MINUTES OF THE TOWN COUNCIL MEETING HELD ON OCTOBER 8, 1996

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A.M. on October 8, 1996. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Public Works Director Al Dusey, Police Chief Joseph Terlizzese, Fire Chief Vincent Elmore, Assistant Fire Chief Kent Koelz, Acting Finance Director Cheryl Somers, Director of Recreation Russell Bitzer, Parking Control Manager Henry Marchman, Purchasing Agent Charles Boggs, Director of Planning, Building & Zoning Robert Moore, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Dr. Cromie of Royal Poinciana Chapel. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Louis C. Pryor, Public Employees Relations Commission - From 1988 to 1996

Mayor Ilyinsky presented a plaque to Mr. Pryor in grateful recognition of his many services to the Town of Palm Beach.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky recognized Mrs. Joyce McLendon, representing the Palm Beach Fellowship of Christians and Jews, and read the following proclamation:

> *Whereas the Palm Beach Fellowship of Christians and Jews was founded in 1993 to promote fellowship, understanding, and respect among all people in our community; and whereas Fellowship week will be a week set aside to educate citizens in an attempt to provide a common understanding of the concepts, principles, and tenets which form the foundation of the religious houses of worship located within the Town of Palm Beach; and whereas Fellowship week provides an excellent opportunity for persons of all faiths to come together in an attempt to promote fellowship within the community and; whereas this year's theme, in addition to the tour of the Houses of Worship in the Town, is pride in our community; and whereas all persons are encouraged to attend and participate in this worthy and significant event; now therefore, I, Paul R.. Ilyinsky*, Mayor of the Town of Palm Beach, do hereby proclaim the week of November 11 through 15, 1996, as Fellowship Week.

Mayor Ilyinsky issued a proclamation proclaiming Red Ribbon Week, October 23 through October 31, that will have a number of activities sponsored by the Palm Beach Police Department.

V. COMMENTS BY THE HONORABLE SHARON MERCHANT, STATE REPRESENTATIVE (DISTRICT 83), REGARDING 1997 STATE LEGISLATION

Representative Merchant reported that recent legislation was passed in the areas of cellular telephone fraud and securities transactions. Additionally, she mentioned that she had worked on projects including State educational funding reporting; codification and consolidation of all statutes related to Florida Inland Navigation District; re-establishment and amending of the qualified defense contractor tax refund program; requirement for State prisoners to work; abolishment of the South Lake Worth Inlet District; mangrove trimming; charter schools; major revision in State welfare for able-bodied individuals; property insurance; crime and public safety (Jimmy Rice Act related to sexual predators); boating safety laws; and water policy issues.

VI. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

Page 4, Withdraw Item XIII.C.2., Request for Fireworks Display at Mar-a-Lago Club.

Mr. Wyett made a motion to approve the request for withdrawal; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Withdraw Item XV.C.2., Variance No. 33-96, George Ross, 321 Tangier Ave.

Mr. Wyett made a motion to approve the request for withdrawal; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Withdraw Item XV.C.3., Variance No. 35-96, Kathryn Pressly, 242 Seaspray Ave.

Mr. Wyett made a motion to approve the request for withdrawal; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 6, Defer Item XV.C.5., Variance No. 37-96, Michael Connelly, 109 Seabreeze Ave. to the November 12, 1996, Town Council meeting

Mr. Wyett made a motion to approve deferral to the November 12, 1996 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 5, Withdraw Item XV.B.1., Appeal of Variance No. 28-96, Sydell Miller, 1415 South Ocean Boulevard

Mr. Wyett made a motion to approve withdrawal; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 6, Defer Item XV.C.5., Variance No. 37-96, Felice Forman, 150 Canterbury Lane, to the November 12, 1996, Town Council meeting.

Mr. Wyett made a motion to approve deferral; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 6, Withdraw Item XV.D.3., Waiver of construction hours at 125 Worth Ave.

Mr. Wyett made a motion to approve withdrawal; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 4, Add Item XIII.C.5., Consideration of Discussion of Water Franchise with the City of West Palm Beach

Mrs. Smith suggested that Item XIII.C.5, Consideration of discussion of the Water Franchise with the City of West Palm Beach, be added to the agenda.

Page 4, Add Item XIII.C.6., Consideration of offer by TV Channel 20 to Film Meetings

Mr. Wyett made a motion to approve adding Item XIII.C.6., Consideration of offer by TV Channel 20 to Film Meetings; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Page 4, Add Item XIII.C.7., Consideration of Discussion of the burying of Utility Lines in the Town of Palm Beach

Mr. Shaw made a motion to add Item XIII.C.7, Consideration of Discussion of the burying of Utility Lines in the Town of Palm Beach; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Page 4, Add Item XIII.C.8., Consideration of Adding a segment to the agenda called "Council Comments" under New Business

Mr. McDonald made a motion to add Item XIII.C.8, Consideration of adding a "Council Comments" section to the Agenda; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Page 4, Add Item XIII.C.9., Consideration of Scheduling a Public Safety Meeting

Mr. McDonald made a motion to add Item XIII.C.9, Consideration of scheduling a Public Safety Meeting; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Page 4, Add Item XIII.C.10., Consideration of Reimbursement by the Federal Government for Funding for Beach Nourishment Projects

Mr. McLendon suggested the addition of Item XIII.C.10, Consideration of Reimbursement by the Federal Government for funding for Beach Nourishment Projects.

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

VII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Comments were heard from Dr. Sanford Kuvin, Jim Koontz, Maurice Shawzin, and Bob Rodax.

Dr. Sanford Kuvin, Town resident, addressed the Town Council, stating that he had appeared before the County Commission to object to serious flaws in the Beach Erosion Control program of the Tri-Party Interlocal Agreement between the Town, the Port, and the County, because he believed portions of the Agreement could cause harm to the Town and property owners with considerable local expense. Dr. Kuvin maintained that the Council had been led to believe that the $3.9 million authorization by the Army Corps of Engineers to build a completely new Sand Transfer Plant would be paid for entirely by the Federal Government, and that, in his opinion, this was not the case. Dr. Kuvin stated that he had called the Corps of Engineers in Washington to find that the Federal formula of 55/45 of the $3.9 million was correct, unless a new analysis of the effects of the Lake Worth jetty on beach erosion on the Town would significantly change the previous Army Corps estimates. He expressed that taxpayers had spent millions of dollars, and now the Town was eager to sign on to a Tri-Party Interlocal Agreement of cost sharing, where the Mayor and Town Council believed that a free lunch had arrived from the Federal Government. Dr. Kuvin asked why the Town Council could not wait to sign the Tri-Party Interlocal Agreement until the end of December--which was the deadline for any Army Corps decision to change funding the way the Mayor hoped for, which was 100% funding for the building of a brand new Sand Transfer Plant forever paid for and forever maintained by the Federal Government. Dr. Kuvin noted that he did not believe that would happen, urging that the signing of the Agreement be postponed until December.

Mr. Maurice Shawzin addressed the Town Council, stating that trash on the sidewalks in Palm Beach was a health hazard, economically costly, and a safety problem. He urged that some attention be paid to the trash on the beaches.

Mr. Jim Koontz addressed the Town Council, stating that he objected to the Corps of Engineer Project for the following nine reasons:

1. No details on how the plant would work had been furnished.
   Dredging the Inlet from a fixed plant was a new and untried technology.
2. No yearly operating costs of the proposed plan had been furnished.
3. Who would have to foot the bill for the Plant's operating expenses had not been stated.
4. No statement had been made about the Town of Palm Beach proposal to build an extension to the pipe from the Inlet to transport sand from the Transfer Plant further south.
5. No statement had been made about how long it would take to build the Plant, and when it could be expected to start operating.
6. No statement had been made about whether the present Plant would have to be shut down while the Plant was being built.
7. No statement had been made about whether the Plant would transfer the sand any more efficiently than the Town's rebuilt Plant.
8. No statement had been made about whether the Plant would cost more to run than the Town's Plant.
9. Usually any Federal government project cost more than a non-government project, and no costs had been made publicly available.

Mr. Bob Rodax, 235 Sunrise Ave., addressed the Town stating that he had experienced some problems in regard to the parking situation in Palm Beach. In the past three months he noted that his vehicle had been booted three times and he had received 11 tickets, and when he inquired about a permit he had been informed that he could not obtain a permit for Sunrise Ave. He asked if there was any way he could obtain a permit?

Chief Terlizzese suggested that Mr. Rodax speak to his landlord about providing a parking space.
Mr. Shaw asked if there was permit parking on the block?

Chief Terlizzese responded negatively--that the street was a commercial street, but that there were off-street parking facilities in the area, and perhaps Mr. Rodax could lease one of the parking spaces.

After discussion of the parking situation on Sunset Ave., Mr. Wyett made a motion to consider it as a Public Safety

Committee Agenda item; Mrs. Smith passed the gavel and seconded the motion. On roll call, the motion carried unanimously.

Mr. Adrian Winterfield addressed the Town Council, stating that he had heard the letters "LLC" for the first time at the public hearings on Mar-a-Lago, suggesting that the Town Council and Town Attorney be aware of the significance of these letters, and submitted that any attempt to substitute a party to the Trump Development Agreement by another party without prior Council agreement was a breach of any agreement and should be handled as such.

APPROVED AGENDA (ITEM VIII THROUGH ITEM X)

VIII. APPROVAL OF MINUTES OF SEPTEMBER 10, 1996

IX. LICENSES AND PERMITS

A. Charitable Solicitations

1. Palm Beach Community Chest/United Way; No. 8-97
2. The Henry Morrison Flagler Museum, No. 74-97
3. Paracare Association of Palm Beach, Inc.; No. 143-97
4. Visiting Nurses Association of Palm Beach County, Inc.; No. 166-97
5. Community Foundation for Palm Beach and Martin County; No. 221-97
6. The Joseph L. Morse Geriatric Center; No. 248-97
7. South Florida Science Museum, Inc.; No. 359-97
8. Give Some Back, Inc.; No. 412-97
9. Palm Beach Cat Rescue and Humane Society; No. 413-97

Other

- Failure to File Prior Results Form Within Prescribed Time

10. March of Dimes Birth Defects Foundation; No. 12-97 (Paid $25 Administrative Processing Fee)
11. Palm Beach Opera, Inc.; No. 68-97

X. OTHER

A. Formal Action to Confirm Town Council's Intent Regarding Dais Modification and Fixed Table in the Council Chambers

B. Renewal of Existing Contracts and Agreements

1. Authorization for Town Manager to Execute Fire-Rescue Department's Emergency Medical Director's Contract for Fiscal Year 1997

2. Authorization for Town Manager to Execute Agreement Between the School District of Palm Beach County and the Town of Palm Beach for the District's Emergency Medical Technology Program

3. Authorization for Town Manager to Execute Agreement Between the School District of Palm Beach County and the Town of Palm Beach for Vocational Education Programs

Mr. Wyett made a motion to approve the Approved Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

REGULAR AGENDA

XI. COMMITTEE REPORTS

A. Report of the Public Works Committee Meeting of September 18, 1996

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING
HELD ON WEDNESDAY, SEPTEMBER 18, 1996

I. CALL TO ORDER AND ROLL CALL:

The meeting was called to order at 2:05 p.m. by Chairman Sam McLendon. On roll call, Chairman McLendon and Committee Member Lesly Smith were found to be in attendance. Other Elected Officials attending were Mayor Paul R. Ilyinsky, Councilmen Leslie Shaw and Allen Wyett. Others attending the meeting were Assistant Town Manager Peter Elwell, Public Works Director Albert P. Dusey, Town Engineer Jim Bowser, Solid Waste Division Manager Ronald L. Meadows, Director of Planning, Zoning and Building Robert L. Moore, and Secretary Jackie Reedy.

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

III. CONSIDERATION OF YARD TRASH COLLECTION AND DISPOSAL:

A. COLLECTION SCHEDULE AND COST

B. EFFECT ON COST TO TOWN TO REQUIRE OFF-STREET STORAGE; HOW MANY EXEMPTIONS.

C. FEASIBILITY OF HOME CONTRACTORS DELIVERING BULK TRASH TO PINEWALK AT THE BREAKERS (SHREDDER, ETC.).

Mr. Dusey reported that Ron Meadows and his staff conducted a survey on the north/south roads--Ocean Boulevard, County Road, and Lake Way--to determine if locations existed for pads that would hold the trash off those busy roads. The tabulation of the sites showed that 148 single family home properties and 44 condominium properties had room for pads to be located on the properties. Locating pads on 17 specific single family home properties would be difficult or impractical. A 6'x6'x6" pad was estimated to cost approximately $180; a 8'x8'x6" - $360; a 8'x16'x6" - $675; and a16'x16'x6" - $1,300. Mr. Dusey added that 17 properties have existing off street trash pads, and although trash pads would remove the yard trash from busy streets, the yard trash would still be visible. Many of the existing walls are too high and would have to be altered, and the pads could be site screened.

Mr. Dusey said the issue is a policy question and depends upon the importance of removing the yard trash from the north/south streets. Mr. McLendon suggested the yard maintenance contractors could deliver the yard trash to central sites, i.e. Pinewalk and the Par 3 Golf Course, where the Town could operate chipper/shredders. Mr. McLendon noted that the Breakers' agreement may not allow the operation of a noisy chipper/shredder at that location. Mr. Dusey stated that there is not enough ground storage available for a chipper/grinder to operate there.

Mr. John Matich, 3475 South Ocean Boulevard, addressed the Committee. Mr. Matich suggested the time spent picking up yard trash at the condominiums could be managed more efficiently with more effective use of manpower. Mr. Matich added the amount of yard trash should be limited at each location on a weekly basis and strong action would be needed to enforce that.

Mr. Matich quoted from Ordinance 58-15--noting the one and three days requirements, depending upon the time of year, for placing yard trash on the streets. Mr. Matich suggested the ordinance should be amended to read: "*No trash is to be placed out on the public right-of-way ..... only one day prior to pick-up*" as required in other communities.

Mr. Matich reported that he had not had a meeting with the thirty condominiums regarding the issue of placing less yard trash on South Ocean Boulevard since the last time this issue was discussed by the Council. Mr. Matich encouraged the Committee to have the independent yard maintenance contractors to do more removal and chipping of the yard trash.

