5' NGVD required. R-B District -

Mr. Ralph Cantin, representing Bruce Helander, addressed the Town Council, stating that there was one minor change in their application--they were asking for 10.6' instead of 12' because they were asking for the minimum variance. Mr. Cantin stated that the site was located in the mid-block of Ocean Terrace, and there was unique geography in the middle of the block, as the home was 4' higher than the street. Mr. Cantin said that the road did not rise with the adjacent properties. Mr. Cantin displayed photographs of the property indicating the proposed construction.

Mr. Paul Castro, Zoning Administrator, stated that the original request was for a 5' variance, from the crown of the road at 7'6" to a point of 12'6", but as the architect mentioned, the house would only be 20' high from the finished floor to the top of the tie beam, so there was 2' to work with, therefore, the elevation from the point of measurement was reduced to 10'6". In addition, Mr. Castro stated that the applicant is also allowed 1'6" for the point of measurement from the crown of the road, so instead of starting at 7'6" he would be allowed to start at 9'. Mr. Castro stated that staff comments were that he should reduce the variance request, and the applicant had amended that. Mr. Castro said that the hardship was the way the house was situated at a higher elevation, and staff had no objections.

Mrs. Smith asked if any members of the Town Council had ex-parte communications in this regard? There were none.

Mr. Wyett made a motion for approval of Variance 51-95. Seconded by Mr. McLendon.

Mr. Shaw questioned the hardship of the request. Mr. Canton stated that the hardship was the unique geography of the area; they were adding 9'4" for the dining room, 1'6" for structure, and then 9' for the upper floor.

On roll call the motion carried 4/1 with Mr. Shaw casting a negative vote. Mr. McDonald explained the hardship was the configuration of the land.

12. Site Plan Review No. 2-95 - S. Lawrence Schlager, 125 El Mirasol; to consider allowing a statue exceeding 6' in height (in the front yard), thereby requiring a Site Plan Review; said statue is 7" - 7" high. R-B District -

Mr. Ames Bennett addressed the Town Council, stating that the statue was kinetic and was a very fine piece of art work that Mr. Schlager wanted to place in the front yard, well behind any setback requirements. Mr. Bennett presented photographs of the statue.

Mr. Moore stated that staff had no objection.

Mr. Wyett made a motion to accept Site Plan Review No 2-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

13. Special Exception No. 22-95 with Variance - James Brindell, 241 Royal Palm Way; to allow the addition of a third story to an existing two-story building pursuant to Section 5.48 of the Town Zoning Code at a lot coverage as it presently exists which exceeds the 25% maximum lot coverage requirement. C-OPI District. - **Request for Deferral to November 14, 1995, per letter dated October 6, 1995, from Ms. Kimberly M. Anderson - DEFERRED TO THE NOVEMBER 14, 1995, TOWN COUNCIL MEETING.**

D. Other

1. Consideration of Request for Waiver to Sections 5-22(103.6.3) and 12-51 of the Town Code of Ordinances, Hours of Construction Work, Regarding Saks Fifth Avenue Men's Store Expansion by Mr. Barry A. Clark, Fisher Clark Construction, Inc. -

Attorney James Brindell, on behalf of Saks Fifth Avenue, addressed the Town Council, stating that construction was underway on this site, but it would be difficult to complete by the 15th, and a schedule had been submitted showing the work plan. He explained that the request was to have an extension to December 15th on the terms and conditions considered in the past for Esplanade work on Le Bateau: no work on Armistice Day or Thanksgiving, and no noise emitted during the construction of the extended period hours outside of the facility. He noted that Mr. Clark was present to answer any questions.

Mr. Moore stated that as long as conditions were the same as the Le Bateau Restaurant previously considered by the Town Council, staff had no objection.

Mrs. Smith asked if there had been any ex-parte communication regarding this matter? There was none.

