Adjusted Budget figure of $26,180,077 to which Mr. Doney responded affirmatively.

Mr. Doney stated the total actual millage for the current year is 4.9003 or $4.90 per thousand dollars of taxable value and the resolutions adopted today setting the tentative operating millage and tentative general fund budget for FY91 ahve a total proposed millage of operating and debt service of 4.781 mills or $4.79 per thousand dollars of taxable value and is a 2.3% decrease in actual millage.

Public Hearing FY91 budget

Mr. Heeke felt there may be some confusion as to the adjustments made in the tentative budget at the last meeting with respect to the Solid Waste Authority (SWA) and asked Mr. Doney to report on where we are on this matter. Mr. Doney explained the current budget as revised and tentatively approved today has been revised based upon the most current available information from the Palm Bach County Solid Waste Authority to reflect that the SWA will directly be assessing residential units as a line item on the upcoming tax bills which will be sent in November by the County. He stated from the Town's budget perspectives, the reason the millage rate was set higher on August 3rd was at that time it was uncertain what the Solid Waste Authority had planned to do concerning whether they would directly be assessing the commercial properties on the tax bills or require the municipalities to pay for the disposal charges from their operating budgets. He stated the current position of the SWA is they will not be taxing the commercial properties and will be charging the tipping fee at the SWA facility which will be $83.50 per ton.

Mr. Doney stated the Town has addressed this issue and this will be on the agenda at the Sept. 11th Town Council meeting by a resolution which will increase the commercial collection and disposal fees for the commercial properties within the Town. He stated another major issue which affects the Town's budget is the disposal charges for solid waste from Town-owned properties, such as Town Hall, Phipp's Ocean Park, the Police facility had a charge by SWA in teh amount of $74,675 which we have been able to have revised downward to $44,214 and we are still contesting the proposed assessment amount for the Phipp's Ocean Park property as it is believed the methodology which the SWA has used is too high.

Mr. Doney advised the Town Attorney has written to the SWA attorney, contesting the rates which are charged for the residential properties to ensure they are proportionately reduced to reflect the yard trash which is separately collected and disposed of by the Town at its yard trash sites. Mayor Marix asked if the amount of the SWA's fees was included in the proposed budget, how much could the budget e reduced as this year the people are paying that tax directly. Mr. McPhail stated it would probably be $500,000 higher. Mayor Marix felt the increases for this year then are more than what was reported. Mr. Doney stated it has been eliminated for the impact on residential properties in the Town. Mayor Marix realized that but felt it was not really a fair comparison as this year we are short $500,000 which would normally have been included. Mr. Doney stated that was correct, if the Town were paying the disposal fees.

H. Second and Final Public Hearing to Adopt Final Millage Rates and Budgets Will be on Tuesday, Sept. 11, 1990 at 5:01PM in the Council Chambers. President Heeke indicated the Town Council will hold the second Public Hearing to adopt the final millage rate and Operating Budget on September 11, 1990 at 5:01PM in the Council Chambers, 360 S. County Road, Palm Beach, FL.

IV. ANY OTHER MATTERS. President Heeke called for any other matters and there were none.

Adjournment

V. ADJOURNMENT. Motion was made by Mrs. Wiener, seconded by Mr. Ilyinsky to adjourn the meeting at 5:35 PM. Motion carried unanimously on roll call.

Grace T. Peters,
Town Clerk

TC Minutes of 10-9-90

TOWN COUNCIL MINUTES OF MEETING
HELD ON OCTOBER 9, 1990

Roll Call

I. CALL TO ORDER AND ROLL CALL: The October meeting of the Town Council was called to order by President HEEKE AT 9:30 AM on October 9, 1990 in the Town Council Chambers. On roll call, President Heeke, President Pro Tem Ilyinsky, Councilwoman Wiener, Councilwoman Douthit and Councilman Weinberg were found to be in attendance. Mayor Marix was absent. Also attending the meeting for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Dusey, Mr. Bowser, Mr. Boggs, Chief Terlizzese, Chief Elmore, Mr. Bitzer, Mrs. Crozier, Mrs. Haynie-Timmons, Mr. Elwell and Mr. Jakubiak.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Rev. Lampe and Pledge of Allegiance was let by President Pro Tem Ilyinsky.

Approval of Minutes

III. APPROVAL OF MINUTES OF SEPTEMBER 11, 1990 (9:20 AM and 5:01PM). Minutes of the meeting held on September 11, 1990 at 9:30 AM was approved on motion of Mrs. Wiener, Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Approval of Agenda

IV. APPROVAL OF AGENDA. Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit to add to the agenda, Item VIII C-7, the comments of Cpt. Montgomery on Peanut Island. Motion carried unanimously on roll call.

Motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky to discuss the Johnson Seawall under Item XII. Any Other Matters. Motion carried unanimously on roll call.

Motion was made by Mrs. Douthit, seconded by Mr. Weinberg that Item X. B. 2, Special Exception No. 10-90 be withdrawn and the agenda be approved as amended. Motion carried unanimously on roll call.

V. Comments of the Mayor. None.

Licenses & Permits

VI. LICENSES AND PERMITS;

A. Charitable Solicitations

1. City of Hope, Palm Beach Chapter, No. 13-91.
2. Jewish Guild for the Blind, No. 23-91.
3. The Garden Club of Palm Beach, Inc., No. 123-91.
4. American Jewish Committee, No. 125-91.
5. Poinciana Children's Theatre Co., Inc., No. 149-91.
6. Women's American ORT of Palm Beach County; No. 167-91.
7. The Preservation Foundation of Palm Beach, Inc., No. 192-91.
8. Bar-Ilan University, No. 196-91.
9. Palm Beach Rotary Club, No. 231-90.
10. Bethesda Hospital Association, Inc., No. 267-91.

11. Food Relief International, No. 272-91.
12. Hispanic Cultural Arts, Inc., No. 305-91.
13. St. Ann's School. No. 306-91.

Mrs. Peters explained staff recommends permits be authorized to be issued for all of the charitable solicitations listed. Motion was made by Mr. Weinberg to approve the charitable solicitation permits as recommended. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

B. Beverage Licenses: — Beverage Licenses

1. New Beverage License - 2 COP - Request by Capetta of the Palm Beaches, Inc., d/b/a L'Osteria at 150 Worth Ave., Suite No. 213. (Related to Agenda Item X.B.11.) Mr. Doney advised the staff recommends approval. Motion was made by Mrs. Douthit, seconded by Mr. Weinberg to approve the new beverage license for Capetta of the Palm Beaches, Inc., d/b/a L'Osteria. Mr. Moore stated there is a Special Exception from 1982, involving a variance which will be reviewed later in the meeting with regards to the seating in this restaurant, and if Council wishes to approve, it should be approved conditionally. Mrs. Douthit asked if the motion should be amended to approve for the regular seating and if they want increased seating, it can be looked at again. Mr. Moore advised this is a requirement of the State of Florida Alcoholic Beverage Dept. and is not a Town requirement and they need the extra seats in order to qualify for the liquor license. Mrs. Douthit amended her motion to approve the transfer conditionally, depending on the Council's decision on the Special Exception later in the meeting. Seconder accepted the amended motion. On roll call, the motion carried unanimously.

2. Request for Transfer of Beverage License - 3 PS - From: David Tisnower - Benjamin Drue d/b/a Hampton Liquors to: Alfred Anthony Stein, III/Hampton's of Palm Beach, Inc., d/b/a Hampton Wine and Liquor at 257A Royal Poinciana Way. Mrs. Douthit moved for approval for the transfer of the beverage license to Alfred Anthony Stein, III/Hampton's of Palm Beach, Inc. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

VII. APPROVAL OF MINUTES OF SEPTEMBER 11, 1990 MEETING HELD AT 5:01PM were approved on motion of Mrs. Douthit, seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously. — Approval of Minutes

VIII. OLD BUSINESS — Old Business

A. Ordinances - Second reading.

1. Ordinance No. 12-90 - Proposed Amendments to Retirement Ordinance - Chapter 15, "Pensions and Retirement" of Town Code of Ordinances. Attorney Randolph read the Ordinance by title: — Ord. 12-90

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES AT SECTION 15-15, SO AS TO CHANGE THE AGE AND SERVICE CONDITIONS FOR NORMAL RETIREMENT FOR FIREFIGHTERS AND POLICE OFFICERS; AMENDING SECTION 15-18 SO AS TO CHANGE THE BENEFIT FORMULA FOR GENERAL EMPLOYEES; AMENDING SECTION 15-29 SO AS TO INCREASE CERTAIN PENSION AMOUNTS PURSUANT TO POST RETIREMENT REDETERMINATIONS; AMENDING SECTION 15-33 SO AS TO FUND A PORTION OF THE ADDITIONAL COSTS TO THE RETIREMENT SYSTEM THROUGH INCREASESTO THE IN MEMBER CONTRIBUTION RATES; AMENDING SECITONS 15-14, 15-15, 15-33 and 15-39 TO REPLACE THE TERM FIREMAN WITH THE TERM FIREFIGHTER AND TO REPLACE THE TERM POLICE WITH THE TERMS POLICE OFFICER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Wiener to approve Ord. No. 12-90 on second reading; seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

2. Ordinance No. 14-90 - Parades and Assemblies on Public Streets. Attorney Randolph read the Ordinance by caption: — Ord. 14-90

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR THE REGULATION OF PARADES; AUTHORIZING THE CHIEF OF POLICE TO RECEIVE APPLICATIONS AND ISSUE PERMITS; PROVIDING STANDARDS FOR ISSUANCE THEREOF; PROVIDING REGULATIONS GOVERNING TIME, PLACE, AND MANNER THEREOF; ESTABLISHING* PROCEDURE FOR APPEAL UPON REJECTION OF APPLICATION; REQUIRING COMPLIANCE WITH PERMIT CONDITIONS; PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS; PROVIDING FOR REPEAL OF SECTION 19-15 OF THE CODE OF ORDINANCES OF THE TOWN AND ANY OTHER ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR EFFECTIVE DATE.

Mrs. Douthit moved for the adoption of Ordinance No. 14-90 on Second Reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

3. Ordinance No. 15-90 - Potential Increases in Non-Ad Valorem Revenues (Fines, Fees, Etc.) Regarding Police Department for FY91 Budget. Attorney Ranodlph read the Ordinance by title: — Ord. 15-90

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 11, ARTICLE II, OF THE CODE OF ORDINANCES OF THE TOWN RELATING TO PENALTIES FOR PARKING VIOLATIONS; INCREASING THE PENALTY FOR VILATING HANDICAPPED PARKING RESTRICTIONS FROM $100 to $250; INCREASING THE PENALTY FOR DOUBLE PARKING AND OBSTRUCTION OF TRAFFIC FROM $20.00 to $40.00; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLIECT; AND PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Ilyinsky to approve on second reading, Ordinance No. 15-90. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

B. Other: — Other

1. Water Supply Feasibility Study by James M. Montgomery Consulting Engineers, Inc. - Progress Report by Town Staff. Mr. Dusey reported the draft of the study has been received and is being distributed to staff and Mr. Sundstrom and Mr. Weinberg and a meetinq is scheduled for the 18th of October to review the study and a final copy will be ready for distribution ot the Council and other interested members of the public by the end of this month. Mr. Heeke stated this will be addressed at the November meeting as to what direction the Council wishes to pursue and whether a workshop should be held. — Water Supply Feasibility Study

IX. NEW BUSINESS:

New Business

A. Resolutions:

Res. 75-90

1. Res. No. 75-90 - Guidelines for Routine Dune Maintenance. Attorney Randolph read the Resolution by title:

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

Motion was made to adopt Res. No. 75-90, Guidelines for Routing Dune Maintenance. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Res. 78-90

2. Resolution No. 78-90 - Opposing Palm Beach County's Ordinance Eliminating Opting Out Position on Environmentally Sensitive Lands. Attorney Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, OPPOSING AN EFFORT BY THE PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS TO MAKE ALL COUNTY ORDINANCES RELATING TO ENVIRONMENTALLY SENSITIVE LANDS APPLICABLE AND ENFORCEABLE WITHIN MUNICIPAL BOUNDARIES.

On motion of Mrs. Douthit, seconded by Mr. Ilyinsky, Resolution No. 78-90 was adopted. Mr. Doney advised the County is working on similar ordinances which in turn may cause them to bring back to the Council similar requests to the Board of County Commissioners and he was not aware of any municipality in the County who was in accord with the County superseding local municipal land use and zoning jurisdiction.

Mrs. Wiener pointed out there is an overall problem here as the leadership seems to be taking a role of conciliation as the municipalities wish to cooperate with the County but they are not representing the local municipalities and the Municipal League is being led down a peculiar path and she felt there needs to be leadership in the League to do the municipalities' business and she didn't feel they were doing their job if they were holding hands with the County. On roll call, the motion carreid unanimously.

Res. 79-90

3. Resolution No. 79-90 - Amending Resolution No. 74-90 - Commercial Solid Waste Collection and Disposal Fees. Attorney Randolph read the Resolution by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMNDING RESOLUTION NO. 74-90 WHICH AMENDMENT IS EFFECTIVE OCTOBER 1, 1990.

Motion was made by Mr. Ilyinsky, seconded by Mrs. Wiener to approve the adoption of Res. No. 79-90. On roll call, the motion carried unanimously.