Mrs. Smith questioned the difficulty of landscaping the condominium sites that would be used for the storage of the yard trash before it was placed on South Ocean Boulevard. Also, the issue of placing the yard trash on the streets only one day prior to pick-up would cause problems for yard maintenance contractors who work on Saturdays and would not be allowed to put the yard trash out for Monday pick-up.

Mr. Wyett encouraged the use of chippers and cited the safety issue of leaving yard trash in the streets. Mr. Wyett emphasized cooperation with the gardeners and yard maintenance people who could schedule major cuttings one day before scheduled yard trash pick-ups.

Mr. Shaw suggested the weekly yard trash pick-ups and the major cut backs should be separated. He agreed with Mr. Wyett concerning the safety issue and the scheduling of major cut backs. Mr. Shaw said the "eyesore" condition in the Town is the result of day to day yard trash that is placed on all of the streets. Mr. Shaw said he has been using a yard trash container, provided by Public Works, on a trial basis for six months, and the container holds his weekly yard trash. Mr. Shaw added the containers do not address the needs of the condominiums but could be part of the solution for private properties.

Mr. Dusey said the cost of each 96 gallon container would be approximately $50--delivered to the home owner. He added that the pick-up plan would be for the Public Works personnel to bring the containers from a convenient location on the property to the street, have the equipment pick up the container, and personnel would return the containers to the properties so they would not remain on the streets. A crew of three people would be required.

Mrs. Smith noted that residents could buy them through the Public Works Department. Mr. Dusey agreed that the Public Works Department could stock some of the containers for residents.

Mr. Dusey said the container system for single family homes would keep a fair amount of yard trash off of the streets and would reduce the costs of yard trash pick-up. Mr. Dusey suggested the containers should be used uniformly by single family residences.

Mr. Dusey requested that if the Council were interested in a container procedure, a compactor truck may be obtained on a loan, lease, or other basis for a trail period in a section of Town that should include several home types, i.e. large estates, small sites.

Mayor Ilyinsky said that a long line of these yard trash containers would have the appearance of a military base and some of the residences in Palm Beach would be inaccessible to a truck for pick-up of the containers. He also noted some of the elderly residents could experience difficulty moving the containers.

Mrs. Smith said the containers could be used by some residents successfully, as Mr. Shaw has proved, and the containers should be used on a voluntary basis by an informed public before a mandatory operation would be enforced. Mrs. Smith encouraged the Palm Beach Daily News to publicize the containers.

Mr. Dusey advised the Committee if a uniform system were not used for picking up yard trash, the Town would end up operating two expensive systems doing the same thing.

Mrs. Smith suggested the Town could enlist the aid of the Civic Association and the Citizens' Association South of Sloan's Curve in a survey of Town residents as they helped with the Comcast survey.

After discussing the size of chippers, the noise levels, resulting mulch, container pick-up, a survey of Town residents, **THE COMMITTEE RECOMMENDED THAT THE TOWN COUNCIL CONSIDER AUTHORIZING A SURVEY OF TOWN RESIDENTS REGARDING YARD TRASH COLLECTION ISSUES.**

D. FEASIBILITY OF PAY INCENTIVES FOR SATURDAY WORK; AND ALSO REQUIRE NEW EMPLOYEES TO COMMIT TO TUESDAY THROUGH SATURDAY WORKWEEK AS OLDER EMPLOYEES LEAVE THROUGH ATTRITION:

Mr. McLendon suggested that future employees of the Public Works be advised that one of the conditions of employment would be the agreement to work Saturdays in place of Mondays if so directed. The alternative may be to set up a differential pay scale, perhaps of 10-15%, to pay for work on Saturdays as opposed to other days.

Discussion then shifted to charges for yard trash collection. This discussion included potential revenues from commercial properties for yard trash pick-up, the number of loads of yard trash, and legal questions concerning charges for yard trash pick-up for various specific users (including churches). Mr. Elwell said if the Town Council would implement a system, the system should be a sound, fair system that does not specifically take into account the particular circumstance of a property but rather treats types of properties on an equitable basis.

THE COMMITTEE RECOMMENDED THAT THE TOWN COUNCIL REQUEST TOWN ATTORNEY RANDOLPH TO PROVIDE A WRITTEN REPORT REGARDING THE LEGALITY OF A PROCEDURE FOR THE ENTIRE BILLING PROCESS TO INCLUDE THE POSSIBILITY OF A $50 CREDIT FOR ALL COMMERCIAL YARD TRASH ACCOUNTS.

Mr. Dusey reported that if the three largest users of yard trash pick-ups (Palm Beach Country Club, the Breakers, and the Everglades Club) and all of the condominiums south of Sloan's Curve chipped their vegetation in the summertime, the Public Works Department could <u>not</u> reduce their work crew by even one trash truck.

IV. CONSIDERATION OF DRAINAGE ISSUES

A. BONDING VS. PAY-AS-YOU-GO:

Mr. McLendon questioned if the five year plan with expenditures of approximately $2 million per year was expedient or should a greater amount be expended to leave future generations with better conditions in Palm Beach than exist presently? Mr. McLendon mentioned the Four Arts drainage basin was scheduled over a 4 to 5 year period and perhaps yearly mobilization costs should be addressed to see if a shorter time period would be amenable and save money.

Mr. Dusey responded that the Town has a short time within which construction work can be done. The Four Arts project actually has two contracts at this time--one for the pumping station and one for the collection station. Mr. Dusey noted that a very large section of Town would have to be "torn up" on a large scale to do a project like that all at once. He added that costs could be saved by doing everything at once, but the disturbance factor would be greatly increased.

Mr. Dusey said that the intention of doing all of the work at once would be to pay the debt service out the Capital Improvement Program funds rather than increasing taxes and to divert whatever payment that might be over a twenty year (*for instance*) period would reduce the Town's flexibility in addressing problems as they may arise if something comes up unexpectedly.

Mr. Dusey pointed out that each side had plus and minus arguments.

Responding to a question from Mr. McLendon regarding tax anticipation notes which may be usable for condensing construction time, Mr. Elwell suggested that Mrs. Somers, Acting Finance Director, speak to that at the October 8, 1996, Town Council meeting when the report of the Public Works Committee is heard.

Mr. Elwell said staff might have concerns regarding the lead time needed to get a bond together and issued, and the Town's time table with the budget preparation in the summer may be tight if a project were intended to begin the following spring. Mr. Elwell said a larger issue was a philosophical question concerning the flexibility versus the long term cost effectiveness, and a long term cost benefit may be had if the bond impacted upon the market at the right time and construction costs were "right". Mr. Elwell suggested that the Town currently has the flexibility of spending approximately $2 million per year as the needs change and the Town Council makes decisions based upon changes and staff recommendations. The Town Council is able to adjust the process of maintaining the Town's infrastructure, and much of that would be lost if a big bond issue was implemented.

Mrs. Smith added that the Town has a long range Capital Program and as the projects are decided upon, the Town Council takes into consideration the needs of the residents and the disruption of the entire neighborhood from the ocean to the lake of the east/west streets making them totally

iinaccessible. Mrs. Smith said that major work concerning the water pipes may be in the future with West Palm Beach repairing some of the pipes. This has to be taken into consideration when Mr. Dusey plans projects, and that is one reason projects may be moved around.

V. CONSIDERATION OF GARBAGE ISSUES

A. ALTERNATIVE FOR LESS FREQUENT PICKUP:

Mr. McLendon requested that if the Town Council agrees to send out a questionnaire in January to the Town's residents regarding yard trash pick-up, that the question of garbage pick-up be included in that survey.

THE COMMITTEE RECOMMENDED THAT THE QUESTION OF FREQUENCY OF GARBAGE PICK-UP SHOULD BE INCLUDED IN THE SURVEY SENT TO TOWN RESIDENTS.

1. **THREE TIMES WEEKLY - MONDAY, WEDNESDAY, AND FRIDAY; TUESDAY, THURSDAY, AND SATURDAY:**

2. **TWICE WEEKLY - MONDAY AND THURSDAY; TUESDAY AND FRIDAY.**

Mr. Dusey asked for clarification if one of the scheduled days would be used for recycling or would an extra day be required for recycling?

Mr. McLendon replied recycling would require an additional day using a separate recycling crew and equipment.

Mrs. Smith suggested that the residents be given a choice on the survey and include recycling as one of the days so as not to confuse anyone.

Mr. Elwell clarified that if the Town Council approved the Committee's recommendation at the October 8, 1996, Town Council meeting, staff would have sufficient time to prepare a questionnaire and present that questionnaire to either the Committee or the Town Council in November.

Mrs. Smith said she understood that the Town Council will decide if they want to ask staff to do the survey and how comprehensive the survey should be. The survey would be mailed after the first of the year.

Mr. Elwell requested clarification on the issue of pick-up of large yard trash cuttings on a once or twice a year basis.

Mr. McLendon responded a recommendation had not been made concerning that issue; however, appointments and scheduling were possible and Public Works would have to work out those details with cooperation from the affected parties.

VI. CORPS OF ENGINEERS - INLET DREDGING FOR MID-TOWN BEACH:

Mr. McLendon said that the Committee needs to take some preliminary planning and action in lining up the possible renourishment of the Mid-Town Beach working out some details with the Corps of Engineers.

Mr. Dusey explained the Town Council authorized the Town to enter into agreements with the Corps of Engineers to bring sand from the Inlet to Mid-Town when it was perceived to benefit the Mid-Town Beach. According to Federal law, the Town would have to pay the differential between the cost of what the Corps would spend to place the sand on the beach south of the South Jetty as compared to what it would cost to bring it to Mid-Town. Mr. Dusey reported that this could be a fairly inexpensive source of sand for renourishment for the Mid-Town Beach on approximately two year basis.

Mr. Dusey reported that Mid-Town is doing very well with an additional inflow of brown sand on the beach. The beaches south of Mid-Town are very good; however, the north end by Clarke Avenue has adjusted very rapidly. Dr. Dean prepared an analysis, and Mr. Dusey proposed that sand be placed on the Clarke Avenue Beach to serve as a natural feeder beach for the rest of Mid-Town rather than waiting to lose a large amount of sand. The 170,000 cubic yards of sand placed by the Corps last year on the north end is still there and has not moved. As northeast storms come, sand will be moving south to help other north end beaches.

Mr. Bowser reported that bids for the placement of the sand should be received by the end of October and presented to the Town Council at the November 12, 1996, Town Council meeting.

Mr. Elwell reported that the Port, the County, and the Town will be meeting with representatives from the Corps of Engineers in late October concerning a number of issues including the Tri-Party Local Agreement and how the three parties will relate to the Corps in the implementation of the Inlet Management Plan.

THE COMMITTEE RECOMMENDED THAT STAFF CONTINUE TO WORK WITH THE CORPS OF ENGINEERS FOR THE PLACEMENT OF SAND FROM THE INLET DREDGE ONTO THE MID-TOWN BEACH.

VII. ANY OTHER MATTERS: There were none.

VIII. ADJOURNMENT:

The meeting was adjourned at 4:35 p.m.

PUBLIC WORKS COMMITTEE

____
SAMUEL C. MC LENDON, COMMITTEE CHAIRMAN

____
LESLY S. SMITH, COMMITTEE MEMBER

Mr. McLendon reported that it had been the recommendation to the Council that an official survey be made of Town residents regarding the yard trash collecting issues. He had drafted a simple form in this regard, which had been presented to Mr. Dusey, Director of Public Works.

Mrs. Smith mentioned that perhaps the Civic Association and the Citizens Association South of Sloan's Curve would help the Town in the distribution of the survey, and that it would be beneficial to find out whether trash in the streets was a major issue with residents.

Mr. Dusey stated that a survey could be drafted and brought back to the Town Council for approval; the intent had been to issue the survey at a time when most residents were in the area.

Mr. Wyett pointed out that when trash was located in a public way it presented a public safety issue.

Mr. McLendon stated that both the aesthetic and safety issues would be included in the survey.

Mr. Shaw made a motion that a trash survey be authorized; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Dusey agreed that he would put a sample survey together and come back to the Town

Council in November.

Mr. Wyett suggested that the survey be mailed in January, rather than in February, since most residents would be in Town at that time.

Mr. Adrian Winterfield suggested that the Town Council look the alternative of requiring all trash to be picked up by a subcontractor, not allowing any trash at all on the public right of way.

Mr. McLendon continued with the recommendations of the Public Works Committee, stating that the second recommendation concerned charging for huge quantities of trash with the Town Council requesting Town Attorney Randolph to provide a written report regarding the legality of the procedure for special billing for large yard trash pick ups, with the possibility of a credit being given to those with small amounts of trash.

Mr. Wyett made a motion to authorize Town Attorney Randolph to provide a written report regarding the legality of large yard trash collection procedures; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. McLendon then reported that the Public Works Committee recommended that the Corps of Engineers be asked to take optional bids on placing sand in the Mid-Town Beach area.

Mr. McLendon made a motion to authorize the staff to work with the Corps of Engineers concerning placement of sand in the Mid-Town Beach area; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Discussion took place regarding the leaking of the south jetty, and Dr. Kuvin indicated that the Army Corps of Engineers would conduct an inspection as soon as the possibility of tropical storms subsided. He asked Mr. McLendon if the Council had received a permit from the Department of Environmental Protection for the request to utilize Corps sand which would normally be dredged from the Inlet and placed in the Mid-Town Beach area?

Mr. McLendon replied that he thought the permit the Town already had included the Mid-Town area.

Mr. Dusey stated that there was a standing permit at Mid-Town for disposal, and the Corps also had a permit to dispose south of the South Jetty. The permits would be married and the Corps would then pursue implementation.

Dr. Kuvin reminded the Council that by contracting with the Army Corps of Engineers to dispose of the sand which was normally put on the north end feeder beach would change the formula which had worked in the past. The combination of dredging from the Inlet and depositing that sand on the spoil area to the South Jetty, plus the pumping of the Sand Transfer Plant had kept beaches in a steady, stable state for almost 40 years. The Mid-Town Beach needed the nourishment drifting down from the feeder beach, and Dr. Kuvin asked the Council to consider this issue in proposing to go forward with the request to the Corps of Engineers.

Mayor Ilyinsky commented that the Town Council was not rushing blindfolded towards the Tri-Party Agreement, but that he thought it was encouraging that there was an opportunity to discuss these issues.

