MINUTES OF THE TOWN COUNCIL MEETING HELD ON SEPTEMBER 13, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL - President Wiener called the September 13, 1994 Town Council Meeting to order at 9:30 a.m. on September 13, 1994 in the Town Hall Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Wiener, Councilwoman Smith, Councilwoman Royal and Councilman Shaw. Also attending for all or part of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Chief Terlizzese, Chief Elmore, Mr. Robert Moore, Mr. David Zimmerman, Mr. Albert Dusey, Mr. James Bowser, Mr. David Jakubiak, Mr. Peter Elwell, Mr. Russell Bitzer, Mr. Rick Dytrych, Mrs. Marie Crozier, Mrs. Barbara Martinuzzi and Deputy Town Clerk Pollitt.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Father Warren from Bethesda By-The-Sea Episcopal Church. The Pledge of Allegiance was led by Councilwoman Smith.

Presentations

III. PRESENTATIONS

A. Presentation to Mrs. Bernice Weinberg in Recognition of the Services of M. William Weinberg, President Pro-Tem, to the Town of Palm Beach - Mayor Ilyinsky read the inscription on the plaque presented to Mrs. Weinberg which said "With great respect, fond memories and sincere appreciation, the Mayor and Town Council recognize the distinguished contributions of William Weinberg during his tenure on the Palm Beach Town Council". Mayor Ilyinsky added the plaque was presented with the Council's blessing, love and affection and the Town Council members were available at any time to assist Mrs. Weinberg.

B. Retirement of Gary Brown, Assistant Golf Course Superintendent, Par 3 Golf Course - 14 Years - Mayor Ilyinsky said the Mayor and Town Council proudly recognized Gary Brown's retirement as assistant golf course superintendent from the 27th of May, 1980 until the 18th of June, 1994 and his 14 years of continuous, loyal and valuable service to its citizens and fellow employees as inscribed on the presented plaque.

C. Retirement of Richard Leandro, Firefighter/Driver-Operator/Paramedic, Fire-Rescue, 14 years - Mayor Ilyinsky stated, with the presentation of the plaque to Mr. Leandro, the Mayor and Town Council recognized Mr. Leandro's 14 years of service to the citizens of the Town of Palm Beach and his fellow employees from June 16, 1980 to May 19, 1994.

D. Retirement of Eugene P. Manning, Parking Enforcement Officer, Police, 14 years - Mr. Doney said that Mr. Manning was not in attendance at this meeting and does have another job as a school crossing guard which may coincide with this meeting.

Administrative/ Organizational Items

IV. ADMINISTRATIVE ORGANIZATIONAL ITEMS

A. Appointment of Town Manager - Pursuant to Section 4.02 of Town Charter - Mrs. Wiener stated as President of the Council she cannot make any motions, but if she could, she would include all of the attributes of Bob Doney, Town Manager. She added Mr. Doney cares more than there is caring available in this world and spends countless hours working for the Town. Motion made by Mrs. Smith to reappoint Robert J. Doney as Town Manager and complimented Mr. Doney on his performance. Motion seconded by Mrs. Royal. On roll call, motion carried unanimously.

B. Appointment of Administrative Officials - Pursuant to Section 2-3 of the Town Code - Mr. Doney stated that in accordance with Section 4.04 of the Town Charter and Sections 2-2 and 2-3 of the Town Code, he recommended the appointment of the following officials:

<u>Administration:</u>

Town Clerk	Grace T. Peters
Finance Director	Marie A. Crozier
Director of Planning, Zoning & Building	Robert L. Moore
Town Attorney	John C. Randolph
Town Engineer	Albert P. Dusey or His Designee
Personnel Director	William C. Crouse
Recreation Director	Russell E. Bitzer

<u>Public Safety:</u>

Chief of Police	Joseph L. Terlizzese
Chief of Fire-Rescue	Vincent K. Elmore

<u>Public Works:</u>

Director of Public Works	Albert P. Dusey

<u>Acting Town Manager:</u> Peter B. Elwell
(Pursuant to Section 4.03 of the Town Charter)

Mr. Doney stated the letter to the Mayor and Town Council, dated September 6, 1994, named Mr. Elwell to be Acting Town Manager should Mr. Doney be absent or incapacitated for one reason or another.

Motion made by Mrs. Smith to recommend the acceptance of the appointments of the administrative officials by the Town Manager. The motion was seconded by Mr.Shaw. On roll call, the motion carried unanimously.

Comments of the Mayor

V. COMMENTS OF THE MAYOR - Mayor Ilyinsky complimented the Town Council members on the motion to reappoint the Town Manager and the other members of the staff. Mr. Ilyinsky stated he has worked with many of them for a long time, and the Town of Palm Beach is well-served and blessed with some of the finest people he has ever known.

VI. APPROVAL OF AGENDA

Approval of Agenda

Mr. Doney said that on page 6 of the agenda, Mr. Gustav Broberg requested a deferral of variance items 25-94 and the companion item number 26-94 due to recent personal circumstances regarding Mrs. McFarlane, and the deferral would be until the October 11, 1994 Town Council meeting.

Mr. Randolph asked that item X.10.A.1. on page 3 of the agenda regarding the resolution for the right-of-way standards be deferred until the October 11, 1994 Town Council meeting.

Mr. Moore asked that item XIV.B.10. Special Exception No. 27-94 for John Serafini, Paramount Theater, 139 North County Road be deferred until the October 11, 1994 Town Council meeting. He stated the letter requesting the deferral had been received on the morning of September 11. Mrs. Wiener asked if anyone in the audience was waiting to hear this item? Mrs. Wiener said that since no one was present to hear the item, the item could be deferred; however, several letters of interest were received by the staff and these people should be notified that the item will be deferred until the October 11, 1994 meeting.

Mr. Doney said Mr. Moore will notify the individuals who have written letters to the Town.

Mr. Shaw requested a discussion on the list of potential Commission or Board appointments to determine if the individuals included on this list are still interested in serving the Town a year or so later after the initial letters have been received by the Town. Mr. Shaw said this item could be heard under "Any Other Matters", since the item is not relevant to the appointments considered later in the agenda.

Mrs. Royal requested that a discussion concerning the matter of monthly reporting from First Union Bank be considered under Any Other Matters since a recent bank error resulted in a $30,000. windfall profit to the Town.

Mrs. Wiener stated that two items added under Item XV. will be: 1. Appointments to Commissions and 2. Bank Relations.

Motion made by Mrs. Smith to approve the regular agenda as amended. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

<u>APPROVED AGENDA</u> (ITEMS VII. THROUGH VIII.)

Approved Agenda Items

Motion made by Mr. Shaw to approve the Agenda Items VII. through VIII. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

VII. APPROVAL OF MINUTES OF JULY 12, AUGUST 4, 9, AND SEPTEMBER 1, 1994.

Approval of Minutes

VIII. LICENSES AND PERMITS

Licenses & Permits

A. Charitable Solicitations

1. Palm Beach Community Chest/United Way, Inc.; No. 8-95
2. St. Mary's Hospital Foundation; No. 9-95
3. The Jewish Guild for the Blind; No. 23-95
4. Arthritis Foundation; No. 87-95
5. American Friends of the Hebrew University, Inc.; No. 101-95
6. Planned Parenthood of the Palm Beaches, Inc.; No. 120-95
7. Rosarian Academy; No. 127-95
8. Visiting Nurse Association of Palm Beach County, Inc.; No. 166-95
9. Center for Children in Crisis; No. 341-95
10. Planned Parenthood Guild; No. 371-95
11. Vetsville Cease Fire House, Inc.; No. 372-95
12. International Children's Museum; No. 373-95

<u>REGULAR AGENDA</u>

Regular Agenda

IX. LICENSES AND PERMITS

Licenses & Permits

A. Charitable Solicitations

Charitable Solicitations

1. Save-A-Pet Florida, Inc.; No. 236-95.

Mrs. Peters reported that Save-A-Pet had been late twice filing the results forms for their charitable events.

Save-A-Pet

Bert Shapero, the attorney for Save-A-Pet Florida, Inc., addressed the Town Council and apologized for any shortcomings and lateness in filing the events. Mr. Shapero stated the problem is the assembling of the information including the untimely return of information of other individuals involved in the solicitation. Mr. Shapero said he has changed the method of reporting back to him, and the results forms will be filed in a timely manner in the future.

Mrs. Gertrude Maxwell, President and Founder of Save-A-Pet Florida, Inc., addressed the Town Council and requested the Mayor and Town Council give permission for the next planned event scheduled for November 26, 1994 at Mar-A-Lago. She added the proceeds from this cocktail reception would benefit the homeless pets and the families who are in dire circumstances.

Mrs. Smith asked Mr. Shapero to name any other officers in the organization who would take over the filing of these forms in an event of emergency?

Mr. Shapero responded the treasurer of the organization, Norma Allen, who is a Palm Beach resident would be responsible. He added all the officers of the organization are listed on the application.

Mr. Shaw asked Mrs. Peters if all the necessary forms have been filed as of this date? Mrs. Peters responded all the forms have been filed.

Mrs. Smith stated Save-A-Pet Florida, Inc. has done a wonderful job helping the animals, but the forms must be filed on time and this is the final warning. Motion made by Mrs. Smith to approve the Charitable Solicitation permit for Save-A-Pet, number 236-95. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Florida Conservation Assoc.

2. Florida Conservation Association; No. 251-95.

Mrs. Peters stated the Florida Conservation Association has filed forms late on four occasions.

Mr. Tim Nettles, President of the Palm Beach County Chapter of Florida Conservation Association, addressed the Town Council. Mr. Nettles stated he is new to the Presidency of the organization and did not realize the forms were not filed in a timely manner in the past until notified by the Town Clerk's office. He added when he was notified, he did produce the required forms, and his organization has added several board members who are attorneys and the board agreed this will not happen in the future. Mr. Nettles apologized for the lateness of the filings.

Mrs. Royal asked Mr. Nettles what is the purpose of the organization? Mr. Nettles replied the conservation organization fights to maintain and help the marine resources of Florida. He added the association has 23 chapters state wide with 9,000 members and 900 members in Palm Beach County. He stated the funds raised benefit the waterways around Palm Beach.

Mrs. Smith asked Mr. Nettles who the officers of the association are, if they are residents of Palm Beach and if the required forms are on file? Mr. Nettles responded the organization is composed 100% of volunteers; some of the board members are business owners and residents of the Town of Palm Beach including Hap Wilson and Mr. Herbert of Herbert's Lafayette Market. He added all the forms are currently filed.

Motion made by Mrs. Smith to approve Charitable Solicitation permit number 251-95 for the Florida Conservation Association. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Hope House of the Palm Beaches

3. Hope House of the Palm Beaches, Inc.; No.297-95.

Mrs. Peters stated Hope House had an event in July, 1994 without a permit although Hope House thought the permit they obtained previously in the year was valid for that event. She added Hope House has requested a third fund raising event thinking that one of these was included in the previously approved permit. Mrs. Peters said the required results forms from past events have been filed late.

Mr. Skip Ciotti addressed the Town Council and stated one of the difficulties is the cycle of the permit which caused confusion, and Hope House thought the one event in July was included under the previous permit. Mr. Ciotti stated he did not realize Hope House was a year behind until this was pointed out by the Town Clerk. Mr. Ciotti stated he has no excuses for the late filing as his office was responsible for that filing; although his group expanded 446% last year in services and his staff has expanded from 4 to 18 people which will alleviate the paper work and plans to file future results forms on a timely basis.

Mrs. Royal asked Mr. Randolph if he has drafted a new ordinance as requested by the ORS Committee as it affects the issue of late filings of results forms?

Mr. Randolph replied no ordinance has been drafted for consideration by the ORS Committee, but he acknowledged he has been directed in lieu of having an ORS meeting to return to the Town Council with an ordinance that would have a late fee for persons who file late.

Motion made by Mrs. Smith to approve Charitable Solicitation number 297-95, including a third event for the calendar year, and commended Hope House on their work in the community and reminded them not to be late in filing future forms. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Wiener said appearances at this meeting by these three groups point out the problem that exists with this ordinance, and she does not think the answer is a late fine and does not recommend taking money from charitable organizations. She added people are trying to do good in the community, and these groups work with mostly volunteers, or if they do have staff, that staff's work load is stretched simply because the object is charity. She said the collected monies are put where good will be done rather than spend it on personnel.

Mrs. Smith asked if a time limit is listed on the application telling these groups when the forms are due?

Mrs. Peters replied that a letter is sent with a date certain the form must be filed.

Mrs. Smith stated she would not approve a fine for a charity who is working hard to raise money. She added other administrative measures should be tried to see that these forms are filed, but if this does not work permission to have the event could be denied which would gather the most attention.

Mr. Shaw stated denying the event would be more costly for a charitable organization than paying a fine.

Mrs. Wiener stated the lunch break would be from 12:15 p.m. to 1:45 p.m. and a special Town Council meeting will be held at 5:01 p.m. concerning the 1995 taxes.

Old Business

X. OLD BUSINESS

A. Resolution

1. Resolution No. 36-94 - Adoption of Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach - Deferred from August Meeting. This item was deferred earlier in the meeting until the October 11, 1994 meeting. Res. 36-94

B. Appointments Appointments

1. Architectural Commission - One Alternate Member with a Term to Expire March 1996 - Deferred from May Meeting. Architectural Commission

Motion made by Mr. Shaw to appoint Ethel Lindsey as an alternate member to the Architectural Commission. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

2. Golf Commission - One Alternate Member to Fill Balance of a Term to Expire November 1996 - Deferred from May Meeting. Golf Commission

Motion made by Mrs. Royal to nominate Mr. Allan E. Shore to replace Col. I. Henry Stern with the term to expire in November, 1996. Motion seconded by Mr. Shaw. On roll call, the motion carried 3/1 with Mrs. Wiener casting a negative vote.

3. Zoning Commission - One Alternate Member with a Term to Expire February 1997 - Deferred from May Meeting. Zoning Commission

Motion made by Mr. Shaw to nominate Mr. James Bertles to be an alternate member on the Zoning Commission with a term to expire in February, 1997. Motion seconded by Mrs. Smith. On roll call, the motion carried unanimously.

C. Other Other

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

A. Consideration of Comcast's Responses to Pending Cable Rate Issues. Comcast/ Cable Rates

B. Consideration of the Town Staff's Report on FCC Form 393.

C. Consideration of Alternative Actions Regarding FCC Form 393 to Establish Cable Rates, Including Potential Town Resolution No. 53-94.

D. Consideration of Accounting Services for Future Cable Rate Review of FCC Form 1200. Mr. Doney suggested the Town Council proceed with item 1.a. Consideration of Comcast's Responses to Pending Cable Rate Issues and hear from either Mr. Rozek or Mrs. Christie from Comcast regarding the company's responses to the pending cable rate issues. He added the Council may wish to discuss Mr. Randolph's letter of September 7, 1994 to Mr. Doney and the memorandum from Mr. Jakubiak and Mr. Doney to the Mayor and Town Council dated September 8, 1994. Mr. Doney said a letter from Mr. Rozek to Mrs. Wiener, the Mayor and Town Council, indicated Comcast's position relative to the request of the Town Council at the August 8th meeting to have Comcast further consider their rates and advise the Mayor and Town Council of their position.

Mrs. Wiener said the Council would hear Comcast's responses to the pending cable rate issues from Mrs. Christie.

Mrs. Diane Christie, Director of System Development for Comcast Cable, addressed the Council and stated the Town and her company are far apart on the interpretation of how the rates should be regulated. Mrs. Christie said she was at the meeting to make a statement on behalf of Comcast. She stated Comcast disagrees with the assessment by the Town staff of the service offerings, and they do not believe the Town staff has complied with FCC regulations governing their rates. She added Value Pack and Cable Guard are currently being reviewed by the FCC and when the FCC makes its decision, Comcast intends to fully comply with whatever those results are. She continued any refund liability related to those services has already been protected for Town residents. Mrs. Christie stated the Town staff's assessment of the evaluation of equipment and installation rates is not consistent with federal regulations, and the company has fully completed Form 393 and any lack of information is the result of the Town staff's misapplication of the federal regulations. She said the company provided the Town with a fully supported Form 393 which has been audited by the Town's independent auditor. Mrs. Christie concluded the issues related to premium and outlet charges, interest on deposits and late fees are not subject to federal regulation at the local level, and the FCC Form 393 only relates to limited basic. She explained limited basic consists of 16 channels on the FCC 393 Form for which the consumer is charged \$8.57, and the tier on the 1200 Form was reduced to \$7.96. Mrs. Christie said if this ordinance is passed, Comcast will be forced to appeal to the FCC, and the company feels confident that the FCC will support their position.

Mrs. Wiener asked the Town's staff to explain what recourse the Town would have if the FCC found these rates are in order or is the Town asking that the FCC determine what is fair and proper?

Mr. Doney responded the staff's position was set forth in Mr. Jakubiak's memorandum of September 8, 1994 and the staff feels the recommendation to reject Comcast's FCC Form 393 still stands and the burden of proof should continue to rest with Comcast, because Comcast has failed to provide answers to certain specific information in addition to the request from Town Council at the August meeting that Comcast make an attempt to lower the rates. Mr. Doney stated, after consultation with Mr. Randolph, that the Town staff has the latitude in reviewing the entire issue to review all available information because a relationship exists between the various components and services offered by Comcast. He added the FCC Form 393 as completed has potential dollar impact to Town customers of Comcast, and the staff has further information that indicates disagreement with the form is in order. He added the staff has spoken to the City of West Palm Beach concerning their customers served by Comcast and the City of West Palm Beach has engaged a rate consultant, Beck & Associates, to determine some of the issues. Mr. Doney said the September 8 memorandum to the Mayor and Town Council enumerates the reasons the staff recommends rejection of

Comcast's form 393, and, in addition, there are legal reasons Mr. Randolph should address to provide the full benefits of the research conducted on the issue to the Mayor and Town Council.

Comcast

Mr. Randolph stated, in response to the questions of litigation of Value Pack and Cable Guard, Comcast has said the results of the current litigation will be binding to both Comcast and the Town and that will take care of the question. Mr. Randolph said the Town should preserve its rights concerning the litigation and if the Town thinks that Value Pack should be part of the basic tier and Cable Guard is not appropriate, a ruling should be made to preserve that and not let the litigation take care of it.