Bid Awards

B. Bid Awards

Sealed Bid 001-90/91

1. Sealed Bid No. 001-90/91 - Diesel Truck with Tree Trimmer Lift. Motion by Mrs. Wiener was made to approve the award of the bid to Altec Industries, Inc., in the base bid amount of $41,097 with a trade-in allowance for the existing equipment in the amount of $26,500. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Sealed Bid 002-90/91

2. Sealed Bid No. 002-90/91 - No. 002-90/91 - Five 1991 Ford LTD Crown Victoria Police Vehicles. Motion was made by Mrs. Douthit to approve the award of the Sealed Bid No. 002-90/91 to Don Reed Ford in the amount of $13,319 for each vehicle. Seconded by Mrs. Wiener. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

Sealed Bid 003-90/91

3. Sealed Bid No. 003-90/91 - Garbage Transfer Trailer. Mr. Doney explained the Town owns two of these trailers which are used at the Pine Walk to transfer the solid waste garbage to the Solid Waste facility and Mr. Dusey has explained in his memorandum of October 5, 1990, there was only one bidder who made an error in his bid, however, this was negotiated with the Municipal Sales and Leasing and they have agreed to meet the Public Works' Department specifications and provide the trailer for $65,000. Mr. Heeke noted this was a $16,000 savings. Mr. Ilyinsky moved the Sealed Bid No. 003-90/91 be awarded to Municipal Sales & Leasing in the amount of $65,000. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

SealedBid 004-90/91

4. Sealed Bid No. 004-90/91 - Nursery Storage Building - Consideration of Resolution No. 76-90. Attorney Randolph read the resolution by caption:

Res. 76-90

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO FOUR JAYS CONSTRUCTION, INC. FOR CONSTRUCTION OF THE NURSERY STORAGE BUILDING.

Mr. Dusey recommended this bid be awarded to Four Jays Construction, Inc. in the amount of $58,550 for the base bid of $55,700 plus Change Order No. 1 in the amount of $2,850 and there be transferred from the Capital Improvement Fund the amount of $28,105 which increase is due to demolition of the existing building, demucking and fill. Mr. Weinberg moved the Resolution be adopted and the funds be transferred from the Capital Improvement Fund as stated in Mr. Dusey's memorandum of October 3, 1990. Seconded by Mrs. Wiener.

Adrian Winterfield addressed the Council wondering if he was mistaken that a different approach was being taken to the Town gardening and they were now purchasing plants, rather than growing them at the Nursery and if that is the case, why would it be necessary to improve this physical plant? Mr. Dusey responded there are still needs at the Nursery to store the fertilizer and chemicals and the location is used for shrubs and palms and things of that nature. He stated the potting shed and the garage will be demolished but these improvements are necessary as the site is still being used. On roll call, the motion carried unanimously.

Sealed Bid 005-90/91

5. Sealed Bid No. 005-90/91 - Rebuild Vac-All Street Sweeper. Motion was made by Mr. Ilyinsky the bid be awarded to Metro Tech Corp. in the amount of $21,450. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Sealed Bid 006-90/91

6. Sealed Bid No. 006-90/91 - South Woods Road Sanitary Sewer Relocation - Consideration of Resolution No. 77-90. Attorney Randolph read the resolution by caption:

Res. 77-90

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO MANTELL ENGINEERING CONSTRUCTION, INC. FOR SOUTH WOODS ROAD SANITARY SEWER RELOCATION.

Mr. Weinberg asked if the neighbor was aware this work would be going on? Mr. Dusey advised they will tell him before they commence working. A motion wasmade by Mrs. Douthit to approve Res. 77-90 with the proviso the adjacent property owner be advosed the work will be started soon. Seconded by Mrs. Wiener. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

C. Other

Other

1. Consideration of Proposed Design Guidelines Study for Town Hall Square Historic District by Preservation Foundation of Palm Beach. (Note: At the request of the Town Council President, this matter has been transcribed verbatim).

Design Guidelines Study for Town Hall Square (Verbatim Transcript)

Polly Earl: Honorable President and members of the Town Council,
I am Polly Earl, speaking for the Preservation Foundation. I believe you have a brief letter from Mr. John Mashek, our President, on this subject. Very briefly, the Preservation Foundation would like to suggest to the Town that the Town undertake a design guidelines study, similar to the study which is currently underway on Worth Avenue, but focused on the Town Hall Square Historic District. We suggest this, with the motivation of trying to assist the Town to perform this work perhaps more quickly than it would otherwise and also in an effort to assist the businesses and other owners in the Town Square who may have questions about what direction to proceed in terms of restoration, rehabilitation, etc. of their buildings and the Preservation Foundation is happy to be willing to offer to fund this study for the Town in the amount that we have been told might possibly be its cost, which is somewhere between $5000 and $7500. Our hope is the Town would direct the study itself, ask your consultants to study whatever perimeters you feel will be useful for the Town and for the owners on the Town Square. Thank you.

MR. HEEKE: Anyone have any questions or comments? Mr. Moore, you have a.........

MR. MOORE: Yes, sir. I have had discussions with Mrs. Earl regarding this particular matter and also with Mr. Brisson of Adley. As you recall this past year we did designate the District area from Brazilian to Chilian. The current quidelines that are in effect are under the jurisdiction of the Landmarks Preservation Commission, and so the historic nature of the Square and the historic buildings within the Square will dictate any changes to any buildings currently that would be on the menu for the next year. The study that Mrs. Earl is referring to on Worth Avenue, as you recall, last year the Zoning Commission recommended that Adley proceed with some design guidelines for redevelopment of Worth Avenue that would include some possible incentives for zoning as related to architecture. It is my understanding that the request of the PRESERVATION FOUNDATION is a substantive request that would involve a similar type study that would relate directly to redevelopment of the Town Hall Square District., i.e, if the Gulf Station were to go, what type of building and what type of architecture would be there relating to architectural matters as well as zoning matters. This is a zoning matter. It would, and I have informed Mrs. Earl that it would take Town Council direction for the Council to authorize such a study to be done not for this zoning season or next year* as to what Adley might recommend for future redevelopment involved in the Town Hall Square area. We would need your direction and your authorization before we could ask our consultants Adley to perform such a study. We are thrilled that the Preservation Foundation would be willing to reimburse the Town for its expenses, and I have not gotten a figure directly from Mr. Brisson and I trust that Mrs. Earl's approximate figure would be accurate, but it would be worth, in my opinion, the effort to perform the study and receiving the reimbursement, the generous offer reimbursement from the Preservation Foundation, however, it would not be something that could be considered this year.
1990-1 but for review prior to the 1991-2 Zoning Season or next year

MR HEEKE: I understand.

MR. ILYINSKY: We all understand that.

MRS. WIENER: Yes.

MR. HEEKE: Does any member of Council have any questions or comments?

MRS. EARL: Mr. President, if I might just add one further footnote here?

MR. HEEKE: Yes.

MRS. EARL: I think that all that Mr. Moore has said would be very beneficial results of such a design guideline study and I think also the Town may wish to consider including what perhaps are some left over little pieces of business resulting from the restoration of the Town Hall, the creation of the Historic District, some of the rehabilitation that has already gone on in the Historic Diestrict, for example, I know that the Landmarks Commission currently has on hold - at least one application for some exterior landscaping in the District. It may be that the Town feels that this particular study might possibly go a little bit further into some of the aesthetic or beautification questions about the Town Square Historic District.

MR. HEEKE: Mr. Moore, do you want to comment on that?

MR. MOORE: Yes. The Beautification is an issue that is directly related to the Landmarks Commission's jurisdiction and I am not one hundred per cent sure - I think what Mrs. Earl is referring to is I believe the Bustani building and the question of landscaping in the poublic right-of-way, or DOT right-of-way and that is a subject that is really beyond currently the Town's ability to go into as far as the DOT is concerned, and of course, the liability issues that the Town Attorney and the Risk Manager would have to go into in authorizing landscaping within the right-of-way area. I think that would be a subject matter that certainly could be added to that study item for next zoning season and discussed at that point, but I would caution all of those involved, including the Preservation Foundation that there are other considerations that the Town must look at, such as the liability issue and the DOT's authority on County Roadk, as to whether or not landscaping ....I wouldn't want to lead them or anyone in the false impression that becuase Adley might think it is a great idea to have trees on the sidewalks along County Road, that, and aesthetically it would look great - we have a couple of other issues that need to be looked at at the same time.

MRS. EARL: Absolutely.

MR. HEEKE: Well, may I have a motion accepting the generous offer of the Preservation Foundation?

MR. ILYINSKY: Yes.

MRS. WIENER: Now wait a minute. There is a - what is the time frame that you have in mind?

Verbatim Transcript re: Design Guidelines for Town Square Historic Area

MRS. EARL: From our perspective, well, perhaps I should start differently, in my very informal conversation with Mr. Brisson, he was quite clear that he could not get started right now because he is - if he should be the consultant that you wish to do this - he could not start it right now, because of his other obligations through the Zoning Season. It is our hope that the Town would move forward and start this as soon as possible, even if it is not formally acted upon until next year's Zoning Season. But, we think that just the study and the consideration of these matters and perhaps their availability in a draft form may be very helpful to the Town and to the owners, to the businesses on the Town Square, because I think one of the things that makes people uncomfortable is uncertainty about what direction they may be going and if they know what the Town is talking about and what the Town is considering, everybody is that much further ahead.

MR. MOORE: We would anticipate - to answer Mrs. Wiener's question directly - we would anticipate authorizing Adley to commence this work which would have to be funded in April when we look at our six month figures in the budget, we would have to fund for it even though we would be reimbursed later on - we would have to fund at that point in time for the $5000 to $7500 - and would anticipate a start in April or May, upon approval by the Council at their budgetary hearings, Finance and Tax and Council action and expect that the study be finished by July or August in advance of the Zoning season for the Council, the Preservation Foundation and anyone else that wished to look at it prior to the discussions in the 1990/91, or 91/92 Zoning Season.

MRS. WIENER: The reason that I asked the question Mrs. Earl, is that there no doubt will be many other expenses involved with this and I think we need to be clear whether, you know, your money will be forthcoming at any time that we do it, or whether there is a a cut off date.

MRS. EARL: No. There is no cut off date.

MRS. WIENER: Thank you-urged they get going with *We urge you to get going with it
MRS. EARL:* and as soon as you can give us a bill....

MRS. WIENER: ..As you know - These things always cost more money than we anticipate and I think it is something people are concerned about - taxes - and we have continual pressure here and I think we have to be fully knowledgeable of how much money it will cost us and I will tell you that this study will cost many times over $7500, with all the ramifications.

MRS. EARL: At the point that you get an estimate or a very firm estimate for the study that goes over that amount, then I would assume that you would want to be in touch with us and we'll look at it. We got what.....

MRS. DOUTHIT: I would be happy to second Mr. Ilyinsky's motion.

MR. DONEY: To make this analogous to other work that Adley has been authorized to do- really what we need to do is - through Bob Moore - to ask Bill Brisson to provide an itemized scope of work with cost and then return it to the Council and the Preservation Foundation, in order that the Council can review the scope of work and then authorize the Agreement be executed, if it is in order.

MR. HEEKE: Ok. Let me try to understand Mr. Ilyinsky's motion which is to accept the offer from the Preservation Foundation to furnish funds for a study of the Town Hall Square Historic District by Adley and Associates, subject to the estimate presented by Adley and Associates.

MR. ILYINSKY: That is my motion.

MR. WEINBERG: Does Mr. Ilyinsky's motion include funds or total funds?

MR. HEEKE: Total funds ..well, funds...

Mr. Moore: ...For Adley's work - if I could clarify that, if I might. Wat I know what Mrs. Wiener happens to be referring to is the amount of staff time that is going to go into this - is going to go way beyond the $7500 - so the Town is contributing through its taxpayers, a great deal of money and staff time and effort and paper work, etc. The actual Adley Study is what I believe Mrs. Earl is talking about funding.

MR. HEEKE: That is my understanding.

MR. ILYINSKY: That's it

MR. WEINBERG: The question still is - will the Preservation Foundation be responsible for all the financial funds necessary to complete this study?

MR. HEEKE: Not for reimbursing the Town staff.

MR. WEINBERG: Exclusive of the Town's staff?

MRS. EARL: At the moment, based on the estimate which we received from Adley and Associates, our Board has authorized an expenditure of $5000 to $7500. $7500 was Mr. Brisson's top guesstimate to me. When you have refined figures, if it goes over that amount, we would be glad to consider very seriously adding to that - but at the moment, what I am authorized to offer is the best guesstimate that we received.

MR. MOORE: Not to exceed $7500.00.

MRS. EARL: Yes sir.

MR. HEEKE: Mrs. Peters, I think we would want a verbatim transcript of the minutes so there is no doubt in the future as to...we all seem to understand it today but Tuesday of next week, we might have questions in our mind.

MR. MOORE: We will give a firm proposal back adn the Preservation Foundation will certainly be reviewing it and signing off, if you will, on it.
MR. HEEKE: I would like to call for the vote now. Mrs. Peters?

On roll call, the motion carried unanimously.