Dr. Kuvin cautioned that the Town had been sued by the County and vice-versa, a water project with the County was complicated, the Port had interests that went towards commercialization of the Port--each governmental body had its own agenda. He suggested that the Town wait until December to enter into any agreement, until government funding was ascertained.

Mr. Dusey stated that, in his opinion, the Tri-Party Agreement was nothing more than a handshake--that the Town, County and Port were agreeing that they would cooperate at a point in time when a project was formulated, with no commitment to spend any money. He did not believe there was any harm in signing such a Tri-Party Agreement.

Mr. Shaw asked Dr. Kuvin what would be gained by delaying the signing of the Tri-Party Agreement?

Dr. Kuvin responded that the Agreement was a non-binding agreement, however, it was an agreement of conscience saying that cost sharing would take place, and that the Town agreed to the agreement. The agreement called for the re-building of a new Sand Transfer Plant, the Inlet Management Plan, the Coast of Florida Study--none of which had been approved by the U. S. Government. Dr. Kuvin commented that Councils, Mayors, and residents would come and go, however, the Agreement would stay--somehow things in bureaucracy got into motion and stayed in motion, where future Councils would say that in 1996 the Town had agreed to the Agreement. He therefore urged that the Agreement not be signed, as there were items within it that the Town may disagree with.

Mrs. Smith noted that in the Committee Report, Mr. McLendon had asked to have Mrs. Somers, Acting Finance Director, speak to the question of tax anticipation notes.

Mr. McLendon responded that there was no urgency on that topic, and Mrs. Somers could address the question at a later time.

B. Report of the Ordinance, Rules, and Standards Committee Meeting of September 26, 1996

**REPORT OF THE ORDINANCES, RULES, AND STANDARDS COMMITTEE
MEETING HELD ON SEPTEMBER 26, 1996**

I. CALL TO ORDER AND ROLL CALL: A meeting of the Ordinances, Rules, and Standards Committee was called to order by Chairman Leslie Shaw at 12:30 p.m. on September 26, 1996, in the Town Council Chambers. On roll call, Chairman Shaw and Committee Member Allen Wyett were found to be in attendance. Also attending all or part of the meeting were Mayor Paul Ilyinsky and Councilman Sam McLendon. Others present at the meeting were: Assistant to the Town Manager David Jakubiak, Town Attorney John C. Randolph, Director of Public Works Al Dusey, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt.

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

III. CONSIDERATION OF DRAFT TELECOMMUNICATIONS ORDINANCE: Mr. Nicholas Miller, Attorney with the law firm of Miller, Canfield, Paddock and Stone, reported that he had reviewed the cable television contract and discussed with the staff the drafting of a telecommunications ordinance. Mr. Miller suggested that the Town should wait before drafting a telecommunications ordinance to consider the preferences of the community, the committee, and the council. Mr. Miller said the Town should move with other cities as there was "safety in numbers".

After discussing the possible locations of tower or antenna sites as related to zoning issues and the importance of addressing that issue during the 1996-97 Zoning Season, the following recommendations were made:

THE COMMITTEE RECOMMENDED THE TOWN COUNCIL HIRE TWO SETS OF ADVISORS (A FREQUENCY ENGINEER AND A COMMUNICATIONS CONTRACTOR)TO ADVISE THE TOWN ON (1) A FREQUENCY DISTRIBUTION MAPPING SERVICE PERFORMED BY THE FREQUENCY ENGINEER WHICH WILL LAY OUT THE TOWN TO SHOW WHERE BOTH PCS AND CELLULAR SITES WOULD BE REQUIRED TO PROVIDE THE PROPER COVERAGE AND (2) AN EVALUATION OF TOWN-OWNED PROPERTIES BY A COMMUNICATIONS CONTRACTOR TO DETERMINE WHAT FACILITIES THE TOWN PROPERTIES WOULD SUPPORT OR WHAT WOULD BE NEEDED ON THOSE PROPERTIES. THE COMMITTEE ALSO RECOMMENDED THAT DAVE JAKUBIAK COMMUNICATE WITH INTERESTED LICENSED PCS AND CELLULAR PROVIDERS TO HAVE THEM

PROVIDE INPUT. THE COMMITTEE SAID THE ENGINEERING FIRMS SHOULD ALSO EVALUATE TOWN-OWNED PROPERTIES NOT LOCATED IN PALM BEACH.

THE COMMITTEE RECOMMENDED THAT A DRAFT ORDINANCE BE DEVISED THAT INCORPORATES THE TOWN'S PRESENT ZONING DISTRICTS AND ADDRESSES THE CONCERN THAT THE CHARACTERISTIC OF THE TOWN NOT BE CHANGED. ANY ANTENNA SITES MUST FIT WITHIN THE ZONING STRUCTURES AS PERMITTED, AND IF MODIFICATIONS ARE NEEDED TO PERMIT THE BUSINESS TO BE OPERATED WITHIN THAT ZONING DISTRICT AND CANNOT BE MET IN ANY OTHER MANNER, VERY LIMITED AND HIGHLY CONTROLLED SPECIAL EXCEPTIONS OR OTHER MEANS COULD BE USED BY THE LAND HOLDER.

THE SPECIAL EXCEPTION ISSUE IS TO BE REFERRED TO THE ZONING COMMISSION (*THIS IS CURRENTLY A STUDY ITEM FOR THE '96-'97 ZONING SEASON)* AND MAY BE CONTINUED TO A DATE CERTAIN WITHIN THE SAME ZONING SEASON AS DISCUSSED BY MR. RANDOLPH AND MR. CASTRO.

THE COMMITTEE RECOMMENDED THAT MR. MILLER RETURN TO THE ORS COMMITTEE WITH INFORMATION REGARDING A MULTIPLE REVENUE SYSTEM FOR THE TOWN--SEPARATED INTO RENTS, TAXES, AND FRANCHISE FEES. THE COMMITTEE RECOMMENDED THAT MR. MILLER CONFER WITH MR. RANDOLPH CONCERNING ANY OF THE LEGAL ISSUES THAT WOULD NEED TO BE ADDRESSED.

IV. CONSIDERATION OF FRANCHISE RENEWAL AGREEMENT WITH COMCAST CABLEVISION, INC.: Mr. Miller summarized his comments regarding the franchise renewal agreement with Comcast. Mr. Miller said the cable franchise ordinance should be limited to cable services only and not touch on telecom services. The most recent Federal law amended the concept of cable franchise fees and limits those fees only to cable service revenues, and if a franchisee had a cable franchise and was allowed to do more than cable services, fees would be paid on only part of the revenues. Mr. Miller said the Town should make sure that the franchise fee should apply to all of the revenues that the operator receives from operating the cable system in Town, and the gross revenue approach should apply to all revenues in the system. Mr. Miller said he agreed with the staff

recommendation that the length of the franchise agreement be short.

After discussing the renewal of the Comcast agreement,

THE COMMITTEE RECOMMENDED THAT WHEN THE COMCAST FRANCHISE AGREEMENT EXPIRES ON OCTOBER 12, 1996, THE AGREEMENT CONTINUE ON A MONTH TO MONTH BASIS. IF THE NEGOTIATIONS ARE NOT CONCLUDED BY THE END OF NOVEMBER, THE COMMITTEE RECOMMENDED THAT STAFF BE GIVEN DIRECTION TO LOOK AT A FORMAL

NON-RENEWAL PROCESS (*THIS PROCESS WOULD REQUIRE 6 - 9 MONTHS*), AND ATTORNEY RANDOLPH PROVIDE A PROGRESS REPORT AT THE NOVEMBER 12, 1996, TOWN COUNCIL MEETING AND REQUEST AN EXTENSION FOR NEGOTIATIONS AT THAT TIME, IF NECESSARY.

V. ANY OTHER MATTERS: There were none.

VI. ADJOURNMENT: The meeting was adjourned at 3:45 p.m.

PUBLIC WORKS COMMITTEE

____
LESLIE A. SHAW, COMMITTEE CHAIRMAN

____
ALLEN S. WYETT, COMMITTEE MEMBER

Mr. Shaw reported that the number one priority was to enact an ordinance that would safeguard the integrity and the unique characteristics of each of the zoning districts in the Town. Once this was established, the financial ramifications of entering into a landlord relationship with

communication suppliers could be addressed. Mr. Shaw commented that the Telecommunications Act of 1996 could be viewed as opening up Pandora's Box, however, there were still rights and interests to be protected--technology could be made to co-exist with a residential town.

Mr. Shaw reported that the following recommendations were made by the Ordinance, Rules & Standard Committee regarding PCS and cell sites:

The hiring of two engineers--one to overlay the frequency ranges within the Town to determine where transmission locations were needed. A communications engineer to evaluate properties owned by the Town to determine support for facilities necessary for co-sharing of antenna and transmission sites, and the equipment necessary to support them.

The Committee draft an ordinance that would incorporate the Town's present zoning districts and address the concern that the characteristics of the Town not be changed. Any antenna sites must fit into the zoning structures as permitted, with only very limited and highly controlled special exceptions being considered if modifications were needed.

The inclusion of the communications issue as a zoning study item, with the clarification that if it was necessary the study would continue to a date certain so that the issue would be resolved in the upcoming zoning season.

Mr. Miller (telecommunications attorney/advisor) return to the ORS Committee with information regarding multiple revenue systems for the Town separated into what he defined as rents, taxes, and franchise fees. The income generation potential was great, however, it would take secondary preference over characteristics of the Town and the zoning integrity that must be maintained.

Mr. Shaw made a motion that the above recommendations be approved; seconded by Mr. Wyett.

Mr. Wyett suggested that any ordinance regarding telecommunications include wireless television that would require a tower, and also suggested that the Sand Transfer Plant site may be a potential Town site for towers.

On roll call, the motion carried unanimously.

Mr. Shaw addressed the issue of the Franchise Renewal Agreement with Comcast Cablevision, noting that Mr. Miller had offered his comments, and the Committee recommended that when the agreement with Comcast expired on October 12, 1996, the contract be extended on a month-to-month basis, which would not jeopardize service. In the event that negotiations were not concluded by the end of November, the negotiating team would come back to the Town Council for further direction.

Mr. Wyett made a motion to accept the recommendation of the ORS Committee regarding Comcast Cablevision; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

XII. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 12-96 - Prohibition of Animals from Seaview Park

Mr. Randolph read Ordinance 12-96

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES RELATING TO OFFENSES MISCELLANEOUS TO PROVIDE A NEW SECTION 13-45 TO PROHIBIT ANIMALS UPON THE GROUNDS OF SEAVIEW PARK UNLESS THAT ANIMAL IS A SERVICE ANIMAL USED TO PROVIDE ASSISTANCE TO AN INDIVIDUAL WITH A DISABILITY, OR IS PART OF AN APPROVED TOWN RECREATION DEPARTMENT PROGRAM OR EVENT, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES; PROVIDING FOR CODIFICIATION; PROVIDING AN EFFECTIVE DATE.

Mr. Shaw stated that he believed the ordinance was too broad, stating that he fully supported that animals should not be allowed near the tot lot, nor allowed to run loose, and that there should be certain controls, however, prohibiting animals in Seaview Park was wrong. He hoped that the Council would see fit to modify the proposal to incorporate the areas where children play, and make a distinction between the entire park area and the play areas.

Mayor Ilyinsky stated that he agreed with Mr. Shaw, stating that the Recreation Director was very capable of creating and enforcing restrictions that would handle the situation.

Mrs. Smith stated that this had gone beyond the point where Mr. Bitzer, the Recreation Director could create restrictions, since this would now become a law that would be enforceable by the police. Mrs. Smith reiterated that she believed this should have been a policy, rather than an ordinance, and had been opposed to it.

Mr. McLendon asked Mr. Bitzer if it was practical to police having dogs in the recreational areas as opposed to the walkway areas?

Mr. Bitzer replied that there really was not a designated area; the whole area was basically a playground and athletic field.

In response to the query of Mr. Shaw, Mr. Randolph stated that if the ordinance was not approved today it could be readdressed at a later meeting.

Mr. Shaw stated that the issue could be handled on a local basis, and that there were enough ordinances in place pertaining to the sanitary habits of animals in Town, suggesting that signage indicating no dogs or animals would be allowed could be implemented in specific areas.

Mr. Bitzer stated that he had commented on each of the points raised, and many problems in the past had been with leashed dogs, and that there was a high concentration of small children in the area.

Mr. Shaw stated that he believed there was a way to handle the situation without creating an ordinance.

Mr. Bitzer replied that most municipalities had ordinances prohibiting animals from playgrounds and athletic complexes.

Mr. McDonald moved the question.

Mr. Randolph stated that a motion to approve or reject was required.

Mr. McDonald made a motion to approve Ordinance 12-96; seconded by Mr. Wyett..

Ms. Eileen Morris addressed the Town Council, stating that the ordinance would ensure the health and safety of children who use all areas of the park, and staff had observed several instances of dogs lunging at children and one had nearly bitten a young child on the face. Other children had been knocked down and scratched. Complaints had been received regarding dogs fighting. Dog droppings were an unhealthy problem in the area. She stated that the ordinance would be easier to enforce than the leash law, and having dogs on leashes would not take care of the problems; that the park was primarily an athletic complex and playground with a large number of very young children using it. She pointed out that a designated area for dogs and animals was impractical in this small complex, and that the ordinance was not against dogs, but for the health and safety of children.

On roll call, the motion carried 3/2 with Mr. Shaw and Mrs. Smith casting negative votes.

2. Ordinance No. 13-96 - Amend Section 2-162 of the Town Code of Ordinances by Increasing the Sealed Bid Limits

Mr. Doney stated that the ordinance would bring the Town in compliance with recent State law.

Mr. Randolph read Ordinance 13-96

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN AT SECTION 2-162 RELATING TO PROCEDURE FOR CONTRACTS/PURCHASES SO AS TO PROVIDE AN AMENDMENT TO REQUIRE BIDS FOR THE PURCHASE OF ALL SUPPLIES AND EQUIPMENT AMOUNTING TO $15,000 OR MORE AND FOR THE ENTERING INTO CONTRACTS FOR THE CONSTRUCTION OF PUBLIC WORK AND IMPROVEMENT ON CONTRACTS INVOLVING $25,000 OR MORE, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. McLendon made a motion to approve Ordinance 13-96; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

B. Other

1. Consideration of Policy Matters Regarding Telecommunications Issues:

a. Comcast Cablevision's Upcoming Rate Adjustments and Programming Changes

Ms. Diane Christie, Director of System Development for Comcast Cablevision, addressed the Town Council, stating that Comcast would be increasing its rates for both limited and standard cable service, which would become effective on November 1, 1996, as well as adding two new programs (Sports Channel and Microsoft NBC). The reason for the rate increase was that the FCC had come out with a new system for adjusting their rates, which now allowed Comcast to adjust rates on an annual basis versus a quarterly basis. Ms. Christie believed the annual filing would cause less confusion and eliminate some administrative burdens.