Mr. Randolph, responding to Mrs. Wiener's second question concerning the passage of these rates and then asking the FCC to make the determination if they are correct, replied he thinks the FCC and Congress have said the Town is the rate making authority, and the Town Council should make the determination if the rates are correct. He added if there is an appeal from the Cable Company, the Town will review that appeal, and the FCC will make a determination if there is an appeal to see if the Town was correct or not. Mr. Randolph said the order he provided is patterned after the Tallahassee order and is far from being a perfect order because the order does not contain any rates as the Town has not had information to determine the rates. Mr. Randolph said if the Town Council passes the order today, Comcast will be in limbo, because the Council will be rejecting the rates but does not have alternative rates. He added the order was presented to the Town Council at this meeting as a draft, and he suggested if the Council passes the order, the staff should gather information to determine what the rates should be and if a refund is in order. Mr. Randolph stated it would be a better and more complete order if that work were done and included in a subsequent order. Mr. Randolph said Comcast provided certain specific information to the City of West Palm Beach for their Form 393, and he suggested the Council may wish Comcast to provide that same type of information to the Town of Palm Beach.

Mr. Randolph said a second issue is the appropriation of funds allocated previously that may be allowed for the second part of the report.

Mrs. Wiener asked why the Town Council did not have all the necessary information at the meeting to make a determination and how quickly could the entire package be assembled? Mrs. Wiener added all the information should be in front of the Council to make a decision.

Mr. Randolph replied a disagreement exists between Comcast and the staff as to the content and completeness of the information that has been supplied. He added, since the staff did not have the information they needed, they used a comparison rate of another company to make a determination if the rates were fair. He said all the information needed was not obtained from Comcast and suggested Beck could assist in that regard. Mr. Randolph said he had contacted the City of West Palm Beach inquiring what fees Beck charges to provide information concerning the cable company's rates but has received no response as of this meeting date. He added he thought the charges could be covered within the monies that already have been appropriated. Mr. Randolph stated Beck is the type of company who could provide the kind of information needed to assist the Town Council in making the decision concerning Comcast.

Mrs. Wiener replied the Council needs help providing the information and asked Mr. Randolph if there is a time restraint regarding the Form 393?

Mr. Randolph replied the time constraint is related to the refund question, and the rates actually went into effect 120 days after the Form 393 form was filed on December 17, 1993 and will continue to be in effect until the Town Council issues an order modifying it. He added the request for refunds can only go back one year from the date the Town Council issues an order.

Mrs. Wiener stated, since the date is December, the issue of the refunds could still be addressed. She added if the Town Council wants to change the rates, the background should be available and the reasons for any rates should be substantiated. Mrs. Wiener said she did not think the Council could move forward on this issue without additional information.

Mrs. Royal asked Mr. Jakubiak if a time constraint did exist as she understood there was one for the acceptance or rejection of Form 393?

Mr. Jakubiak replied the Town did issue an accounting order on April 12, 1994, five days before the Form 393 was due, and that protects the Town as Mr. Randolph has explained concerning the possible order of issuing refunds.

Mrs. Wiener said the issue could be deferred to allow time to assemble a full, concise package.

Mr. Shaw asked Mr. Jakubiak if he could process Form 393 with the figures Mr. Jakubiak considers correct to explain to the Council what the staff's aim might be? Mr. Shaw stated if the Council knew what specific areas should be addressed, then these specific rates could be incorporated into this resolution. He added some of the points contained in the Beck report for West Palm Beach have either not been addressed or answered in the relationship between Comcast and the Town of Palm Beach. Mr. Shaw acknowledged Mr. Jakubiak did not have the necessary figures at this meeting to insert into the resolution; but said he understands the staff is refuting Form 393 and questioning the rate.

Mrs. Wiener responded the direction may be to use Beck or someone who is an expert on the issue, as a consultant, in place of the staff. President Wiener added the cost of hiring a consultant should be considered by the Town Council and compared to the amount of the potential rate savings.

Mr. Randolph stated he thought it would be beneficial if the Council asked the Comcast representative if they would cooperate with the Town and provide any additional information which may be needed for a continued study by the Town.

Mrs. Christie responded that Comcast would provide any material related for Form 393 that would help the Town assess the issue. She added Comcast did not provide information that was requested by Town, because the information did not relate to Form 393. Mrs. Christie said Comcast was requested to provide information on installation charges from 1990 through 1993, and installation charges are based on cost and the FCC stated Comcast did not have to look at the costs in the prior year, 1992. She said Comcast did not choose to spend hours and many, many people to gather information that does not relate to the 393 Form. Mrs. Christie, responding to a question from Mr. Randolph, said Comcast would be able to provide the Town of Palm Beach the same type of information provided to Beck, representing the City of West Palm Beach, since it relates to the 393 Form.

Comcast

Mr. Randolph said that information provided by Comcast would help the Town of Palm Beach reach a final decision concerning the rates and recommended the Council defer the item until the information can be gathered.

Motion made by Mr. Shaw to defer Item X.C.1. (a through d) to the October 11, 1994 Town Council meeting to allow time for further information to be provided by Comcast Cable, as given to the City of West Palm Beach for Form 393, in order to make a final determination. Motion seconded by Mrs. Smith.

Mrs. Smith, opening the matter for discussion, asked Mrs. Christie since Comcast knew the information the Town was looking for and was willing to supply the information, why had Comcast not supplied the information previously?

Mr. Randolph, intervening, said the Town Council has determined additional information is needed and suggested not all of this information has been requested in the past by staff.

Mr. Doney added, to clarify the situation, the staff does disagree with Comcast's interpretation and believes the information has been previously requested but has not been provided to date.

Mrs. Smith said if the same type of information had been provided to the City of West Palm Beach using Beck as their consultant, why could not the same type of information be provided to the Town of Palm Beach without spending funds to employ Beck?

Mrs. Christie responded different municipalities who have filed for certification have used different consultants or have gathered the information themselves. She said, in this particular case, the Town hired an auditor who audited the books.

Mrs. Wiener said the auditor requested certain information, and one of the requests Comcast did not feel pertained to form 393 and staff thought it did; however, information was supplied to the City of West Palm Beach that applies to form 393, and Comcast will provide similar information to the Town as this is the first time the Town has requested it. Mrs. Wiener stated she thought the Town and Comcast should concentrate on the parts they are together on--not the parts they are apart on.

Mrs. Christie requested a letter from Mr. Randolph or a staff member stating the requested items.

Mr. Doney said, upon the Town Council's authorization to the Town Staff, the best fee possible will be obtained from Beck & Associates who will be the technical resource for this issue. Mr. Doney stated each of the 17 municipalities served by Comcast has the same concerns.

Responding to a question from Mrs. Smith, Mr. Randolph stated the motion contemplates the accounting order that was issued in April is still in effect and the Town is still receiving information pursuant to the terms of that accounting order. Mr. Randolph stated of the $10,000 appropriated in April, $5,000 is left for the form 1200 and suggested discussing that issue.

Mrs. Royal asked Mr. Randolph if a copy of the city of West Palm Beach's Beck report could be obtained? Mr. Randolph replied the Town intends to do that.

Mrs. Peters read the motion: Mr. Shaw moved that further information be provided prior to making a final determination of the rates. On roll call, the motion carried unanimously.

Mr. Shaw requested that Mrs. Christie or a representative from Comcast be present at the October 11 Town Council meeting and present a summary or proposal of what Comcast can do for the Town that the Town cannot do for themselves. Mr. Shaw stated if a company is soliciting the Town's business, the Town should not have to pay them for those services.

Mrs. Wiener said requests of that nature do cost money, and the correct procedure is to put items of that nature out to bid. She added, at this point, the issue is a staff matter.

Mr. Doney stated the item would not have to be put out to bid since the amount is less than $10,000 based upon Mr. Randolph's inquiry.

Mr. Randolph said that $5,000 has already been appropriated to review Form 1200, and the staff requests the assistance of a consultant such as Beck & Associates. Mr. Randolph asked for the authority to determine the cost of retaining Beck for the purpose of completing this particular review, and the figure should be within the $5,000. He added if the cost is within the $5,000, Beck could assist staff in supplying the necessary information and in preparation of the ultimate order.

Mr. Shaw said he stood corrected, and his intention was to ask Comcast to come to "us" as the Town and to meet with staff to make their presentation to them. Mr. Shaw stated funds have already been allocated and the staff should have the right to re-allocate from one vendor to another to acquire the necessary information.

Mr. Randolph replied the Council had allocated funds for the review of the Form 1200, and the staff would like to have the discretion to use those funds for the purpose of completing the Form 393 and, if funds are left over, to use the remaining funds for the 1200 Form.

Mrs. Smith asked Mr. Randolph if he had investigated the possibility of joining or sharing information with the City of West Palm Beach without the appropriation of additional funds by the Town?

Mr. Randolph stated he had explored those possibilities, and the City of West Palm Beach is willing to cooperate, but he does not have the figure back from West Palm Beach at this time.

Mrs. Smith said she hesitated to appropriate funds when a lesser amount may be involved if the City of West Palm Beach allows the Town to join with them in discussions with Comcast. She added appropriated amounts are never returned, and an equitable solution may be obtainable without the expenditure of additional funds.

Mr. Randolph stated he was comfortable with the situation as is, without a motion to appropriate funds unless Mr. Doney had an objection.

Mrs. Wiener responded the monies currently appropriated are for the Form 1200 not the 393 Form, and if a figure is not named, specific direction is not given to the staff. She added the staff must then obtain the funds from what funds are available.

Comcast

Mrs. Smith stated she thought the Council was being fiscally conservative since a definitive dollar amount is not involved, and the information provided from the City of West Palm Beach may be sufficient and the services of a consultant may not be needed.

Mr. Doney responded he does not have the authority under the Charter to make expenditures in this instance because no appropriation has been made for this purpose, and a Town Council action is necessary to authorize an appropriation for the specific purpose.

Mr. Randolph said he contemplated being able to contact the City of West Palm Beach and for an additional $1,000, $1,500 or $2,000, the Town may be able to acquire the necessary information. He added if a set figure is named, that figure becomes a target.

Mrs. Smith said the Council has been dealing with this matter since last December, the process is moving along at a turtle's pace, and now the holdup is the City of West Palm Beach may provide additional information. She added Mrs. Christie has not dealt with the question if Comcast may decrease the rate for installation.

Mrs. Christie said the average installation cost over the last year has been $20.00+, and Comcast is within its guidelines to charge that. She added the company runs specials for installation charges on an ongoing basis to encourage new customers.

Mrs. Wiener stated it is unlikely that the Town will resolve the situation without spending money and suggested a figure in the range of $1,000 - $1,500, and if additional funds are needed, the Council can consider it at that time.

Mr. Doney suggested allowing the Town Attorney and Staff to define the scope of necessary work, report back at the October 11 meeting for Council authority and proceed from there.

Mrs. Wiener said following that suggestion, no movement will take place between the September and October meetings, and a refund situation exists with a December 17th deadline.

Motion made by Mr. Shaw to reallocate the $5,000 previously allocated to the Form 1200 and to use these funds to assist in the resolving of Forms 393 and 1200, and the funds are to be redistributed at the discretion of the staff.

Mrs. Smith stated she did not wish to name the $5,000 figure as the amount to be spent.

Motion seconded by Mrs. Royal. On roll call, the motion carried 3/1 with Mrs. Smith casting a negative vote.

Mr. Doney said this issue may be ready for the October 11 Town Council meeting, but it is possible that the issue may have to be presented at the November Town Council meeting.

Mr. Randolph, responding to a question from Mrs. Royal, said the staff may not have the expertise to determine what the rates should be after reviewing the City of West Palm Beach information, and that is the reason a consultant's services may be required.

Mrs. Smith said the issue has to be reviewed at the October meeting regardless if all the questions have been answered and cannot be put off until the November meeting.

Interlocal Agreement with Solid Waste Authority

2. Proposed Interlocal Agreement with Solid Waste Authority for Municipal Recycling and Grant Management - Reconsideration Based Upon Letter Dated August 18, 1994 from Solid Waste Authority.

Mr. Doney stated Mr. Dusey's opinion as set forth in his September 7, 1994 memorandum indicated the Solid Waste Authority, while cooperative, has refused to seek approval for the amended agreement requesting the Town receive 20% of the State grant money. Mr. Doney recommended the Town not forego the State grant money that is available, and both the Town and the Solid Waste Authority will lose the money if the agreement is not signed. He said there is a need for specialized educational efforts by the Town through Mr. Dusey and his department, and the Town is entitled to 20% of the $28,200 annually to fund education programs. Mr. Doney said over a period of six years, if no agreement is reached, the Town and the Solid Waste Authority would not receive $28,200 each.

Responding to a question from Mrs. Smith, Mr. Doney stated the Solid Waste Authority is the designated agent under the State law to receive these funds; therefore, the Town cannot receive any of the grant funds unless the Solid Waste Authority participates.

Mr. Dusey said for the two year period 1997-1998 the State funds are allocated for a new recycling facility in the south end of the county, and the Town would receive nothing during that two year period.

Mrs. Smith stated the costs of incurred by the Town for recycling are very large and growing every year. Mrs. Smith asked Mr. Dusey if the amount the Town might receive could be negotiated with the Solid Waste Authority?

Mr. Dusey replied the Solid Waste Authority's position is the agreement is uniform among all the municipalities, and they do not wish to vary it for one. Mr. Dusey stated there were no alternatives if this agreement was turned down by the Town.

Mayor Ilyinsky suggested the Council follow Mr. Dusey's suggestion.

Mr. Dusey restated the issue is either receiving $28,200 or nothing.

Mr. Shaw, referring to the August 18, 1994 letter to Peter Elwell from Kathleen E. Kelly at the Solid Waste Authority, asked Mr. Dusey to explain the statement that allows the Town to recover any costs for the production and printing of specialized education/informational brochures, not to exceed 20% of the amount received from the Town for the countywide education program. Mr. Shaw said his understanding was that the SWA would pay 100% of the educational expenses up to 20% of the amount received by the Town. He said, in reality, the Town has the ability to spend the 20% the Solid Waste Authority does not wish to give to the Town. Solid Waste Authority

Mr. Dusey responded that Mr. Shaw's assumptions were correct.

Mr. Shaw said the Town could take an aggressive approach and promote the advantages of the recycling program, and this is a fair compromise.

Motion made by Mr. Shaw to approve the Interlocal agreement with Solid Waste Authority with the stipulation and understanding that the Town has the right to spend up to 20% of the monies for educational materials for printing as stated in the agreement. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

D. Town Council Organizational Items - Deferred from September 1, 1994 Special Town Council Meeting.

1. Consideration of Appointment to Vacant Town Council Seat (Appointed Individual to Serve Until Town Election on February 7, 1995). Appointment to vacant Town Council Seat

Mrs. Wiener stated the first order of business should be for the Town Council to decide if an appointment should be made.

Mr. Shaw said he was the one who made the motion to defer at the September 1 Town Council meeting, and the main benefit derived from that deferral was the time allowed for other members of the community to come forward and apply for the position. He added he agrees with Mrs. Wiener that there is a potential problem coming in January, and he does not think it would be fair to ask someone to be appointed for only one month. Mr. Shaw made a motion to nominate C. Gerald Goldsmith to fill the vacancy effective October, 1994, and that he not be seated at the September meeting.

Mrs. Wiener said a second motion was made at the September 1 meeting stating if an appointment was made at the September 13, 1994 meeting that person would be seated at that meeting.

Mr. Shaw said he did not think the applicants or individuals who expressed interest in being appointed had the opportunity to meet with staff to review the issues that are coming before the Town Council at the September 11 meeting, and it would not be judicious to ask an individual to vote on issues they are fully aware of. He added it would be inappropriate to go forward with the seating.

Mrs. Wiener said Mr. Shaw had several things in his motion, and the issues are:

1. Does the Council wish to appoint an individual to fill the vacancy?

2. Identify the appointee.

3. A determination would have to be made to seat the individual at the September meeting or a later meeting.

Mr. Shaw withdrew his motion.

Mr. Shaw made a motion to have the Town Council consider the issue of an appointment to fill the vacancy. Motion seconded by Mrs. Smith.

Mrs. Royal stated her concern was that the three of the four people who have offered their services are on the Zoning Commission, and these people are all qualified, but if one is removed from the Zoning Commission at a time when the Commission is doing its work, the Commission could be crippled. Mrs. Royal stated someone should be appointed in January after the zoning season, and at that time, individuals who are members of the zoning commission could be considered at that time.

Mrs. Wiener responded the Zoning Commission does its work during the month of November, and the items on the zoning calendar are nearly completed. She added an appointment could be made between September and December.

On roll call, the motion carried 3/1 with Mrs. Royal casting a negative vote.

Mrs. Smith said, as a point of clarification, the motion was approved to appoint someone with no time frame mentioned.

Mrs. Royal stated she preferred to appoint someone for the month of January.

Mr. Shaw made the motion to nominate C. Gerald Goldsmith to fill the position. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to have Mr. Goldsmith's appointment effective in October. Mr. Shaw modified the motion to have the appointment become effective in November. The motion was seconded by Mrs. Royal.

Mrs. Wiener stated she did not understand why the appointment should be delayed until November as Mr. Goldsmith is ready, willing and able to serve, and October may be a reasonable choice. She added the Council needs to be at full speed as soon as possible.

Mr. Shaw said his reason for choosing November is that he believes there is no hurry to fill the vacancy, and his concern is that the schedule becomes heavier in the next months, and by

November a multitude of items will be before the Council. Mr. Shaw offered to withdraw the motion and discuss with the Council the best possible date. He said it may be appropriate to discuss the issue with Mr. Goldsmith.

Mr. Randolph said the Charter indicated that when the Council makes the appointment that they shall appoint for the remaining term, but the Council may wish to state the starting date.

Mrs. Wiener stated the Council voted last month to have the appointee seated in September, if appointed, and Mrs. Wiener reluctantly agreed to that.

Mr. Shaw withdrew the motion to seat Mr. Goldsmith in November.

Mrs. Smith said, in retrospect, it would not be feasible because to have any one of the four applicants who have expressed willingness to serve to be up to speed for the September meeting. She added, it would be better to seat an appointee in October. Mrs. Smith said, as was brought up at the August meeting, the appointee, who is Mr. Goldsmith, is bound by the fact that they will not stand for election for any seat in February, and that was a condition that all the applicants agreed to.

Mayor Ilyinsky said it makes a great deal of sense to put Mr. Goldsmith on the Council effective with the October meeting. He added there is no reason not to have Mr. Goldsmith start in October, and to postpone it any longer than that would be foolish.

Motion made by Mr. Shaw to appoint Mr. Goldsmith effective with the October meeting. Motion seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Wiener stated the judge, who was present at the September meeting, could swear in Mr. Goldsmith at this meeting, so it would not be necessary for him to return to the October meeting.

Mr. Randolph requested clarification of the actual effective date of Mr. Goldsmith's term should any emergency meetings be held by the Town Council between now and the September meeting.