Scharaga request to construct a wall

2. Request from Mr. Stuart Scharaga, 210 Wells Rd., for the Town to construct a wall on the property line between his Property and the North Fire-Rescue Station. Mr. Scharaga addressed the Council indicating he has lived at 210 Wells Road since Dec. of 1989 and before he purchased the house, he did some research and talked with the people in the Fire House and felt there were certain noises he could live with, however in April, he had a meeting with Chief Elmore and asked why the Town did not build a wall on the western side of its property as there is a wall on the south side. He talked with the previous owner who was offered the wall, but who did not want it as she felt with the shrubs there, there was a better security position and she could be immediately in touch with the people at the Fire House. He stated there were certain noises for which they were not prepared, as on Saturday morning, the auxiliary generator is activated and because his house windows face eastward, the generator noises are quire loud and the fumes form the generator are quite offensive. Hi is building a new house which will face the west but there will still be some easterly windows to take advantage of the sun and the easterly winds. He stated other noises are trucks backing in, the dumpster being unloaded, and although the noises are not excessive and would not be if the building were in a commercial zone but due to the fact this is residential, he believes the fire house should be isolated form the residential area and a wall will do that. He indicated a bigger problem is when the fuel tanks are being filled, the fumes blow across through the shrubs and into the house and he urged them to authorize the building of the wall which would cut down on the noise element and allow the fumes to be reflected.

Mrs. Douthit did not feel it was a Town problem as the house was purchased knowing it existed there next the fire station and she asked him why he didn't build the wall on his property? Mr. Scharaga stated when he bought the house, he was prepared for the various noises, but not for having it as a refueling station and did not know about hte diesel generator.

Mr. Heeke believed the wall was offered to be built when the building was being renovated but that situation is now long since passed and he recalled several applications in the past which wanted to use Town property and funds for the benefit of a next door neighbor and they have been denied and he sees no reason to depart from that practice.

Mr. Ilyinsky asked how many other places there were in the Town which had a similar situation? Mr. Scharaga indicated he knew of none. Mr. Ilyinsky felt perhaps a 50-50 deal could be worked out. Mr. Scharaga stated the gas stations in the Town are not in residential areas, so no-one will complain about the fumes and in his case, he believes there is a health hazard. Mr. Ilyinsky wondered if a wall would be effective as the fumes would probaboy go over the wall. Mr. Scharaga did not believe so. Mrs. Wiener felt the property was misrepresented to him when he purchased the property, and the Council always stays away from problems of neighbors and since he bought the property and knew where it was and should have realized there may be some type of problem with it. Mr. Scharaga did not believe the fire house was the problem but the refueling was the problem. Mrs. Douthit believed the fuel tanks were there prior to the purchase. Mr. Heeke commented they do have to conduct the business of the Town and Fire-Rescue is one aspect and that includes fueling of the emergency vehicles, which is a municipal function. Mr. Scharaga felt the Town had the responsibility to contain the fumes on its own property.

Mr. Heeke felt this was a proper municipal function and they have conducted the business of the Town in this building since 1928 and it has been business as usual, although there may be more sophisticated generators but hopefully it shouldn't present as much noise. Mr. Scharaga indicated they can't carry on a conversation when the generator is in use.

Chief Elmore stated the tanks are filled about twice a month and the generator is operated about five minutes a week and it is generally a maintenance matter and it is scheduled for testing on Saturday mornings between 8AM and 9AM. Mrs. Wiener asked if ti could be done at another time if this is not convenient and perhaps it could be done when the neighbor is not at home.

Mr. Heeke informed Mr. Scharaga he had the option of installing a wall on his own property.

Mrs. Douthit made a motion to deny the request of Mr. Scharaga to construct a wall on the property line on the grounds that he can build a wall on his own property. Mr. Heeke asked if the motion could also include the other statements made in the course of this discussion to which Mrs. Douthit agreed. Seconded by Mrs. Wiener who indicated to Mr. Scharaga that if he needed a wall a little higher than was allowed to solve the problem, she would be willing to entertain something of that sort, if he decided to build the wall on his own property. On roll call, the motion carried unanimosuly to deny.

Traffic Hearings in Town Council Chambers

3. Proposal to Hold Traffic Infraction Hearings in Town Council Chambers by Chief Judge Daniel T. K. Hurley, Circuit Court. Mr. Doney indicated a memorandum has been sent by Chief Terlizzese under date of October 5, 1990 and the issue does have some advantages for the Police Department and residents but nevertheless there may be some problems about the use of the Council Chambers on a continuing basis and other unanswered questions. Chief Terlizzese advised the infractions are non-criminal traffic tickets and they write about 3500 per year with approximately one-third to Town residents, so it would be a convenience to the Town residents to hold the traffic hearings in the Town, as it will be a lot quicker and it should cut down on overtime expenses for the police officers involved. He stated the down side is the facility would have to be designated for one particular four hour block every week adn there would be some wear and tear on the building and electricity costs. He felt if the concept was approved, it should be conditional that the Town would not incur any additional funds to operate this facility as the taxpayers are already paying taxes for that purpose. Mr. Heeke thought if this was granted, perhaps they could do it on a trial basis. Mrs. Wiener indicated she did have a problem with this as this room is used quite extensively and because of the fact this is the only room available with larger seating, it is a problem to her. Mr. Weinberg asked if there was any room in the Police facility for this activity to which Chief Terlizzese responded negatively. Mrs. Wiener felt it may be self-defeating as probably more people would plead not guilty. Mr. Heeke and Mrs. Douthit felt it would save a lot of police time.

Mr. Doney explained another problem issue is parking and another issue is there are some unknowns since this is in the formative stage and we don't know what space needs or equipment needs there may be and we would need a clear definition of that before this is finalized. Mrs. Douthit wondered it they should get further information as to the funding and the other ramifications and find out what is necessary and perhaps we should do it on a trial basis for six months or a one year period but before a decision is made, further information is needed. Chief Terlizzese stated he will gather more specifics from Judge Hurley. Mrs. Douthit made a motion to authorize Mr. Doney and Chief Terlizzese to gather further information on this matter prior to coming to a decision and this be brought back to the Town Council next month. Seconded by Mr. Ilyinsky.

Mrs. Wiener stated she would like to know how many other municipalities are doing this as she strongly believes the Town Hall Council Chambers are used quite heavily and there is no room for anything on a scheduled basis as it is a tight schedule and to add further burdens to this building would not be appropriate.

On roll call, the motion carried 4-1 with a negative vote cast by Mrs. Wiener.

Agreement with Computil Corp.

4. Request to Renew Agreement with Computil Corporation for Collection of Outstanding Parking Fines for Parking Citations and Request for Authorization for Town Manager to Execute Agreement for Period from October 1, 1990 to September 30, 1991. Motion was made by Mrs. Douthit to authorize the Town Manager to execute the Agreement with Computil Corp. for collection of the outstanding parking fines for the period from October 1, 1990 to September 30, 1991. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Settlement of AT & T overpayment of telecommunications tax

5. Proposed Settlement of AT&T Alleged Overpayment of Telecommunications Tax. Mr. Doney reported this request has been pending since late 1988 when AT&T alleged they had overpaid a number of municipalities in the State on the telecommunications tax and the Town, initially through Mr. McPhail responded to AT&T that we did not believe the proper documentation had been provided to support the overpayment request. He stated subsequently, they have provided additional data and Mr. McPhail in his memorandum of 9-24-90 advised he has reviewed this and it is his understanding there was an overpayment and AT&T has proposed to settle in an amount of 62.4% of the amount they had identified as an overpayment, with no interest. Mr. Doney recommended Council conditionally approve payment to AT&T in the amount of $34,510.46 for the settlement amount conditioned upon:

(1) that Mr. Ball's letter dated 8-24-90 to Mr. McPhail that the "most favored nation position" should apply and if they settle with any jurisdiction for a lesser amount, the Town would then get a refund.

(2) AT&T will fully comply with Town Ord. 7-87 in the future.

(3) Within ninety days fo the close of each fiscal year, AT&T will provide the Town with a written annual statement and report by month, which certifies that the monthly payments made to the Town are true and accurate and if any annual adjustment is required, AT&T will provide written documentation on same, indicating the amount due to the Town or the amount refunded to AT&T and the identified amount shall be paid within thirty days of AT&T's provision of their written annual statement to the Town. If this conditional requirement is not met, it is recommended that AT&T would waive its rights to any outstanding claims.

(4) AT&T will draft a formal settlement agreement which will be subject to review and approval by the Town attorney and Town Manager and shall include the above conditions 1, 2 and 3.

Mr. Heeke noted this is a complicated matter and he commended Mr. Doney, Mr. McPhail and Mrs. Crozier for their handling of this.

Motion was made by Mr. Weinberg to approve the recommendations of Mr. McPhail's memorandum of Sept. 24, 1990 and the four conditions as outlined by Mr. Doney and written on the bottom of the memorandum. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Interlocal Agreement re: Gas Tax Distribution formula

6. Consideration of Palm Beach County's Proposed Interlocal Agreement Regarding Gas Tax Distribution Formula. Mrs. Douthit stated her dislike about the County's attitude and she moved that the Council do everything in its' power to retain the small percentage we now have and not diminish it further. Seconded by Mr. Weinberg.

Mr. Doney noted the considerations and alternatives which are before the Council now which have been recommended by the County Administrator as set forth in Mr. Jakubiak's memorandum of October 3, 1990 and because of the options offered, it is recommended the Town Council approve Option 1 which is there be an appointment of a Committee with municipal representation so it can be evaluated thoroughly and verified, since there are a lot of trade-off issues and it is a complicated matter.

Mr. Heeke felt the motion was that the Council does not want to give up anything they now have and staff can have their on-going discussions but the philosophy and statement of the Council is clear.

Mrs. Wiener commented on the fact the County is well beyond teh millage rate and every projection they come up with is for their own case and they don't deal in a fashion for the good of everyone and love to point their fingers at the municipalities, and this is one more way of squeezing.

On roll call, the motion carried unanimously.

Remarks of Ctp. Montgomery on Peanut Island

7. Remarks of Cpt. Montgomery on Peanut Island.

Cpt. Montgomery addressed the Council, commenting on the fact he is a Port Commissioner for the Port of Palm Beach, but was here today acting on his own behalf, and not acting as a Port Commissioner or for pleasure basin of Peanut Island, and he was not sure that everyone is aware that the Florida Inland Navigation District has a proposal before the Port Commission to purchase Peanut Island and if this is concluded, they will utilize Peanut Island for a spoil dump site for approximately a twenty mile stretch of the Intercoastal Waterway dredging project. He noted no-one will state specifically how much spoil they are going to dump, however twenty miles of Intercoastal Waterway being dredged adn the spoil being put on Peanut Island, it could be in excess of a million cubic yards. He stated the minutes of the last Port meeting will verify that Mr. Art Wilde, the Executive Director of the Florida Inland Navigation District admitted that upon completion of this dredging project, Peanut Island will not exist as we see it now, and ultimately they will create a recreational area, but they also propose that they will have an ongoing project of putting additional spoil and removing spoil from Peanut Island. He indicated there is only one way to handle spoil sand, and that is to dredge it up out of the bottom of the Intercoastal Waterway; hydraulically pipe it into a containment area; then pile it up into piles; turn bulldozers loose in there and level it all out with bulldozers. He felt that this is not going to be the best use of Peanut Island over the long term period for the people of this District, especially when the bast majority of this spoil sand that they are proposing to utilize is beach quality sand, and just about everybody in Palm Beach County is asking and begging for beach renourishment of new beaches and he thought it is a very poor use of such a great asset as to dump it into a pile on Peanut Island, when it could be utilized in beach restoration projects. He indicated Florida Inland Navigation District state they have no other alternative but the fact is that the Florida Inland Navigation District has been around for many years and have had twenty-five years to plan for this project, but during that 25 years, they have made no effort whatsoever to get the necessary permits to utilize the existing spoil sites or to make arrangements to deliver this sand to the beaches along the barrier islands and go through the necessary permitting process that will allow them to do this and now when they are ready to do the project, they say "we don't have time - we want to use Peanut Island because Peanut Island is there - it is already a spoil island and nobody can stop us from using it for that purpose." He asked theCouncil to remember that FIND is a taxing districts, and oddly enough, they are not elected representatives of the people, but appointed bureaucrats. He noted they don't have to ask your permission to do anything - they also don't have to ask your permission to increase your taxes and are increasing the FIND tax on your property by fifty-seven per cent this year. He believed they have only one function - this is an entire bureaucratic level now, including Executive Director, Assistant Directors and office spaces and secretaries and all these people that do only one thing, and that is to acquire sites for the Corps of Engineers to dump spoils when they do dredging projects and have no other function. He didn't believe they thought about historical values or ecological values; or recreational values. He stated they only want to have a place to dump spoil that is legal and if it is legal that is all they are concerned with. He mentioned the fact that they spent last year approximately $160,000 in improving the properties that they now own for recreational purposes. He suggested that the Palm Beach Town Council send a letter to Gov. Martinez requesting that the State of Florida purchase Peanut Island for the purpose of preserving the historical, ecological and recreational values of Peanut Island in perpetuity for future generations.

Peanut Island

Mr. Heeke thanked Cpt. Montgomery for coming and emphasized Cpt. Montgomery is here in an individual capacity and not in any capacity as a member of the Port Commission. Fortunately, for the Town of Palm Beach, Cpt. Montgomery lets us know when these things come along.

Mrs. Douthit asked if a million cubic yards of sand on top of Peanut Island would bury all the trees? Cpt. Montgomery responded he had talked with the Executive Director of FIND, who stated: "Our intent is to build an earthen dike around the uplands of Peanut Island and pump it full of spoil sand and the trees would have to go."
Mrs. Douthit: Most of whom are very dead.

Cpt. Montgomery felt if the Florida Navigation District buys Peanut Island from the Port and taxes citizens to get the money, they are being taxed to buy something they already own. He has already discussed this with the people on the Singer Island Civic Association and some of the people down in South Palm Beach who desperately want beach sand - beach restoration and would be willing to pay any additional costs necessary to get this spoil sand piped over onto their beaches rather than put it on Peanut Island.