Mr. McDonald commented that there were many advertisements stating that an antenna could be purchased for approximately $200 and have as many as 200 channels, and asked why Comcast did not offer 200 channels?

Ms. Christie replied that as technology changes there would be that capability--the current system could handle up to 79 channels of programming.

Mr. Wyett asked when the Town residents could expect to benefit from the new digital technology?

Ms. Christie responded that digital technology was being tested now, and that Comcast had the most advanced system in Palm Beach County, and she believed that modem service would be offered sometime in 1997.

Mrs. Smith stated that several residents were still having reception problems for some stations.

Ms. Christie replied that a service call should be placed and someone would come out to check on that. There were some interference problems with Channel 2, which was being addressed and should be completed by the end of the month.

b. Utilization of Municipal Properties for Tower Facility Sites

Mr. Dave Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that as directed at the last Council meeting a report on companies that could be utilized was completed. Recommendations were for two areas; one was for a frequency engineer to provide geographic, computerized maps which would show what the appropriate coverage would be in the Town of Palm Beach relating to cellular communication services. A communications contracting firm was also recommended, which would review all municipally owned property. Several companies had submitted proposals, and the two firms recommended, with the technical guidance of Mr. Horowitz and Mr. Bernardo, were Comp Comm, Inc. (frequency engineers) - proposal for $5,310 if a trip to the Town was not involved, and under $10,000 if a trip was involved. Mid-State Communications and Electronics Inc. (communications contracting) had offered to review approximately 12 sites of Town owned property for $7,350. Mr. Jakubiak requested that the Town authorize that $17,350 be approved for the General Fund Undesignated Fund Balance. If there was some unexpected costs, additional funding may be required, but at this time the proposals were based on that amount.

Mr. Wyett mentioned that he had reviewed the proposals and believed that car rentals could be obtained at a much lower cost, as well as hotel accommodations.

Mr. Jakubiak responded that he had explained to the companies that expenses should be kept as low as possible, and the high ends were being given in the proposals.

Mrs. Smith agreed that the expenses in the proposal of $5,310 or under $10,000 if a trip was involved did seem out of line with the initial proposal.

Mr. Jakubiak replied that there were ways to reduce costs, and more specifics would be addressed.

Mr. Shaw referred to the Comp Comm proposal which indicated that charges for a site visit were $1,000 per day, and he asked if that was their fee?

Mr. Jakubiak replied affirmatively, and that when they mentioned costs for a trip, they were including their fee as well.

Mr. Shaw asked Mr. Jakubiak how many people were planning to come with Mid-State Communications and Electronics?

Mr. Jakubiak replied that he did not know at this time.

Mr. Shaw responded that $1,600 for one person to fly down was rather expensive, and suggested that approval include charges for services and completion of the report, but not the travel budget.

Mrs. Smith commented that staff could correct the misinterpretation of the money available for the Town to spend.

Mr. Shaw made a motion to approve the proposal of Comp Comm, Inc., as presented, but questioned the quality and accuracy available with the $5,310 proposal versus the $7-$10,000 proposal?

Mr. Jakubiak stated that Mr. Horowitz believed that the Comp Comm proposal could be done in house with a trip, however, it had also been explained that they may need information that Town staff could not provide, in which case costs would escalate--an opportunity for a trip to Palm Beach, if necessary, was built into the proposal.

Mr. Shaw made a motion to approve the Comp Comm proposal as presented with the option to either use Proposal A or Proposal B, with expenses approved by the Town; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Shaw asked what experience and background Mid-State Communications & Electronics had in residential communities, and if further work was done for the Town was there a possibility of refund of the research and development costs?

Mr. Jakubiak replied that there had been a short length of time available to collect information and further information could be garnered. He noted that the intent of the proposal was for Mid-State to review municipal properties.

Mrs. Smith expressed concern with the geographical location (New York) of Mid-State Communications & Electronics and the ability to service the Town when and if a contract was awarded.

Mr. Jakubiak responded that there may not be a local company capable of completing the project at this time.

Mrs. Smith stated that the company would have to give the Town a guarantee that they could do the work, maintain it, and service the Town in an emergency situation if the contract was awarded to them.

Mr. Wyett pointed out that this was a service contract for location and advice, not one for installation--one for installation would have to go out for bid, assuming that the Town would own and operate, which had not yet been decided.

Mr. Shaw asked Mr. Jakubiak to call Mid-State Communications & Electronics to ask for a fax of information regarding prior experience, so that the Town Council could move forward to authorize the hourly rate of $150 for 16-24 hours, the Completion Report of $800, and travel expenses would be at the appropriate comparable level. Mr. Shaw made a motion to postpone this item until later in the meeting; seconded by Mr. McLendon.

(This item was continued after XV. Development Reviews D. Other - minutes noted below).

Mr. Jakubiak pointed out that personal communication services had not been around for long, and these companies had done a lot of work in the private sector rather than in municipalities.

Mrs. Smith referred to the statement of Mr. Miller that the Town Council had authorized him to retain the following companies as expert advisors and asked why they would not be hired by the Town of Palm Beach?

Mr. Jakubiak replied that Mr. Randolph may want to address that question.

Mr. Randolph stated that the question had been raised as to whether the companies should be advisors to counsel or to the Town Council--there was a public records law and there was concern as to whether this was something done by Mr. Miller or directly by the Town Council.

Mrs. Smith asked for clarification.

Mr. Randolph explained that if Mr. Miller gave advice from the standpoint of counsel, all documentation would be in his hands, therefore sensitive information would not be of public record.

Mr. McDonald remarked that if Mr. Miller disclosed information it would automatically become public record anyway.

Mr. Jakubiak explained that the reports provided by these companies would represent the municipality and not private companies; licensed providers would be very interested; the preparation of an Ordinance may deal with co-location on sites, which could be challenged--therefore, Mr. Miller felt more comfortable if these companies were hired as sub-contractors through him.

On roll call, the motion of Mr. Shaw to defer to later in the meeting carried unanimously.

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Referring to Item XII. OLD BUSINESS, B.Other, relating to telecommunications issues, Mrs. Smith asked Mr. Jakubiak to report on what had transpired since this morning.

Mr. Jakubiak stated that some questions had been asked this morning, and in regard to the question relating to charge back of costs to the telecommunications companies, Mr. Miller believed that the costs relating to the proposals could be passed through as permit or application fees upon entering into contracts with licensed providers.

In response to the question of Mrs. Smith relating to the warranty and the provision of 24-hour service when the company was located in New York, Mr. Jakubiak explained that after discussion with Mr. Horowitz and Mr. Miller, he believed it was too early to address those issues at this time, as this was merely a study to review the appropriateness of municipal sites in relation to frequency maps. If the Town Council should chose to pursue the municipal sites that would be the time when construction would be addressed.

Mr. Jakubiak explained that it was estimated that a tower or antenna site on one particular site location would generate about $1,500 per month per licensed provider, and there were 8 licensed providers--thus the potential of $144,000 in revenue could be generated in each site per year.

As to the questions raised about the companies, both Mr. Bernardo and Mr. Miller stated that most companies did not have a lot of experience working with municipalities as clients because of the nature of the industry just coming to fruition as of February with the licensing of PCS. These companies did have some experience working in municipalities and all relevant information had been gathered regarding that.

Mr. Jakubiak commented that Comp Comm had submitted a more detailed proposal with very reasonable expenses relating to travel, hotel, meals, car rental. Mid-State expenses were not as reasonable, and Mr. Jakubiak encouraged Council discussion of this matter. Mid-State had been utilized by Mr. Bernardo and Mr. Horowitz, who spoke very highly of them.

Mr. Wyett proposed that unless Mid-State could adjust their figures that another company be used.

Mrs. Smith suggested that the Town Council go along with the recommendation that the Site Consultation be accepted, as well as the figure for the complete written report, and the Town would take care of the hotel room, rental car and airline ticket.

Mr. Wyett made a motion to accept that proposal; seconded by Mr. Shaw.

Mr. Jakubiak asked if the company turned down the proposal, would the Town Council direction be to go with the second proposal from CER instead?

On roll call the motion carried unanimously.

Mr. Shaw stated that if the company turned the offer down, the Town Council could vote on another supplier.

Mr. Jakubiak would report back to the Town Council.

2. Status Report from Finance Department Regarding Enforcement Procedure for Collection of Fines, Fees, and Other Monies Due to the Town

Cheryl Somers, Acting Finance Director, addressed the Town Council, referring to her memorandum with the attached schedule of monies due the Town.

Mr. Shaw asked the status of collection on monies due the Town?

Mr. Randolph explained that he understood that quarterly reports would be submitted in these matters, although he had been involved in interim correspondence regarding some of them.

Discussion took place of several specific incidents relating to collection policies.

Mr. Elwell explained that he had communication with the attorney of Mr. Gilbertson, and that Mr. Randolph had followed up in this regard.

Mr. Randolph agreed to update the Council at the November Town Council Meeting as he received information on all collection matters mentioned in discussion today (E. N. Gilbertson; Garden City Co., Inc.; Elizabeth T. Ward; and Catherine Bradley).

3. Update on Implementation of Recommendations in the Nowlen, Holt & Miner, P.A. Report

Cheryl Somers stated that an update had been furnished of the issues raised by Nowlen, Holt & Miner, P.A., and that she would gladly answer any questions regarding it.

Mr. Shaw addressed item no. 8 on page 4, "Cash Receipts" and asked if all cash receipts would be deposited daily, not merely Marina funds?

Mrs. Somers responded that the Golf Course made daily deposits, and tennis receipts were also deposited on a daily basis from the Finance Department.

Mr. Doney recollected that the Marina was the only operation off premise that was not carrying out the daily deposit procedure, and now cash deposits would be done on a daily basis.

Mr. Shaw stated that he believed it was always daily, but the question had been how the day was structured--the idea was to keep each day as one deposit.

Mrs. Somers replied that the Dock Master did stop in the Finance Office every day between 3-4:00 to drop off deposits, so anything taken in after that point would go on the next day.

Mr. Shaw stated that the recommendation was that should not be done--that each day's deposit should represent that calendar day from the start of business until the conclusion of business.

Mrs. Somers replied that she would follow up on that.

Mr. Shaw then addressed page 3 of the report, "Petty Cash-D" and noted that the person receiving cash could not approve a voucher.

Mr. Doney replied that current practice was that the person receiving cash could not approve a voucher.

Mr. Shaw then addressed page 2 of Exhibit II, item E, stating that it should read "Supervisors *will* not approve their own petty cash vouchers", rather than "Supervisors *should* not approve their own petty cash vouchers." On the same page, item L, regarding Imprest checking accounts, Mr. Shaw stated that he did not believe there was a need to check with other municipalities, as noted in the report.

Mrs. Somers stated that the recommendation could be implemented if it was so directed by the Town Council.

Mr. Doney asked that staff be allowed to talk with the auditors again, as there was some other input in this regard.

Mr. Elwell stated that there had been some difference of opinion as to whether the Imprest checking account was the right change--further discussion would be needed with the auditor. More generally, he addressed the concerns of Mr. Shaw with wording, and he pointed out that the wording was verbatim from the Nowlen, Holt & Miner report--the actual procedure had been implemented, even if the language was conditional in the recommendation.

Mrs. Smith addressed the question of the Town taking credit cards, and asked Mrs. Somers if a study concerning that was underway?

Mrs. Somers replied negatively--that it would be researched soon.

Mr. Doney noted that there was a pending list of items which included the credit card issue, which would be researched.

Mr. Wyett noted that sales taxes may be avoided with the use of a corporate type credit card, and petty cash could be practically eliminated.

Mr. Doney stated that implementations were being done on a priority basis, proper controls were needed, and he and Mrs. Somers were working with the auditors.

4. Consideration of Advanced Funding for Improvements to State Road 704, Royal Palm Way (Deferred from August 13, 1996 Meeting)

Mr. Dusey stated that the Royal Palm Way improvement project would be added in the last year of the upcoming program of the State Department of Transportation, which was about six years away. Mr. Dusey expressed that the existing condition of Royal Palm Way was deteriorating quickly, the drainage system was in bad shape, and he suggested that the State pursue a minor resurfacing to hold the road together for the next few years. The State did not have the funding at this time, but would let the Town make the repairs on a reimbursable basis. Mr. Dusey requested direction regarding pursuing such a project ($35-$40,000) to be reimbursed by the State Department of Transportation in the near future, and to be implemented in the early Spring.

Mr. McDonald made a motion to authorize Mr. Dusey to proceed with the project, as well as to pursue an agreement with the State Department of Transportation regarding reimbursement; seconded by Mr. McLendon.

On roll call, the motion carried unanimously.

XII. NEW BUSINESS

A. Resolutions

1. Resolution No. 48-96 - Readoption of Routine Dune Maintenance Guidelines

Mr. Randolph read Resolution 48-96:

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

Mr. Shaw made a motion to approve Resolution 48-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Sealed Bids

1. Sealed Bid No. 96-15 - Submersible Pumps for D-14 Stormwater Pumping Station; Resolution No. 50-96

Mr. Dusey stated that this was the second phase of the Pump Station upgrade at Seaview Avenue on the Society of Four Arts property. Two more pumps would be used as part of the expansion of the connecting system on Coconut Row going to Pendleton Ave, which was being requested through Sealed Bid 96-15. The low bid had been for $209,000, and award was recommended to Moving Water Industries Corporation (M.W.I.).

Mr. McLendon made a motion to approve Sealed Bid 96-15, with award of the contract to Moving Water Industries Corporation in the amount of $209,000; seconded by Mr. Wyett.

Mr. Randolph read Resolution 50-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING A CONTRACT TO MOVING WATER INDUSTRIES CORPORATION FOR THE SUBMERSIBLE PUMPS D-14 STORM WATER PUMPING STATION.

On roll call, the motion carried unanimously.

C. Other

1. Consideration of Request for Amendment to Encroachment Easement at 190 South Ocean Boulevard, Estate of Johanna Johnson

Mr. Randolph recalled that the Town Council had previously approved an Encroachment Easement which was signed and the property owner closed on the property on the basis of that easement. It turned out that the survey at the time of the closing indicated that the encroachment was .77', and subsequent to the closing the Town learned that the actual encroachment was 3.55'. The purchaser requested that the Town give consideration to the amendment of the Encroachment Easement so as to take into account the 3.55' as opposed to the .77'.

Mr. Wyett made a motion to approve the request for amendment to the Encroachment Easement at 190 South Ocean Blvd.; seconded by Mr. Shaw.

Mr. Shaw questioned why the Town could not sell the land to the purchaser?

Mr. Randolph replied that he did not know if the Town had the ability to sell the property, as it was not Town-owned property, but was a public park area dedicated to the public, and an encroachment easement would be the best way to recognize that fact.

Mr. Shaw asked if the Encroachment Easement came with a liability policy to protect the Town?

Mr. Randolph responded that the agreement as presently drawn would require that a liability policy acceptable to the Town be given to the Town to cover it against any liability. The language of the easement provided that "in consideration for the easement granted herein trustee agrees to indemnify, save, defend, and hold the Town harmless from and against any loss, damage, or liability which the Town may suffer as a result of the seawall being located on the easement parcel...trustee shall procure such comprehensive general liability insurance as the Town may require from time to time, insuring trustee and the Town from and against any claims for property damage, etc. etc."

Mr. Shaw asked how the Town could know if the policy was maintained on an annual basis?

Mr. Randolph replied that it was a requirement of the agreement, however, the Town could also require it on an annual basis.

Mr. Shaw stated that there was a tragic incident on one of the walls adjacent to the property a few years ago, and his concern was that a policy could lapse and there would be no notification to the Town.

Mr. Randolph responded that the Town had the liability concern absent any agreement from the property owner--unless the Town was willing to say there was an encroachment there that should be abated, there was liability. The advantage of the Encroachment Easement was that (if it was not the intent to abate the encroachment) the property owner was willing to assume the liability for that by way of an insurance policy. There could be a provision in the agreement that proof of insurance could be given each year.

Mr. Moore stated that the Town could be the certificate holder and would know if the policy lapsed or not.

Mr. Randolph suggested that a provision could be included that the easement would automatically lapse if the policy lapsed.

Mr. Shaw asked that every possibility be covered and whatever had to be done in that regard be included.

Mr. McDonald noted that he would not have voted to approve the easement had he known it was nearly 4' instead of .77', and recommended that he preferred to have the encroachment abated, or for the Town Council to consider two things: a payment from the landowner in addition to the indemnification for the Town to grant the Encroachment Easement; and/or payment of legal fees. He added that if payment was requested from the landowner it would probably be covered by the surveyor's malpractice policy anyway, as it was apparently his error. He suggested that Encroachment Easements never be granted without some sort of consideration in addition to indemnification.

Mrs. Nanette Gammon, attorney for the trustee, fee simple title holder to 190 South Ocean Blvd., addressed the Town Council, stating that it was subsequent to closing that the surveying error was discovered in the process of preparing the easement attachment previously approved by the Town. The request for an easement was for a parcel that was of a triangular nature, and the surveyor's error was in measuring. She noted that she was unsure of Mr. McDonald's request for some sort of payment, as there was already language in the agreement regarding maintenance of the seawall of the bulkhead, indemnity, and insurance, so that there was no cost or expense to the Town for the granting of this easement.

Mr. McDonald explained that he thought there should be consideration for the granting of the Encroachment Easement--at least compensation for legal fees and some additional money.

Mrs. Gammon replied that whatever the Town Council decided would have to be taken back to her client, and she would like to be able to rationalize to the trustee as to where an amount came from, including any amount of legal fees that may have been incurred.

Mrs. Smith suggested that more background was needed, and a formula was needed to allow Mrs. Gammon to take it back to her client, and so that it would be in the record for all future projects.

Mr. McDonald stated that he did not have a formula, but was reluctant to grant this easement without consideration.

Mrs. Smith suggested that Mr. McDonald give more detail.

Mr. McDonald replied that if Mrs. Gammon could give him a number as to the costs of abating an encroachment, perhaps a percentage of that could be used.

Mrs. Gammon stated that it was her understanding that it would be $75-$100,000.

In response to the question of Mr. McLendon, Mr. Dusey replied that the seawall was not in good condition.

Mrs. Gammon inquired if there was a precedent for other type of encroachment easements on Town property?

Mr. Wyett made a motion to defer consideration of the request for the amendment of the Encroachment Easement at 190 South Ocean Blvd. to the November Town Council Meeting; seconded by Mr. Shaw.

Mr. McDonald suggested that Mrs. Gammon approach her client and indicate the discussion today, allowing an offer to be presented to the Town.

On roll call, the motion carried unanimously.

2. Consideration of Request for Fireworks Display at Mar-a-Lago Club, 1100 South Ocean Boulevard, on October 30, 1996, by Mr. Ted Walker, Add Fire, Inc. - **Request for Withdrawal per Letter Dated October 7, 1996, from Ted A. Walker**

3. Consideration of Forming a Selection Committee per the Consultants' Competitive Negotiation Act to Select a Coastal/Marine Engineering Firm

Mr. Dusey stated that the contract was expiring for the coastal/marine engineering firm, and requested that a committee be formed for selection purposes, recommending Mr. McLendon, Mr. Dusey, Mr. Bowser as his designee, and Mr. Elwell.

Mr. Shaw made a motion to approve the selection committee as proposed; Mrs. Smith passed the gavel and seconded the motion. On roll call, the motion carried unanimously.

4. Consideration of Attendance at the 36th Annual Florida League of Cities Legislative Conference, November 14 & 15, 1996, in Tampa, Florida

The Town Council authorized Mr. Shaw to attend the conference as a representative of the Town, with per diem expenses for travel, food and lodging. Mr. Shaw agreed to waive the per diem.

Mr. McLendon made a motion to authorize Mr. Shaw to attend the Annual Florida League of Cities Legislative Conference, November 14 & 15, 1996; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Doney explained that the Mayor, Town Council President, and Town Manager had annually sent letters officially expressing the Town's position and requested that the Town Council approve such a motion today.

Mr. McLendon made a motion authorizing the Mayor, Town Council President, and Town Manager to send letters officially expressing the Town's position; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Doney requested authorization to retain Mr. Ron LaFace, a Tallahassee attorney who had assisted the Town on various legislative issues on an as needed basis.

Mr. McLendon made a motion to approve authorization to retain Mr. Ron LaFace on an as needed basis; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mr. Doney explained that Town items of legislative concerns would be prepared, and a report would be provided if necessary.

5. Consideration of Special Meeting to Discuss Water Franchise Agreement with West Palm Beach

Mrs. Smith noted that the latest notice from West Palm Beach was that the meeting date for discussion of the Water Franchise had been changed from October 31, 1996 to October 29, 1996 at 10:00 A.M. in the West Palm Beach City Commission Chambers.

Mr. Doney would notify the City of West Palm Beach that the date was acceptable to the Town Council.

Mr. McLendon referred to his memorandum of September 9, 1996 pointing out several flaws in the proposed Water Agreement. He noted that he had since met with Mr. Sanders and summarized the meeting, pointing out that Mr. Sanders was somewhat sympathetic, however, the only concession was a small extension to the surcharge cap period of years. Mr. McLendon suggested that it was important to have a meeting of the Town Council between now and October 29, 1996 in order to plan strategy.

Mr. McDonald made a motion to move discussion of the Water Franchise Agreement to the end of the Agenda today; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

6. Consideration of Discussion of the Televising of Town Council Meetings

Mr. Wyett made a motion not to have televised Town Council Meetings, reserving all rights; seconded by Mr. McLendon.

Mr. Jakubiak stated that the issue related to the Franchise Agreement for the cable company, and if the Town Council should ever chose to use video tape it would be through Channel 20 unless a separate channel was created. The cost per hour of $280 would include cameras, taping, four staff members, and the airing of the meeting.

Mrs. Smith asked Mr. Jakubiak if there were any modifications or recommendations that should be included in the motion?

Mr. Jakubiak recommended that the right to utilize the service be reserved, as well as entering into an Interlocal Agreement at a time the Town Council should chose to air the meetings.

Mr. Wyett accepted that amendment to his motion; Mr. McLendon accepted the amendment to his second. On roll call, the motion carried unanimously.

7. Consideration of Discussion of Burying Utility Lines in the Town of Palm Beach

Mr. Shaw stated that there had been a short in a power pole that had caused a fire in Bradley's and the immediate area, and he suggested that the issue of burying utility lines in the Town be addressed.

Mr. Dusey explained that some years ago a quote of $1 million per mile to go underground with power wires had been given by Florida Power & Light, and by now it probably was substantially more. Additional costs would be incurred with BellSouth and cable lines.

Mrs. Smith expressed concern about the scope of such a study.

Mr. Doney stated that there was a group called "The Undergrounders" which the Town was supportive of, however, it was a matter of cost. He suggested that FPL had a responsibility to have clear lines without interference of trees, etc.

Mr. Shaw explained that he was talking about the fact that there were four or five areas in Town which were highly congested and had excessive amounts of lines, transformers, and communication systems, that were running in almost inaccessible areas, and he was asking that these unique areas be addressed.

Mr. Doney suggested that the Mayor be authorized to write to the District Manager of FPL to ask what type of preventative measures could be taken to give the Town comfort in these issues.

Assistant Fire Chief Koelz addressed the Town Council, stating that the power line near Bradley's had come down, and caught onto the other utility lines, sent electricity into several buildings, blew out some television sets and computers, and the power went to ground in the Bradley building. Ground was supposed to protect the buildings from power, but in this case it ran the power backwards through the building, through the plumbing pipes and started a fire in a concealed space that was difficult to get to. Chief Koelz explained that the salt air added to the deterioration of lines, and that FPL did a good job with maintenance of power lines. He added that there were problems from time to time with access, moving equipment around, etc.

Mr. Wyett asked Mr. Dusey if there was any part of the Town that had underground wiring?

Mr. Dusey replied that all new subdivisions had underground wiring.

Mr. Wyett proposed that step one would be to put underground lines in the north/south access, which would be far less costly. He suggested that FPL be asked to analyze the north/south cost structure of putting lines underground.

Mr. Shaw again explained that his concern was the potential disaster that could occur in the few commercial streets where there was an access problem to deteriorating lines. He made a motion that this item be put on the Agenda for the next Town Council Meeting; seconded by Mr. McLendon.

Mayor Ilyinsky asked Fire Chief Koelz how many times there had been a fire like the one at Bradley's?

Fire Chief Koelz responded that the potential was there, but the Fire Department was able to successfully handle the problem within an hour or so, and that every fire was different. The overhead lines had built in systems that also protected it when it went to ground, which was a safeguard.

Mr. Dusey explained that if underground wiring was desired, the Town would have to pay the costs.

Mr. Doney suggested that a letter be written to FPL asking for comments on this situation.

Mrs. Smith suggested that the item be removed from the November Agenda, since when FPL came back with their response there may not be a need to make it an agenda item.

Mr. Shaw withdrew his motion; Mr. McDonald withdrew his second.

Mr. Wyett made a motion to authorize Mr. Doney to write to FPL for their comments; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Doney would report back at the November meeting in this regard.

8. Consideration of Special Agenda Item for "Council Comments"

Mr. McDonald suggested by motion that there be a trial period of three months where there would be an Agenda item entitled "Town Councilpersons Comments," as often during the meeting a Council member may want to make comments that were not pertinent to any particular Agenda item. The motion was seconded by Mr. McLendon.

Mrs. Smith stated that she had not noticed that anyone on the Town Council had been restricted from speaking, and suggested that the item be added at the end of the Agenda.

Mr. McDonald pointed out that Development Review was quasi judicial and he did not know that it would be appropriate to comment at the end of the Agenda.

Mrs. Smith replied that if it was decided to add this item to the Agenda it could be decided at what time during the meeting it would be added.

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

9. Consideration of Scheduling Public Safety Meeting

Mr. McDonald stated that he would like to schedule a Public Safety Meeting in a workshop fashion, dealing with the educational aspects of burglary prevention.

Police Chief Terlizzese addressed the Town Council, stating that the Crime Watch Program was used to educate citizens, mentioning that October was National Crime Prevention Month, and there were many functions planned during the month.

Mr. McDonald stated that Crime Watch had an ongoing program of education, but there had been 41 burglaries from November - April, and he wanted residents to know that the Town Council took the matter very seriously and there could be other educational approaches.

It was decided that the Public Safety Meeting would be held on November 21, 1996 at 10:00 A.M.

10. Consideration of Federal Funding or Reimbursement for Beach Projects

Mr. McLendon referred to his memorandum of September 30, 1996 relating to the funding of Palm Beach County beaches by $5.5 million of Federal aid, and suggested that letters be written to government legislators requesting reimbursement regarding the beach project done by the Town for the amount of $5.5 million. He made a motion that the Town Council authorize a letter from the Mayor to Senate and House of Representative legislators requesting federal reimbursement to the Town; seconded by Mr. McDonald.

Mr. Elwell explained that the Town had not requested federal monies for the Mid-Town project as the emergency nature and changes in the project prohibited it from getting into the normal funding cycle. It was possible that the Town could initiate a process with the Corps of Engineers in order to be eligible for federal funding in the future for maintenance of the Mid-Town project, although it could require some modifications to the design.

Mr. Doney explained that the projects mentioned in the newspaper article referred to by Mr. McLendon had been applied for 5-6 years ago, and finally received federal funding authorization.

Mr. McLendon asked Mr. Elwell if one could not be on a congressional allocation without going through the Corps of Engineers?

Mr. Elwell replied that there was an exception to that, however, he had heard of it being applied very rarely and in advance of a project, not once the project was already constructed. Most of the time federal government appropriations for beach projects was for projects approved by the Corps of Engineers, which was true of each of the projects in Palm Beach County that had received funding.

Mrs. Smith suggested that perhaps this would be the time to submit the necessary applications for Federal funding for renourishment of the Mid-Town Beach.

Mr. Elwell suggested that Town Staff provide a memorandum for the next Town Council Meeting which would lay out the process and costs estimates.

The motion of Mr. McLendon, seconded by Mr. McDonald, to authorize the Mayor to write to government legislators to request reimbursement of monies spent for the Mid-Town Beach project carried unanimously.

Mr. McLendon made a motion to authorize Mr. Elwell to return to the November Town Council meeting to outline the process for upcoming federal funding for beach renourishment; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. McLendon referred to the second item in his September 30th memorandum, which referred to the Town Council adopting a policy that would modify its policy to the extent that if a Council person sends a memorandum via the Town Manager at least a week before the next scheduled Council meeting that the matter be included on the agenda in order to avoid unnecessary delays. He added that if any member of the Council objected to adding an item to the agenda it would not be on the agenda.

Mr. McDonald made a motion to approve the policy suggested by Mr. McLendon; seconded by Mr. McLendon.

Mrs. Smith explained that the reason for the current policy was to enable the entire Town Council to vote on whether an item would be on the agenda, and she did not recommend a policy where something that would come in seven days before a Town Council Meeting would automatically go on the Agenda.

Mr. McDonald withdrew his motion; Mr. McLendon withdrew his second.

XIV. APPROVAL OF THE WARRANT LIST AND FUND EXPENDITURES FOR SEPTEMBER 1996

Mr. Shaw made a motion to approve the Warrant List and Fund Expenditures for September, 1996; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of September 25, 1996 - Minutes

The major matters were:

Deferrals and Continuations - Major Projects:

B51-96 Application by Jan Kemper, Lot B, Boca Ratone Company's Inlet Sub Division, for new single family residence - approved.

B57-96 Application by Euro-Homes, Inc., 242/246 Everglade Ave., for new two-story duplex - deferred.

B60-96 Application by Mrs. Arnold Miller, 1415 South Ocean Blvd., for new two-story single family residence - deferred.

New Business - Major Projects:

B70-96 Application by Anita Gilberd, 265 Sandpiper Drive, to remodel front entry and circular drive - deferred.

B71-96 Application by Mr. and Mrs. Denis Coleman, 662 Island Drive, for demolition of existing structure - approved.

B72-96 Application by Jonathan Deitcher, 175 Via Palma, to demolish existing house and build a new two story home - deferred.

B73-96 Application by Palm V Associates/Spa Thira, 230 Worth Avenue, for facade renovation - approved.

B74-96 Application by Joseph J. Bianco, 180 Barton Avenue, for addition of a new second story to existing one story residence; expansion of the ground floor; new minor exterior facade details - approved.

Mr. Shaw made a motion to approve the minutes of the Architectural Commission of September 25,1996; seconded by Mr. McDonald.

Mr. McDonald commented that members of the Architectural Commission were not properly handling the ex-parte communication issue, as well as the Conflict of Interest issue, and he asked Mr. Moore to look into the matter and advise Commission members of the proper procedures.

On roll call, the motion was unanimously approved.

At this time, all those who would be speaking to Variances or Special Exceptions were sworn in by Town Clerk Pollitt.

B. Appeals

1. Consideration of Appeal of Administrative Decision regarding Town Council's Action on August 13, 1996, of Variance No. 28-96 - Sydell Miller, 1415 South Ocean Boulevard; Motion to Approve Failed by a 3-2 Vote. - **Request for Withdrawal per Letter Dated October 7, 1996, from Peter S. Broberg.**

C. Variances, Special Exceptions, and Site Plan Reviews

Old Business

1. Revised Site Plan Review No. 3-96 with Variance - FH of Palm Beach, Inc. commonly known as C-15 and C-16, of the Palm Beach Hotel, 235 Sunrise Ave.; said units also known as 251 Sunrise Ave; located in the C-TS Zoning District. Review the requested expansion of a nonconforming structure, an 870 sq.ft. addition (from canopy to permanent) and said 10' to 13' wall additions and modifications around the exterior dining area. (Deferred from September 10, 1996 Meeting)

Attorney Brooks Ricca, representing FH of Palm Beach, Inc., addressed the Town Council, requesting a variance so that property located at 251 Sunrise Ave. could be reconfigured, as his clients were opening a restaurant and bar at that location. The present and previous establishments had been there for many years, and the building itself was a nonconforming use. He presented photographs of the property and an acoustical study for Town Council consideration, while requesting the following:

Building a double wall that would be inside a courtyard inside the existing wall on the south side.

Raise the wall on the west side from 6'8" to 10', in order to attach it to a ceiling.

Bring in the wall 10' on the north side and construct a wall 13' high. The area would then be reduced from a little over 1.300' to under 1,000'. All of the walls would then, in effect, be double walls, plus to the south side it would actually be recessed in off the street.

Eliminate canopy or awning and enclose the area, which could be enclosed if wall modifications were made.

Mr. Ricca presented an exhibit of what the property would look like when finished.

Mr. Robert Moore, Director of Building, Planning, and Zoning corrected Mr. Ricca's statement that the use of the property was a nonconforming use, however, the building was a nonconforming building. Mr. Moore noted that the applicant had addressed the issues of sound, and had met the decibel level required for that particular area. The parking issue, however, would need to be addressed. The parking requirement was one space for every three seats, plus a loading zone, plus one for every 300 sq.ft. of kitchen storage area--51 parking spaces would normally be required if it was a new business.

Mr. Ricca explained that it was the applicant's intention to have valet parking.

Mr. Wyett pointed out that would not satisfy the requirement.

Mr. Ricca replied that many restaurants in Town use valet service to satisfy the parking requirements.

Mr. Moore explained that the parking currently for the building was laissez-faire; currently there was no assigned parking to this particular restaurant. One aspect the applicant had been asked to look at last month was to investigate the possibility that the new building across the street could provide additional parking.

Mr. Ricca responded that he would look into the matter.

Mr. Wyett stated that the parking across the street would not provide 51 spaces, and the street was already very congested, which would be exacerbated by valet parking.

Mr. Ricca stated that his client had intended to use valet parking, and although parking was a legitimate concern he honestly did not have an answer. He added that many establishments in Town used valet services, although the applicant would certainly avail himself of any available parking spaces.

Mr. Moore explained that it had been the policy of the Town Council to attach reasonable conditions to approvals related to variances, special exceptions and site plan reviews. What was now being discussed was a known problem that the applicant was aware of, which was that the prior operation was grandfathered. The parking issue could now be ignored by the applicant if the application was withdrawn and the building was completed without need of variances and site plan review.

Mayor Ilyinsky noted that it was becoming impossible for the applicant to upgrade the restaurant based on the fact that parking could not be provided. He asked where the parking was when the establishment had first opened as a restaurant?

Mr. Moore stated that it was a policy issue that the Town Council would have to decide.

Mr. Ricca remarked that parking was a relevant issue, however, he urged that the focus remain on the improvements to the property. He noted that the prospect of a shared parking amendment to the zoning code could alleviate some of the parking problem.

Mr. McDonald stated that the applicant had done a great job since last month and had tried to comply with what had been requested by the Town Council. He therefore made a motion to approve the revised site plan review 3-96 with variance; seconded by Mr. McLendon.

Mr. Shaw suggested that the approval be conditional, with the understanding that there will be parking sought. He also suggested that any French doors allowing noise to escape would have to be closed at a certain time in the evening.

Mr. Ricca agreed that the French doors to the east side and west side of the building would not remain open, and that he would do anything within his power to alleviate the parking problem. He mentioned that there was a parking lot near the establishment and discussions had taken place about using that space for the valet parking.

Mr. Wyett expressed concern with noise emanating from the establishment; that the major condominiums were protesting that the restaurant should not be allowed. He suggested that the applicant open up in the current space, see what the problems were, and come back in six months to ask for modifications.

Mr. McDonald stated that perhaps the condominium associations were not clear that this was a grandfathered use, and whether the variance was granted or not the applicant would be able to open. The Town Council actually was requiring them to make it a lot better than what was currently allowed.

Mr. Wyett responded that right now the restaurant could reduce noise to 55 decibels, which was 3 decibels below the 58 allowed. Without enclosing, they would probably reach 100 decibels and Code Enforcement would tell them to stop, which was the only protection the condominiums in the area would have.

Mr. Ricca disagreed, and submitted that the neighboring residents must understand that the restaurant was not a nightclub.

Mr. Wyett urged Mr. Ricca to realize that the area was mainly residential and residents were begging him to take the position he was taking.

Mrs. Smith asked Mr. Moore what conditions had been placed on Janiero's when there was the same concern for the residential area.

Mr. Moore replied sound proofing of the inside, a curfew on dinners of 11:00 P.M. (Until 1:00 A.M. on Friday and Saturday), and no music and entertainment after 1:00 A.M.

Mrs. Smith suggested Mr. Ricca talk to his client and give a specific answer on the parking concerns, and whether conditions would be accepted concerning the hours of service of food, and playing of music.

Mr. Ricca remarked that Janiero's was attempting to get their occupational license, and his client was in a different situation as they could open one way or another. He advised that his client was trying to open the restaurant in the most accommodating way possible at this time. He specified that the spaces across the street would be used, as well as a valet. He did not have an answer for noise created by people outside going to their vehicles, however, he suggested that off-duty police officers be hired to keep the noise down. He explained that he had discussed conditions on the approval with his client, and they would like to go forward the way it had been planned. Presently, the restaurant could stay open until 3:00 A.M. for food, liquor and music.

Mr. Shaw asked Mr. Ricca if his client was willing to cut back on the number of bar seats for one season in order to allow the Town Council to see the impact to the community?

Mr. Ricca replied that realistically that would not address the issue mentioned by Mr. Wyett, however, if the building was completed as proposed the noise would not be an issue at all.

Mr. Shaw explained that the interior sound was not the issue, it was the exterior sound. He suggested removing one bar and putting tables in the area then coming back to the Town Council after the first season.

Mr. Don Kino of Smith Architectural Group asked if it would be acceptable to reduce the number of seats at the bar rather than remove the bar entirely. He noted that there must be 150 seats in the location, and there were 106 of those seats allocated to table seating.

Mr. Shaw suggested eliminating one bar, replacing the seats with tables for one season and coming back to the Town Council at the end of the season to request replacement of the bar.

Mr. Ricca stated that one of the problems was that this was a separate room and its use would be affected by eliminating the bar. He did not believe elimination of the bar would make a difference.

Mr. Shaw reiterated that some of his concerns would be satisfied if 20 of the bar seats were removed for tables.

Mr. Wyett commented that the restaurant would attract more and more people to the Town of Palm Beach at the wee hours of the morning, and if a bad situation was made worse, the Town Council would have to take appropriate action to protect the residents.

Mrs. Smith stated that her problem was with the hours of operation, and suggested that the hours of operation be cut back. She remarked that she believed the people who had filed objections did not understand that the restaurant could open anyway, and people would be there outside until 3:00 A.M. no matter what action the Town Council took today.

Mr. McDonald asked for clarification on Mr. Ricca's idea of hiring off-duty policemen.

Mr. Ricca responded that an off-duty policeman could monitor the noise, perhaps on Thursday, Friday and Saturday nights from 7:00 until closing.

Chief Terlizzese stated that off-duty policemen were usually required on Friday and Saturday nights between the hours of 9:00 P.M. - 2:00 A.M., depending on the type of operation, the kind of entertainment, the advertising done, and the clientele attracted.

Mr. Ricca responded that he would be willing to make it a condition of the variance that the applicant would be required to have police officers in place for a reasonable length of time on Thursday, Friday and Saturday nights. He suggested a reduction in the bar areas, taking 10-15 seats out, and that the sound proofing be done--all the issues would then have been addressed with the exception of the parking, which would be across the street as well as valet parking, and as soon as the Shared Parking Amendment was passed changes could be made.

Chief Terlizzese mentioned that seating would not limit the number of people in the bar; as a matter of fact, the more open space there was, the more people would crowd in.

Mr. Wyett asked Chief Terlizzese if the problems on the weekend happened on holiday weeks as well, suggesting that those periods of time should be included. In addition, Mr. Wyett asked if additional pressure would be put on the Police Department with more cars and people attracted to the Town because of the restaurant?

Chief Terlizzese responded affirmatively--the area was a hot spot already, attracting heavy traffic until 3:00 A.M.

Mr. Wyett asked if it was possible that more police could be requested as a result of operations such as this?

Chief Terlizzese replied that the seven additional police officers requested in the new budget would be spending much of their time in that area.

Mrs. Smith asked Mr. Ricca how the Town-serving aspect would be addressed?

Mr. Ricca responded that his client intended to serve a nice crowd, however, he could not say that they would all be Palm Beach people.

Mrs. Smith explained that the Town Council was attempting to put all concerns on the table before problems could develop.

Mr. McDonald stated that he would like to incorporate the off-duty provision in his motion.

Mr. Wyett suggested incorporation of reduced seating.

Mr. McDonald noted that based on what Chief Terlizzese had said he did not think that would accomplish anything.

Mrs. Pollitt read the motion:

The motion was made by Mr. McDonald; seconded by Mr. McLendon to approve the revised Site Plan Review 3-96 with Variance with the following conditions:

1. Closing the French doors by 11:00 P.M.

2. Valet parking would be used.

3. Shared parking across the street would be investigated.

4. Off-duty Police Officers would be hired Thursday, Friday, and Saturday from 9:00 P.M. to 3:00 P.M.

5. All conditions would be reviewed after a period of one year..

Mrs. Smith asked if there had been ex-parte communications in this matter.

Mr. Wyett declared ex-parte communication with numerous residents of condominiums--
Arnold Hoffman of the Palm Beach Condominium Association, Carol Perruzzi of Royal Poinciana South, Jay Denzer of Park Regent, Frank LaGalante from Sun & Surf.

Mr. McLendon declared that he had met with the architect and owner regarding their plans.

Mrs. Smith and Mayor Ilyinsky did not have ex-parte communication to declare.

Mr. Shaw responded that the only ex-parte communication had been the letters received by all members of the Town Council, and entered into the record of today's meeting.

On roll call, the motion carried 3/2 with Mrs. Smith and Mr. Wyett casting negative votes, and Mr. McDonald, Mr. McLendon and Mr. Shaw casting affirmative votes.

2. Variance No. 33-96 - George Ross, 321 Tangier Ave.; located in the R-B Zoning District; to allow installation of driveway entrance gates setback 4' from the pavement, in lieu of 18' required. (Deferred from September 10, 1996 Meeting) - **Request for Withdrawal per Letter Dated September 30, 1996, from George M. Ross**

3. Variance No. 35-96 - Kathryn Pressly, 242 Seaspray Ave.; located in the R-B Zoning District; to allow installation of concrete pavers in the front yard thereby reducing the landscape open space to less than the 40% required. (Deferred from September 10, 1996 Meeting) - **Request for Withdrawal per Letter dated September 20, 1996, from Katie Pressly**

New Business

4. Variance No. 36-96 - F. W. Rustmann, Jr., 210 Manana Lane; located in the R-B Zoning District; to allow construction of a garage providing a 10' west side yard setback in lieu of 12.5' required, and a 24.64' rear street yard setback in lieu of 25' required.

Mr. Fred Rustmann addressed the Town Council, stating that he was remodeling a home on Manana Lane, which had been built in 1951 with a 10' sideyard setback, and was requesting that the westerly side line be continued in a straight plane, requiring a variance. In addition, a variance would be required for the rear for 3.5".

Mr. Moore gave staff comments: Architectural Commission, Landmarks Commission, Comprehensive Plan comments: rear yard should adhere to code, no objection to maintaining of the side yard. Building Department: No objection to the west side yard which lines up with the existing rear setback and should be maintained. Town Engineer:

Driveway Removal Agreement required if same crosses an easement (on Laurie Lane).

Mr. Rustmann agreed that he would be crossing an easement. He noted that the proposed garage was 18.6', which was the minimum requirement for a garage. In order to comply with the garage depth he could not comply with the rear setback.

Mr. Moore explained that the minimum parking space was 9' in width by 18' in length.
He added that the Building Department scale showed 20', and the architect showed 25', however the architect was not present to identify that. He stated that if the garage could be built without the need of a variance it should not have a variance.

Mrs. Smith clarified that Mr. Rustmann understood that if approval was granted his plan would be stamped at 18.6', not 20' and would not then be permitted to be built at 20'.

Mr. Rustmann replied the plot plan showed a setback problem of 3.5", and he agreed that he understood the measurement would be taken at 18.6', *not* 20', and he agreed to exercise an easement agreement with the Town.

In response to Mr. McDonald's query regarding hardship, Mr. Rustmann explained that it was an aesthetic problem with the side line plane.

Mr. Moore pointed out that there were two hardships in the rear: one was that it was a double frontage lot for the portion where the garage was being proposed; the second hardship on the side of the house was that the house was built at 10' and the applicant wanted to line that garage up with the existing 10'. The cul-de-sac on Laurie Lane in the rear was unusually shaped, causing a setback problem for Mr. Rustmann.

Mr. McLendon made a motion to approve Variance 36-96; seconded by Mr. Shaw.

Mr. Shaw asked the elevation of the property.

Mr. Rustmann replied that the first floor elevation was 5.4'.

Mr. Shaw asked if the improvements on the property would meet with the 50% rule?

Mr. Rustmann replied that he did not know if the garage was involved with that.

Mr. Moore stated that Mr. Rustmann's son and the architect were aware of the 50% rule as far as renovations of the structure before they have to meet FEMA regulations. An appraisal had been provided, and the estimates of cost of construction were being worked on in order to see if the remodeling and construction could take place without need of a FEMA flood variance.

Mr. Shaw stated that he did not see how the Town Council could authorize an additional expenditure without knowing if FEMA regulations had been met. He added that he would also like some assurances that no gates would be put in which would require a variance, and the plot plan appeared to have the rear road offset partially, so that the opening was not fully accessible.

Mr. Rustmann replied that it was open. He noted that a reputable contractor had broken down costs, which had been submitted to Mr. Ackerman in the Building Department.

Mr. Moore commented that Mr. Rustmann must understand that a variance request granted today could not be used if there was a problem with the conversion at some later date.

Mr. Rustmann agreed that he understood that the variance was just for the garage.

Mr. Shaw suggested that a building permit not be issued until there was confirmation as to regulations being met, etc.

Mr. Rustmann agreed that he understood the FEMA rules and regulations.

Mr. Moore noted that the Building Department recommended disapproval of the rear yard because it was believed that, according to the scale on Mr. Pandula's plan, it was 20' in length and would have to be shortened by 3". On the side yard variance, the Building Department noted that type of variance had been granted many times in the past. The building could be built to code on the rear yard based on the 20' scaling of the rear; however, if Mr. Rustmann represented that the measurement was only 18.6', then 3.5" would make a substantial difference. Therefore, Mr. Moore maintained the Building Department recommended approval.

On roll call, the motion carried unanimously. (Motion included approval with the following conditions: Owner will provide an Easement Agreement; comply with the 50% FEMA regulation; request no variances for gates or posts).

5. Variance No. 37-96 - Felice Forman, 150 Canterbury Lane; located in the R-B Zoning District; to allow a real property conveyance that will result in a 8.3' side yard setback in lieu of 15' required. - **Request for Deferral to November Meeting per Letter Dated October 1, 1996, from Robert E. Deziel**

6. Variance No. 38-96 - Michael Connelly, 109 Seabreeze Avenue; located in the R-B Zoning District; to allow construction of a swimming pool providing a 5' side yard and a 5' rear yard setback in lieu of 10' required.

Mr. Shaw declared ex-parte communication with Mr. Deziel and Mr. Broberg.

Mr. McDonald declared that he had none.

Mayor Ilyinsky declared that he had none.

Mr. McLendon declared that he had none.

Mr. Wyett declared that he had none.

Mrs. Smith declared that she had none.

Attorney Peter Broberg addressed the Town Council, stating that the application was for a variance to put in a swimming pool, requesting a 5' side yard and a 5' rear yard setback in lieu of 10' required. The applicant had reconsidered and was requesting amendment to ask for a variance of 7' from the rear and 7' from the side to fully comply with the requirements of the Zoning Ordinance, in that it was a minimal variance being sought. Mr. Broberg explained that the property was undersized and was 6,000 sq. ft. in a zone that required 10,000 sq. ft.; the house had been constructed in 1925 and was to the side and back of the property. Therefore, locating the pool in the front would not work, leaving the back yard only. The pool size was 11' x 27', which was a smaller pool than the average. Mr. Broberg described that the 7' rear variance request would have no impact on anyone, since there was an alley behind the rear line; likewise on the east side there was a wall, hedge and a large expanse of space between the neighboring house. He noted that the house, as constructed, did not comply with any of today's codes; the green space, even with the addition of the pool, would be 52.9 sq. ft., which was well in excess of the green space requirement.

Mr. Paul Castro, Zoning Administrator, noted that there was a hardship related to the side yard setback in this instance in that the lot was only 50' wide, where there was a 100' requirement in that district. However, he added that staff believed that there was no hardship for the rear yard setback because the depth of the lot was 122.5' and the pool could be moved 5' closer to the house to meet the requirements. With 10' in the rear and 7' on the side a 3' wide walkway entirely around the east side of the pool would be provided, and the minimum variance could be met with that design.

Mr. Wyett suggested that a pool with a 3' walkway was rather awkward, and since this did not infringe upon neighbors, he made a motion to approve Variance 38-96; seconded by Mr. McLendon.

Mr. Shaw stated that he did not believe there was a hardship, as the pool could be reduced in size and brought forward to meet the 10' side yard setback, and that the pool should be pulled as close as possible to the building, shifting all available space to the property line.

Mr. Broberg responded that a regular sized pool was 14' x 28' or 15' x 30', and the proposed pool was already smaller. He offered an 8' setback on the rear and a 7' setback on the side.

Mr. Wyett accepted that amendment to his motion. On roll call, the motion carried 4/1, with Mrs. Smith casting a negative vote.

7. Site Plan Review No. 4-96 with Variances - 300 South Ocean Blvd. Apts., Inc., 117 Brazilian Avenue; located in the R-D(2) Zoning District; to allow expansion of a parking lot, adding 4 parking spaces, and constructing a property line wall and hedge. Variances requested are to provide 30% landscaped open space in lieu of 35% required, and to construct off-street parking in the required street side yard contrary to Section 6.21(F) of the Town Zoning Code.

Mr. McLendon recused himself as this was his residence.

Attorney James Brindell, on behalf of 300 South Ocean Blvd. Apartments, Inc., addressed the Town Council, requesting two variances in order to construct four more parking spaces. He gave the following background: The complex was built in 1959. A few years later a lot next door was obtained, and in 1971 a Special Exception was granted for 20 parking spaces there. The reason was that in 1959 the parking requirements were one space per unit. There were 45 units in the building, and 46 parking spaces in the parking garage that had been constructed at the time, so in actuality it exceeded code. Between then and 1971 the Town increased its parking requirements by 220% because one space per unit was not enough. In 1971 the parking requirements were two spaces per unit, plus one additional space per five units, resulting in the number of 99 spaces. When the Special Exception for 20 spaces was approved in 1971, the complex was required to leave a 30' landscape buffer along the western side of the property between the lot and a house. They were also required to meet the 25' setback requirement from Brazilian.

Mr. Brindell displayed some photographs so that the Town Council members could appreciate the unusual nature of Brazilian Avenue, which was a very wide street, with the Town owning another 17.5' from the curb back to the sidewalk. He noted that of the 45 units, 22 of them had maids or nurses that regularly serviced them, and the building itself had seven full time staff people Monday - Friday from 8:00 A.M. - 4:00 P.M. With the lot approved in 1971, there was a total of 66 spaces. The four being requested today would bring that number to 70. That would still make the project 29 spaces short of the current code. Mr. Brindell explained that this property needed some additional parking. The open space requirement was 35%, and since the lot became part of the complex there had been an effort to comply with the open space regulation and the four additional spaces would not change that compliance. Mr. Brindell maintained that the granting of the variance would allow the complex to come more into compliance with code and with the real need of its residents. It would allow the lot to be used in a similar fashion as other lots on Brazilian Ave. There was no room left on the main parcel to add additional parking.

There was no ex-parte communication declared by any Council member.

Mr. Moore stated that the Building Department had no objection to the setback, but believed that the greenspace request could be mitigated. Mr. Doney had requested more information on the Variance request. There was no comment by Public Works and the Town Engineer.

Mr. Wyett suggested that grasscrete or some similar material be used on the area where the four new spaces were located, as well as the hedge being moved to the sidewalk.

Mr. Brindell pointed out that the application did call for the replanting of a hedge at the sidewalk, and even said that the existing wall would be extended across to the wall to the south, however, he requested the option to delete the wall, as opposed to the hedge.

Mr. Wyett then suggested that if the wall was deleted, the hedge should go with the land so it would always have to be there. He also suggested that two Fox Tail Palms be placed on each side of the entryway.

Mr. Brindell agreed with the suggestions of Mr. Wyett.

Mr. Wyett made a motion to approve Site Plan Review 4-96, with the conditions that grasscrete be used to minimize the reduction of green space; that two Fox Tail Palms be placed on each side of the entryway; and that the hedge go with the land; seconded by Mr. Shaw.

Mr. Shaw suggested that stack parking be used for staff, since the 30' setback area was no longer required, which would minimize the variance by not having to take the front yard setback, and that grasscrete did not count as a reduction of green space, whereas ribbon strips would.

Mr. Brindell responded that in 1986 there had been a request to add spaces into that very 30' setback which was originally part of what had been required in the 1971 approval. That was denied because it was desired to maintain the landscape buffer between the residential district and the RD-2 District. Mr. Brindell raised the possibility of neighbor objections, as well as the fact that there may not be enough money in the budget for ripping up parking spaces and adding ribbons or grasscrete to it, however, if that was the only option the applicant would try to work with that.

On roll call, the motion carried 4/0, as Mr. McLendon had recused himself.

D. Other

(At this time the continuation of item XII. Old Business, B. Other, 1. b. - Utilization of Municipal Properties for Tower Facility Sites was heard. Minutes of this discussion are located under item XII. Old Business, B. Other, 1.b.)

1. Consideration of Letter Dated September 5, 1996, from James Brindell regarding the Right-of-Way at 1330 North Lake Way

Mr. Randolph reported the negotiations with Mr. Brindell were still under discussion, and an update would be provided to the Town Council at the November 12, 1996, Town Council meeting.

Mr. Brindell reported that there was another 60 days left before notice of closing off the easement would have to be given. He mentioned that another option was being considered, however, he did not have an answer back from his client yet, but there was plenty of time to resolve this matter. He stated that he would give an update at the November 12, 1996 Town Council Meeting.

Mr. Wyett suggested that there was a strong desire to seek access to the lake consistent with all of the other accesses in Town.

2. Consideration of Special Exception No. 30-95 with Variance - 264 The Grill Restaurant, 264 South County Road; regarding whether the restaurant has met all the previous conditions after issuance of the Certificate of Occupancy for the restaurant addition that provided additional seating.

Mr. Moore stated that one of the conditions of approval in the granting of Special Exception 30-95 with Variance was that the applicant return to the Town Council after six months in order to discuss the conditions attached.

Mr. Victor DeMarinas, owner of 264 The Grill Restaurant, addressed the Town Council, stating that all conditions set forth had been met: no valet parking operation at the entrance to Phipps Plaza; a loading zone had been requested near the restaurant, and if approved, delivery men would be instructed to use that zone; (He noted that a loading zone had been requested, however, it had not been given, therefore, all delivery men would use the existing loading zone in front of First National Bank); glass had been separated from other garbage; a rubber lid had been put on the dumpster; all garbage debris was placed in dumpster and the dumpster area was swept prior to the area being washed down, the flow of water would be minimized; (A request had been made that pick up of dumpsters be made at another time other than 7:30 A.M. --as Mr. DeMarinas was told at the last Town Council Meeting-- however, Mr. DeMarinas reported that he was told that the time of pick up was not until 9:30-10:00 A.M.)

Mr. Moore interjected that if these conditions were met, then the applicant would be required to enter into a Declaration of Use Agreement with the Town to memorialize the conditions.

Mr. DeMarinas agreed with that.

Mr. Shaw asked Mr. Moore if everything had been complied with according to the agreement?

Mr. Moore replied that he had no record of any violations, and that he had personally watched the valet operation, which was in compliance.

Mrs. Jane Volk, President of Phipps Plaza Property Owners Association addressed the Town Council, asking if the Town Council would extend the trial period for 4-5 months, because the residents most affected were not in Town as of yet, and the summer months could not accurately reflect the winter season.

Mr. Bill McCranie, 224 Phipps Plaza, addressed the Town Council, stating that he supported the request of Mrs. Volk, and that he had noticed several things that were not being done at the restaurant, although he believed the owner was trying. He believed that the valet parking issue would be solved, as signs were being prepared to shift the location of the valet parking service to the north side of the Plaza. There were also problems with the delivery trucks. In addition, Mr.. McCranie related that the trash pick up was at 8:00 A.M. *not* at 9:30, and he had been told by Mr. Dusey that the request for the later trash pick up was only for the weekend. He maintained that was not what had been discussed at the February Town Council Meeting--the weekdays were the problem for those people living close to the restaurant. He suggested that the Town Council delay permanent action until the March Town Council Meeting.

Mr. McDonald asked Mr. Dusey if the Town could change its trash pick up time during the week?

Mr. Dusey replied that a change of time on the week days was not possible.

Mr. McCranie stated that he hoped something would be resolved concerning valet parking issues in the Town.

Mrs. Smith stated that residents of Palm Beach were very fixed in their ways, and no matter where the valet parking sign was residents would pull up in front of the restaurants, as they had done for 40 years. She remarked that the valets and the residents would have to get to know each other and meet on an equitable footing.

Mr. Shaw stated that everyone was trying to resolve the valet issues, and asked that the valets and the restaurant *not* put a sign in front of the restaurant, so that people would get accustomed to the fact that the valets were not there, and that the host/hostesses be aware of the situation in order to advise customers. He made a motion to accept that the terms of the Agreement of February had been met and that the Declaration of Use Agreement be brought forward and signed.

Mr. McDonald asked if the Declaration of Use Agreement indicated that garbage would be picked up only on weekends?

Mr. Moore responded affirmatively.

Mr. McDonald seconded the motion for discussion.

Mayor Ilyinsky suggested that the six month extension was quite restrictive.

Mr. Shaw stated that he would add to his motion that there be no valet signage placed in front of the restaurant, and that the signs that were presently there would be removed.

Mr. DeMarinas replied that the agreement was that valet parking would not be done in Phipps Plaza, and a sign was necessary somewhere nearby.

Mr. Shaw responded that the sign was across the street, and putting it in front would create confusion.

Mr. DeMarinas replied that condition had not been attached six months ago, and it was not fair to come back six months later and change the conditions.

Mr. Shaw stated that there could not be a sign on a public sidewalk.

Mr. DeMarinas said that would apply to every other restaurant on South County Road, and that he had satisfied the conditions attached to the Special Exception.

Mr. McCranie stated that Mr. DeMarinas was entitled to one sign, but not three signs.

Mrs. Smith stated that agreement had been reached that two signs were not needed in front of the restaurant, but until residents understood about the valet parking, there was no problem. The valet issue would be resolved Town-wide in the near future.

Mr. Shaw agreed that one sign would remain in front of the restaurant, and one on the other side of the street.

Mr. Wyett said that if the Declaration of Use Agreement was not adhered to, residents had reason to come back before the Town Council.

On roll call, the motion carried unanimously.

3. Consideration of Request for Waiver to Section 12-51, "Hours for Construction Work," of the Town Code of Ordinances by Ms. Betsy S. Burden for 125 Worth Avenue Limited Partnership at 125 Worth Avenue - **Request for Withdrawal per Letter Dated October 3, 1996, from Betsy S. Burden**

4. Consideration of Request for Waiver to Section 12-51, "Hours for Construction Work," of the Town Code of Ordinances by Mr. Harry R. Darling for Royal Poinciana Plaza

Mr. Harry R. Darling, Executive Vice President of Royal Poinciana Plaza, addressed the Town Council, stating that a contract with Thermaseal affected a roofing recovery system and they were requesting an extension of work hours by one hour in the morning (at 7:00 A.M. in lieu of 8:00 A.M.) in order to give the roofer more time to complete the project. Mr. Darling explained that the actual roofing work would not start until after the normal working hours; in addition, he requested that the contractor for the parking lot modifications (seal coating and striping) be allowed to work on two Sundays when there would be fewer cars in the lots.

Mr. Moore stated that staff had no objection, as the Plaza was an isolated piece of property, except for the towers on the southwest corner of the property--any early work could not involve that portion of the property.

Mr. Darling explained that the parking lot would be out of use overnight, therefore Dempsey's could use the valet service in other areas of the parking lot; the remainder of the roofing project was mainly over the courtyards and walkways, and the upper roofs had been completed, so there would be nothing going on in the outside perimeter.

Mr. Wyett made a motion to approve the request to allow an extension of work hours to begin at 7:00 A.M. rather than 8:00 A.M. along with work on two Sundays; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

5. Consideration of Request for Waiver to Sections 5-22 and 12-51, "Hours for Construction Work," of the Town Code of Ordinances by Mr. James R. Brindell for Saks Men's Store at the Esplanade, 150 Worth Avenue

Attorney James Brindell, on behalf of Saks Fifth Avenue, addressed the Town Council, stating that on June 11, 1996 the Town Council had approved a 1,440 sq.ft. expansion to Saks Men's Store. The Building Department Application had been filed on August 15 after the necessary plans were prepared, and the permit was issued August 28, with a revised building permit being issued September 25, and construction starting October 2, 1996. He was requesting an extension of construction hours on the same basis and conditions granted October 10, 1995 for the previous Saks Men's Store improvements, except that the current request would extend to December 30, 1996, due to the projected delivery of certain special order items. The contractor had prepared a time schedule indicating that from November 15 on there would be mainly fine work done, with all the heavy work already accomplished. There were some items that were not expected to arrive until after November 15, 1996. It was hoped that final inspection would be made December 16, 1996. The conditions were: all work that would emit noise outside of the Esplanade would be done during normal construction hours, not during the extended hours. Construction vehicles would be kept inside the parking garage and off the street during the extended hours, and no construction would be allowed on Veteran's Day, Thanksgiving, and Christmas.

Mr. Wyett made a motion to approve the request for Wavier to Sections 5-22 and 12-51, "Hours for Construction Work," of the Town Code of Ordinances, with the conditions as outlined in the October 10, 1996 request; seconded by Mrs. Smith. On roll call, the motion carried unanimously.

XVI. ANY OTHER MATTERS

Mr. Dusey reported that he had reviewed the Franchise Agreement, and pointed out the following areas where further negotiation would be needed:

Section I, Definitions, parts F and G concerning water pressure and water pressure problems (further definition would also be needed).

Section III, Grant of Franchise, part A.

Section III, Grant of Franchise, part B--specifically the method of amending the "Standards Applicable to the Public Rights-of-Way and Easements Within the Town of Palm Beach"

Section V, Water Conversation--specifically irrigation provided by well water, etc.

Section VII, Term.

Section VIII, Quality of Service, part B.

Mr. Dusey noted that some beneficial language had been requested by the Town and had been provided in the Franchise Agreement by the City of West Palm Beach, specifically pointing out backflow prevention apparatus language, although he suggested that some kind of record keeping be requested stating that West Palm Beach residents were being treated equally with Palm Beach residents regarding backflow prevention.

Mr. Dusey expressed concern with the fact that the water pressure studies would be completed within six months after execution of the Franchise Agreement, as he understood that should have been completed two years ago.

Mr. McLendon reported that he had received a message approximately one month ago that the hydraulic rate study would be ready in the engineering office, however, it had not been ready when Mr. McLendon checked with that office.

Mr. Wyett suggested that the Town Council give some thought to the 5-year freeze instead of the 50-year freeze, stating that he had given them a formula that the freeze would stay in effect until it fell to 12.5%, staying at that level, with surcharge rates being raised to maintain the 12.5%; in addition he noted that there was a back door open on step rates as Palm Beach had many users above the minimum whereas West Palm Beach did not have many users above the minimum--therefore a back door way to increase rates would be to separate and narrow it, resulting in an increase for everyone in Palm Beach who was not a minimum user. Mr. Wyett suggested that would be unacceptable, however, appreciation of the fact that they had made an enormous budge in their minds to some sort of compromise should be acknowledged.

Mr. Dusey stated that there was a provision that they would keep the same relative differences in their ranges which was something the Town had asked for a long time ago--the relative rate structure would remain the same.

Mr. Wyett pointed out that some attention should be given to the request about being able to continue to serve South Palm Beach if the option to buy the system was taken. He noted that he did not see the inclusion of improvements to the water pressure in the north and south of Town.

Mr. McLendon stated that his memorandum of September 9, 1996 expressed his feelings, and the only indication that he had received of any movement was in the number of years of the cap, which was insignificant. Considerable discussions relating to evaluation of the system had taken place, and Mr. McLendon suggested that decisions be made as to what was going to be asked for on the 29th. Mr. McLendon then asked Mr. Randolph what would be sacrificed if there was no agreement at all?

Mr. Randolph responded that there was no need for an agreement in order to continue to receive water from the City of West Palm Beach, as they were obligated to supply water. He noted that the one thing that would be sacrificed without having an agreement would be any incentive on the part of the City of West Palm Beach to make capital improvements to the system. The system would have to be kept up to the point where pubic safety would not be jeopardized; there was an obligation to provide water so as not to jeopardize the public health and welfare.

Mr. McDonald agreed with the comments of Mr. McLendon that no contract may be better than the contract presented.

Mr. McLendon expressed that he saw three options:

1. Challenge the application of the State Statute (to try to prove that the State Statute was not intended to

include one municipality supplying all of the other municipalities with all individual customers).

2. Find a good lobbyist who could get the Statute revised such that if the annual surcharge exceeded $500,000 it would have to be justified.
3. Advertise and take proposals from large legal firms regarding the surcharge issue, who would be willing to accept a contingency of annual surcharge savings over a period of five years.

Mrs. Smith clarified that in the years that the Town would be going through the process, customers would still be paying surcharge costs, however, the law firm would not be paid unless the case was won.

Mr. Randolph responded that he did not know how a law firm could be assured a contingency since the individual residents would receive the surcharge back, and they would need to agree to give up what the lawsuit would obtain for them.

Mr. Shaw asked if it was possible to proceed with litigation while permitting the 25% surcharge to be withheld to an escrow account until a determination was made?

Mr. Randolph replied that it could be requested and would have to be determined by the court.

Mr. Shaw suggested that a non-potable source be looked into, because the bottom line would be cutting the revenue of the City of West Palm Beach.

Mrs. Smith stated that on the three and one-half years that she had been sitting on the Town Council the discussion had been towards a Water Contract, and she suggested that negotiations continue with West Palm Beach.

Mr. McDonald suggested that the position of the City would not turn around.

Mrs. Smith replied that Mr. Sanders' opinion did not necessarily reflect the entire West Palm Beach City Commission.

Mr. Wyett suggested that the Town take one unified position before attempting further negotiations. He noted that there were a few options left and he encouraged further thought on a contract, or no contract. The incentive for West Palm Beach for a contract was to keep the Town as a customer; thus, it was in their interest *and* the interest of the Town to sign a contract that would last for the full term of the contract--conditions could change down the road, which could involve a drop in costs, and in the worst case scenario the Town could be buying 6-8 years.

Mr. McDonald responded that could be done without a contract.

Mrs. Smith stated that she believed there were negotiating points in the Franchise Agreement, unless the Town Council decided that there would be none, in which case there was no need for a meeting with West Palm Beach.

Mr. Wyett stated that water was gong to be an extremely precious commodity in 15-20 years.

Mr. McDonald stated that the more expensive water became, the more viable the options would become, and that he saw no advantage to signing a contract at all.

Mr. McLendon suggested picking out two or three items to concentrate on.

Mr. Shaw stated that three years ago, before the surcharge was addressed, one of the major objections was the fact that the water pressure in the Town was very low in some areas, which was probably the most pressing issue when it came to the quality of service provided. He commented that the quality of water system wide had improved over the last few years, and the questions now were could the surcharge be extended out to 8-10 years, and agreement on a portion of the surcharge money going back into the system. Mr. Shaw pointed out that every time the Town maintained the infrastructure, the City of West Palm Beach also was required to do maintenance replacement. He also suggested that re-use water be addressed, as it would have to go through the City of West Palm Beach also, and did not agree that "no contract" was the answer.

Mr. Randolph stated that the City could not cut the water supply off, however, could give reasonable notice and advise the Town that there would be so many years to seek another source.

Mr. McLendon stated that the City had provided specifically that they would spend monies on renewals in the same proportion as revenues, however, surcharge was excluded from that calculation.

Mrs. Smith suggested that the Town Council reach a consensus.

Mr. Wyett remarked that the first Contract had no outs, and this one did.

Mr. McDonald commented that the majority of residents did not know that there was currently no contract with the City of West Palm Beach.

Mr. McLendon offered to prepare a bullet list as an outline of the major issues.

Mrs. Smith suggested that there were several issues that were very important to the Town, which should be mentioned as strong negotiating points.

Mr. Wyett suggested that a date be set for continuance of Water Franchise discussions. The date of Friday, October 11, 1996, after the Special Town Council Meeting on Mar-a-Lago, was scheduled for further discussion of the Water Franchise.

Mr. Dusey reported that Congress had adjourned, therefore a letter to Congressmen regarding funding, as earlier suggested, would be futile. He advised that he would report back to the Town Council in November regarding this matter.

XVII. ADJOURNMENT

The meeting was adjourned at 8:43 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn

Variance 4-96 XI C.7

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

LAST NAME—FIRST NAME—MIDDLE NAME McLendon Samuel C	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council
MAILING ADDRESS 300 S. Ocean Blvd (A-5)	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☐ CITY ☐ COUNTY ☒ OTHER LOCAL AGENCY
CITY Palm Beach FL COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED 10/8/96	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- **You must disclose orally the nature of your conflict in the measure before participating.**
- **You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.**

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Samuel C McLendon, hereby disclose that on Oct 8, 1996:

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

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, ________;

✓ inured to the special gain or loss of my relative, Joyce W. McLendon (wife);

___ inured to the special gain or loss of ________, by whom I am retained; or

___ inured to the special gain or loss of ________, which is the parent organization or subsidiary of a principal which has retained me.

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

my wife is record owner of a cooperative apartment in 300 S. Ocean Blvd which had an application for variance to place 4 additional parking spaces.

Oct 8 1996
Date Filed

Samuel McLendon
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.