Mrs. Wiener replied Mr. Goldsmith's term is effective October 11, 1994 and not before.

Swearing in of C. Gerald Goldsmith as Council Member

A. Swearing in of Newly Appointed Town Council Member, if Necessary, by Judicial Officer of the State.

Judge Jack H. Cook, Chief Judge of the Circuit Court administered the oath of office to C. Gerald Goldsmith.

2. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of Town Charter.

Mayor Ilyinsky said the Council was in the position to elect a Council President Pro-Tem and requested nominations for the position.

Lesly Smith as Pres. Pro-tem for remainder of Weinberg term

Mrs. Royal nominated Councilwoman Lesly S. Smith to serve as President Pro-Tem for the remainder of the term held by the late M. William Weinberg. On roll call, the nomination carried unanimously.

The Town Council took a 15 minute break.

New Business

XI. NEW BUSINESS

A. Resolutions

Res. 44-94

1. Resolution No. 44-94 - State Emergency Medical Services (EMS) Grant of $2,327.25 for EMS Equipment and Training - Mr. Randolph read the resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE APPLICATION FOR FUNDS FROM THE PALM BEACH COUNTY EMERGENCY MEDICAL SERVICES AWARDS PROGRAM TO BE USED FOR THE IMPROVEMENT AND EXPANSION OF EMS SERVICES FOR THE TOWN AND HELPING MEET STATE EMS GOALS. SUCH GRANT SHALL NOT SUPPLANT EXISTING EMS BUDGETED FUNDS.

Motion made by Mrs. Smith to approve Resolution No. 44-94. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Res. 45-94

2. Resolution No. 45-94 - Designation of Town Depositories and Authorization to Sign Checks for FY95 - Mr. Randolph read the resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING TOWN DEPOSITORIES FOR FISCAL YEAR 1995, PURSUANT TO SECTION 2-160 OF THE TOWN CODE OF ORDINANCES AND DESIGNATING PARTIES TO SIGN CHECKS OR WARRANTS ON BEHALF OF THE TOWN PURSUANT TO SECTION 2-159 OF THE TOWN CODE OF ORDINANCES.

Mr. Shaw said he understood the Council approval stated the Town has one bank, and this resolution implies the Town has two banks when in reality these are the same bank with different branches. He added if all the branches of First Union in the Town are to be listed, there should be five listed. Mr. Shaw continued the Town has more than one account and specific accounts are not being listed. He stated the resolution should state that there is one bank, First Union National Bank of Florida.

Mr. Doney responded that the identification of First Union National Bank of Florida as a specific bank with all the branches in the Town of Palm Beach included would be usable for Town financial purposes. He added the reason for specifically identifying First National in Palm Beach was for the actions of the Retirement Board related to the Retirement Fund proceeds. He added the south end branch of First National is used for night deposits for the Par 3 Golf Course, but all of the Town's accounts are maintained at all of the financial institutions.

Mr. Shaw said the Town's accounts are at First Union National Bank, and the fact may be that they are handled at different branches for whatever reasons, but the Town has only one bank. He added the resolution is misleading, and the resolution should state one bank.

Mr. Randolph said a problem may exist if the Retirement Board has signature cards or resolutions that identify a specific bank by name although a branch may be a part of the main bank. He added he did not know how First Union Bank designates those areas. Mr. Randolph said he did not think it was harmful to list the banks as shown, but there may be something the Town is not aware of if they are omitted.

Mr. Doney, responding to a question from Mrs. Smith, said the accountant referred to in the resolution is Debbie Kelly.

Mrs. Smith asked Mr. Randolph if it is possible that this resolution could be cancelled anytime during the year?

Mr. Randolph responded it could be cancelled during the year subject to Town Council, and Town Council is the authority. He added the resolution is simply an authorization and is not an agreement with the bank in any way.

Motion made by Mrs. Smith to approve Resolution 45-94. The motion was seconded by Mrs. Royal. On roll call, the motion carried 3/1 with Mr. Shaw casting a negative vote.

3. Resolution No. 50-94 - Amending Golf Course Winter Rates - The resolution was read by Mr. Randolph. Res. 50-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING GOLF COURSE WINTER RATES.

Ann Herman addressed the Council and mentioned the recent work that has been completed during the last four months at the Par 3 Golf Course including the new greens, new tees and driving range, all in beautiful shape. She said at the last meeting of the Golf Commission, the rate increases were discussed, and the Golf Commission unanimously voted to retain all the fees as they presently are. She added Rick Dytrych, the golf pro, agrees with the Commission, and the reason is players have been lost over the last four months during the renovation. Mrs. Herman said the Golf Commission also thinks revenue will be lost because of the decrease in tourism Florida and this will affect the number of golfers.

Mrs. Smith said, during the discussions on golf course rates, the Par 3 Golf Course is for the people of the Town of Palm Beach, and the Town supports these facilities for the residents and their guests in the Town of Palm Beach. Mrs. Smith added she understands and concurs with the Golf Commission's reluctance to raise the rates and suggested raising the rates for the nonresidents greens fees from $18.00 to $19.00 and leaving the other rates as they are: $600 for the annual single permit; $900 for the annual double permit.

Mrs. Herman responded that 83% of the funding comes from nonresident players, and the Golf Commission does not want to lose that. She added the Par 3 Golf Course's rates are higher than many regular courses.

Mrs. Smith noted that Boca, Boynton Beach and Lake Worth offer lower prices than Palm Beach. She added her concern is for the residents of Palm Beach and that was the reason she suggested raising the rate from $18.00 to $19.00 or $1.00 difference on the nonresident green fee charge.

Mrs. Wiener said, as members of the Finance & Taxation Committee, the Town figures have to be viewed overall, and when rates are raised for any program, some people are unhappy. She continued the Town has a combination of user fees and taxes, and the Council has to meet the bottom line. Mrs. Wiener said several Finance & Tax meetings have been held where all these figures have been reviewed.

Mrs. Herman replied all the fees collected at the golf course go back into the golf course and are retained by the golf course. She added considerable funds remain with the golf course, and the Golf Commission would prefer these increases be deferred until next year and keep the rates as they exist.

Mrs. Royal asked Mr. Doney if the golf course was an enterprise fund? Mr. Doney responded it is an enterprise fund and they stand alone on their revenues and expenditures, and it is not part of the general operating fund of the Town.

Mrs. Royal questioned what difference increases would have on the Town's budget process, since they will not improve the general fund balance, nor improve the tax situation and is a self-supporting independent unit. She said the rate changes are not germane to the budget of the rest of the Town.

Mr. Doney replied the rate increase is an independent business policy action that the Town Council visits and makes a determination.

Mr. Shaw questioned Exhibit 1 which showed the nonresident fee if $18.00 and on Exhibit 2 the fee is listed at $18.50.

Mr. Bitzer replied the correct number is $18.00.

Motion made by Mrs. Royal to leave the golf course rates as they are. Mrs. Royal asked the Finance Committee, the next time it meets, to look at the possibility of invading the funds raised by the Golf Course and transfer these funds to the general fund.

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

Mayor Ilyinsky said the Council nominates individuals to sit on the various commissions and historically the Council has accepted their recommendations in most cases. He added in the years

Res. 50-94 (continued)

he has been associated with the Town Council, this is the first time in memory an entire Commission has voted against a recommendation made by the Town Council. The Mayor suggested the Council should listen to Mrs. Herman's remarks and possibly postpone this raise in rates for one year.

Mrs. Wiener stated the Committee reviewed the entire list and looked at rates that had not been raised for a minimum of three years. Mrs. Wiener said the matters of money rest with the Council regardless of the Commission, and the decision to raise rates was weighed very carefully. She added the formula to change the rates has been established with a great deal of thinking and background behind the decision.

Mr. Shaw said the issue on the raising of the golf fees affects 38 people in the amount of $50.00 apiece annually out of the thousands of people who play golf on the Par 3 course. He added the impact of what the Council is asking for is very minimal compared to the 3300 people who have increases in the cost of their riding carts, and a loss of revenue will be incurred when a single category is added to the carts; people who are now paying $16.50 will only be paying $10.00. Mr. Shaw said the 1,000 lessons which were last raised in 1991 are not being raised this year, and more items could be considered if the issue is multiplying units times proposed fees.

Mrs. Herman said the Commission understands Mr. Shaw's comments, but the Commission hopes to attract the golfers they have lost by being closed. She added if any of the fees are raised, more golfers will be lost; possibly more will be lost than gained. Mrs. Herman said the fee for the carts does not involve too many people; however, if one person plays, it is not fair to make them pay as two do for the use of the cart.

Motion made by Mrs. Royal to retain the fee schedule at the Golf Course as requested by the Golf Commission.

Mrs. Wiener stated the motion is actually to deny the resolution.

The motion died for lack of a second.

Motion made by Mr. Shaw to approve Resolution No. 50-94. Motion seconded by Mrs. Smith. On roll call, the motion carried unanimously.

4. Resolution No. 51-94 - Increase in Dock Rates.

Res. 51-94

The motion was read by Mr. Randolph.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, INCREASING DOCK RATES FOR ANNUAL, WINTER SEASONAL AND WINTER SEASONAL TRANSIENT LEASES.

Motion made by Mrs. Smith to approve Resolution No. 51-94. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Res.52-94

5. Resolution No. 52-94 - Request for Additional $50,000 to Complete the Mid-Town Oceanfront Roadway Protective Seawall Rehabilitation Project, Which was Approved by Resolution No. 28-94, at the May 10, 1994, Town Council Meeting.

The motion was read by Mr. Randolph who stated the purpose was to amend Resolution No. 28-94.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE PROJECT BUDGET FOR THE MID-TOWN BEACH SEAWALL REHABILITATION.

Mr. Dusey stated the original contract was awarded based on estimated quantities, but the nature of the work, upon physical inspection, proved how badly the seawalls were deteriorated. He added the unit prices apply; they still work with the lowest bidder and the price is still below the new estimate.

Mr. Shaw asked Mr. Dusey if the new findings will affect the professional fees?

Mr. Dusey replied he did not know the answer to that.

Motion made by Mr. Shaw to approve Resolution No. 52-94. Motion seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Appointment

B. Appointment

Mini-PERC

1. Mini-PERC - One Four-Year Term to Expire September 1998. Mr. Doney said the Mini-PERC has been in existence since the late 1970's and serves a valuable purpose. He added it has not met, except for information and educational purposes to keep abreast of current State laws. Mr. Doney stated, through Mr. Crouse, the Town has provided the Mini-PERC members the current legislation and also through Mr. Randolph and an employment attorney used by the Town, certain information to keep the Blue Ribbon Panel up to date on its responsibilities and potential actions should those actions ever be needed. He said currently the action before the Town Council is to appoint a three member or alternate number of members, preferably an odd number of members, to a Blue Ribbon Panel to allow an employee representative to be chosen for the seat. Mr. Doney said Charles Mueller's term expires October 1, 1994, and he is the current employee representative. Mr. Doney added the matter could be deferred until the October 11, 1994 meeting, or an alternate plan would be for the Town Council to designate certain members to the Blue Ribbon panel, and the Town staff would assist the panel making recommendations concerning the employee representative.

Mrs. Smith requested the background on the Commission and asked who the members are?

Mr. Doney replied the members of the Commission have included the President or Chairman of the Palm Beach Civic Association, the Chairman or President of the Citizens Association South of

Sloan's Curve and the President of the North End Property Owners Association. He said the North End Property Owners Association consists, as the name implies, of owners of property in the north end, and Nigel Marix was the representative from that group. Mr. Doney said from previous discussions, the thinking was to have an odd number, but the members do not have to come from these two or three organizations.

Mini-PERC Commission (cont'd)

Mrs. Wiener responded it would make sense to have some larger group within the Town to be represented.

Mr. Doney stated one potential concern is that Mr. Louis Pryor, the Employer Member, has a possible conflict.

Mrs. Wiener asked if there was any reason the Council cannot make the appointments of the members rather than appoint the groups to make the appointments? Mr. Randolph responded he would have to research that issue.

Mr. Crouse said the ordinance does require that a Blue Ribbon panel be appointed by the Council, and that panel's responsibility is to recommend to the Council names for appointment to the Commission. He added this ordinance does follow the State laws.

Mrs. Wiener said the two organizations, Palm Beach Civic Association and the Citizens' Association South of Sloan's Curve, are representative, but a different third organization should be named.

Mrs. Smith recommended the Preservation Foundation be the third organization and Mrs. Wiener concurred with that recommendation.

Mrs. Wiener said the Blue Ribbon Panel is a nominating committee to the Council, and only one member's term of the Commission is actually expiring. She added the person nominated by the member of the Blue Ribbon Panel does not necessarily have to represent the group that nominated them. Mrs. Wiener stated the nominee must have certain qualifications.

Mr. Doney read the requirement for one appointee shall be a person who held a previous vocation, appointment or affiliation is or has been classified as a representative of employers; one appointee shall be a person on account of previous vocation or employment or affiliation, is or has been classified as a representative of employees or employees' organizations - this is the term that is currently expiring; and the third member who on account of previous vocation, employment or affiliation has not been classified as a representative of employers or employees or employee organizations. He added Section 1.03 of the Appendix B of the Mini-PERC ordinance describes further qualifications of the appointees.

Motion made by Mr. Shaw to appoint as a Blue Ribbon Panel the representatives of the Palm Beach Civic Association, a representative of the Citizens Association South of Sloan's Curve and a representative of the Preservation Foundation of Palm Beach with the provision that none of the appointees are sitting members of the Mini-PERC Commission. Motion seconded by Mrs. Smith.

Mr. Doney said historically the Council as appointed the President or Chairman of these organizations; otherwise, they have to hold a meeting for the selection of nominees.

Mrs. Wiener responded Mr. Pryor is chairman of one of the organizations and a sitting member. She suggested changing the designation to President except in the case of someone who is currently sitting on Mini-PERC.

Mr. Shaw suggested stating the President of the organization or his designee.

Mrs. Smith suggested stating President or Chairman.

Mr. Ned Barnes from the Civic Association addressed the Council and stated Louis Pryor is the President of the Civic Association and Hal Scott is the Chairman.

Mr. Randolph said the Council does not have the right to delegate its authority as a council to others and the ordinance stated the Council shall appoint a Blue Ribbon Panel and to delegate to another group the authority to name the persons to that panel abdicates the Council's authority in that regard.

Mrs. Wiener asked how the situation with a sitting member on the Mini-PERC Commission, Mr. Pryor, would be handled?

Mr. Shaw replied Mr. Barnes stated Mr. Pryor is not the chairman so therefore the motion is to appoint the Chairman of the Civic Association; the Chairman of the Citizens' Association South of Sloan's Curve and the President of the Preservation Foundation.

This motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

The Town Council adjourned for lunch at 12:20 p.m. and reconvened at 2:00 p.m.

C. Other

Other

1. Request Authorization for Town Manager to Execute Contract for Town Physician for FY95.

Contract for Town Physician

Mr. Doney said Dr. Joseph Ojea's performance has been extremely responsive to the Town's needs in the area of physical examinations and day to day clinic needs. Mr. Doney recommends Dr. Joseph Ojea be reappointed as the Town Physician for FY95, and that the Town Manager be authorized to execute the agreement for the appropriate medical services.

Mrs. Smith asked Mr. Doney to give the amount of the incidental medical malpractice insurance?

Mrs. Martinuzzi reported the Town, under its property casualty insurance includes malpractice coverage for Dr. Ojea while he is working for the Town under a designated contract, and there is no additional charge in the Town's casualty coverage for that. She said that was a coverage that was added onto the Town's coverage a couple of years ago.

Motion made by Mrs. Smith to approve the request to authorize the Town Manager to execute the contract for the Town Physician for FY95. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Management Agreement for Palm Beach Municiapl Golf Course FY95

2. Request Authorization for Town Manager to Execute Management Agreement for the Palm Beach Municipal Golf Course for FY95.

Mr. Doney referred to the memorandum dated September 2, 1994 from Mr. Bitzer and stated Mr. Dytrych has been employed by the Town of Palm Beach as the Golf Pro - Manager since July of 1978. He said Mr. Dytrych has complied with his contract requirements and has performed well. Mr. Doney said he concurs with Mr. Bitzer's recommendation that Mr. Dytrych be provided a new contract effective October 1, 1994 for the FY95 fiscal year.

Motion made by Mrs. Smith to reappoint the golf professional and have the Town Manager approve the management agreement for the operation of the Par 3 Golf Course for FY95. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Management Agreement for Seaview Tennis Courts FY95

3. Request Authorization for Town Manager to Execute Management Agreement for the Operation of the Seaview Tennis Courts for FY95.

Mr. Doney said that Mr. Jim Hay has been the Tennis Pro - Manager since March of 1991, and Mr. Hay has complied with all the contract requirements. He added Mr. Bitzer stated his performance has been very good, and Mr. Doney thought he has done a very good job for the Town. Mr. Doney said his recommendation is for the authorization of the Town Manager to execute the noted agreement for FY95 as attached to Mr. Bitzer's September 2, 1994 memorandum.

Mrs. Royal said she noted the contract for Mr. Dytrych included insurance coverage and the contract for Mr. Hay did not.

Mr. Doney responded that prior to 1991, Mr. Dytrych was hired with those benefits, and he has an annual base salary of $6,000, and if or when Mr. Dytrych retires or there is a change in the Golf Pro Manager that the Town goes to a purely contractual arrangement and move away from benefits. He said the issue had been surveyed at the time, and some of the Golf Pro - Managers receive benefits and some do not, but it would be to the Town's best interests for the golf and tennis areas to offer the jobs on a purely contractual basis. Mr. Doney said an adjustment had been made to the Tennis Pro - Manager's retainer about two years ago to recognize the difference in the benefits provided. Mr. Doney said the Tennis Pro - Manager's base is $9,600.

Mrs. Wiener asked Mr. Bitzer if the Tennis Pro - Manager is satisfied with the contract as it now reads?

Mr. Bitzer responded Mr. Hay is satisfied with the contract.

Motion made by Mr. Shaw to approve the management agreement for the operation of the Seaview Tennis Courts for FY95. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

FY95 Annual Property/Casualty Insurance & Claims Management Services

4. Recommended Program for FY95 Annual Property/Casualty Insurance and Claims Management Services - Request for Authorization for Town Manager to Execute Agreements and to Proceed with Related Details.

Mr. Doney said Mrs. Martinuzzi's memorandum of September 8, 1994 detailed and described the Town's property and casualty insurance programs. He referred to the summary recommendations that state the Town should renew all coverages in accordance with the proposal and premium cost as outlined in Appendix One. Mr. Doney said this would include total annual fixed costs of $787,489 and probable maximum fixed costs plus claims paid of $1,562,489.