Mrs. Douthit stated she was opposed to the dredging and dumping the sand on Peanut Island and encouraged Mr. Heeke to write very strong, positive letters to the Governor and whoever else has anything to do with this and the Port Commissioners, expressing our opinion, and she so moved. Mr. Ilyinsky seconded the motion.

Mrs. Summers of the Garden Club asked if there had been an environmental impact study done by FIND? Cpt. Montgomery responded they were supposed to, but he hasn't seen it. Mrs. Summers asked if a letter writing campaign of protest from the citizens in Palm Beach would help to which Cpt. Montgomery responded it would probably be of some value.

On roll call, the motion carried unanimously.

IX. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR SEPTEMBER, 1990. On motion of Mr. Ilyinsky, seconded by Mr. Weinberg the Warrant List and Fund Expenditures for September, 1990 were approved. On roll call, the motion carried unanimously.

Approval of Warrant List

X. DEVELOPMENT REVIEWS:

A. Major Matters Previously Considered by the Architectural Commission at their meeting of September 26, 1990.

Major Matter. Arch.Comm.

Mrs. Wiener felt this was an appropriate time to discuss some of the matters which are being discussed by the Architectural Commission as this is something that has disturbed her for several years. She felt there were many matters discussed at ARCOM meetings which are not architectural commission matters. Mrs. Douthit asked if it was proper for Mrs. Wiener to speak on this subject when there are no members of this Commission in attendance today. Mrs. Wiener stated nor are the people available who have had some problems with this Commission and her comments are being made to make a determination as to whether or not a workshop should be held. Mr. Heeke asked Mrs. Wiener to continue.

Mrs. Wiener stated she has discussed these matters with the Building Official and the Chairman of the Architectural Commission in hopes of avoiding these matters, but she thought when there were appointed people to a Commission, who have direction through ordinances and she has researched the ordinances and they are quite specific as to the duties of the Commissioners. She noted from the minutes there was someone who was building a private home on a large piece of property and approval was given with the proviso the builder must build a fence and paint it green. She didn't believe there was anything which empowered appointed people to spend taxpayer's money and to protect one neighbor from the other. She likened it to the situation that came before the Council today with the gentleman who lived next to the North Fire Station and was told he had the problem and he should build the wall. She felt zoning matters were continually discussed at the Architectural Commission meetings and at their meeting last month, they discussed a window on a residence and had the members state it was unattractive or doesn't suit the appearance of this home, or is in conflict with the general architectural plan for this home, she would find no prolem; but instead there was a discussion which concerned whether or not someone would be using that portion of the home to live in and she considered that a zoning matter. She noted approval was given with the proviso that a window not be included because someone might be using that area for living. She felt the Council needed to be clear about what the Commissions do and what their responsibilities are and also when they go beyond what is spelled out in the Ordinance, the Council needs to sit down and talk to them about it. She felt this was going on for a long period of time and there are many matters that are subjective to individual members of the Council as some don't like railings or grille work and as long as they are on the Commission, they won't allow grille work. However, she stated they may be replaced by someone on that Commission who likes grille work and in the meantime we are talking about money being spent by people who live here or will live in this Town. She wondered if a Workshop should be held.

Mrs. Wiener noted another item in the minutes is someone was asked to fully landscape their lot and she believed there is an unevenness about what people are asked to do.

Mrs. Douthit pointed out every piece of property is different. Mrs. Wiener agreed but felt it had nothing to do with the fact that zoning is charged with a certain number of things by ordinance. She indicated in the minutes it states that one of the applicants does not intend to use a portion of the enclosed garage for living space and she didn't believe that was a matter for the Architectural Commission to be considering. She isn't faulting them, but very often these matters get out of hand. Mr. Heeke pointed out this does happen and even happens at Council meetings when they get off track and the Town attorney brings them back on line. He noted they are dealing here with volunteers. Mrs. Wiener agreed but pointed out the difference is Council is elected and if the people are not happy, they can be removed. She felt this was an entirely different situation as they are volunteers appointed by the Council and we haven't had a workshop with them for a long time and in other communities, it is done on a regular basis.

Major Matters Arch. Commission

Mr. Moore reported that B66-90 is the one that Mrs. Wiener is referring to with regards to the window and secondly, B97-90 on the issue of the fence. He stated Mrs. Wiener's comments are quite on point and there have been discussions from a technical standpoint with members of the Architectural Commission and they have been advised by letter by the Town Attorney on their responsibilities and their limits within the area of architectural judgment and all of the other guidelines that go with that ORDINANCE. He stated the staff is in a difficult position from time to time when a member of the Commission seems to go beyond the guidelines as it is difficult to interrupt the proceedings regarding actions taken by the Commission, especially after they have been informed of their limitations. He attends most of the meetings and it is his opinion it is not done on a selective basis and does not agree that certain people are selected for certain treatment. Mrs. Wiener corrected that statement by stating she didn't mean that but there are certain people on the Commission who do not like certain things, such as grille work.

Mr. Moore agreed that that may be the case but the selection of these Commissioners is from a wide group and they have different tastes about different things, such as roof tiles, windows, wrought iron or landscaping. He stated a plus in the Ordinance is there must be two architects on the Commission as they have the training, the schooling and the prior work experience to relate to the other architects and one of the little known facts is that those members of the Commission who are architects do meet with other architects who have problems on their first appearance before the Architectural Commission to try and assist them with the areas of concern. He felt the area of zoning is a hold over from the time when the Commission did look at zoning some years ago. He didn't feel that a Workshop would be a disadvantage now and in fact, would be helpful if the Commission members were to hear from all of the Council members their feelings on this matter and supported the concept of the Workshop to be a means of exchange between the Commission members and the Town Council.

Mrs. Douthit pointed out that not only is Mr. Moore in attendance at these meetings, but also the Town Attorney and she was sure that he would not allow anything to happen and if they were overstepping their bounds, the Town Attorney would immediately point this out to them. Mr. Moore felt there was no question that they have overstepped their bounds at certain times but it is difficult for staff to correct the situation as the staff is on an advisory basis and it puts them in a difficult position to repeatedly police every work that is said by members of the Commission. Mr. Heeke felt that Mr. Randolph is always tactful and when advising the Council, he doesn't miss the point on how to proceed and perhaps these needs are to be emphasized not only with the Architectural Commissions, but all of the Commissions. Mrs. Douthit felt it rather peculiar if they weren't allowed to give their opinion as they are advisory to the Council.

Attorney Randolph stated this is not a situation unique to the Town, but exists in any municipality which has a community appearance board or a commission such as the Architectural Commission which has the job of attempting as best possible to judge aesthetics. He indicated criteria is set out in the Ordinance, such things as a project cannot be too similar or too dissimilar and that kind of language allows for some discretion, so it is difficult for the Staff to know when to draw the line in addressing a person's comments. He stated there is a provision with regards to denials as the person who makes the motion must state a reason for it being denied and what criteria is being applied and if there is a motion to deny, he will remind the Commissioner to state the criteria, and that is a way to keep the Commission in line to ensure they focus on criteria and not their individual taste. Mr. Heeke stated he had a degree of comfort with Mr. Randolph discharging that function as he has seen him perform with the Town Council and he doesn"t believe the thought processes of any individual can be controlled and particularly as to what is beauty and what is not.

Mrs. Wiener realized what they were saying but she has attended a few Architectural Commission meetings and three times out of four, Mr. Randolph is represented by someone else from that office and she really felt they needed to have a workshop as she had a real concern about the Architectural Commission getting into zoning matters.

Mr. Moore agrees the zoning is staff's responsibility and accepts the responsibility of not jumping in when zoning matters surface and he does believe it is the staff's responsibility to advise the Commission when they are in an area where they shouldn't be and he does take that responsibility and will try to do a better job in the future of administrering that responsibility in a faster manner.

Mr. Randolph stated if the Council wanted a Workshop, that would be fine, but if they do not, he will review this with the Architectural Commission that this is not a Board which is supposed to use personal preferences and must follow the guidelines as set out in the Ordinance.

Mr. Heeke felt that between Mr. Moore and the Town Attorney, with Mr. Moore not being reluctant to speak up, this might be a first step in the right direction as he didn't wish this discussion to be misconstrued by the Architectural Commission that the Council is critical of their efforts as if anything, the Council is most appreciative of the time and what they do but this is just a question of guidance and he would like to see if this solves the problem before they go to a Workshop. Mrs. Wiener indicated she also appreciates the work done by the members of the Commission, but she wanted to bring it to the attention of the Council as she thought it needed to be brought up.

Motion was made by Mrs. Wiener to approve the major matters of the Architectural Commission meeting of September 26, 1990. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

The major matters were:

B40-90 - New residence for William A. Meyer, President of Palm Beach Land Investments, Inc., 3 Windsor Ct. Removed from Agenda.

B28-90A - Revisions to a previously approved project of the Wells Road Land Co., 133 Wells Rd. - Deferred.

B62-90 - Garage addition and new pool house for Dr. & Mrs. Welch, 144 Everglade Ave. - Approved conditionally.

B66-90 - New Residence for Mr. & Mrs. Claude Clement Mimun, 1150 N. Ocean Blvd. Approved conditionally.

B16-90 - Revisions and additions to residence of Michael J. Civitella, 272 Country Club Rd. No action taken.

B26-90 - Landscape Plan for Leonard and Pat Sousa, 1300 N. Ocean Blvd. - approved conditionally.

B76-90 - Storefront Renovation for Stuart Doppelt, 125 Worth Ave. - Removed from agenda.

B77-90 - New residence for Mr. & Mrs. Stephen Levin, 446 N. Lake Way - Approved conditionally.

B82-90 - New residence for Richard Doan, 218 Miraflores Dr. Deferred.

B83-90 - New residence for Mr. & Mrs. Eugene Applebaum, 325 Via Linda. Removed from agenda.

B85-90 - Renovations to residence for Walter J. Elliott, 1233 N. Ocean Way. Approved conditionally.

B87-90 - Wall for property of John and Chandler Mashek, 1290 S. Ocean Blvd. Approved.

B91-90 - Addition to residence of Mr. & Mrs. Seymour Cole, 233 List Rd. - Approved conditionally.

B27-90 - Landscape plan for property of John Raimondi, 1420 N. Ocean Blvd. Deferred.

B52-90 - Demolish and build new residence for Peter Stanley, 1332 N. Ocean Blvd. Deferred.

B92-90 - New storefront and signage for B. Handelsman, 223 Worth Avenue. Approved.

B93-90 - Remodeling for B. Handelsman, 240 Worth Avenue. Approved.

B94-90 - New window treatment for B. Handsel's 375 S. County Rd. Approved.

B95-90 - Demolish existing building and construct new residence for Robert W. Gottfried, Inc., 132 El Brillo - Approved conditionally.

B96-90 - Remodel commercial space of B. Handelsman, 238 Worth Ave. Deferred.

B97-90 - Tennis pavilion and pool cabana for Leonard Sessa, #6 S. Lake Trail. Approved contitionally.

B98-90 - Remodeling for Mr. & Mrs. Ronald Leeds, 120 Jungle Rd. - Approved.

B99-90 - Addition to residence of Ronald Perelman, 641 S. County Rd. Approved.

OLD BUSINESS: Old Business

1. Variance No. 49-90 - Howard and Debra Risick, 144 Reef Rd., to allow construction of a swimming pool providing a front yard setback of 15' in lieu of 25' required. R-B District. Deferred from September meeting. Attorney Michael Small addressed the Council indicating they have reduced the size of the pool to 12' and are putting it closer to the house and now have a setback of 15' and need a variance for ten feet instead of fifteen feet. He pointed out the back yard is very narrow and a pool cannot be buildt there, and the hardship is the configuration of the lot and the motivation for this variance is the fact their son has chronic asthma and their physician has recommended daily swimming could be particularly geneficial. He indicated there have been other variances granted in this area. Mr. Moore reported the projects identified by Mr. Small were all built before there was a setback requirement and only one received a variance in 1989. He believed the applicant has made a good effort to reduce the amount of the variance and has gone the extra mile and if this is approved, it should be made clear the medical reasons are not valid reasons for a hardship. Mr. Ilyinsky asked if the pool could be seen from the street to which Mr. Small responded it will not be visible as there now exists substantial hedging and this will be further landscaped. Mr. Ilyinsky agreed the applicant has done his very best to make this a minimum variance and he was willing to make a motion to approve this variance. Seconded by Mrs. Wiener. Mr. Heeke indicated he does not see a hardship and would be voting against the motion, but he commended Mr. Small for reducing the variance request. Motion carried on roll call, 4-1 with Mr. Heeke voting against the motion. Var.49-90

2. Special Exception No. 10-90 - Tete a Tete, Inc., 101 N. County Rd. - withdrawn from consideration as a Special Exception. Substantially modified request will be heard under Agenda Item S.C.1. The special exception request was withdrawn. Spec.Excep. 10-90

NEW BUSINESS: New Business

3. Special Exception No. 12-89 with Variance - Barry and Melinda Wright, 230 N. Ocean Blvd., to allow construction of beach house per Section 5.47 of the Town Zoning Ordinance and further, to vary from Subsection (b) to construct the beach house on a lot with 81.53' frontage in lieu of 100' required, and providing a street side yard setback of 5' in lieu of 10' required. Beach Area District. Request for one year extension. Attorney James Mascarene Weary indicated this was the first request for a one year extension. Mr. Ilyinsky moved for approval of the one year extension. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. Spec.Excep. 12-89

4. Variance No. 52-90 - Richard Lasdon, 208 Angler Ave.; to allow installation of an awning providing a south side yard setback of 6.68' in lieu of 12.5' required. R-B District. Mr. Richard Lasdon addressed the Council on his own behalf requested the variance to increase an awning by six feet to cover a terrace and he has had no objection from his neighbors of this request. Mr. Moore advised the line is in line with the existing setback of 6.68' and the hardship is the house was constructed at the setback which was in compliance with the Code at the time of construction. Mr. Heeke noted the original construction met the Code at the time it was constructed. Motion was made by Mrs. Wiener, seconded by Mr. Ilyinsky to approve Variance No. 52-90. On roll call, the motion carried 4-1 with Mr. Heeke voting against the motion because he could see no demonstrated hardship. Var. 52-90

X. B. 5 - Variance No. 53-90 - Tova Leidesdorf, 203 S. Lake Drive; applicant proposes to divide subject property and requests variances to allow construction of a single family dwelling on a parcel with a lot frontage of 63' measured at the building setback line in lieu of 125' as required; and to allow the proposed property line to be 5' from the existing two-story accessory building in lieu of providing the required 15' side yard setback. R-A District. Var. 53-90

Attorney Raymond Royce addressed the Council on behalf of the applicant. He exhibited drawings which showed the old plats of the area and the property in question. He noted Seabreeze Avenue was platted all the way with a 16' wide street and his clients have a large piece of property between the two cul de sacs. He noted one of the Plats was platted in 1914 and the other in 1917 and the way the lots were laid out, they never had any frontage on Seabreeze or Seaspray, except for a small portion of the cul de sac. He stated the

entire property consists of approximately 71,438 square feet, which is about 1.64 acres and is 280' on the lakefront and the depth of the property varies from 230' to 290'. He stated his clients wish to subdivide the property into two lots and the R-A District requires 20,000 square feet per lot and they are able to provide that from a theoretical standpoint, it could be divided into three lots with some footage left over. He stated
Var.53-90 they are only seeking two lots, with one lot at 40,946 square feet adn the other 30,492 square feet.

Mr. Royce stated at the present time the home now existing has a driveway off of Seaspray and they propose to break the property into two parcels with a driveway installed to the second lot and the entrance to the main house would remain where it is. He pointed out they are not here seeking a variance for the driveway, as that might become a focal point of discussion, however, itf there is no variance needed for the driveway and need only to apply to the Public Works Department for access to the property. He noted the variance is needed because of the requirements of the Code which require a certain lot width at the setback line. He stated they could come in on Seaspray with a T-type road similar to the one built on Seabreeze, and they can provide the frontages to do it that way, but would prefer not to do it that way because it will be expensive to build it there and it will become another public street for the Town to maintain. Secondly, it doesn't go anywhere; and thirdly, it chews up property which could otherwise be green space.

Mr. Royce stated there is an oriental garden located there and they would like to avoid putting a driveway through there, so the garden can be saved. He stated from a highly technical legal standpoint, it could be contended they have the frontage on Seabreeze Ave. as there is 70' at the setback line in this area, but they would prefer not to do it there. He pointed out the Code contemplates frontages of 125' width and 150' of depth. He stated the configuration of the lots cause the problem as they do not front on the cul de sac so it is the application of the Code that creates the hardship. He thought it could work out well and should have no harmful effect to anyone else, adn they have found if the driveway is installed to come in from the north, they would be re-creating a driveway which formerly existed there. He exhibited a drawing dated May 12, 1937 and the driveway didn't quite come off the cul de sac but a corner of the extension of Seabreeze and later was closed off in the late seventies. He stated in their research, the found a drawing by John Volk which showed the driveway coming onto the property dated 1928 and it was approved by the Palm Beach Art Commision.

Mr. Royce exhibited photographs of driveways built off the cul de sacs in this area. He didn't believe the Code contemplated lots on cul de sacs but the usual rectangular arrangement. He exhibited an artist's rendering showing the driveway going back off the cul de sac, with the wall and the heavy landscaping of hedges and flowering plants and gates installed, which is similar to the Dreyfoos house on Seaspray, the property to the south of his client's property and it would be attractively done. He summarized that they didn't really need the variance for the driveway but the variance is needed for the sub-division of the property and this is a technical variance because of the wording of the Code which came long after the property was platted. He stated if they had to install the driveway another way, it could be done, but it will interrupt the Oriental garden and they would be creating more asphalt instead of preserving green space.

He emphasized the variance is not needed for the driveway but did need it to meet the technical requirements of the lot width.

Mr. Heeke requested Mrs. Peters to read the letters from the neighbors into the Record which was done:

1. Letter of approval from Alex W. Dreyfoos
   14 South Lake Trail.

2. Letters of protest from:
   A. Lawrence S. Gorfine, M.D.
      444 Seabreeze Avenue

   B. Ann Blades
      402 Seabreeze Avenue

   C. Mr. & Mrs. Daniel Hanley
      427 Seabreeze Avenue

   D. Bradford S. Lovette
      431 Seabreeze Avenue

   E. Warren and Nancy Ponvert
      425 Seabreeze Avenue

Mrs. Dorothy Letts, addressed the Council indicating she grew up at 441 Seabreeze Avenue and her brother and her inherited the property and in 1938, her father sold a lot to Mr. Byron Miller, which was then known as 441 so he could build a house and there was never a driveway from 442 into the piece of property along the Lake. Sh ststed the house at 441 was a guest house and is now used as a private residence. She wanted to go on record that there was not a driveway there and had not been since 1938, also, she felt it was a horrible idea to have a driveway at the location they are requesting.

Mr. Royce indicated he was concerned that the issue would get shifted off to the driveway and that is why he repeated several times the variance is not about the driveway. He does understand the concerns of the neighbors but with all due respect, he believed these were exaggerated somewhat, as what we are discussing is one house entering off of Seabreeze Ave. and not a through road or connection between the streets as one of the letter writers has suggested and that could be a condition attached to the approval. He felt if the road was built from the south on Seaspray, there would be the same concerns from people on Seaspray and there would be two homes serviced and traffic would be increased to service both of these homes. He reiterated there would not be a variance necessary to install this driveway but if notice was sent to the people on Seaspray, the same kind of letters would come from them. He knows the Council is concerned about the letters that have been written, but this is a tough situation which the residents do not understand as to do it the way the Hicklin property was done, the garden would be destroyed adn there would be a lot more asphalt installed and there would be two houses of traffic on Seaspray Ave. and as troublesome as the letters are, he feels it would be better off to have one lot served by one street and the other lot served off the other street to keep the traffic to a minimum on either street.

He stated the issue is the frontage question and the fact that these lots were platted forty or fifty years before the Code was written is a circumstance that is beyond the control of his clients. He recalled driveways have been allowed in the past in similar cases because the Code was written after the lots were platted. He thought it was unfortunate that words like "devious" had to be used and he believed he has submitted proof the driveway did exist and was removed in 1979 or 1980 when certain renovations were made to the house. He stated Mr. Leidesdorf and Dr. Gorfine do not get along well, however, he doesn't believe that serves any purpose here as it is unfortunate they feel that way about each other, but the issue is a variance by virtue of the configuration of these lots. Var. 53-90

Michael Slade of Calloway and Price addressed the Council, indicating he was a real estate appraiser and was MAI, SRPA, CRE as well as a State certified appraiser and has done an analysis on the property at 444 Seabreeze Ave. and it is his opinion that there would be no loss in value attributed to that property due to the installation of a driveway at the location requested.

Mr. Moore gave the staff comments: If the application is approved, the pool should be removed and the lot lines should be drawn in such a manner so there is no non-conformity in the building and accessory buildings; the Town Engineer recommends the driveway on Seaspray be relocated to the cul de sac and redevelopment of the property should meet current Town drainage requirements; Bldg. Dept. has no objection to the street frontage variance conditionally approved on the fact that the pool adn accessory structure must be removed. He stated the drive through from Seaspray to Seabreeze were addressed by Mr. Royce, however, it is his recommendation tht if this is approved, the drive-through be prohibited.

Mr. Moore stated the applicant can ask for a variance for the street frontage which is at the building setback line which is behind the actual cut of the cul-de-sac, and Mr. Royce has correctly stated the Town's Zoning Ordinance does not contemplate cul-de-sacs, except in new subdivisions.

Mr. Moore believed there was once a driveway there, which was closed up and now they are asking for it to be reopened. He stated as far as whether they can subdivide the property by adding a private street, they can come in off of Seaspray and put in a T-turnaround and create two lots in that fashion, however, the down-side for that as far as the residents on Seabreeze are concerned, is the variance is not for the driveway but for lot frontage, so if the property owner wished to have access onto Seabreeze, they merely need to apply to Public Works for a driveway cut and do not need a variance for the driveway and if those who oppose this feel that is an issue, they should understand that that is not the variance request.

Mr. Royce stated they are agreeable to removing the pool and if the variance request on the other buildings is a problem, they can adjust the line so they can provide the setback of fifteen feet, although it will take away some of the garden in order to relocate the garden wall.

Mrs. Wiener noted the driveway is not a variance, but a number of residents have written who object to the driveway and they do not seem to be aware of that. Mr. Moore responded copies of the application were sent to property owners within 200' of the Leidesdorf property, and how they made the determination about the driveway he is not sure as the application doesn't state it is a driveway variance, when indeed it is not.

Mrs. Wiener noted there was a complaint in one of the letters of protest on speeding drivers and asked the Chief of Police if there was anything in his records on that item? Chief Terlizzese responded it is difficult for people to speed there although there could be an isolated case or two, although they have had complaints about traffic related problems in that area, however, most are for parking infractions.

Dr. Gorfine addressed the Council indicating he wasn't going to address this Council on this issue until the attorney for Mr. Leidesdorf made a statement that he couldn't allow to stay as public record and that is that Mr. Leidesdorf and he did not get along well, as it was his feeling that they were friends and he has spent many nice afternoons with Mr. Leidesdorf and his wife around the swimming pool and the Leidesdorf's daughter has been over to his house multiple times to play with his daughter. He was objecting to this variance as he first of all, didn't believe there was a driveway there years ago. He knows the driveway is not the issue, but his calculations were somewhat different than theirs, but even if you use their calculations, they are asking you to turn your backs on 50% of what's required by Town Ordinance, or sixty seven feet.

Mr. Ilyinsky wondered how many cul de sacs in Town were in violation at this time. Dr. Gorfine didn't know, but felt if this were approved, it would encourage further sub-division development of Palm Beach. He wondered if the street light which is not there was going to put in the middle of this proposed cul de sac.

Mrs. Wiener asked Mr. Moore if the T-form situation was installed, could the Leidesdorfs still have the other driveway by simply calling the Public Works Department? Mr. Moore responded affirmatively. Dr. Gorfine felt they may not install it, if they have to have the drive anyway. He talked about the other property across the way which was opened up last year, and all the statements made to the Council. when actually they put in three new building lots which have increased traffic considerably in the area. He knows they made promises for the property at the end of Seabreeze that when that property was developed, that it would be done well and nicely and so on and we found they ended up speculating on the property and there have been families moving in and out and it has turned from a nice quiet area into a development area and this is what they are very concerned with also - why are we making it easier for the developers and the subdividers to come in. He felt if this was granted, the Council would be granting developers and subdividers to come in to this Town and do this on a continual basis.

Mrs. Wiener reminded Dr. Gorfine they can do it anyway. She recalled on the South Lake Trail property, she had a concern when it was granted that they were hiding behind Preservation and thought it was an outrage and had very serious concerns about it.

Mr. Moore noted this Town is one of the toughest towns in the nation to build or subdivide and we constantly crank down our Ordinances tighter and tighter adn have recently rezoned this property, and the requirement now is 20,000 square foot lots and they are in excess of that.

Mr. Moore explained the hardship is in the event the front of the house is declared off of the cul de sac, it would be a cul de sac entrance and the hardship would be the existinglayout of the cul de sac in its present configuration.

Mr. Ilyinsky did not think it would be in order to have two of the driveways on Seaspray, as he had friends on both of these streets and would like to make a suggestion to postpone this so all of you on Seaspray can get together along with all of you on Seabreeze. He knew they couldn't prevent someone from developing their property, but he has seen this Town go from one hundred houses to just this side of Miami Beach and he didn't like it one bit.

Mrs. Ann Blades of 402 Seabreeze addressed the Council, stating she didn't mean to trade any rights and didn't want to impose any hardship on Seaspray. She didn't know if any of the Council walked along the Lake Trail, but it is a disgrace as nobody seems to have the money to maintain the big estates any longer. She did not want to deny individual property the rights for development but there has to be a happy medium and all she asked is a bit of a break to try and guard this lovely town - and please don't mistake any of us - we don't want to sacrifice the Leidesdorf family rights for our rights or for the rights of Seaspray. She thought it was a good suggestion to sit down with all of the neighbors and try to find a solution.

Var. 53-90

Arthur Leidesdorf then addressed the Council advising he had purchased the property back in 1978 from the Homer Marshmans and at the time of purchase, the driveway existed going in there because prior to that, he purchsed 444 Seabreeze, both houses originally had been part of the Dodge Estate and where Dr. Gorfine is linving was the helps quarters for the Dodge people. He purchased that as soon as he purchased the Marshman house - to go in there and to watch the building of the new house because we tore everything down and started fresh and the driveway was in there as was an entrance to the boat dock and he closed up the driveway because he only wanted one entrance. He later sold 444 Seabreeze to Dr. Gorfine. He recalled at that time, Mr. Grace was on the Council and he had just spent $30,000 fixing up the foliage of 444 Seabreeze, so they couldn't see the house from his residence.

He stated the lady who talked previously about there not being a driveway is wrong when she says that there wasn't a driveway there as having owned both houses, he knows there was on there. He indicated he wasn't tring to do anything that asn't there before and just wants a minimum amount of charging. He didn't believe it was his people speeding. He noted there is a cul de sac to the south on the Dreyfuss property and he is about 15' to the west of his house towards the Lake with an entrance there and he knows of no complaints about that.

Mr. Brad Lovette addressed the Council, indicating he thought it was a good suggestion to meet with the other residents involved to try and work this out. He hoped the Public Works Department would take into consideration the aspect of safety when the request is made for the additional driveway and also consider the foot traffic in this area.

Mr. Ilyinsky reiterated his suggestion to have the neighbors on both streets meet and try to come up with some kind of a solution in an agreeable manner and he moved this matter be deferred for one month until the next Council meeting. Seconded by Mr. Weinberg.

Mr. Royce responded he would prefer to have a decision today, and didn't think the facts would change within the next thirty days.

Mr. Heeke asked Mr. Royce if he and his client accede to the recommendations made by the Building Department?

Mr. Royce responded with regards to the pool being removed and they would also move the property line. Mr. Moore indicated that his recommendations were to remove the accessory structure, not the line, as the line as drawn divides the property in such a fashion which would not be in good planning practice; and the other, of course, is the agreement that the driveway proposed on Seabreeze would have no access permitted from the Seaspray side. He stated he certainly agrees with the neighbors that had that concern, that two vehicles would be permitted to exit Seabreeze where in fact the alternative of this subdivision would create the two homes on Seaspray of three.

Mr. Royce clarified that they had no problem with removing the pool and they are not trying to get a through street between Seabreeze and Seaspray, and obviously a condition could be placed and we would agree with it that there not e a through street connecting the two, however, the other situation - the accessory building is a garage and servant's quarters and it's been there for some time and we are not aware that it has caused a problem, however, if this is deferred, he will meet with Mr. Moore and see what the problem is.

Mr. Moore advised if there is a lot split involving a great deal of - in fact - variances whatsoever, jogging of the line has been done and done many times - in fact, it is quite legal. In this particular case, the applicant is requesting something of the Town. The quid pro quo, if you will, will be that it will be conventional lot split - a straight line lot split and not a jog to accommodate an accessory structure for the convenience of that lot split and that is the staff's recommendation. Council can certainly decide in Mr. Royce's favor, but the staff is recommending a clean lot split without the jogs to simply accommodate one accessory structure.

Mrs. Wiener hoped they will all use the time to get together and hopefully come up with a solution, as when you take one neighbor versus two streets of heighbors, it gets to be quite heavy handed on one side and she thought they should all understand that when someone has a piece of property as large as this, which more than suffices in its footage for a split, that they have certain rights also, despite the fact that there are many of you and only one of this party, and she was not telling them which way I would go but I would like to see some peace over there and have everybody happy.

Mr. Royce advisedthey would be happt to cooperate in any way possible, but needed some direction as to what is expected of them by the Council as he doesn't want to come back in thirty days with Council stating he didn't do what he was supposed to do.

Mrs. Wiener felt the Building Department needs to cooperate so that everybody understands specifically.

Mr. Royce indicated he will be in touch with Mr. Moore to work out the details.

Renny Ponvert of 425 Seabreeze, addressed the Council, noting the reason for this heated opposition to all of this is because of the disaster that went on with the cul de sac and the Graebner-Hicklin-Switzer area and because of that, we all feel that we don't want anything more going on to continue to ruin our end of the street and it is perfectly understandable and there is nothing particularly personal in any of this, we are just sick and tired of looking at an absolute mess at the end of our street and it is a shameful thing for the Town. It doesn't speak well of the Pulibc Works Department and it doesn't speak well of the governing body when you look up and down that bike path, it is a disaster.

On roll call, the motion carried unanimously.

Var.54-90

6. Variance No. 54-90 LaPalma Condominium Association, 2860 S. Ocean Blvd.; to allow variance from Section 532 (c) of Town Zoning Ordinance and permit installation of storm shutters at the edge of the balconies. R-D(2) District. Mr. Heeke recalled there are already shutters on this building at the edge of the balconies. Mr. William Cramer, President of LaPalma Condominium Association addressed the Council indicating there are 92 units in the building with 46 having shutters at the railing and 22 of these apartments face S. Ocean Blvd. Mr. Moore advised at one time shutters at the balcony line were allowed, however, in 1984, this ruling was changed, but there are as Mr. Cramer has stated, forty six units in this building which have been permitted and staff has no objection. On motion of Mr. Ilyinsky, seconded by Mrs. Wiener, the approval was

authorized for Variance No. 54-90. On roll call, the motion carried unanimously.

7. Variance No. 55-90 - Evelyn B. Harrison, 265 Fairview Road; to allow construction of an addition to a nonconforming residence providing at seven foot side yard setback in lieu of 12'6" required. R-B District. Sidney Neill, architect addressed the Council on behalf of the applicant, Mrs. Harrison, requesting the variance for a storage room. He explained there was no other location on the property other than at the northwest corner of thehouse and the hardship is the setback on that side is five feet and on the east side, it will be 18'. Mr. Moore advised staff has no objection to the request. Mr. Ilyinsky moved for approval of Variance No. 55-90. Seconded by Mr. Weinberg. On roll call, the motion carried 4-1 with Mr. Heeke voting against the motion, since he could find no hardship. Var. 55-90

8. Variance No. 56-90 - James and June Sturrock, 141 Seaview Ave., to allow conversion of a required one car garage into living space per Section 6.21 (f) of the Town Zoning Ordinance. Attorney John Bannister addressed the Council on behalf of the applicants, indicating there has been a redesigning of the request which may make it unnecessary to request a variance and he asked for a thirty day deferral. Mr. Ilyinsky moved the Variance No. 56-90 be deferred. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Var. 56-90

9. Variance No. 57-90 - Richard and Ellen Rampbell, 1186 N. Ocean Way to allow one corner of a swimming pool to be located 23.9; from Nightingale Trail lieu of 25; as required for this street side yard. R-B District. Mr. Moore made the presentation for the Rampbells, indicating there was a mistake made in the Building Department when a permit was issued incorrectly as the plan reviewer failed to note this was a corner property and although the front yard setback was maintained, the street side yard along Nightingale was not observed and this side yard variance of 1.3; is necessary. He stated the hardship is that it is a corner lot and he requested the variance. Mrs. Wiener moved for acceptance of the Variance No. 57-90. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously for approval. Var. 57-90

10. Special Exception No. 11-90 - Royal Poinciana Chapel, 60 Cocoanut Row; to allow construction of a 400 square foot columbarium (memorial) structure as an accessory to the Chapel, thereby modifying this existing Special Exception Use. R-B District. Robert Nichols, architect, addressed the Council requesting the columbarium and there will be no variance necessary as the structure will comply with all R-B zoning requirements and it will be screened by an adjoining site wall and tree lined to the north and will remain behind the Royal Palm Trees to the Trail and he felt it does not present an adverse impact on the community and is consistent with the use of the property. Mr. Zimmerman explained a columbarium is an accepted accessory use for church property and there are no objections to the granting of this Special Exception. Mr. Heeke noted Mr. Nichols went carefully through the Code in his presentation. Motion was made by Mrs. Wiener to approve Special Exception No. 11-90. Seconded by Mrs. Douthit. Mr. Heeke asked Mrs. Wiener if she would like to include in her motion this was being granted for the reasons as outlined by Mr. Nichols? Mrs. Wiener believed it was a Permitted Special Exception Use and that is what she was basing her motion on. Mr. Heeke felt he still met the test of the Code to which Mrs. Wiener agreed and included this in her motion. On roll call, the motion carried unanimously. Spec.Excep. 11-90

11. Special Exception 12-90 - with Variance - Worth AVenue Associates, Ltd. with Claudio and Betsey Capetta, The Esplanade, Space 213, Formerly L'Express; to amend prior Special Exception with Variance approval No. 8-83 by adding 24 seats in the existing space. A variance is required to allow expanded use at this site that has been made nonconforming as to present required parking regulations. Applicant proposed to restripe Esplanade parking per Section 6.21 thereby adding eight parking spaces and maintaining the present parking nonconformity status. C-WA District. Gene Lawrence, Architect, addressed the Council on behalf of the Worth Avenue Associates and he had with him Mr. Sanders, President of the Goodman Co.; Michael Buckner of Steel, Hector, Davis, attorneys and Betsy and Claudio Capetta, the operators of the restaurant. He gave a past history noting in 1983, the Town entered into a Special Exception Agreement with the Worth Avenue Associates for the use of the property across the street from the Esplanade. He noted this property had the capacity of parking twenty cars which equated itself to sixty seats in a restaurant, with 46 seats going to a new restaurant and 14 going to the Cafe L'Europe. He recalled the Council after hearing the testimony that these twenty cars would not be needed for their restaurant parking and Council then requested this area be made into a park, which has been done. He noted the 46 seat restaurant was operated by the L'Express in 1984 and their lease was up for renewal this year and was not renewed. He filed with the Clerk a letter from Apollo which states they did not notice the difference in parking when the L'Express closed. He indicated he has discussed with Mr. Moore the status of the park and as the park now sits, in the event the 60 seats were given up, it is believed the owner would have the right to take the park back and do something else with it. He has filed with Mr. Moore a letter which states the owner is prepared to leave the park as it is as long as there is a restaurant of any kind in the Esplanade. He believed they have complied with the intent of the Ordinance and this is a Town-serving restaurant, under the 2000 foot limit and the people who use it are already there as they are the shoppers in the Esplanade. Spec.Excep. 12-90

Mr. Moore recalled the original application was a long and arduous Special Exception with variance and a very unusual condition of approval in that Mr. Goodman did turn the property across the street into a park and a Unity of Title Agreement was negotiated. He stated their records indicate this particular restaurant is over 2000 square feet. He indicated they have not had a need for the parking, however, they are asking for 24 additional seats within the same wall frame by remodeling and staff has no objection as they can provide the eight additional parking spaces by restriping the existing parking area and that should be a condition, if this is approved. He suggested two other conditions that the 24 seats must meet all building and fire codes and the seating configuration must be approved by the Building Department and the Fire Marshall as to the number of seats. He stated another issue is the park and he is in receipt of a letter from Mr. Bucknew representing Mr. Goodman and they have offered to change the arrangement in that the Unity of Title will be modified to reflect that the park will remain a park or in the alternative, if the Town decided it needed parking spaces there, it could be changed to a parking lot as long as there was any restaurant use within the Esplanade. He agreed the Esplanade is a destination shopping center and is visited by pedestrians who park there and shop and eat there, however, he has seen in the last ten years great changes in the Town and it is the staff's feeling the Town has had the benefit of the Park and they have demonstrated with the operation of the restaurant they do not need the parking spaces, so it is recommended the Council consider the park be given to the citizens of the Town of Palm Beach in perpetuity and that is recommended as a further condition of approval, as long as the Esplanade is in existence.

Mr. Lawrence wished to comment on the Fire and Building Code compliance as in the Fire Code requirement, there were two comments as there is a new Code requirement on the placement of furniture with which they can comply; however, there is another requirement defining the distance between exits and an additional exit is required as it is not possible to install it and they anticipate submitting that problem to the Building Board of Adjustments as physically, they simply cannot comply with this law due to the shape of this unique space. Mr. Moore stated he had no problem that this be subject to the approval of the Building Board of Adjustments and Appeal.

Mr. Lawrence recalled Mr. Goodman bought the Sweatt Lamp Shop across the street when he was developing the Esplanade property for one million dollars and with the seating allowed, this equates to $16,700 per seat, whereas the usual cost per seating in a restaurant is between five and seven thousand dollars and he had a problem with them offering the park to be in perpetuity. Mr. Moore indicated in their initial discussions with the attorneys representing Mr. Goodman, it was their conclusion that this was locked up in the Unity of Title and haveit modified to reflect that, therefore, even though a compromise was offered, it could at some point of time it may become economically feasible for Mr. Goodman or a subsequent purchaser of the Esplanade to eliminate the restaurant use in the Esplanade and build it across the street to gain more retail space and provide the same parking on an underground basis and the park would then be gone and he felt it was to the Town's advantage to see the park be maintained.

Attorney Michael Buckner responded they can't perceive what the future will bring and Mr. Goodman has been dedicated to having a restaurant in the facility and while they think it is a good compromise, the Special Exception and the Unity of Title which now exists, provides that the park is titled to the Esplanade and will continue as a park as long as the 60 seats are used for the restaurant. He stated if the building is not permitted and they are not able to make a restaurant economically viable, 46 seats would be gone and that would get down to 14 seats away from the Unity of Title having no further application and that is why they suggest the benefit that Mr. Goodman is willing to confer is not an empty one, but a significant one to the Town as it does further restrict it, although it doesn't grant it in perpetuity and it is much more likely to have that property to continue as a park.

Mr. Ilyinsky asked if they would consider a fifty year agreemtn? Mr. Bob Sanders, President of the Goodman Co. addressed the Council indicating it would be onerous and burdensome from a financial and an operational point of view to relinquish the property in perpetuity or for a good number of years and they are not prepared to do that, however, Mr. Moore did raise some good points and they are prepared to relinquish it as long as there is any restaurant in the Esplanade, which he viewed as a fair compromise. Mr. Heeke asked if they would expound the word restaurant to "eating facility" to which Mr. Sanders agreed.

Mrs. Wiener felt there was no problem with parking and she felt they were going far afield. Mrs. Douthit felt the parking requirements had to be met according to the Code. Mr. Heeke asked if anyone was prepared to make a motion approving the Special Exception with variance conditioned upon the restriping of the parking lot at the Explanade which would generate eight additional spaces and meeting all the requirements of the Building and Fire Codes, recognizing there may be an appeal to the Building Board of Adjustments; and that the Unity of Title to the Park be modified to continue as long as there is any eating facility in the Esplanade. Mrs. Wiener so moved. Seconded by Mrs. Douthit.

Mr. Winterfield addressed the Council noted for the record that this is the only time when a determination of the parking condition is being made upon the applicant's representation and wondered if the next time someone wishes to open another business and they say the parking is not needed, would it be alright? He also was curious as to why the spaces were not restriped in 1983 as had they been, the whole problem of the park may have been avoided. Mr. Heeke pointed out the people who manage the parking facility submitted a letter establishing the history of the use of the parking facility when the prior restaurant was in full operation.

Mr. Moore pointed out the Town changed its parking requirements subsequent to the Special Exception in 1983 to allow for nine foot spaces as when the Esplanade was built, it was striped at ten foot spaces, as required at that time.

On roll call, the motion carried unanimously.

Other

C. Other

Tete a Tete

1. Tete a Tete 1, Inc., 101 N. County Rd., a parcel located in two zoning districts, C-TS and R-C. Applicant seeks discretionary approval, in accordance with Zoning Ordinance Section 3.30(d) to permit the authorized use of the C-TS Zoning District to extend 25' into the contiguous R-C Zoning District. Specifically, applicant proposes a restaurant use in the C-TS District with parking spaces located partially in the R-C Zoning District. Attorney Peter Broberg addressed the Council indicating last month they came before the Council under 6.20 (d) (3) requesting a special exception for a restaurant in excess of 2000 square feet; and required off street parking in a zoning district other than the district that the building was located. He stated it was decided this was not properly before the Council and they now have revamped their request which allows the Town Council in their discretion to grant parking in a contiguous zoning district if it is owned by one person which is the case. He requested Town Council to use their discretion to allow parking in a residential (R-C) zone which is already being used for parking and to accommodate that they are here under Section 3.30(d) for the purpose of allowing parking to allow the seating for the proposed restaurant. He stated it will be Town-serving and they now request the parking plan noting there is ingress and egress from Main Street and Sunset which will allow the traffic to flow and there is off-street parking behind the Post Office and on Royal Poinciana and there will be a handicapped space and a loading space provided also.

Mr. Moore gave the Staff comments - with no comments from the Fire-Rescue Department. Police had a concern with the traffic, however, that involved the excessive use. Mr. Bowser states the drainage for the paved area will be required and valet parking should not be allowed due to the traffic patterns in this area. Building Department states poor traffic flow is in the area and the use is too intensive, however there is no objection to the improved parking area and the 2000 square foot restaurant and the Town Manager concurs with all of the statements indicating the valet issue should be resolved if conditional approval is granted.

Mr. Moore indicated he had investigated whether the parking area was used for required parking for any of the residential areas and it is not as it is unpaved. He felt the applicant has met the requirements as set forth in 3.30 (d) and it is the Town Council's discretion if it should be granted.

Mrs. Douthit stated she was concerned about people stopping there and letting people out of the cars, but evidently the Police Department did not think that was a serious problem. Mr. Moore did not think that could be controlled as that would be a driver's discretion.

Mrs. Wiener was satisfied they came down to the 2000 square feet and she was willing to make a motion that the request be granted.

Mr. Moore asked for conditions that:

1. The drainage meets the Town's drainage requirements;
2. There be no valet parking, based upon the Manger's and the Building & Zoning Department's comments as well as Mr. Bowser's comments.

Mr. Winterfield addressed the Council noting part of the presentation included the advantage of access from Sunset Avenue. He recalled the building at Sunset and County was recently sold and it is primarily residential and if they are going to have restaurant traffic cutting through this residential parking lot, there may be a problem and he thought if this is an important part of the application, they might wish to ensure that the purchaser formally agrees to having that lot crossed by this restaurant traffic.

Mr. Broberg indicated to the best of his knowledge, the parking lot was not sold with the building and is still owned by Mr. Brummel.

Mrs. Douthit wondered if there should be a condition that the restaurant must have the parking. Mr. Broberg pointed out they could have thirty seats in the restaurant without any parking.

On roll call, the motion carried unanimously.

Proposed Indian Hill Place Subdivision Plat

2. Proposed Indian Hill Place Subdivision Plat (Ballinger Property) 1200 S. Ocean Blvd.; request for authorization for Town Manager to Execute Plat, Agreement to Construct Improvements in Subdivision and Any Related Actions. Mr. Moore stated they wish to split this into two lots. He noted this is a Landmarked property and has received approval from the Landmarks Preservation Commission for the lot split with a condition that the architecture of any proposed new home on the new lot be compatible with the Ballinger home itself. He stated there is a necessity for a subdivision, even though it is two lots, due to the fact there is not enough street frontage along South Ocean Blvd., so a "T" turnaround is in place in this Subdivision on the south side of the property. He indicated staff has reviewed the application and the plat as submitted complies with the Town Zoning and Subdivision regulations except for the "T" type turnaround instead of the cul de sac adn if this is approved, he requested they waive that portion of the Ordinance and grant a waiver to the normal cul de sac requirement and allow the "T" turnaround. He indicated staff does recommend approval of the subdivision subject to:

1. Review and approval of language of Plat by the Town Attorney and Town Manager.
2. Receipt of an agreement to construct improvements in a timely manner including the irrevocable letter of credit in the amount of 135% of the estimated construction cost, all subject to approval by the Town Attorney.
3. Receipt of the subdivision fees as required under Town Code Section 20-8.
4. Increase radius at street intersection from 22' to 25' as required.
5. Extend five foot utility easement along North and South property lines to Ocean.
6. Construction plans subject to final approval by the Town Engineer.
7. Provide access easement for new fire hydrant.
8. Two existing greenhouses situated near the two story accessory building must be demolished, relocated or altered to comply with Zoning regulations.

Mr. Heeke asked Mr. Gustav Broberg if his clients were agreeable to these conditions to which he responded affirmatively.

Mrs. Douthit asked if the "T" turnaround has been checked out by the Fire-Rescue Department and they are able to get their rescue equipment into the property? Mr. Moore responded affirmatively.

Mrs. Douthit moved the Plat be approved subject to the waiver of the cul de sac requirement being authorized and a "T" turnaround provisions being allowed and the eight remarks of Mr. Moore as outlined in a memorandum dated Sept. 28, 1990 be incorporated for the Indian Hill Place Subdivision at 1200 South Ocean Blvd. Seconded by Mr. Ilyinsky.

On roll call, the motion carried unanimously.

Final List of Study Items for 90-91 Zoning Seasons

3. Final List of Study Items for 1990-91 Zoning Seasons. Mr. Moore indicated a memorandum was sent to the Mayor and Council dated Oct. 3, 1990 outlining the twenty one items of study items to be addressed this zonigg season. On motion of Mr. Weinberg, seconded by Mr. Ilyinsky, the final list of study items for the 1990-91 Zoning Season was approved. On roll call, the motion carried unanimously.

Sloan's Curve - removal of Aust. Pines

4. Request by Sloan's Curve Homeowner's Association, Inc., to remove all Australian Pine trees on land west of State Road A-1-A by James McCartney Wearn, Attorney.

Mr. Wearn addressed the Council on behalf of the Sloan's Curve Homeowner's Association, stating he appreciated the efforts of the Council to preserve the park on Worth Avenue.

Mr. Wearn indicated his clients are the owners of the property west of A-1-A from Sloan's Curve extending down to Phipp's Ocean Park and the request before the Council today is based on new law adopted by the State Legislature. He have a history indicating this was before the Council on April 11, 1990 and a request was made for the removal of the Australian Pine Trees which are located in the very northern six hundred feet from Sloan's Curve southward. He noted the Town Council at that time conditionally approved the removal of 50% of the Pine trees on a replacement plan for the trees being removed, being submitted and approved by the Town Council. He informed the Council that since that time the first phase of the clean-up and beautification effort of this area was commenced and is almost completed and this was the removal of all of the invasive species in that entire stretch of property. He exhibited a drawing which showed how the area should look with the Australian pines shown in orange.

He stated the specific reason of why he is here today is to remove the remaining Australian Pines, without any condition or imposition as not only is there a County Ordinance, which is the Coastal Protection Ordinance which encourages the removal of all Australian Pines as invasive species not natural to vegetation in Florida. He stated the Town Ordinance 8-90 encourages that very same removal and prohibits the replanting of same, but also have State Legislation (Chapter 90-313) and it has major provisions which pertain to Australian Pines and deals with invasive plants, which include Australian Pines and the retention of the Australian Pines for any length of time in any number will continue to choke out vegetation native to Florida.

Mr. Wearn pointed out they offer little habitat value. He noted these are findings by the State Legislature at public hearings.He indicated another point is they impact fish and wild life communities native to Florida.

Sloan's Curve - Aust.Pines removal

Mr. Wearn pointed out they offer little habitat value. He noted these are findings by the State Legislature at public hearings. He indicated another point is they impact fish and wild life communities native to Florida and exacerbate the erosion problems, because they shade out native vegetation and have a shallow root system incapable of stabilizing sand, therefore the Australian Pines in this particular location will be detrimental to the existing Native vegetation.

Mr. Wearn indicating as a result of these findings, the State Legislature enacted that a person may not cultivate or possess any Australian Pines without a permit from the Department of Natural Resources and it provides this is a misdemeanor of the second degree. He suggested that this is a fairly strong mandate from the State on the removal of Australian Pines. He requested the Town Council grant permission not only commensurate with the County Ordinance, but with the Town's Ordinance and now with the State Law for the Australian Pines to be removed in their entirety from this property.

Mrs. Douthit recalled the Council granted them permission to remove 50% of the Australian Pines and they were to submit a new landscaping plan as to what would be replanted in place of the Pines being removed. Mr. Wearn recalled the Council granted permission to remove fifty per cent of the Pine trees and the condition was for a replacement planting plan concerning the removal of the 50% of the Pine trees. Mr. Moore recalled the request was originally to remove all of the Australian Pines and Council granted permission to remove 50% but based upon a review of a landscape plan asreplacement. He believed it was made clear that they wanted to see an entire shore line replacement plan and not just the area for the Pine trees. Mr. Wearn believed the permission was for removal of Pine trees only at that time and that was the request that was made but since then we have the new State legislation which clearly mandates from the State level the removal of the Australian Pines. Mr. Heeke disagreed with that interpretation that it mandates removal. Mr. Wearn agreed and retracted his wording that it doesn't mandate removal but encourages removal and suggests you have to have a permit in order to possess them, but in any case, he would like to have the permission to remove the Pines, which he felt would be in compliance with the thrust of the State Statute, the County and the Town Ordinances. Mr. Weinberg asked what they planned to plant in their stead? Mr. Wearn believed there would be developed a vegetation plan which will be presented to the Council when the Pines are removed. Mrs. Douthit indicated she has had many complaints about that area and she thought it looked awful as it now exists.

Mr. Heeke recalled at the April meeting, much discussion was had on what they were going to use for the replacement planting and Mr. Wearn stated at that time they could not come up with a Plan until their landscape architect had an opportunity to view the area without the Pines and they have an opportunity to remove fifty per cent of the Pines and now Council wants to see the Plan. Mrs. Wiener asked if there was a Plan being worked up at this time? Mr. Wearn responded they need to know what is going to happen with the Australian Pines and would prefer to have the Pines removed first, so they can view exactly what is there and come back with an appropriate plan. Mr. Heeke asked why they didn't come to the Council with two plans, one as it is now and one with the remainder of the Pines removed.

Mr. Wearn responded the reason he is here today making this request is because there is a new State Statute which justifies the request being granted without a condition being imposed. Mr. Heeke stated these are the same people who brought us the legislation on the Comprehensive Plan. Mrs. Wiener felt there was a problem here and this should be resolved amicably and the people who are concerned about the removal would be more comfortable in knowing that there was a Plan which everyone could look at before there was a major removal and she didn't think that was unreasonable.

Mr. Wearn was sorry to hear that people didn't believe it looked good as it now is as it was his opinion it looks considerably better and is much more attractive and safer.

Mrs. Douthit felt they shouldn't make any decision until two plans are before them, one with replacement planting for 50% of the trees which have been removed and the other for with no Pine Trees, and she moved to deny the removal of the remainder of the Australian Pines until such time as there is Landscape Plan for the Council to look at. Mr. Weinberg asked if this applied to the first fifty per cent. Mr. Wearn responded negatively indicating none can be touched. Mrs. Wiener asked why the property looks worse and what has been removed? Mrs. Douthit responded they have taken out the other exotics and removed the underbrush. Mr. Heeke believed what Mr. Wearn was saying is that it is easier for them to go in there and remove all the Australian Pines at one time rather than pick and choose fifty per cent. Mrs. Douthit believed in April they also discussed the trunk sixe of the Pines. Mrs. Douthit restated her motion to deny until such time as there is a workable plan in front of the Council. Mrs. Wiener believed they were free to remove the first fifty per cent. Mr. Wearn disagreed. Mr. Moore informed the Council permission was granted for Mr. Wearn's client to remove up to fifty per cent of the pines upon submittal of a landscape plan and it was his understanding that if they wanted to do this in phases, it would encompass the entire lakefront of the area along Sloan's Curve to show what was going to be put back in the place of all the exotics as well as the area of the 600', so the statements made by Mr. Blakely was they didn't know what they would be putting back until they see what it looks like and until the rest of the exotics are removed and that is finished now and what is left is the Australian Pines on the north section of the property and none can be removed until the proposed Landscape Plan for the entire west side is given to the Council.

Mr. Moore stated from a staff standpoint, this is a PUD item and the whole concept of leaving this in its natural state was left in the hands of the now sitting Council from the original Council's action until today and that determination as to what is the natural state and what is not, is an authority that is in the Council;s hands. He stated the reason the clean-up was considered is because they have changed policies in the Town around 1985, and other lakefront projects, which were not PUD's were permitted to remove Australian Pines and the current Town Policy is not to exceed 50% along the Lakefront, so what is at stake is fair treatment for the Sloan's Curve people as well as the same treatment given to other condominiums south of Sloan's Curve, so there is a fairness issue involved.

Mrs. Wiener asked how long it would take to have a plan available for the Council's review? Mr. Wearn felt it could be a lot sooner if it was found that all of the Australian Pines were going to be removed and he commented that since they required alternate plans, they do not know what may or may not be accepted in the 50% Plan and he believed it was never to be more than about the north 800', or to the matchline, and he didn't believe it was to encompass the entire lakefront line.

Mr. Moore asked if the Council wanted the Plan to the match line or for the entire lakefront? Mrs. Douthit believed it should be the entire area along the Lakefront.

Mr. Weinberg understood on the south end there are only eight or nine areas of Pine. Mr. Moore felt Mr. Wearn had to have clear direction as to whether the Plan should be to the match line or the entire lakefront. Mrs. Wiener believed there was a desire to maintain as much of the area as possible, then it would be to the matchline and if they are not planning to do any other work there, she didn't believe they should be discussing this any further.

Mr. Moore recalled the original PUD stated it should all stay in its natural state. Mrs. Wiener felt it was to be only to the matchline. Mrs. Douthit wanted it to be all the way.

Mr. Heeke didn't feel a motion was necessary as Mr. Wearn still has the option to come back with the Plan as to what it will look like without all of the Pine.

Mr. Weinberg clarified that they couldn't touch anything until there is a Plan made available which is acceptable to the Council to which the rest of the Council agreed. Mrs. Wiener asked why they didn't simply bring back a Plan. Mrs. Douthit suggested they get another landscape person.

Mr. Randolph advised the only request before them today is to allow unconditioned removal of the Australian Pines and he felt they could act on that request.

Mrs. Douthit renewed her motion to deny the request to remove 100% of the Australian Pines. Mr. Heeke handed the gavel to Mr. Ilyinsky to chair the meeting and seconded the motion.

Mrs. Wiener did not understand how this came back on the agenda as there was an agreement they would come back with a Landscape Plan and they haven't done that. Mr. Randolph explained in the meantime there was an intervening State Statute which they felt justified their coming back.

Mr. Wearn indicated he did not consider there was an agreement as what was done there was a conditioned approval that permitted only 50% of the Pine Trees to be removed and only then when there was a replanting plan for those removed trees to be submitted and approved by the Town Council. Mr. Heeke agreed it was a conditioned approval and not an agreement. Mr. Wearn stated what was done was the Council granted a conditioned approval that permitted only fifty per cent of the pine trees to be removed and only when there was a replanting plan for those removed trees to be submitted and approved by the Town Council. Mr. Wearn clarified they came back today, on two basis - is it a proper matter to have a condition for the removal of the Australian Pines at this point as they would like to be able to not have it conditioned and go through and complete this phase of the clean-out without that condition being imposed. He stated the second aspect was to ask the Council for approval for the removal of 100% of the Australian Pines instead of a restrictive condition for the removal of only 50%.

Mr. Randolph was asked if it was his opinion that the Council is required to authorize removal under the recently enacted State Statute? Mr. Randolph advised the request before the Council today is a justified request based upon teh fact there was s Statute passed, however, it is not his opinion that the Statute mandates the Council grant an unconditional approval for the removal of the Australian Pines.

On roll call, the motion carried unanimously.

Mr. Heeke thought one of the questions which will come up is the remaining shrubbery there is not as high as the pines, so he was sure it would be asked is what kind of height the replanting will reach. Mr. Wearn inquired if there was any indication as to whether or not 50% or 100% would be entertained as that has a significant direction for the landscape architect. Mrs. Wiener thought it could be entertained but Mr. Heeke thought they were getting into speculation. Mrs. Douthit expressed her dissatisfaction about committing herself until she has an idea of what they will be using for replacement material.

Mr. Pusateri recalled what happened on April 11 and it was clear a motion was made that the petitioner be required to furnish a complete drawing indicating the trees to be removed and their replacement and those plans be returned to the Town Council for aesthetic approval in phases, if budgetary restraints so dictate and he didn't know why they were still discussing this matter. Mr. Pusateri hoped when a plan is submitted , they would have an opportunity to review it prior to the day of the Town Council meeting.

Mr. Heeke advised Mr. Wearn the Council has approved 50% and that doesn't mean they would not look at other plans but how they react to it is entirely open.

Mr. Pusateri recalled the PUD agreement said this area should remain in its natural state so there has to be a change made to that PUD which was decided in 1980. He felt it was the province of this Council to make a decision as to what should be put there or not put there under the PUD.

Mr. Moore clarified that Mr. Pusateri was quoting from the minutes and the answer to his question earlier it does state for the trees to be removed, so the matchline is correct, and all that Mr. Wearn has to bring back is the landscape plan for the so called Australian Pine quadrant of the property and what is left open is the remainder of that property, if it is to be revegetated to the south all the way to Phipps' Ocean Park would still have to come back if landscaping is going to be placed to fill the voids which are there now to which Mr. Wearn agreed.

XI. COMMUNICATIONS FROM CITIZENS. Communications from Citizens

A. Comments were received from Bess Summers informing the Council of the deplorable condition of the Lake Trail from Primavera to Seaspray Avenue as some of the properties have high grass, hoses are running across the trail from the property at 10 South Lake Trail; there is moss growing on the Trail; there are mosquitoes; the seawall is in disrepair with actual holes in it; and the Anthony property is in an appalling state with no irrigation and lots of dust and she asked the Council to check on this.

B. Warren Ponvert of 425 Seabreeze Avenue addressed the Council stating the condition of the Lake Trail goes further south to the Leidesdorf property but the major problems are the Graebner and the Switzer properties around Seabreeze Avenue, and it is a health problem with the swimming pools as they have hoses across the bike trail which are leaking and the hoses are going directly into the Lake. He stated the Graebner have an empty lot and dug a pool but stopped work on it so it just sat there all summer long and after many complaints, they have filled it with sand and when it rains there is a mosquito problem. Mr. Moore indicated there is nothing they can do about them filling in the pool. Mrs. Douthit asked if the ground shouldn't be level? Mrs. Wiener asked about the dust and wondered if they didn't have to irrigate their property? Mr. Heeke asked Mr. Moore to have this matter checked into. Mrs. Wiener asked that a report be received on what has been done to correct these problems. Mr. Heeke stated the report could be circulated by way of a memorandum. Mrs. Wiener felt the people in Town should be aware of the fact that this is being taken care of.

C. Ann Blades addressed the Council asking when a home is demolished are there any regulations which require the owner or developer to sod and irrigate the property? Mr. Moore responded negatively indicating the demolition is governed by the Architectural Commission and they can place a condition on the demolition that the property be sodded and irrigated within thirty days, but the Anthony property demolition was handled by the Town Council and he did not believe there were any conditions put on it.

D. Adrian Winterfield addressed the Council asking them to replace the flags at the south entrance to Town Hall, as they are in deplorable condition.

Mr. Winterfield asked that now that a Parade Ordinance is in place, the Council should adopt an Ordinance which governs Special Events and suggested they do so.

XII. ANY OTHER MATTERS.

Any Other Matters

Johnson Seawall

A. Johnson Seawall Discussion - Michael Sexton of Metric Engineering representing John Revlon who is the son and agent for Mrs. Johnson. He summarized the situation indicating in May, 1990, they appeared before Code Enforcement with Mr. Revlon and got the project moving again, performing the soil testing and preparing the designs and are dealing with the regulatory agencies to secure the proper permits. He is here today to request a letter from the Town in order to secure the permits necessary for other regulatory agencies, that their plans meet the requirements of the Code of the Town. He indicated one of the problems is the County's Coastal Protection Ordinance requires rip rap on the outside of seawalls for protection. He is rehabilitating this seawall utilizing the present existing wall, which is primarily the east/west wall at the north end of the property and in the area from the Coastal Construction Line back to the Town's street, approximately 100', they proposed a three foot triangle with rip rap along the base of this wall which would be on the Town property, and this is something that is required by the County Ordinance.

Mr. Doney indicated the issue is for them to use approximately three feet by six feet of the south end of the Clark Avenue Beach in order to place rip rap which is a requirement of County DERM and Mr. Bowser has questions about the wall itself and the appropriateness of the rip rap which would be on Town property and it is viewed as a liability concern adn believe it could be redesigned so it would be contained on the property owner's property and not be any potential liability to the Town of Palm Beach.

Mr. Sexton responded by going back to the concept of the rehabilitation of the existing wall and if it were to be moved three to six foot inward, it would not match with some of the structure which will remain at the eastern end, the existing seawall beyond the Coastal Construction line and secondly, it would be looked at as new construction by the other agencies. Mr. Doney indicated that would mean it would be a different permitting process for new construction versus rehabilitation. Mr. Sexton advised it is a much more complicated process and they would like to have the pile driven before Dec. 1st, and have had the problem, along with permitting, of sea turtles, etc.

Mrs. Douthit believed the problem started about out three years ago and she thought the wall should be moved and it shouldn't be at the taxpayer's expense or the giving up of Town property, which is public beach. Mr. Heeke felt it would be a bad precedent to use municipally owned property for any private use and consistently this has been rejected in the past. Mrs. Wiener felt they were in no postiion to give away Town property, which in essence this would be doing, if this was granted. Mr. Moore concurred with the Council, however, County DERM wanted a longer dock for Dr. Spector and here once again is DERM telling us that they want rip rap. Mrs. Douthit didn't believe the wall could be salvaged. Mr. Moore felt if it is a DERM requirement, his argument should be with them and not with the Town. Mr. Heeke felt the Spector situation was different as that wasn't Town-owned property. Mr. Doney asked if the representative from Metric could relate to County DERM that the Town doesn't believe the rip rap is necessary, but it is probably beyond that as Mr. Bowser met with Metric yesterday and had other concerns about the structural plans itself. Mr. Bowser explained they can work out the technical issues but the issue here is the rip rap on Town property.

Mrs. Douthit moved that the request of Metric Engineering to put rip rap on Town property and to support a privately owned seawall of Mrs. Johnson be denied on the grounds that the Town cannot give public land for private purposes. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Closing of public parks & recreation areas

B. CLOSING OF PUBLIC PARKS AND RECREATIONAL AREAS. Mrs. Kathy Haynie-Timmons addressed the Council, indicating she has had discussion with the County on the encephalitis problem and a letter has been distributed from the Medical Director of the Department of Health and Rehabilitation Services and the request is to close our recreational areas one hour before sunset for outside activities. Motion was made by Mr. Weinberg that the Town's recreational facilities be closed at 6PM Daylight Savings Time and 5PM Standard Time and reopen at 8AM until this alert is lifted by the Health Department. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Per Diem Expenses for travel on town business

C. PER DIEM EXPENSES FOR TRAVEL ON TOWN BUSINESS. Mr. Heeke noted it has been brought out the per diem expenses allowed are inadequate and he recommended they should try it for a while with receipts with no limit and have the Town Manager or the Finance Director approve them. Mr. Doney reported the receipts are a tremendous problem and they have been using \$3 for breakfast, \$6 for lunch and \$12 for dinner, which is State Law and an employee gets that amount which is \$21 per day. He knows in certain areas, this is not sufficient but he believed this could be lived with. He reported the Mayor and Town Council receive no compensation and for the Florida League of Cities conference and other travel which is done and the question of reasonableness is what is reasonable to one person may not be to another and there can be heated disagreements and he recommended setting fixed limits. After discussion, the fixed limit for meals was raised to \$6 for breakfast, \$8 for lunch and \$16 for dinner or a total of \$30.00 per day. Mr. Doney explained when attending conferences, there are always meals furnished be it a breakfast, lunch or a banquet dinner and that would be excluded from the total amount.

Mr. Heeke also suggested the mileage rate for transportation be increased to 27¢ per mile. He reported other communities are paying that, such as Boca Raton and he believed Delray Beach was about to increase their mileage rate to 26¢ per mile. Motion was made by Mrs. Douthit to increase the per diem to a total of \$30 per day, with it divided out at \$6 for breakfast, \$8 for lunch and \$16 for dinner and the mileage be increased to 27¢ per mile. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Heeke asked Mr. Doney to bring this back to the Council if the oil problem does not compensate the employees fairly.

Adjournment

XIII. ADJOURNMENT. Meeting was adjourned at 5:42PM.

Grace T. Peters
Town Clerk