Mr. Wyett made a motion to approve the Waiver to Sections 5-22 (103.6.3) and 12-51 of the Town Code of Ordinances, Hours of Construction Work, Regarding Saks Fifth Avenue Men's Store Expansion. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

2. Consideration of the Order of Review of Variances and Special Exceptions by the Architectural Commission -

Mrs. Smith stated that discussion would take place concerning whether or not properties that need variances should go to the Architectural Commission before they come to the Town Council.

Mrs. Smith explained that projects had gone to the Architectural Commission and been approved, and had then come to the Town Council for a variance and not received the variance.

Mr. Shaw made a motion that the projects should come to the Town Council first, before being looked at by the Architectural Commission. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

3. Consideration of Extension of Construction Hours for Temple Emanu-El, 190 North County Road - Special Exception 20-92 -

Attorney Paul Rampell addressed the Town Council, stating that he was representing Temple Emanu-El, and that Temple Emanu-El was in the process of constructing improvements at 190 North County Road pursuant to Special Exception 20-92. Mr. Rampbell stated that he was requesting, on behalf of the Temple, that the Town Council exercise its discretion under Section 12-51 of the Code of Ordinances, and permit expansion of hours during which construction work could be performed. Max South Construction, Inc., was the general contractor who had made the following representations:

1. The construction would consist primarily of interior work.
2. The work would not disturb neighbors.
3. No heavy or noisy equipment would be used.
4. Parking of construction vehicles would be limited to the Temple's property.

Mr. Rampbell stated that the expanded hours of construction were being sought for the remainder of the month of October and through the month of November. Mr. Rampbell stated the proposed hours extend from 7:00 A.M. - 10:00 P.M. Monday through Friday, 9:00 A.M. - 8:00 P.M. Saturday, 10:00 A.M. - 6:00 P.M. Sunday, but no work on any holidays. Mr. Rampbell stated that the Town Council was being asked to determine a reasonable expansion of hours, basically as may have been given to other construction projects.

Mr. Rampbell agreed that the extended hours would go through November 30, 1995, excluding Sundays and holidays.

Mr. Moore commented that the request to work until 10:00 P.M. was somewhat exorbitant in comparison to other projects in the past, however, the contractor was in need of some extra time, which staff would recommend.

Mr. McDonald stated that the time-line submitted in the previous request should be submitted with every request, as it made it easier for the Town Council and the Building Department.

Mr. Wyett made a motion to approve the extended work hours, and asked Mr. Rampbell if November 30, 1995 was an optimistic date, or did his client need additional time? The motion was seconded by Mr. McLendon.

Mr. Rampbell stated that he would like to say it would be concluded by November 30, 1995, but it was not absolutely known.

Mr. Wyett offered additional time, such as December 15, 1995.

Mr. Rampbell replied that if expanded hours were needed after the November 30, 1995 date they would come back.

Mr. Moore stated that work hours change on December 1, 1995 in this area.

Mrs. Smith suggested that the date be left at December 1, 1995 and Mr. Rampbell could come back if more time was needed.

Mr. Moore stated that the Building Department had recommended 9:00 P.M., rather than 10:00 P.M. as the latest hours of construction.

Mrs. Smith stated that 9:00 P.M. would be more acceptable, as the area was residential. Mrs. Smith clarified that hours of construction would be 7:00 A.M. until 9:00 P.M., Monday through Saturday, until December 1, 1995, with work starting at 9:00 A.M. after that date. Work would be done on Sunday only on the interior from 10:00 A.M. - 6:00 P.M.

Mr. Moore clarified that all noisy work would be done during the normal working hours, and the extended hours would be for the quiet work only. He noted the noiseless work would be conducted from 7:00 A.M. - 8:00 A.M. and from 6:00 P.M. - 9:00 P.M.

Mrs. Smith asked if there had been any ex-parte communications by any Town Council member in this regard? Mr. Shaw said that it had been brought up at the Sunday gathering at the Temple, which he had attended.