Mr. Doney said Mrs. Martinuzzi has provided in the back up materials a description of each of the types of insurances provided for the Town and also gave a current status in Appendix two of the various types of claims that the Town has experienced. He added Appendix three describes in a table format the overall property casualty insurance program and workers' comp program.

Mrs. Wiener said she assumed that the excess workers' compensation, the excess property liability and the London Package rates that dropped down and the Boiler and Machinery Rates that went up are in relation to the Town's experience.

Mrs. Martinuzzi replied that is true to some extent; the property rates are a reflection on the market; the workers' comp is directly related to the Town's experience and legislative changes. She added the workers' comp claims stay in the system for a long time, affecting the rates.

Mr. Doney added many municipalities face insurance problems based on recent situations with the impact of Hurricane Andrew and other issues. He said many municipalities are having difficulty acquiring the necessary coverage and the overall pictures are negative in some areas, and the Town of Palm Beach has had the proper programs in place and has been lucky as far as disasters are concerned.

Mrs. Wiener requested an explanation of the item (1) in Appendix One for an alternative proposal for Workers' Compensation that would have saved the Town $16,080 and is not recommended by Mrs. Martinuzzi.

Mrs. Martinuzzi replied a lot of the cost for Workers' Comp has to do with the attachment level of the excess carrier which is the level that they would be involved with any claim. She said the Town has its self insured retention which is $100,000; a buffer layer and then the excess carrier. She stated the excess carrier that she is proposing has an attachment point of $450,000 and the excess carrier for the alternative proposal has an attachment point of $350,000, so the majority of the savings would be in the reduction of the London buffer layer in the interim. Mrs. Martinuzzi said the reason she recommended the initial proposal and not the alternative was that the best rating of the insurance company is their financial ability to pay claims; the proposed carrier has an A++14 rating which is a superior rating and the alternative proposal has an A-7 rating.

Property/ Casualty Insurance & Claims Management Services FY95 (cont'd)

Mrs. Martinuzzi said the ratings have to do with the carrier to pay claims and their premiums are reflective of the losses they have incurred as well as their financial abilities in relation to their assets. She added the carrier she has proposed has assets of $6.5 billion and is managed by General Electric. She added the other carrier has assets of only $250 million and is managed by an insurance holding company in Delaware. She stated these are important issues to look at because the Town has to have assurance that the carrier will be in place to pay claims when the retentions are exhausted.

Mrs. Martinuzzi said she professionally feels the alternative proposal is based on a lower attachment point in an effort to curtail the Town's business, and and will possibly raise the attachment point in a short time after they had their foot in the door. She stated it would not be in the best interests of the Town in the long run to go with the alternate proposal, and the Town would pay for it later.

Mr. Shaw asked Mrs. Martinuzzi to explain the value of the Town's docks that was listed at $1,000,000. Mrs. Martinuzzi replied the value is $1,000,000 x 3 or $3,000,000 total. She added the Town has a limitation of 50% of the value of the docks because they are personal property. Mrs. Martinuzzi stated she thinks the proposed plan is a good renewal, even with that limitation, for the Town because most of the coastal entities in Florida and several inland are facing windstorm deductibles across the board from 2 to 15% of the total value and not having any coverage for docks, piers or any structures that extend into the ocean. She said the Town has had a long term relationship with the property carrier, CIGNA, and the Town has leverage negotiating with them. She added an engineering report for the docks rating them excellent was submitted to CIGNA, and they were also aware the dock renovation was in progress. Mrs. Martinuzzi continued that in the event the Town were to experience a loss, it would be unlikely the loss would be total, but in the event that should occur with all three docks, the Town has substantial reserves set aside and in the event of a natural disaster, FEMA would reimburse for uninsured losses.

Mr. Shaw asked Mrs. Martinuzzi if a property is under insured and a claim is made, is that claim paid in proportion to the insurance?

Mrs. Martinuzzi replied the actual cash value as compared to a replacement cost, and the Town has full replacement costs on all of the coverages with a limitation on the docks. She added if a loss occurred on the docks and the total replacement value was $1,500,000 versus the $1,000,000 it is insured for, the Town would have full coverage up to $1,250,000 because that is the limitation on the policy. She stated it does not tie back into the value of the docks, and there is no penalty for that limitation. She added full replacement could be had through use of the reserves for that purpose or reimbursement from FEMA.

Mrs. Martinuzzi, responding to a question from Mrs. Smith, said traditionally the insurance broker goes into the market place after determining what the incumbent carrier proposes, to make sure that number is consistent because the long term relationship and longevity are extremely important especially in a volatile market. She added the broker markets for the Town to several different carriers and presents the proposals to the Town, and Mrs. Martinuzzi, independently, ascertains the market for the Town with the Florida League of Cities. She stated the Florida League of Cities, this year, was unable to compete with the coverages that the Town provided or the premium rates. She added the Florida League of Cities does not write medical malpractice coverage which leaves a gap in the areas of the Fire Department, Medical Director, and the Clinic Doctor, and they cannot provide coverage on the PEP reef or liquor coverage at the Golf Course.

Motion made by Mrs. Smith to approve the Annual Property/Casualty Insurance and Claims Management Services for FY95 and reaffirm the recommendations of the Insurance Manager. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

a. Consideration of Purchasing Insurance on Oceanfront Roadway Protective Seawalls and Related Infrastructure.

Consideration of purchasing insurance on oceanfront roadway protective seawalls

Mrs. Martinuzzi said she investigated the possibility of purchasing insurance on the oceanfront roadway protective seawalls and related infrastructure and found, due to the the aftermath of Hurricane Andrew, the market place is somewhat chaotic. She said these types of coverages are essentially unavailable because insurance companies have only so much money to spread out on certain risks, and they are willing to assume only so much exposure in a certain region so, in the event there is a major loss, they are not totally wiped out. She added the insurance companies who were willing to quote wanted to be sure they were going to receive sufficient monies for the exposures. She said the Town did receive one quote from Lloyd's of London which essentially offered $8,000,000 worth of coverage for $250,000 in premiums. Mrs. Martinuzzi stated this is cost prohibitive for the short term the Town would have on an annual basis, and the Town is better served to continue to self insure and save those premium costs. She added the reserves would be available in addition to possible FEMA reimbursement for disasters.

Motion made by Mrs. Smith to not purchase insurance on oceanfront roadway protective seawalls and related infrastructure. Motion seconded by Mr. Shaw. On roll call the motion carried unanimously.

5. Consideration of Renewal of Computil Agreement for Collection of Parking Fines for FY95.

Renewal of Computil Agreement for FY95

Mr. Doney stated the Town's current agreement with Computil to collect delinquent fines expires September 30, 1994, and the September 30, 1993 agreement provided for Computil to retain 32% of all revenues they collected on behalf of the Town. He added because of dissatisfaction express by the Mayor and Town Council regarding performance deficiencies during FY93 and a change in management at Computil, Computil agreed to reduce its retention fee to 25% of all revenues collected for FY94. Mr. Doney said the Town is in the process of rewriting the parking ticket and management program, and it would be extremely difficult to change companies at this time, nor could

Computil Agreement (cont'd)

the Town, at this time, project a collection rate of an alternate proposer. Mr. Doney stated he agreed with Mrs. Crozier's recommendation to approve the extension of the agreement with Computil for one year from October 1, 1994 to September 30, 1995 during which time the Town will determine the need to continue to retain their service. He added at that time if the services of a collection company are still needed, the recommendation would be to have at least three proposals from different companies in July, 1995 to prepare a recommendation for the Town Council in September, 1995.

Mrs. Wiener stated a tremendous improvement has been made over the performance of the previous year.

Mrs. Royal asked what was wrong with the previous parking ticket management program and why was it rewritten?

Mrs. Crozier stated the previous parking ticket system the Town had was written in the early 1980's, and the Town had essentially outgrown it, and there was no room in the program that was being maintained. She added the program needed to be compatible with the hand held units used for issuing tickets. She said the program will have more aggressive procedures associated with it, and the intent it not to use a collection company with the new program at all. Mrs. Crozier said the people who are booted are noted on a monthly basis, and the new program will allow them to be noted on a weekly basis with more aggressive language as each week passes.

Mrs. Smith asked Mrs. Crozier if Computil would accept the 25% rate for collection in lieu of the 32% for FY95?

Mrs. Crozier responded Computil said the 32% was reduced in FY94 based on their poor performance, and Computil has performed well during the balance of FY94, and a compromise of 30% was agreed to. Mrs. Crozier agreed with Mrs. Smith and said last year there was no negotiation, but this year there was a compromise. Mrs. Crozier said the industry recognizes the fact that frequent notices must be sent after a parking ticket is issued or the chances of collecting a 3 - 6 month old parking ticket are very slim.

Motion made by Mr. Shaw to approve the agreement with Computil for collection of parking fines for FY95. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Proposed Mutual Aid Agreement for Fire-Rescue Services between Town of PB and PB Co.

6. Consideration of Proposed Mutual Aid Agreement for Fire-Rescue Services Between the Town of Palm Beach and Palm Beach County - Request Authorization for Mayor and Town Manager to Execute Agreement

Mr. Doney stated this is an agreement for emergency services and is a mutual aid agreement between Palm Beach County, Florida and the Town of Palm Beach. He added that Palm Beach County is trying to enter into interlocal agreements for emergency services or mutual aid agreements with all municipalities, and this agreement has been reviewed by Mrs. Martinuzzi, Risk Manager, and Mr. Randolph the Town Attorney. He added certain changes were agreed to and made by the County that were necessary to protect the Town's interest. Mr. Doney recommended the Town Council authorize the Mayor and the Town Manager to exercise this agreement and enter into the interlocal emergency services mutual aid agreement with the County. He added, in the event of an emergency, total discretion is held by the Fire-Rescue Chief, his designee or the Town Manager to not respond in those instances where the Town believed a determent existed for the Town of Palm Beach. He stated this is not an uncontrolled interlocal agreement,and it does give the Town protection while providing terms and conditions that protect the Town's interests.

Responding to a question from Mrs. Royal, Mr. Doney stated this agreement is new.

Mr. Shaw asked about the automatic renewal clause in paragraph 12.

Mr. Randolph stated without that clause the issue would have to be presented to Town Council each year, and with the clause, the agreement will automatically renew as long as the Town is satisfied with the arrangement. Mr. Randolph said he did not believe this was an agreement in perpetuity since it is cancellable on notice by the Town.

Mr. Doney suggested an alternative would be to consider it on a three year basis, although the cancellation clause covers some concerns.

Chief Elmore stated the renewal clause was his preference, and the Town has agreements with other municipalities and is actively pursuing all municipalities. He stated it would be a hassle to return to the Council on a yearly basis to renew everyone of those agreements.

Mrs. Royal asked Chief Elmore if the Town had ever called anyone under these agreements?

Chief Elmore responded he could not recall calling Palm Beach County for an emergency, but the Town has called on them for hazardous materials, and Palm Beach County has not called upon the Town. He added the Town has responded to West Palm Beach and West Palm Beach has responded to the Town, and he considered the agreements beneficial to the Town.

Mrs. Smith asked Chief Elmore to explain the liability responsibilities for the Town, and should the municipality where the emergency occurred be liable for injuries to personnel or equipment?

Chief Elmore said when the Town responded to another jurisdiction, the Town uses its own equipment.

Mrs. Martinuzzi replied it was preferable for the Town to accept the responsibility and liability for the Town's employees rather than assume responsibility for someone else's people as the Town would be picking up some uncontrollable liability especially in the Workmen's Comp field. She added essentially there is no burden of proof in the Workmen's Comp field, and if an employee has an on the job injury the employer has bought that employee or that part of his/her body for the rest of his/her life. She stated when the Town is in control of their own people, they can control the supervision, the equipment, the training, safety, etc., and if the Town were to change the mutual aid agreement, the Town would be picking up people and claims that the Town had no supervision, no control and no awareness of the type of training. She added, once a claim has been incurred, the Town wants to have control over the persons activities, recovery, or transfer to an accommodating position.

Motion made by Mrs. Smith to approve the agreement for the Fire-Rescue Interlocal Agreement with Palm Beach County. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

7. Consideration of Appointment to Citizens' Committee on Airport Noise (CCAN) to Represent Town of Palm Beach.

Appointment to Citizens' Committee on Airport Noise

Mrs. Wiener stated the appointee is required to live south of Royal Palm Way.

Mr. Doney said the Mayor and Town Council and the Staff have had a continuing interest in participating in the ongoing studies on airport noise. He stated Mr. Weinberg was the Palm Beach County Municipal League's designated representative on CCAN, and Mr. Weinberg had indicated in the past that it was fair and appropriate that the Town have its own designate for a specific neighborhood seat that would be created from County Commission District 7. He added District 7 includes Royal Palm Way and extends south to the southern Town limits. Mr. Doney said, historically, an elected official has served.

Mrs. Smith indicated Mayor Ilyinsky is an elected official who lives within the indicated boundaries. Mrs. Smith nominated Mayor Ilyinsky to represent the Town of Palm Beach on the Citizens' Committee on Airport Noise (CCAN).

Mayor Ilyinsky responded he would be delighted to attend the meetings.

On roll call, the motion carried unanimously.

8. Consideration of Date Change for Tuesday, November 8th Town Council Meeting, Which Falls on Election Day.

Date change for Council meeting

Mr. Doney stated, if the date is changed, the Staff needs to know that for notification purposes including public notices. He added, from the Town Clerk's perspective, although the election is handled through the Palm Beach County Supervisor of Elections Office, there is some involvement from the Town Clerk's office and personnel also. Mr. Doney said Monday is a difficult day because the weekend does not allow the preparation time for the Staff to do last minute items.

Mrs. Royal stated the date should be changed to allow citizens time to concentrate on the National Election. She suggested changing the date to Thursday, November 10, or Wednesday, November 9.

Motion made by Mrs. Royal to move the date of the Town Council meeting from Tuesday, November 8, to Thursday, November 10, 1994. The motion was seconded by Mr. Shaw.

Mrs. Smith asked if Friday, November 11, 1994 is a holiday and would the Town Hall be closed on that day?

Mr. Randolph read from the rules of procedure of the code stating that the Council will meet in regular session on the second Tuesday of each month at a preannounced time, and special meetings may be called as provided by the Charter.

Mrs. Wiener addressed Mr. Randolph and said the meetings have been changed in the past to other dates.

Mr. Randolph stated the Council obviously had the right to set special meetings, and in changing and moving this meeting it might be called a Special meeting.

Mrs. Wiener responded the Council had never followed that procedure in the past.

Mrs. Smith asked that the motion reflect the reason for moving the meeting date be noted as the National Election.

Mr. Shaw clarified the date for the meeting will be Thursday, November 10, 1994.

On roll call, the motion carried 3/1 with Mrs. Smith casting a negative vote.

Employee of the Year Meeting

Mr. Doney said the Annual Employee of the Year Designation Meeting at the Chamber of Commerce meeting will take place on Thursday, November 10, 1994, and this will present a problem for all the department heads and the Town Manager's staff to return for the Town Council meeting by 9:30 a.m.

Mrs. Wiener offered to have the Chamber of Commerce present the Employee of the Year Award earlier in the meeting.

Mr. Shaw asked if the meeting date could be changed to Wednesday?

Motion made by Mrs. Royal to reconsider the previous motion to move the meeting to Thursday, November 10, 1994. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Motion made by Mr. Shaw to move the November Town Council meeting to Wednesday, November 9, 1994. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

9. Consideration of Renewal of Agreement with Advanced Protective Service, Inc. for Dock Security Services for FY95.

Renewal of Agreement with Advanced Protective Service

Mrs. Wiener said she did not have in the backup materials provided to the Town Council any information concerning the contract or the amount Advanced Protective Service, Inc. is receiving on an hourly or weekly basis for the service.

Contract with Advanced Protective Service (cont'd)

Mr. Doney reported the total annual contract price is $41,607 and the terms and conditions can be explained by Mr. Dusey. Mr. Doney said the amount is the same as the previous year's contract.

Mr. Dusey said one person is hired for all the hours Town employees are not present and this varies.

Mr. Shaw asked Mr. Dusey what the cost of the operation would be if it were covered under police services?

Mr. Dusey replied the present hourly rate is between $7 - $8 and police services would be much higher, and the reasons security is needed are to deter people from being in the parking lot who should not be there, robbery of boats, and the person polices the docks to prevent boaters from docking who do not have reservations either collecting fees from them or contacting the police to have them removed.

Motion made by Mr. Shaw to approve the renewal of the agreement with Advanced Protective Service, Inc. for dock security services for FY95. The motion was seconded by Mrs. Royal.

Mrs. Smith asked Mr. Dusey to define the hours the service is used?

Mr. Dusey responded the hours were from 5:00 p.m. in the evening until 8:00 a.m. weekdays and weekends.

Mrs. Smith asked if the Public Works employees have extended their services during the weekend hours so that some of the security people would not be needed.

Mr. Dusey replied the request was to have two Public Works employees present on the weekend when enough activity is happening to help tie up because one person cannot handle all the docks. He added the security people would be present 24 hours a day over the weekend. Mr. Dusey stated this security company is one of the most effective companies the Town has used.

Mr. Shaw asked if it would be beneficial to have a dock person on a night shift to perform other duties?

Mr. Dusey responded negatively. Mrs. Wiener said the person on the night shift should be a security person with training to handle any situation.

On roll call, the motion carried unanimously.

Potential Sale of Town-Owned Property on Pike Road

10. Consideration of Potential Sale of Town-Owned Property on Pike Road (West of West Palm Beach in Unincorporated Area of Palm Beach County).

Mr. Doney said the location of the property is west of the Turnpike and south of Belvedere Road, and the Town has two locations for the collection of yard trash and vegetative matter which are Skees Road and Okeechobee Boulevard. He said, based on an assessment that Mr. Dusey has done of the acreage and size of those two parcels and the operations that are currently in place, the staff does not think there is a future need for the Town to retain the Pike Road piece of property. He stated the frontage on Pike Road is 1,320 feet, and it is 660 feet deep or about 20 acres. He added it is zoned, under Palm Beach County unincorporated area, industrial. Mr. Doney said one of the problems is the illegal dumping that goes on in the area especially on pieces of property that are not being utilized. He said Palm Beach County has notified the Town that water service is being installed in that area due to the development, and the Town would incur an additional cost if the Town would develop and use the property, but the staff does not see that necessity. Mr. Doney stated if the property were to be sold, specific procedures under State law would have to be followed and Mr. Randolph would have to advise the Council on those issues. He said the costs for the water main installation for the Town owned property would be $33,343, and he requested direction from the Town Council.

Mrs. Wiener replied, before Town Council could consider any action, the value of the property would have to be determined. She added if the property had tremendous value, the cost of the water installation would not be of as much importance, and if the value of the property were minimal, then that type of water expense would be out of proportion to the value.

Mr. Randolph, agreeing with Mrs. Wiener, said an appraisal would be needed if the property were to be sold, and an appraisal is needed as part of the decision making process.

Mrs. Smith asked why the Town should consider installing a water meter if the property may not be retained by the Town?

Mr. Dusey replied there is no requirement to install the water main; however, an assessment has been made against the property for $33,000, but this does not have to be paid until the hook up is made. He added the longer the Town waits to do the hook up, the larger the hook up charge is, and Mr. Dusey did not want to do anything that would hinder the sale of the property.

Mr. Dusey, responding to a question from Mrs. Smith, said the County charges a fee for every month of setting aside the meter for having the capacity at the plant, and that fee applies forever. Mr. Dusey said the hook up charge would not have to be paid until someone wants to order a hook up.

Mrs. Smith said the Town must have an idea of the value of the property, and the Council should consider the cost of the assessment as it relates to the value of the property.

Mrs. Wiener said the Council needs to consider the cost of an appraisal and no decision could be made without one.

Mr. Shaw said he did not think the potential value of the property is relevant to the water main issue, and the cost of the assessment is not going to change. He added if the property is sold, it is sold with a condition--if it is an improvement, it increases the value, and if it is sold without, it decreases the value. He said to invest $33,000 out of the Town funds to install a water meter is a loss of revenue on that money that could be sitting in an account, and the earnings on that money would more than offset the cost of installing a meter at a later date. He added the issue of an appraisal needs to be addressed, but another question worthy of consideration is what may be the best use of the land for the Town? He said a long term lease may be in the best interest.

Pike Road property (cont'd)

Mr. Doney responded the water meter issue is what prompted the issue to be presented to the Town Council. Mr. Dusey added his recommendation is not spend any money to install the water meter at all.

Mr. Dusey said the Mayor and Town Council have to decide to sell or not to sell the property since it appears to be in excess of the Town's needs.

Mayor Ilyinsky suggested an appraisal be authorized, see what it is worth and then make a decision.

Mr. Shaw said the Town should know the value of the property it owns and also the best uses of those properties since land swaps or other situations may be considered at some point in time.

Mr. Doney replied the Town has an inventory of all Town owned property, internal and external, and these are identified for insurance purposes. He added the Property Appraiser's numbers for valuation are not good because the Town is exempt from paying taxes. Mr. Doney said the staff does not see any of the other Town owned properties being classified as excess in the foreseeable future, and this property is the only one not needed for a specific purpose for which it is currently being used.

Mrs. Wiener stated the basic determination to have or not to have an appraisal at this point is the issue, and based on that appraisal, the Town Council should decide to sell the property or not.

Motion made by Mrs. Smith to obtain quickly an appraisal on the Pike Road (west of West Palm Beach in Unincorporated Area of Palm Beach County) and bring back to the Council in October and at that time the Council will determine whether or not to go ahead with the sale of the property. In the interim, the staff can look into the issue if this property is of particular use to the Town either presently or in the long range plan. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Doney requested an appropriation of a sum of money to cover the cost of an appraisal.

Mr. Shaw asked if someone in the audience could estimate the cost of an appraisal?

Mr. Doney suggested the staff could make calls to several companies and have an estimate of the cost.

Mr. Raymond Royce, attorney, with agreement from Paul Prosperi, stated the cost should be between $2,500 and $5,000.

Mrs. Wiener said the staff will report back to the Council on a probable cost for the appraisal before the end of the meeting.

11. Consideration of Request for Refund for Solid Waste Fees by Leverett House Condominium.

Request for refund for Solid Waste Fees by Leverett House

Jay Denger, Manager of the Leverett House Condominium, and Mr. Norman Belfour, President, addressed the Council. Mr. Denger said the condominium association was turned over to the unit owners on May 31, 1989, and since that time the unit owners have paid twice for solid waste collection services provided by the Town of Palm Beach, once through taxes and once through billing by the Town to the Condominium Association. Mr. Denger said the Town Council at last month's meeting resolved to set a precedent for such requests for refunds by offering one year's fees. Mr. Denger requested the Council reconsider that precedent based upon a previous precedent set at the July, 1993 meeting. He stated at that meeting, Bernard Heeke, representing Tres Vidas Association, presented a request under very similar circumstances, and the minutes of that meeting stated it was Mr. Randolph's opinion that the association was entitled to a refund of all fees billed and paid since turnover of the association. Mr. Denger said at the time of the July, 1993 Council meeting, $7,000 had already been refunded to Tres Vidas, and the Council then decided to refund half of all the fees collected prior to the date of turnover retroactive to 1985. He added, a manager of another condominium, under similar circumstances, had ten years of double fees refunded. He stated the Leverett House is requesting a refund of the actual fees, no interest or collection costs are involved paid since the turnover of the association which is less than five years.

Mr. Randolph responded since the Town Council has handled the rebates in three different ways, a precedent has not been set. He added the last one presented to the Council from L'Ermitage received a one year refund, but it is up to the discretion of the Council as presented by the Leverett House. Mr. Randolph stated he did not remember the incident where one association received a refund of ten years worth of fees.

Mr. Denger said The Villas received a refund seven years ago, and he had heard the refund covered a ten year period. He added Tres Vidas received last year a refund of half of the fees prior to turnover equaling $4,500 over the $7,000 awarded by the Town Council. Mr. Denger stated Leverett House is requesting the refund of the fees since turnover.

Mrs. Wiener cited an example of a bill submitted by an insurance company she received for services that was incorrect, and she thought the normal procedure would be for the Association to check the incoming bills and notify the billing party that an error has been made. She added responsibility for the five year error should rest with the Condominium Association, not just the Town's Public Works Department. She said the Town Council's decision at the August 9, 1994 meeting concerning L'Ermitage refunding one year's fees should be followed. Mrs. Wiener added a tremendous drain results to the Town that is not of the Town's making.

Mr. Shaw stated he does not think the Town has made any errors, and this situation is similar to the solicitation permits where an obligation exists to notify the Town of changes or events. He added the Town did not do anything to change the rules; however, the Condominium Association did make changes and failed to notify the Town. He said the Town Council has made a conscious effort

Refund for Solid Waste Fees - Leverett House (cont'd)

to resolve the situation with last month's decision for L'Ermitage's refund, and he would like to see the same offer made to Leverett House.

Motion made by Mr. Shaw to refund one year's fees to Leverett House and to cease billing henceforth. Mrs. Wiener passed the gavel to Mrs. Smith and seconded the motion.

Mrs. Royal stated she thought it was outrageous for the condominiums including the Leverett House to request these refunds when they cannot keep their accounts correctly, and it is not the Town's responsibility.

Mr. Denger responded that a mistake was made, and the participants should not try to look at who is at fault, but the fact remains that the unit owners have paid twice for the same service. He added the confusion may lie in the fact the tax bills received by the owners do not list every service, and the owners do not pick up on this easily. He stated no hardship would be incurred by the Town to refund the fees that have been collected.

Mrs. Wiener told Mr. Denger the Town was not continuing in this practice but was offering a year's rebate, and the management staff, accountants, etc. are responsible for discovering billing discrepancies. She added the Town cannot be held accountable for many associations requesting large refunds that are the result of sloppy bookkeeping practices.

Mrs. Smith asked if Levertt House notified the Town of Palm Beach that the building had been turned over by the developer to the association and what was that date?

Mr. Denger responded he did not have that date, and the only notification was a telephone conversation with Mr. Dusey. Mr. Denger said that Mr. Dusey had Public Words personnel conduct a survey of all the Condominiums last November in response to the Tres Vidas refund question and that was when the Levertt House billing was stopped.

Mrs. Smith asked Mr. Denger what actions have occurred during the last ten months? She added Mr. Denger is asking for a compromise but he is asking for a total of $9,845.22?

Mr. Shaw restated the motion that he made to refund one year's collected fees to the Leverett House.

On roll call, the motion carried 3/1 with Mrs. Royal voting negative.

Strangler Fig Tree - Lagomar Road

12. Consideration of Strangler Fig Tree - Lagomar Road.

Mr. Doney explained the Town has attempted to come to an agreement with the abutting property owners along Lagomar Road to see if they could assume liability if a problem would arise with the tree in its present condition.

Before Mr. Dusey reported on his findings, Mrs. Wiener asked Mr. Randolph if one property owner could assume the responsibility if this tree would cause damage and would the Town be held harmless?

Mr. Randolph replied any assumption by a property owner would not preclude the Town from being named in a law suit because of the deep pocket theory. He added, in the event of a law suit, if the Town had an agreement from a property owner, the Town would go against the insurance policy provided by the property owner to the Town. He stated his concern was with the continuation of the policy should any changes in the property ownership occur. He added the Town either has a hazard in the right-of-way or not, and if a hazard exists it is the responsibility of the Town to take care of it.

Mr. Dusey said the horticultural consultant has found the tree to be rotten, and the consultant has been reliable in his assessments of potential problems in the past. Mr. Dusey said the tree had been scheduled for removal, but the residents on the street were notified because Mr. Dusey knew the residents had become attached to the tree and it is part of the character of the neighborhood. He stated an attempt was made to keep the tree without the Town suffering liability when the tree fails.

Mrs. Wiener asked what the Town's insurance liability was?

Mrs. Martinuzzi said trees and plants are not insurable, and the Town generally does not accept liability for damage by trees, palm fronds, etc. because they are considered to be an act of God when they are damaged, struck by lightning or wind. She stated the Town's concern is the preexisting condition that the Town is aware of and has prior knowledge. She said if the tree falls, and the Town had failed to remove it, the Town could be liable since the Town had prior knowledge and did not remove the tree.

Mrs. Smith noted that Mr. Haley, the consultant, had notified the Town in March of 1993 that the tree was in dangerous condition and could fall at any time. She said 1.5 years had passed since that evaluation but questioned why the Town did not seek a second opinion, and she would be more comfortable with a second opinion since the tree has survived for this long.

Mr. Dusey responded Mr. Haley has been reliable in the past, and the Town is fairly prudent in its expenditures for consultants.

Responding to questions from Mrs. Smith, Mr. Dusey said the Public Works Department did not have any alternate solutions other than the removal of the tree after the matter of the insurance was addressed.

Mrs. Smith stated she attempted to find a compromise for this situation since the residents are upset about the tree.

Mr. Dusey replied, based on generally acceptable engineering standards, planting a tree in the middle of the road is inviting a liability issue.

Mayor Ilyinsky said he had intervened last year to delay the removal of the tree until Mr. Dusey had time to address the situation. He advised that if the Town does remove the tree, to notify all residents in the immediate area and include a letter including an explanation of the insurance liability with the notice.

Strangler Fig Tree - Lagomar Road

Mr. Shaw said he found it odd that it took a year to get to this point, and many trees are in the middle of the road that can be barricaded and protected from traffic. He suggested replacing the tree with another kind of tree that would be a better choice for the middle of the road. He added Lagomar is not a major thoroughfare, and since it is a dead end road, perhaps another solution can be found. Mr. Shaw pointed out that Casa Bendita has a gazebo in the middle of the road.

Mrs. Smith asked Mr. Dusey if he could look into some of the suggestions made by the Council and return with something by the October meeting? She suggested the Mayor become involved with the residents on the street in an attempt at a solution to the problem.

Motion made by Mrs. Smith to defer the matter of the tree until the October meeting with the Mayor's input. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

13. Consideration of Request for Authorization to Contract for Raft Removal.

Raft Removal

Mr. Doney said this is a contingency authorization the staff is requesting from the Town Council since a number of rafts have washed ashore, and the Public Works Department has needed assistance from Fire-Rescue, the Police Department and others to dismantle and remove the rafts. He added other services are sometimes required when the Town cannot handle the dismantling.

Mrs. Smith asked Mr. Dusey how large were the rafts, since she noticed one raft required 12.5 hours to remove from the beach.

Mr. Dusey replied it depends upon the type of construction and if the raft is wood, Town employees can cut it up fairly quickly, but steel presents different problems.

Mrs. Smith stated a raft has been on her beach for two weeks and has not been removed, and asked Mr. Dusey to explain the amount of time required to dismantle these rafts.

Mr. Dusey stated one of the rafts washed ashore in the north end that is reminiscent of the African Queen, and it has a motor and is very large. He added this will take a long time to remove, and Public Works does not have the equipment to remove this type of craft.

Mrs. Wiener said Mr. Dusey is equipped to make the judgement of how much money this will take and the methods necessary to accomplish the removals. Mrs. Wiener stated she did have one concern in that the Town is obviously going to have to set a little money aside, and it might be a wise idea to send the billing along with a letter, stating the Town's case, to the Governor, just in case Florida does make any sort of recovery from the federal government so that the Town receives its share of the federal money. She suggested keeping a running total and whatever office in Tallahassee handles the distribution of federal funds should be made aware of the Town's expense.

Mr. Shaw asked Mr. Dusey if there was a concern for the possibility of hazardous materials on these rafts and are there any federal or state grants already established for the removal of the rafts?

Mr. Dusey answered he was not aware of any grants but he would be aware of that possibility. He said one incident did require the services of the Fire Department to determine if the removal would cause problems for the Town. Mr. Dusey said the expense would be incurred by the Town for removal of any substances.

Motion made by Mrs. Smith to authorize Mr. Dusey to do whatever means possible for the raft removal taking the funds from the emergency disaster relief program, keeping a list of the expenses incurred in this emergency situation to be forwarded to the State of Florida. Mrs. Smith asked Mr. Dusey for a dollar amount to be attached to the request.

Mr. Dusey replied the total to date is $5,500 for equipment and manpower and that figure is growing. He said Beach Cleaners have been contacted and other small contractors have been willing to give quotes on a per raft basis. Mr. Dusey added nine rafts are still on the beach awaiting removal.

Mrs. Smith added to her motion the amount of $5,000 with the provision Mr. Dusey may return for additional funds if the Cuban situation is not resolved. Mrs. Wiener passed the gavel to Mrs. Smith and seconded the motion. On roll call, the motion carried unanimously.

14. Consideration of Renewal of Agreement with Coral Building Services, Inc. for Janitorial Services for FY95.

Agreement w/ Coral Bldg. Services, Inc.

Mr. Doney said Coral Building Services was awarded bid number 93009 on June 14, 1994, and that contract provides for four one-year extensions with scheduled increases if mutually agreed on by the Town and Coral Building Services. Mr. Doney said the staff is recommending the Town Council authorize the one year extension of the janitorial services with Coral Building Services, Inc. in the amount of $56, 424. He added this is a $1,344 increase over last year's cost as a result of contract option clauses, and sufficient funds were budgeted to cover the scheduled increases and Coral Building Services has performed satisfactorily.

Mrs. Royal asked Mr. Dusey by what method the Town determines the citizenship legality of the employees of Coral Services, Inc.?

Mr. Dusey responded record checks are done on all the employees.

Motion made by Mrs. Royal to extend the janitorial services for FY95 for Coral Building Services, Inc. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

The Commission recessed at 4:15 p.m. for a 10 minute break.

Approval of Warrants & Expenditures

XII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR AUGUST 1994.

Motion made by Mrs. Smith to approve the warrant registers and funds expenditures report for August, 1994. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Communications from Citizens

XIII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

There were no comments from citizens.

Development Reviews

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of August 24, 1994 - Excerpt Available in Town Manager's Office.

Motion made by Mrs. Royal to accept the report of the Architectural Commission. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Variances, Spec.Exceptions & Site Plan Reviews

B. Variances, Special Exceptions and Site Plan Reviews.

Mr. Moore said Peter Broberg was present in the audience to address the Town Council concerning the postponement of Special Exception 28-94, Hals Realty Associates, 401 South County Road.

Spec.Exception 28-94

Mr. Broberg stated the applicant does not have the required drawings finished for presentation at this meeting and requested the project be postponed for one month.

Mrs. Wiener asked if anyone in the audience was waiting to hear this item and received no response.

Motion made by Mrs. Smith to defer Special Exception 28-94 until the October 11, 1994 meeting. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Old Business

Var. 56-93

Old Business

1. Site Plan Review in conjunction with Zoning Variance No. 56-93 to authorize substitution of a restaurant on the site of an existing radio station at 3000 South Ocean Boulevard by H. Loy Anderson, applicant. R-D(1) District. Deferred from August meeting.

Paul Prosperi stated this is a continuation of the variance granted in October, 1993 for the WPBR property adjacent to the Lake Worth Casino. Mr. Prosperi said the tenant for the property will be Morrison's, Inc. who will operate a restaurant called Ruby Tuesday's. Presenting the site plan, Mr. Prosperi said the present building containing 4987 square feet will be utilized; the 18 foot underground basement will be retained to provide storage for a dumpster and trash and dumpster washing. He continued 64 parking spaces will be provided although 51 parking spaces are required, and 135 seats and a 1,500 square foot kitchen area will be included in the restaurant.

Mr. Prosperi stated the curb cut is proposed to be along the perimeter road which is under the Lake Worth jurisdiction, and if Lake Worth did not allow the curb cut, a site plan would have to be prepared showing the curb cut on A1-A or South Ocean Boulevard.

Mr. Prosperi stated he has met with the attorney, Mr. Royce, representing the property owner to the south, and they have worked out a list of conditions to which the applicant agreed. He stated the following conditions have been agreed to by both parties:

1. The applicant will install a six foot high masonry wall along the common property line.
2. The applicant will install and maintain an average five feet wide, ten feet high landscape buffer along the property line.
3. The applicant will remove the parking area along the east side of the property along the old A1-A right-of-way parallel to the ocean, and that area will be grassed in.
4. The dumpster and the trash wash will be installed in the basement area with doors opening to the west, away from the south property line in the middle of the existing building.
5. There will be no mechanical units in the south setback.
6. There will be no exterior lights and no windows on the south side of the building.
7. The north facing door will be the primary entrance door.
8. The east facing door will be a fire exit and a concrete walk will end by the door.
9. There will be no outdoor music or service.
10. Existing Australian pine trees will be trimmed on the common property line and topped at 15 feet.
11. The restaurant will install state of the art scrubbers, vents, exhausts and minimize food odors.
12. There will be no sidewalk at the southwest corner of the building, and the existing stair will be enclosed.
13. There will be no outside gazebo as shown on the original site plan.

Mr. Prosperi stated the applicant has made as many compromises as possible to allay the concerns of the property owner to the south to minimize the noise and the impact of a restaurant use on that property. He added the area of disagreement is the issue of closing time, and the tenant does not wish to be at a disadvantage when compared to other restaurants in Town. He said a survey was conducted and most of the restaurants close around midnight, and that is the closing time the applicant requests. He added other restaurants close later but the ones that are mainly restaurants and not bars close at midnight. Var. 56-93 (cont'd)

Mr. Moore said his department has been in contact with Mr. Royce, representing the neighbors to the south, and Mr. Prosperi, representing the applicant. He continued all the items alluded to by Mr. Prosperi during his presentation have been listed in a letter from Mr. Royce. He added the issue of the closing time is a decision for the Town Council and not the staff considering the neighbors to the south. He said most restaurants do stay open until 11:00 -12:00 p.m., although Mr. Royce requested an 8:00 p.m. closing time. Mr. Moore stated staff has no objections to this project, although the staff requested any signage, which is not a part of this presentation, conform to the Town's ordinances including any signage that would face the Lake Worth property.

Mrs. Wiener requested Mr. Randolph advise the Council from a legal point of view concerning the closing time.

Mr. Randolph replied the Council could impose any reasonable restrictions that relate to the use of the property and closing time does relate to the use of the property, and therefore the Council can address that issue.

John Metz, owner of Murray's Palm Beach Diner at 2880 South Ocean Boulevard, addressed the Council and stated he prepared a letter to be read to the Council.

Mr. Moore noted this location is 500 feet from the proposed Ruby Tuesday's.

Mr. Metz stated his concerns are for the noise problem created by the potential use of the site as a restaurant and a probable cruising area. He added approximately 40% of Ruby Tuesday's business will be from liquor sales as opposed to restaurant business and will create an undesirable element in the area. Mr. Metz said he conducted a poll among the patrons of his restaurant during the last 60 days and 66% of the participants are against the use of the site as a restaurant.

Mrs. Wiener asked Mr. Metz if he did realize the use of the site as a restaurant has already been granted.

Mr. Metz replied he did understand that, but he recently sold 35 of his restaurants to the Wags chain excluding the Palm Beach restaurant because it was his understanding that the Town did not wish to have franchised restaurants in the Town.

Mrs. Wiener noted a Howard Johnson's restaurant existed in the same spot Mr. Metz's Palm Beach Diner does for many years and the Town has no ordinance against franchises.

Mr. Metz said he received that impression when he appeared before the Town Council when he bought his restaurant from Howard Johnson, and he was surprised when Ruby Tuesday's, a franchised restaurant, was granted permission to take over the WPBR site. He added a consultant he used to prepare a town-serving statement previously had prepared one for Ruby Tuesdays, and in his opinion, Ruby Tuesdays is not town-serving.

Mrs. Wiener said Mr. Metz's comments are not germane to the issue being discussed at this meeting which is the closing hours.

Mr. Moore explained the Mayor and Town Council are looking at the site plan review which was a condition of the granted special exception where the town-serving issue was addressed and the variances that went with it. He added the project received a conditional approval that required the applicant to return with a site plan review that encompassed such items that have been addressed at this meeting. He stated the issue at this meeting is not the granting of the special exception, it has been granted with variance, but the issue before the Town Council is how the property is to be used in conjunction with the restaurant use. Mr. Moore said Mr. Metz's restaurant is closer to 1,000 feet away from the site and not 500 feet as previously stated.

Mrs. Wiener said certain, final decisions are to be made at this meeting; however, the variance has been granted and asked Mr. Metz to address any of the issues presented to the Council at this meeting.

Mr. Metz replied his concerns were the noise and the type of traffic that will be generated by a franchised restaurant including the bar and the severe parking problem that will be created. Mr. Metz said he believed he would have been notified of the original meeting if the Lakeworth Casino had not been where it is, separating two parts of Palm Beach.

Mr. Moore answered that Mr. Metz's property is not within the two hundred feet notification limits.

Mr. Ray Royce, attorney for the Beachcomber Apartment property immediately adjacent to the south of the proposed project, addressed the Council. He said Bill Walton, manager of the property, and Mrs. June Powell who is one of the principal owners of the property. He stated his clients were very concerned about the noise and the potential for problems and conflicts related to having a restaurant next to the Beachcomber Apartments. He added the radio station was a nice, quiet neighbor with very little traffic with essentially no disturbances emanating from it. Mr. Royce said the photographs he presented showed the closeness of the pink apartments with the white roofs to the existing radio station building. He added the closest distance is approximately 20 feet from building to building, and the closeness aggravates the situation.

Mr. Royce stated he understands the decision has been made to allow the restaurant use of this property, but he was requesting as much possible protection from the Town Council to alleviate the potential problems. He said he had met with Mr. Prosperi and worked through a number of site plan adjustments for which he and his clients are appreciative. Mr. Royce stated minor differences existed between the two lists, but the main problem between the two parties was the hours of operation. He said that John G's Restaurant, the only other beachfront restaurant in that area, closes at 3:00 p.m. Mr. Royce suggested there may not be a need for a really late night type

Var. 56-93 (cont'd)

restaurant in the area. He added the site plan shows a fairly large bar in the middle of the building and his concern is if the restaurant stays open late into the evening, it will become a late night watering hole and will attract people into the community from across the bridge, and they will have a few drinks, go out onto the beach and create problems. Additionally, he said it takes about two hours to close up and clean up a restaurant, and the employees will be there for that period. Mr. Royce said his clients are concerned about the squealing of tires, the honking of horns, the slamming of doors and the shouting voices as they will affect the peace, quiet and tranquility of the guests of the Beachcomber. Mr. Royce said the Beachcomber consists of three buildings; one of which will be near the front yard of the restaurant; one has an apartment with an open window close to the wall of the restaurant and a third building will be adjacent to the parking lot. He also questioned if the Town of Palm Beach police or the Lake Worth police will be called to control the noise in the area. Mr. Royce asked for an 8:00 p.m. closing time or at least stop serving at 8:00 p.m. and leave by 10:00 p.m.

Mrs. Wiener asked Mr. Royce if the Beachcomber was a condominium building?

Mr. Royce responded its use is an apartment motel and does not have any restaurant or bar facilities.

Mr. Walton indicated at one time a restaurant did exist in the building but it was closed some time ago. He said the Beachcomber's clientele during the winter months are mostly guests who stay two weeks at a time or longer, and in the summer time, the stays are shorter. He added some of the residents will stay 6 months at a time, and these guests are mainly older people. He said currently the guests complain about the beach noise and additional noises from a restaurant will not be good.

Mr. Royce stated the two lists, his and Mr. Prosperi's, have only minor problems, and one is the 6 foot high masonry wall which Mr. Royce suggested be stuccoed and painted on both sides. He also requested there be no washing of dumpsters at any time outside, and although Mr. Prosperi's list said the washer and cleaner will be installed in the basement, Mr. Royce would prefer the agreement stated there will be no washing outside at any time.

Mrs. Wiener suggested Mr. Prosperi stand next to Mr. Royce and indicate to the Council his agreement with items on the list to save repetition.

Mr. Prosperi answered his client agreed to paint and stucco the wall, and the dumpster washing will be conducted inside.

Mr. Royce requested the agreement should state the restaurant will install and maintain these scrubbers for washing.

Mr. Prosperi agreed to that statement.

At 4:50 p.m., Mrs. Wiener announced that a ten minute break was in order since a 5:01 p.m. meeting was scheduled.

The regular Town Council meeting was temporarily adjourned at 4:50 p.m.

The regular Town Council meeting reconvened at 5:55 p.m. after the 5:01 p.m. meeting was held.

Mr. Prosperi said his clients, the owners of the property, had negotiated for about a year with the tenant, Ruby Tuesdays. He added the 600 parking spaces in the Lake Worth Casino lot make this a less than desirable marketable location. He said the problem is the tenant has stipulated the midnight closing time as part of his agreement with the property owners. He added his client is agreeable to install a nylon mesh membrane in the asphalt paving in the parking lot which is supposedly effective in reducing tire sounds and squeals in the parking lot. He said an acoustical cement tile block that could be used for building the wall between the restaurant and the Beachcomber, and his client would be willing to make the wall higher. He added a lot of the parking lot noise comes from the Lake Worth Casino lot.

Mr. Prosperi said the floor plan shows a 135 seat restaurant with 24 seats at the bar or about 17% of the seats are devoted to the bar area and is not intended to be a primarily bar use.

Mr. Royce replied his clients will be happy to have the mesh in the paving and the acoustical wall but that does not really solve the problem. Mr. Royce stated the Town should guide the tenant as far as the closing hours are concerned and not have the tenant guide the Town. He added the Town should say this is a quasi residential area with people trying to sleep next door and control the closing hours. He said if an out of town company headquarters think that the 8:00 p.m. closing suggested by Mr. Royce is unreasonable, then the company should come back with what they consider a reasonable compromise.

Mr. H. Loy Anderson, one of the owners of the property, stated the problem is not the neighbors next door but the crime and the noise in the 600 parking space area located adjacent to the Lake Worth Casino. He said other restaurants in the Town abide by a closing time that is standard for the Town which for most of them is 2:00 a.m. He added Ruby Tuesdays has agreed to a closing time of midnight, and they feel this is a disadvantage to them. He said that he and Mr. Prosperi have indeed tried to reduce the closing hour but have been unsuccessful in doing so.

Mr. Shaw said the Beachcomber's residents are really a transient group and many residential properties object to having transient or hotel type of neighbors because they are concerned that people come for a short period of time, and since they do not live there, they themselves make noise. He added he was sure the Beachcomber had a vacancy factor, and even though the Beachcomber has long-term guests, these guests do not expect to come into a hotel environment and be secluded in the hills. He said these guests probably accept the fact there will be some adjacent property noises around any given hotel. He added Mr. Royce indicated a noise factor existed, and a point of compromise should exist since the Beachcomber is not truly a residential property; the Beachcomber is a commercial property and it is creating a transient environment with people arriving at different hours. Mr. Shaw said some of the guests may consider it an advantage to have a restaurant next door to go to. He asked Mr. Royce what the occupancy factor is for the building closest to the restaurant driveway.

Mr. Royce stated his clients are concerned mainly with the tenants, and these people are mainly older who have been returning year after year and like to go to bed earlier than a younger, transient, stay up all night crowd. He added the Town residents who live in that area are mainly in the same age group. Mr. Royce said although there is an existing problem, this problem does not justify aggravating or intensifying the problem. He added if he knew the restaurant was going to be quiet by 11:00 p.m. probably that would be acceptable, but midnight and 1:00 a.m. activities at the restaurant will cause the loss of customers to the Beachcomber whether it is this year or the following year when they may not return. Var. 56-93 (cont'd)

Mrs. Royal asked Mr. Moore what the closing hours for the Palm Beach Hilton or the Four Seasons Ocean Grand were? She also asked what Mr. Metz's Palm Beach Diner's closing time was?

Mr. Moore responded that the Ocean Grand and the Hilton both have restaurant - night club licenses so they are open longer than the proposed closing time in this case. Mr. Moore replied he did not know the exact time for the closing hours.

Mr. Metz replied the Palm Beach Diner closes at 11:00 p.m.

Mr. Prosperi mentioned that Charley's Crab has reached a compromise where they have week night and weekend hours of 11:00 p.m. and 12:00 a.m. He added the issue is the exiting of the parking lot at a late hour.

Mrs. Wiener asked Mr. Prosperi if his clients have valet parking?

Mr. Prosperi replied they did not plan to have that.

Mrs. Wiener added this is something that might be helpful since this would prevent people from walking around and shouting late at night.

Mr. Prosperi replied that had not been considered previously, and that is an issue the property owner could control because if the tenant did not wish to pay for it, the property owner would. He suggested valet parking in the evenings after 8:00 p.m. and the entrance is on the north side which is on Lake Worth Road, no closer to the Beachcomber than traffic is presently.

Mrs. Royal asked Mr. Prosperi if Lake Worth refuses to allow the curb cut on Lake Worth Road, where will the new curb cut be located?

Mr. Prosperi identified the second choice for a curb cut in the vicinity of the Town's lift station, but he did not think Lake Worth would close off the Lake Worth Road curb cut unless their property would be developed at some date.

Mr. Shaw asked Mr. Prosperi if he would consider or agree to a security guard or the presence of an individual at the property in lieu of the valet to mitigate the noise levels?

Mr. Prosperi agreed a security person could be hired.

Mr. Shaw asked what closing hours other Ruby Tuesdays have? Mr. Shaw stated he thought the other restaurants were not free standing but part of other complexes.

Mr. Prosperi replied the one at Palm Beach Gardens Mall has an exterior entrance; the one at the Mizner Village is open quite late and the one at Adventura is open until 1:00 a.m. He added he was not aware of any entertainment at the other restaurants.

Mr. Royce said the location of the Beachcomber's buildings is extremely close to the restaurant and are going to be tremendously impacted. He asked that consideration be given to the Beachcomber and Town residents in the area, as existing entities, and not a newcomer, Ruby Tuesdays. Mr. Royce said he appreciates the wall and the security guard, but he still thinks the hours should be considered. He added perhaps Ruby Tuesdays are bluffing since they are not present to represent themselves.

Mr. Shaw asked if 11:00 p.m. is a problem for the Beachcomber or would 10:00 p.m. for dinner and 11:00 p.m. for bar service be acceptable for the weekdays and extra hours on the weekends?

Mr. Royce replied his clients would not like those hours but, it is better than what has been proposed.

Mrs. Smith said the Town Council had a similar situation last year when the subject of Janiero's came up, and this restaurant is in a residential area. She asked Mr. Moore what time Janiero's was required to close?

Mr. Moore replied it was 11:00 p.m. with an option they could bring that back at a later date after establishing a record for maintaining their operation without complaints.

Mrs. Smith asked if it were not true that the Town was reviewing Janiero's record for complaints that would be received during the year?

Mr. Moore replied that was correct and Janiero's had the right to return in a year to extend the hours.

Mrs. Smith added, to the best of her knowledge, no complaints have been received from the condominiums close to Janiero's.

Mr. Moore replied his office has not received any, but he could not speak for the Police Department.

Mrs. Smith asked who would have jurisdiction over this property over complaints since it fronts on the Town of Palm Beach and borders on the City of Lake Worth?

Mr. Moore replied the property does have frontage on South Ocean Boulevard and is located in the Town of Palm Beach. The Town would be called for any disturbance that occurred on the property known as the WPBR property subject to the variance and site plan review.

Mrs. Smith asked if part of the existing parking lot is used by the people who use the Lake Worth Pier?

Mr. Moore said he believes it is used although there are no parking signs that are up there, and tickets are issued occasionally. He added both Mr. Royce and Mr. Prosperi agreed that part of the property would be abandoned that was in reference on the east side of the building.

Mr. Prosperi, responding to questions from Mrs. Smith, stated the parking area to be abandoned on the ocean side would be sodded.

Var. 56-93 (cont'd)

Mr. Royce said he did not accept Mr. Prosperi's offer to trade 16 front parking spaces for 16 parking spaces on the east side and sodding the front area.

After discussion, Mr. Prosperi stated the problem in the area is the Lake Worth property where, in the course of 8 weeks, 400 arrests and complaints were made or issued. He added Ruby Tuesdays is the entity that will be most affected by the Lake Worth property and his clients have hermetically sealed off this property to protect the neighbors from any additional noise or commotion. He stated his clients have the right to an economical use of the property, and after a year of negotiating with a tenant, implying additional restrictions is not the answer. He said other potential tenants have lost interest in locating on this site because of its restrictive nature.

Mr. Royce replied the property, under the land use plan, is residential, and is a non conforming use because the radio station had been there for many years.

Mrs. Wiener requested that the parties and the Council accommodate each other in the best possible way understanding the circumstances. She added this is not a normal circumstance, and that is why the Council acted like it did. Mrs. Wiener suggested the use of valet parking to help control the situation and having someone on the property to assure that the cars would not be screaming around the parking lot.

After discussion of the effects of a restaurant in the area, Mrs. Wiener stated that every single restaurant that is in a residential area is open at least until midnight. She added she thinks the issues are fairness, what is right and what is wrong, does one particular person or group of person become a group that is entitled to more protection than another group of people? She added this situation exists all over Town.

Mrs. Smith asked Mr. Prosperi if Ruby Tuesdays would accept the 11:00 p.m. closing time?

Mr. Prosperi replied he was not sure since Ruby Tuesdays asked for certain provisions in the lease that the property owner could not agree to and the 12:00 midnight closing time was an issue they did not waiver on.

Mrs. Smith suggested a closing time of 11:00 p.m. during the week and 12:00 midnight on Fridays and Saturdays with valet parking.

Mr. Prosperi replied if this solution does not work with this tenant, he would like to return to the Council if this is not acceptable.

Mrs. Smith said Mr. Prosperi has the option of returning to the Council if the tenant does not agree to those hours. She requested Mr. Prosperi present these hours to his client to see if this solution would work.

Mrs. Royal asked Mr. Prosperi if he would have the restaurant install a bicycle rack for their customers. Mr. Prosperi replied he would agree to that.

After discussion about outdoor dining, Mr. Shaw said outdoor daytime dining may offset the loss of an hour closing time.

Mr. Prosperi agreed to Mr. Shaw's proposal.

Mrs. Wiener said this was a condition not asked for by the applicant, and the Town has a standing problem with outdoor dining. She requested the Council members address the issue of the hours and closing time.

Motion made by Mrs. Smith to approve the site plan review in conjunction with Zoning Variance No. 56-93 to authorize substitution of a restaurant on the site of an existing radio station at 3000 South Ocean Boulevard with the stipulation the closing time Sunday through Thursday be 11:00 p.m. and 12:00 midnight on Friday and Saturday nights with valet parking required in addition to the noise containment issues agreed to by Mr. Royce and Mr. Prosperi. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Var. 25-94

2. Variance No. 25-94 - Cathleen McFarlane, 456 and part of 458 Worth Avenue; applicant proposes to purchase a portion of 458 Worth Avenue creating a west side yard setback of 0 in lieu of 15' required. To allow the cubicle content to be 5.28 in lieu of 4.25 required, and to allow 8' high property line wall to match existing in lieu of 7' allowed. R-B District. Deferred from August Meeting. Letter dated September 12, 1994 from Gustave Broberg, Esq., requesting deferral.

This variance was deferred until the October 11, 1994 Town Council meeting.

Var. 26-94

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

This item was deferred until the October 11, 1994 Town Council meeting.

4. Variance No. 35-94 - Richard Danton, 146 Sunset Avenue; to allow parking in the front setback (3 spaces requested) prohibited by Section 6.21(f) of the Town Zoning Ordinance. R-C District. Deferred from August Meeting. Var. 35-94

Mr. Richard Danton addressed the Town Council and asked the Council to follow his explanation of the site plan. He said a large ficus hedge is in front of the property, and two parking spaces are proposed behind the front hedge and one parking space with a new curb cut in front of those two. He said at the last meeting it was suggested by the staff that parking pavers with grass installed between, and this was shown on all five spaces on the site plan.

Mr. Moore said the staff had requested that Mr. Danton address the concerns expressed by the Leverett House at the August 9, 1994 meeting. He said staff had no objections to the initial request; however, one parking space was moved as requested by the Leverett House. Mr. Moore added the staff thought this was acceptable to the Leverett House, since it was moved to a spot they suggested.

Mr. Danton replied the Leverett House has objected.

Mrs. Wiener stated she was absolutely shocked to read a very nasty letter concerning her behavior, because staff knew how to handle these variance matters, and this particular variance reduced the number of units in the building and was an improvement. She continued the letter stated she was adverse to people compromising on the issue. She told Mr. Danton he has gone more than out of his way to do the right thing, and Mrs. Wiener still approves of the Town's staff, and she apologized that someone who attended one Town Council meeting should spend the time and the effort to write a letter complaining about any member of the Town Council and the way they conducted themselves.

Mrs. Smith stated at the last meeting she suggested that Mr. Danton and the Leverett House try to reach a compromise, and she asked Mr. Danton if the parking space has been moved farther to the west, the one that was originally on the property line.

Mr. Danton replied the parking space has been moved approximately 28 feet to the west from the Leverett House. He said a landscaped area has been added to the front next to the Leverett House.

Motion made by Mrs. Smith to approve the project according to the presented drawing by Mr. Danton showing the changes made since the August 11, 1994 meeting. The motion was seconded by Mr. Shaw for discussion.

Mr. Jay Denger, Manager of the Leverett House Condominium, said he did meet with Mr. Danton's representative and attempted to reach a compromise. He said the compromise they were seeking was the elimination of the front parking space that would require a new curb cut and that requires a person to back out of that space over the sidewalk. He added a large ficus hedge in the front would occlude street visibility and presented photographs showing the actual existing conditions.

Mrs. Smith responded that when she made the motion she was well aware that the green area shown on the site plan was not landscaping, and she has seen the site.

Mr. Denger said the Town's ordinance states there will not be parking in the front setback, and the Leverett House feels that the introduction of parking in the front area will require the deletion of the ficus hedge due to the eighteen feet required for the space.

Mrs. Smith stated the project will be presented to the Architectural Commission and a discussion about any landscaping is premature. She added the overall effect of this project is a reduction in density, and her motion stands.

On roll call, the motion carried unanimously.

5. Special Exception No. 22-94 With Variance - Escada USA, 214-218 Worth Avenue; to allow applicant to expand to the second floor for a total of 2,591 square feet in lieu of 2,000 maximum allowed. Variance is requested to provide parking off-site in a different zoning district per Section 6.21(d)(3)(d), and a variance from Section 8.23 to allow the reconfiguration of the existing nonconforming stairway. C-WA District. Deferred from August meeting. Spec.Excep. 22-94

Mr. Jim Wearn, attorney for Escada, introduced Kim Virgil, the assistant manager of Escada, and Eugene Lawrence, the architect for the project.

Mr. Wearn stated the property is located in the Mid-Avenue Development area as defined by the Town's planning consultant, Adley, Brisson, Engman, Inc. He continued this area consists of mainly one story stores and all the stores on the north side of Worth Avenue in this area starting at the Armour Building, 205 Worth Avenue, is the only two story building that has commercial spaces above the first floor. He continued, to the west at the corner of Hibiscus, a two story commercial building exists.

He stated in the Worth Avenue commercial district, this application involves the reversion from a non conforming, special excepted use to a permitted commercial use. He added the nonconforming use is a residential use on the second floor, and the Town code, in special exception uses for commercial Worth Avenue district, allows just one residential special exception use per 50 feet of frontage. Mr. Wearn stated this property has 75 feet of frontage and three apartment units exist on the second floor. He added that two units containing 700 square feet each will not be used for residential occupancy thus ending the non conformity.

Mr. Wearn said the use applied for is a permitted use, permitted by the Town of Palm Beach Comprehensive Plan and the Zoning Ordinance, and the requested Town Council approval does not involve approval of that permitted use since that was given when the Zoning Ordinance and the Town's Comprehensive Plan were approved. He added that Escada, with retail space on the first floor only, needs office and storage space on the second floor where commercial use is automatically permitted as previously stated. Mr. Wearn said the request is to combine the commercial use on the first floor with the commercial use on the second floor. He added the second floor use is specifically limited not to include retail use but to include only office and only business related storage use. He said the combined use of Escada will result in a total of 591 square feet of space over the 2,000 square feet Town Serving limitation, and he requested a special

Spec.Excep. 22-94 (cont'd)

exception for those conditions. He stated the requirement to prove Town Serving will be filed with the Town via a letter in the usual form expressing that the Town Serving customers exceed 50% for Escada.

Mr. Wearn said the request is consistent with other businesses on Worth and is consistent with the Comprehensive Plan that encourages the Town Serving types of commercial development. He added the Zoning Code states the intent of this district is to preserve and enhance an area of unique quality and character oriented to pedestrian comparison shopping and provide a wide range of retail and service establishments to be developed either as a unit or individual parcels serving the short term and long term of the needs of townspeople. He added Escada is Town Serving and by definition does not cause problems of parking and traffic congestion. He said no new employees or personnel are contemplated with no increase in intensity of use, and needs the space to be viable and compete as a Town Serving retail shop.

Mr. Wearn requested two approvals for parking and better stairs for the second floor area. He stated the parking request is for off site parking in a different zoning district, and if the parking is approved, parking will be finalized and proper documentation will be furnished to the Town within the time allowed for the implementation of this use, as is usually done.

Mr. Wearn said new, covered stairs are required for access to the second floor, and will reduce the footprint of the present stair area and will be more nearly conforming to current codes.

Mr. Moore stated the Town Serving issue has to be addressed and Mr. Wearn has produced a document addressing the customer base, and the Council needs to made the determination if that document satisfies the need for proof of Town Serving. He added the variance is for the parking location outside the Worth Avenue district, and a lease will have to be provided proving the parking requirement. He said the staff has no objection to the second floor or the stair area. He asked that the Town Council consider limited use on the second floor of office and storage as requested by Mr. Wearn.

Mrs. Smith asked Mr. Moore why the stairs had to be redone?

Mr. Moore responded the stairs had to be reconfigured for weather purposes and asked Mr. Lawrence to address the issue including the use of the stairs as a second means of egress from the second floor.

Mr. Eugene Lawrence stated each second floor space requires two means of exit, and the eastern stairs were rebuilt approximately two years ago, but this nonconforming stair has winders, and it should be covered for safety reasons.

Mr. Shaw said the existing Escada store contains 1,213 square feet and the store size will be doubled, and he asked Mr. Wearn if the store really needs that much square footage over the 2,000 square feet allowed.

Mr. Wearn replied to open up storage space in the back and create offices for the staff, the additional square footage is needed.

Mr. Peter Broberg, representing a consortium of Worth Avenue property owners, and asked that if parking space is not readily available within 500 feet would the application be allowed?

Mr. Moore responded that it would not be allowed if the parking spaces were not provided within the 500 feet limit, and Mr. Wearn stated that in his presentation.

Mr. Broberg asked Mr. Moore if construction could begin before a signed parking lease was received by the Building Department?

Mr. Moore replied construction could begin before the lease is received unless there is some reason Mr. Broberg knows that the parking is not available.

Mr. Broberg responded that the parking may not exist within 500 feet.

Mrs. Wiener said if the applicant stated they will obtain the parking that is the responsibility of the applicant to supply that information.

Mr. Wearn responded parking has been addressed but no leases have been signed as of this time, but the lease will be presented within the time frame if the petition is granted.

Mrs. Wiener asked Mr. Wearn if parking is available to the best of his knowledge? Mr. Wearn replied affirmatively.

Mr. Broberg responded, to the best of his knowledge, the Apollo lot is not available.

Mrs. Smith said she understood Mr. Wearn wanted to receive approval for the second floor before signing a lease for the parking places.

Mrs. Wiener said if the Town Council grants the variance and it is based on their having the parking, they will not have the variance if the do not have the parking.

Mr. Moore responded the applicant would be constructing at his/her own risk, and the Building Department does not nor never has held up the building permit because of the time constraints on Worth Avenue, and the Building Department does not interfere with problems between landlords and tenants. He added that Mr. Wearn understands no certificate of occupancy would be issued without the two parking spaces, or the space will stay vacant until the lease for the parking spaces is received.

Mrs. Royal asked Mr. Wearn the length of time of Escada's lease on the property?

Mr. Wearn replied the current arrangements will continue for another 3.5 years.

Mrs. Royal asked Mr. Wearn if the construction will be completed on Worth Avenue before the November 15th cut off?

Mr. Wearn replied the intent was to complete the construction before November 15.

Mrs. Smith stated the applicant cannot return and ask an extension of hours that were just established. Mrs. Smith asked Mr. Lawrence if the work can be completed before the deadline? Spec.Excep. 22-94 (cont'd)

Mr. Lawrence replied he has contacted general contractors, and the schedule will be tight, but the work can be completed.

Mrs. Wiener suggested that if a motion is made to approve the project a condition may be made that the applicant will not make a request for additional hours prior to this season.

Mr. Lawrence said he would not like to make a commitment NOT to return to the Council for a request for an extension of work hours in the event unforeseen events would take place.

Mrs. Royal asked Mr. Moore if this project is in conflict with the Worth Avenue Redevelopment Guidelines?

Mr. Moore responded it would be in conflict with the Redevelopment Guidelines which means demolishing a building and rebuilding which provides for a second and third story by special exception for residential use, but it is not a conflict under remodeling which this project is.

Motion made by Mr. Shaw to approve Special Exception 22-94 with variance with the conditions discussed including the required documents concerning the two required parking spaces that must be received before a certificate of occupancy is granted; the use of the second floor space will be limited to office and storage uses; and the applicant is not to return to the Town Council to request an extension of work hours on Worth Avenue. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

6. Consideration of Request for One Year Time Extension - Variance No. 55-93 - Sidney Kimmel, 1236 South Ocean Blvd.; to allow construction of a two-story dwelling at a height measured from the existing site elevation of 22.5' in lieu of 7.5' as required, and to permit a second floor ceiling height of 27.5' in lieu of 25' maximum. Additional variances are requested to permit a second and third kitchen installation, to construct garden walls exceeding height restrictions by 6' with gate post 2' above the wall height (Re: Sections 5.36a and 5.36b of the Town Zoning Code). R-AA District. Var. 55-93

Mr. Paul Prosperi addressed the Town Council and stated this house has been redesigned and approved by the Architectural Commission at the August, 1994 meeting. Mr. Prosperi requested an extension for a one year time period with all the provisions and conditions that existed for the first approval.

Motion made by Mrs. Smith to approve Variance No. 55-93 for a one year time extension. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

The Town Council recessed for ten minutes.

New Business New Business

7. Variance No. 42-94 - George Milidrag, 445 Antigua Lane; to allow installation of gates at driveway entrances providing a 4' setback in lieu of 15' required. R-A District. Var. 42-94

Mr. Ken Spina, architect represented Mr. and Mrs. George Milidrag, addressed the Town Council and stated the gates, as shown on the site plan which included six lots on the entire street, will be located on the westerly end of Antigua Lane. He added no passing traffic for any stopped cars waiting to enter the gates. He said he understood the intent of the ordinance was to prevent a back-up of cars or a safety hazard before cars entered into properties, and that condition does not exist for this property. He added a microphone will be installed at the entrance, a button will be pushed, and the gates will open, and the exit gate on the other side of the property will work in the same manner.

Mr. Moore said very light traffic exists on Antigua as it is a cul-de-sac, and the staff has no objections to the installation of gates.

Motion made by Mr. Shaw to approve Variance No. 42-94. The motion was seconded by Mrs. Royal for discussion.

Mrs. Royal asked Mr. Moore if any letters had been received from neighbors? Mr. Moore responded no letters were received.

On roll call, the motion carried unanimously.

8. Variance No. 43-94 - David & Jillian Gilmour, 5 Golfview Road; to allow installation of entrance gates providing a 11' setback in lieu of 15' required. To allow an addition providing a front yard setback of 13' in lieu of 35' required. To allow construction of a carport providing a 12' front yard setback in lieu of 35' required, and a 3' side yard setback in lieu of 15' required. To allow placement of four equipment items (AC & pool) in a setback in lieu of 2 permitted. R-A District. Var. 43-94

Frank Lynch, attorney representing Mr. and Mrs. Gilmour, addressed the Council. He said that he understood the Everglades Club had filed an objection with the Town, and Mr. Lynch said he did not have time to respond to the objection before this meeting. He suggested some of the issues in the application could be solved if Mr. Lynch and the Everglades Club reached an agreement before the October meeting, and Mr. Lynch said perhaps some of the items should be deferred until that time.

Mr. Lynch stated the application contains four variance issues, three of which the Everglades Club objects to.

Var. 43-94 (cont'd)

Mrs. Wiener said, regardless of what the Everglades Club or any neighbor may think, the neighbors do not grant variances and the neighbors do not make policy for the Town. She added if Mr. Lynch did want a deferral, it could be granted at this late hour if no one was in the audience waiting to hear the discussion.

Mr. Lynch replied there was one issue concerning the gates that he would like to present at the meeting, but he would be prepared to accept a deferral for the balance of the items.

Mrs. Wiener replied all or none of the items in the variance would be heard, and the approach is that the neighbor does not care about one of the issues so that is the one that can be heard.

Motion made by Mr. Shaw to defer Variance No. 43-94 until the October 11, 1994. The motion died for lack of a second.

Mr. Lynch replied the applicant has some concerns that need to go forward before the next meeting, and would like to have the issue of the gates heard. Mr. Lynch stated if the other three parts of the variance can be settled with input from the Everglades Club and the Town Council would hear the issue of the gates at this meeting, it would not be necessary to return for the October meeting.

Mr. Moore pointed out that Mr. Lynch missed the deadline for filing for a new variance for the October meeting should he have to return if these three items were removed from this variance request.

Mrs. Smith said she understood that Mr. Lynch wants the gates which is variance number 1 to be discussed; variance number two is for the equipment storage room and that may be eliminated. Mr. Lynch replied variance number two, the equipment storage room, may be located on another part of the property. Mrs. Smith asked about the carport and the walkway. Mr. Lynch replied the carport is an issue that he will have to address with the Everglades Club since it may be too close to the tee, and the last issue pertaining to the equipment has already been relocated and permitted at this point.

Mr. Moore responded he was not aware that the equipment has been permitted, but if it were, it would have been permitted within the correct guidelines.

Mr. Lynch replied two air conditioning or pool equipment units may be installed in any one setback, and the units were moved around until they met the ordinance requirements.

Mrs. Wiener said part 4 of the variance is eliminated, and it will not be coming back to the Council. She asked Mr. Lynch to address the issue of the side yard setback.

Mrs. Smith stated she did not understand why the Everglades Club was a problem, and if the Town Council approved of these variances, and the applicants decide they do not want to build the equipment storage room, the carport and the walkway that is the decision of the owners. She asked Mr. Lynch if the possibility exists that variances number two and three will not be heard or requested at any time?

Mr. Lynch replied variance number three is the one that may be solved with the Everglades Club, and the equipment storage room will not be coming back most likely. He said the attorneys for the Everglades Club were not present at the meeting.

Mrs. Wiener said the item should either be heard or not, and the Town Council should not be used as the court of last resort. She stated Mr. Lynch has the option of using or not using any variance approvals that may be granted.

Mr. Lynch said he would proceed with the first request which was for the installation of gates providing an eleven foot setback in lieu of the required 15 feet. He said two sets of gate posts are existing and a third set is proposed, and the height is eight feet and otherwise they comply with Town codes. He added the main reason the applicants want the gates is for security and to deter turn around traffic in the driveway area. Mr. Lynch said an additional set of gate posts is requested to be installed on the west boundary of the property to allow entrance into either a paved parking area or, if approved, a carport area. He added the gate design has been approved by the Architectural Commission.

Mr. Moore stated the staff has no objections to the gates and the locations; however, the staff does ask that they swing inward rather than outward.

Mr. Lynch replied an error was made in the drawings and the gates do swing in.

Mr. Shaw asked Mr. Lynch if Golfview is wide enough and safe enough for someone to back onto the street from the driveway area?

Mr. Lynch replied he thought it was safe since it is a private road and not a great deal of through traffic exists on the street.

Mr. Moore stated staff had visited the area and determined the street was wide enough to back out from the driveway area.

Motion made by Mr. Shaw to approve Variance number 43-94 strictly for the installation of the three mechanical gates on two sets of existing gate posts and on one new set of gate posts at the west end of the property. The motion was seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mrs. Wiener said the next part of the variance to be considered would be to allow a front yard setback of 13 feet in lieu of the 35 feet required.

Mr. Lynch explained the request is for an addition of a storage facility to store landscape equipment, and the existing garage is small with no room for storage. He added the configuration of the house does not allow any addition other than coming forward in the front yard. He said the addition will be totally sight screened from the street, and the access will be from the garage and from the outside of the building.

Mr. Moore replied ample room exists to locate a storage facility elsewhere on the property, and the staff does not think there is any hardship for this request.

Var. 43-94 (cont'd)

Mr. Lynch said the 5' x 9' storage shed may be located elsewhere on the property, and the attempt has been made to locate the building in the most inconspicuous place, and the front yard was chosen because of the location of the garage and the abundance of sight screening in that area.

Motion made by Mrs. Smith to deny the part of Variance Number 43-94 allowing an addition providing a front yard setback of 13 feet in lieu of the 35 feet required. The motion was seconded by Mr. Shaw for discussion.

Mr. Shaw asked Mr. Lynch if the storage building could be located on the south side of the house in the area of the proposed carport?

Mr. Lynch replied the cut out area shown on the site plan referred to by Mr. Shaw is a breakfast room, and the possibility of storing equipment emitting fumes in that area may not be feasible.

Mr. Moore, responding to a question from Mrs. Royal, said inquiries regarding the project were received via telephone but no written responses were received.

On roll call, the motion for denial carried unanimously.

Mrs. Wiener said the next part of Variance Number 43-94 to be considered is the request to allow construction of a carport providing a 12 foot front yard setback in lieu of the 35 feet required and a 3 foot side yard setback in lieu of the 15 feet required.

Mr. Lynch said the request is for a carport with a canvas roof in the front area inside the new gated area to allow the staff to enter the house and park in a protected area in times of inclement weather.

Mr. Moore responded the staff does not think a hardship exists locating a carport that close to the street when it appears room exists to move it further to the west closer to the new kitchen addition which did not require a variance.

Mrs. Smith stated she noted a large coconut tree existed on the west side of the property and asked if that were the reason a carport could not be located in that area?

Mr. Lynch replied the applicants are attempting to avoid disturbing the present landscaping including the large coconut tree.

Mrs. Smith stated no other carports exist on Golfview Road, and it is difficult to install a carport and maintain the architectural integrity and the ambiance of the street. She added a carport is not Golfview Road; but moving the coconut tree would not be difficult and the parking area or a carport would not be as visible from the street if located in that area.

Mr. Lynch said it was his understanding that a paved parking area could be installed in the subject area if it is not covered by a roof.

Motion made by Mrs. Smith to deny the part of Variance Number 43-94 to allow construction of a carport providing a 12 foot front yard setback in lieu of the 35 feet required and a 3 foot side yard setback in lieu of the 15 feet required. Motion seconded by Mr. Shaw. On roll call, the motion to deny carried unanimously.

9. Variance No. 44-94 - Risa Property Co., 207 Pendleton Avenue; to allow construction of a swimming pool providing a rear yard setback of 9.1' in lieu of 10' required and a side yard setback of 5.5' in lieu of 10'. R-B District. Var. 44-94

Mr. Paul Prosperi, attorney representing Risa Property Company, addressed the Town Council. Mr. Prosperi said the application is to rebuild an existing swimming pool and the existing curved pool which is approximately 13 x 38 feet, and the proposed pool measures 10 x 28 foot pool in approximately the same location. He added the property is partly non conforming, and almost 300 square feet of green space will be added. He said it is necessary to reduce the size of the pool to accomplish the redesigning of the back yard, and 10 feet will be removed from the length of the pool and 2 - 5 feet will be taken from the sides of the pool.

Mr. Moore stated the property borders the Breakers' Golf Course on the rear and poses no problem there; however, the west boundary does require a large set back and the Staff does not see the hardship for that area as the pool could be redesigned.

Mr. Prosperi replied the pool was left in the location shown on the site plan to reduce another non conformity, and if the pool would be shifted or moved, a less amount of concrete would be eliminated. He added the adjoining property, looking west from the subject property, is located on a lot and a half and is quite a distance from this house and in not heavily impacted by the variance.

Mr. Moore replied Mr. Prosperi was correct in that the non conformity is not being increased. Responding to a question from Mrs. Royal, Mr. Moore stated the Breakers' was the only neighbor responding to notification, and they had no objections.

Motion made by Mrs. Royal to approve Variance Number 44-94 to allow construction of a swimming pool providing a rear yard setback of 9.1 feet in lieu of the 10 feet required and a side yard setback of 5.5 feet in lieu of the 10 feet required. The motion was seconded by Mrs. Smith.

Mrs. Smith asked Mr. Prosperi if the pool could be moved farther to the east; thereby reducing the request for the variance on the west side.

Mr. Prosperi replied that a wing of the house extends in that area, and realistically the pool could be moved only one or two feet in that direction.

On roll call, the motion carried unanimously.

Spec.Excep. 27-94

10. Special Exception No. 27-94 with Variance - John Serafini, Paramount, 139 North County Road; in conjunction with a proposed 2,000 sq. ft., 85-seat restaurant, to allow outdoor seating pursuant to Section 6.61 of the Town Zoning Code, with a variance to the provisions prohibiting an increase in capacity. A variance to the required 23 parking spaces is requested. C-TS District.

This item was deferred earlier in the meeting.

Spec. Excep. 28-94

11. Special Exception No. 28-94 - Hals Realty Assoc.., 401 S. County Road; to allow a restaurant to occupy 6,500 sq. ft., and to allow off-street parking on another commercial site within 500 feet of the proposed restaurant. C-TS District.

This item was deferred at the request of Peter Broberg until the October 11, 1994 Town Council meeting earlier in this meeting.

Other

C. Other

Spec. Excep. 13-94

1. Report by Director of Planning, Zoning and Building Regarding Town Council's Conditional Approval at its May 10, 1994 Meeting of Special Exception No. 13-94 With Variance Regarding Parking at Poinciana Club, Poinciana Plaza, Royal Poinciana Way. C-PC District.

Mr. Moore said at the August 9, 1994 meeting the subject of alleged uses at the Poinciana Club was brought forth, and the Building and Zoning staff has investigated the matter.

Mr. Moore said that on May 10, 1994 the Town Council approved the Special Exception Number 13-94 allowing the Poinciana Club to construct a awning covered deck on the west side of the building, and that application clearly stated, as did Attorney Wearn speaking for the applicant at the Council meeting, that the only purpose of this request was to arrange the social and dining areas closer to Lake Worth and that no operational changes in the Club were contemplated. He added the minutes of the May 10, 1994 Town Council meeting reflect the representation of Council that no changes in Club operation will occur; and the minutes further reflect that the applicant will provide documentation verifying the Club is town-serving now and on an annual basis hereafter. He said the Poinciana Club, Inc. has a Town occupational license for a dining room, a night club and a State liquor license for COPSRX, a restaurant type license 6002147 issued to the Poinciana Club, Inc. He added, based on the available information, there was no reason to believe the Club operation is going to change.

Mr. Moore summarized that the Zoning Ordinance allows the Club as a Special Exception use to continue or alternatively the space so occupied could be used for those permitted uses in the C-PC District. He added any listed Special Exception use in the district, such as a restaurant, would require prior Town Council approval; therefore, he found there are no issues that would be germane to this as a Club operation.

Mrs. Wiener asked Mr. Randolph to address the situation which is unusual.

Mr. Randolph said he understood that Mr. Moore has looked into this issue based on a request from a citizen at the August 9 meeting and has reported back to the Town Council, and it seems the item the Town Council voted on is being met. He stated no action is necessary at this time other than to hear the report of Mr. Moore.

Mr. George Dempsey spoke to the Town Council, and said it was his understanding that Mr. Moore was going to attempt to answer some of the questions that were unanswered at the time Mr. Wearn made his presentation when it was thought the Poinciana Club was going to stay under the same management, the same ownership and there would be no changes in the size of the membership. Mr. Dempsey said he wanted to make sure there would be no changes in the management and ownership nor the size of the membership. He added his concern was for the parking predicament which will be serious if there is increased traffic flow, and emergency vehicles will be unable to drive through the parking lots.

Mrs. Wiener stated that the report was received from the Building Department stating that nothing exists other than what was granted at the May meeting; and therefore, the Council has no cause for action.

Mrs. Smith said at the last meeting Mr. Wearn stated he would send in the documents to the Town stating that it is still a club and a list of the officers. She added the question is if the ownership or the proprietorship of the Club has changed, and asked Mr. Moore if he has received any information regarding those questions since the August meeting?

Mr. Moore responded he did not believe the Building Department had any other information other that what Mr. Wearn said he would provide and that must be provided prior to the issuance of a certificate of occupancy.

Mrs. Smith pointed out Mr. Wearn's comments were on page 25 of the August Town Council minutes.

Mrs. Wiener told Mr. Dempsey he could be assured that no certificate of occupancy would be issued without receiving the required documentation.

Mr. Dempsey thanked Mrs. Wiener and stated his concern is not the competition from the Club but a valid concern for the parking in the area.

Waiver to Section 12-51 by Palmer Gen. Contractor for work at 125 Worth Ave.

2. Consideration of Request for Waiver to Section 12-51, "Hours for Construction Work," of Town Code by David Palmer General Contractor, Inc., for Work at the 125 Building on Worth Avenue.

Waiver to Section 12-51 by Palmer Gen. Contractor for work at 125 Worth Ave.

Mrs. Wiener declared a conflict of interest on this item because she is a director of the bank located at this address. A conflict of interest form is on file in the Town Clerk's office.

Mrs. Wiener passed the gavel to President Pro-Tem Lesly Smith.

David Palmer addressed the Council and stated that during the course of construction it was determined that the building did not have adequate fire dampers in the main trunk lines of the system. He said the Town's Building Department has required his construction firm to install new fire dampers in the main trunk line and this would require the shut down of the air conditioning system. He added some of this work can be accomplished during the day but the work with the air conditioning off will have to be done on a weekend.

Mr. Palmer said that further investigation uncovered the fact that the air conditioning systems themselves are antiquated and need to be taken off the roof and replaced. He added sprinklers on the roof actually keep the units from burning up at this point. He said the equipment must be replaced before the November 15 Worth Avenue deadline, and weekend work which may or may not run into a Sunday will be required. He requested permission to work the weekend of October 29, 1994.

Mr. Moore replied that the Building Department had made a decision to allow Mr. Palmer to begin this work because it is a life safety issue with the installation of the fire dampers, and the work has been on-going with the stipulation that the equipment and the construction workers be in the basement and all work be contained inside of the building. He added Mr. Palmer is at this meeting to report that this work has been in progress and to ask for the Town Council's indulgence and permission to extend the work for the conditions he mentioned, and the Building Department thinks that it is proper due to the life safety issue of the fire damper installation.

Mrs. Royal asked Mr. Moore if his recommendation would be to allow them to work on Sundays?

Mr. Moore replied it would be discretionary if the Town Council wished them to work on Sundays; however, they have been working on Sundays at the present time because the work up to this point has been self contained inside the building and on the roof. He added no construction noise has bothered either the neighbors to the east or to the southeast. Mr. Palmer, responding to questions from Mrs. Smith, stated they do not plan to close down Worth Avenue completely to remove the large air conditioning units from the roof with a crane but at some point it would be necessary to close the street completely for 8 - 10 hours. Mr. Palmer said it is necessary to do the air conditioning work on the weekends since the new units have to be re-started before tenants can work in the building starting on Monday. Mr. Palmer stated the work will probably be finished by November 15, but the schedule will be very tight.

Mrs. Smith asked Mr. Palmer if the air conditioning units could be installed the weekend before November 15 as this is the weekend when many winter residents return to Palm Beach.

Mr. Palmer replied they would like to install the units on the roof after they arrive which will be approximately October 25, 1994.

Mr. Shaw asked Mr. Palmer if the street could be closed during the removal, then opened until the old units were ready to be removed. He added at that time the street could be closed again so the closed time would not be excessive.

Mr. Palmer replied he would like to bring the crane in to put the cooling tower up on the roof which will take about an hour, and the second time the crane will be brought in, the chillers will be set in place and the remaining two units will be removed.

Mr. Moore stated just one lane of Worth Avenue will be closed, not two lanes.

Mr. Palmer agreed there will be no crane on Sunday, but work may continue on the units depending on the success of the installation of a new system.

Mrs. Smith said she was sure that staff could work out some of the details concerning the actual hours necessary for the work.

Responding to Mrs. Royal's question, Mr. Moore stated Mr. Palmer had worked in the Town before and has honored all his obligations with the Planning, Zoning and Building Department.

Motion made by Mr. Shaw to approve the extension of the hours with the schedule of hours to be worked out with the staff On roll call, the motion carried unanimously with Mrs. Wiener declaring a conflict of interest.

The gavel was passed back to Mrs. Wiener.

3. Consideration of Request for Waiver to Section 12-51, "Hours for Construction Work", of Town Code by Gregory H. Lewis, for Work at First National Bank in Palm Beach, 255 South County Road.

Waiver to Sect. 12-51 - 255 So.County Rd.

Mr. Gregory Lewis addressed the Town Council and requested an extension of an approval to work until 9:00 p.m. in the bank lobby. He added they have been working on the interior ceiling and the work has progressed slowly since it takes a significant amount of time to set up and then only a couple of hours remain to continue the work until 9:00 p.m.

Mr. Moore asked Mr. Lewis what reasons he could provide for an extension permission?

Mr. Lewis replied his company was given until September 10 to complete the work and that deadline has passed. He said originally he had requested the hours be extended until November 1 and that was not granted.

Mr. Shaw reminded Mr. Lewis that Mr. Hap Lewis had indicated the work could be finished in three weeks. Mr. Shaw stated the bank has five branches in Town and the main bank could shut down for a day or two and complete the work. Mr. Shaw requested Mr. Lewis give the Town Council a time certain that the work will be completed.

Mrs. Royal asked Mr. Lewis what hours and dates he needed to complete the work by November 15?

Mr. Lewis replied to be allowed to continue from 5:00 p.m. to 9:00 p.m.

Motion made by Mrs. Smith to approve the extension to finish the work until 9:00 p.m. until November 1, 1994. The motion was seconded by Mr. Shaw.

Mr. Moore said that if the hours of the extension do not cover the entire amount of work to be completed, Mr. Lewis will make arrangements with the bank to resolve the situation and not return to the Council for additional extensions.

On roll call, the motion carried unanimously.

Any Other Matters

XV. ANY OTHER MATTERS

Appointments to Commissions

1. Appointments to Commissions

Mrs. Wiener said the first item to be discussed was Appointments and asked for Mr. Shaw's comments.

Mr. Shaw said he thinks there is a better method than the existing one to ascertain the interest of the potential appointees to the various Town commissions. He added the department heads re-confirm, prior to the Town Council meeting, that these people are still interested, they are eligible and, if appointed, they are actually able to serve. He said the Town Council was embarrassed when they appointed someone who did not wish to serve; one of the lists had someone who passed away on the list and one name on a list is already a member of another commission. He said he would like to know that every name on the list is ready to serve.

Mrs. Wiener responded this is an administrative problem that has gotten lost here and there.

Mr. Doney replied that historically that the Town Council did always want the individual contacted or recontacted thus creating an expectation that the Council would appoint that individual to the anticipated commission. He added this notification could be done as purely a verification of eligibility with no expectation of appointment by the appropriate department head.

Motion made by Mr. Shaw that the list of eligible commission appointees be kept up to date and the department heads present to the Town Council in a timely manner a list of the people who have confirmed their interest at the time this will be reviewed by the Town Council and that they are eligible to serve and ready to serve upon appointment. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Bank Relations

2. Bank Relations

Mrs. Wiener said the next item to be discussed in Bank Relationships and asked Mrs. Royal for her comments.

Mrs. Royal said her concerns stem from an August 17 letter from Mr. Steven Ferris who is a money manger for First Union Bank addressed to Mr. Doney.

Mrs. Royal read a paragraph from the letter which stated on May 31, 1994 First Union delivered a report to the Town of Palm Beach which stated we had added value to the General Fund and the Self Insurance Fund for a combined total of $50,000. Mrs. Royal said this report was wrong and First Union had added value in the amount of $20,000 and a large disparity resulted. She added, after consultation with Mrs. Crozier, apparently First Union gave the Town monthly interest and at the end of six months they gave the Town interest again. Mrs. Royal said this was a bank error in the Town's favor, and the Town will receive the difference from First Union and, as a result, will receive a windfall profit. She said her concerns are with the format of the report as previously sent to the Town and with the timeliness of the reports. Mrs. Royal said Mr. Morgan of First Union had now compiled a form but she would like to see a form that shows capital and the capital increase. She added Mrs. Crozier had designed a form during the time of the present Council meeting so that elected officials could see how First Union was doing for the Town. She asked Mr. Morgan to look at the statement to see if the bank could duplicate Mrs. Crozier's effort.

Mr. Morgan stated that methodology was the reason for the statement confusion, and he was hopeful that both the bank and the Town have arrived at a conclusion concerning the methodology. He thought the new form would work for both.

Mrs. Royal requested that the form be received at least one week before the monthly Town Council meeting which is the second Tuesday in the month. She added that Mrs. Crozier received the August report on September 13.

Mrs. Wiener said the information is in the file as needed, and the Town Council does not need to address every item of money or whatever goes on in the Town.

Mrs. Smith said the report should be reviewed by Mrs. Crozier, as the expert, not by the Town Council as a whole.

Mrs. Wiener said that the Town needs to receive this information on a regular basis, but it is not an item that Town Council needs to discuss month after month.

Mrs. Royal added if Mrs. Crozier asked the Town's accountants if the proposed form is acceptable to them?

Mrs. Crozier stated the only unresolved issue is the $30,000 windfall, and said the Town has the option to roll that amount back into the portfolio or receiving a check for that amount from First Union Bank. She said it was suggested from an auditor's perspective that a check should be issued from First Union.

Mrs. Wiener said, and the Council concurred, that a check should be issued first.

Mrs. Royal asked Mr. Morgan if First Union would wave their fees, since they had said their fees would be waived during any month they had an error.

Mrs. Wiener said the last item to consider is the appraisal fee required for the Town's property. Bank Relations (cont'd)

Mr. Doney responded Mr. Elwell had contacted two appraisers and had information.

Mr. Elwell stated both the estimates received from the appraisers were in the area of $2,500. He added the designation may be made from the undesignated General Fund Balance, not to exceed $3,000 so the estimates may be in line with the appropriation. He said the estimates were for full appraisals.

Motion made by Mrs. Smith to appropriate an amount not to exceed $3,000 for the appraisal on the Pike Road property owned by the Town. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Wiener asked if any other matters were to be considered at this meeting?

Mr. Moore stated, as a reminder, that September 16, 1994 at 5:00 p.m. is the deadline for zoning items to be submitted to the Planning, Zoning and Building Department.

XVI. ADJOURNMENT - The meeting was adjourned at 8:34 p.m. Adjournment

Mary A. Pollitt
Deputy Town Clerk

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

LAST NAME—FIRST NAME—MIDDLE NAME WIENER HERMINE	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE COUNCIL
MAILING ADDRESS 324 GARDEN ROAD	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: CITY COUNTY OTHER LOCAL AGENCY
CITY PALM BEACH COUNTY SAME	NAME OF POLITICAL SUBDIVISION: TOWN OF PALM BEACH
DATE ON WHICH VOTE OCCURRED 9/13/94	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. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with 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.

RECEIVED SEP 29 1994 TOWN OF PALM BEACH

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should 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:

A person holding appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

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

- You should 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 should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

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

- You should disclose orally the nature of your conflict in the measure before participating.
- You should 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 should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, HERMINE L. WIENER, hereby disclose that on 9/13, 19 94:

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

✓ inured to my special private gain; or

___ inured to the special gain of ______________________, by whom I am retained.

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

A REQUEST CONCERNING A BUILDING IN WHICH THE BANK ON WHICH I AM A BOARD MEMBER IS THE MAJOR TENANT.

RECEIVED SEP 14 1994 TOWN OF PALM BEACH

9/13/94
Date Filed

Hermine L. Wiener
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), 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 $5,000.