On roll call the motion for approval carried unanimously; hours of construction would be 7:00 A.M. until 9:00 P.M. Monday through Saturday, interior work only would be done from 10:00 A.M. - 6:00 P.M. on Sunday, no work on Holidays, noiseless work conducted from 7:00 A.M. - 8:00 A.M. and from 6:00 P.M. - 9:00 P.M., and all construction vehicles would be parked on site.

XV. ANY OTHER MATTERS

Mrs. Smith stated that when the ARCOM and Variance processes were considered, the discussion was on whether or not that would be placed on the Agenda in November, and she should not have asked them to move approval of that suggestion. She added that hopefully approval would be moved in November, but the discussion was really whether or not it would be placed on the November Agenda.

Mr. Moore explained the Phipps' Estate gates item at the Architectural Commission Meeting was concerning the change of a gate from a solid sliding gate on Northlake Way on two entrances to two swinging gates, because of concern with the gate functioning correctly. Mr. Moore stated that the gate would swing out for the outbound traffic, and for inbound traffic it would swing inward, and there would be no additional stacking required for the gate to either go left to right or right to left, or just one gate opening for ingress and one gate opening for egress. What had been reviewed by ARCOM was the fact that there were two gates now instead of one gate, with the design remaining the same.

Mr. Wyett stated that his reason for bringing it up had to do with public safety, as swinging gates could cause delays and had breakdown potential, which would present serious traffic hazards, and before the gates were purchased and installed Mr. Wyett felt the issue should be reviewed. Mr. Wyett stated that non-manned gates in this situation were a public hazard.

Mr. Moore stated that there was a subdivision provision that the gates could not be manned, but the gates would operate by pressure pads.

Mr. Wyett said that the time delay, with two or three cars backing up on the street, and the frequency of mechanical breakdowns of the gate presented a problem. Mr. Wyett added that the design review had brought up the problem with gates, and he thought the Town Council should be aware of it, because the solution was that the gates would eventually be left open as people tired of repairs.

Mr. McLendon asked what the purpose of the gates was, and if anyone could trip the gates?

Mr. Moore explained that there was a trip pad to leave, going outbound, and that there was a trip pressure pad operation to have the gate open inbound. Mr. Moore noted that the only difference on what was approved by the Town was that instead of one gate sliding open and then coming back to close, it was now two gates.

Mr. Wyett stated that he was aware of that, however, he was bringing up the fact that an error was made because he did not think enough consideration had been given to a minor item as a public safety issue. He said that he was bringing it up as a public safety issue, trying to spare the developer the cost of putting the gates in and then having the Town Council find it a public issue and pulling them out later.

Mrs. Smith stated that she had voted against this project, but she stated for the record that a lot of time was spent on the gates on the basis that this would be perceived as a gated community, and several members of the Town Council did not want to see any gates there. She added that the Fire Department and Police Department had addressed the issue. She commented that she would be very happy to have the Town Council look at it again and decide that there would be no gates, but she was not sure that this application should be opened up again.

Mr. Randolph stated that it was beyond that point.

Mr. Moore stated that this was a minor project and that the Town Council did not have the ability to pull minor projects off the Architectural Commission.

Mr. Wyett asked if it was necessary to wait for an accident on Northlake Way with several cars involved and possible loss of life in order to reconsider this item.

Mrs. Smith suggested that Mr. Wyett write a personal appeal to Mr. Swanson asking him to eliminate the gates. She stated that she did not think the Town Council could do anything when an earlier Town Council had approved the project without seeing everything in writing.

Mr. Wyett asked if the Town Council would be precluded from reconsidering the project if there was an accident associated with the opening and closing of the gates?

Mrs. Smith stated that she hoped that would not happen, but that she did not know how the Town Council could proceed legally.

Mr. Randolph stated that it was a Public Works/Public Safety type of issue, and there had been nothing heard from those departments that the situation was a safety hazard.

Mrs. Smith asked if the streets were public or private?

Mr. Moore replied that they were private.

There was no further discussion.

XVI. ADJOURNMENT - The meeting was adjourned at 4:15 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn