MINUTES OF TOWN COUNCIL MEETING HELD ON SEPTEMBER 12, 1995

I. CALL TO ORDER AND ROLL CALL - The meeting was called to order by President Smith at 9:30 a.m. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald, Councilmen Leslie Shaw, Samuel McLendon, and Allen Wyett. Also attending were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager Dave Jakubiak, Town Attorney John Randolph, Director of Public Works Albert Dusey, Town Engineer James Bowser, Purchasing Agent Charles Boggs, III, Personnel Director William Crouse, Police Department Major Frank Croft, Assistant Fire Chief Rick Neal, Fire Department EMS Coordinator Charles Price, Director of Building and Zoning Robert Moore, Building Department Zoning Administrator Paul Castro, Recreation Director Russell Bitzer, Finance Director Marie Crozier, Risk Manager Barbara Martinuzzi, and Town Clerk Mary Pollitt.

Mrs. Smith made two announcements prior to the Invocation:

1. The Mayor and Town Council would be conducting the second and final Public Hearing related to the FY96 Proposed Tentative Millages and Budgets at 5:01 P.M. today, and the Town Council Meeting would be adjourned for that meeting.

2. Due to the length of today's Agenda, there was a possibility that the Town Council may need to continue at 9:30 A.M. on Wednesday, September 13, 1995.

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Father Woodcock from St. Edward's Church, and the Pledge of Allegiance was led by President Smith.

III. ORGANIZATIONAL ITEMS

A. Appointment of Town Manager - Pursuant to Section 4.02 of the Town Charter and Section 2-3 of the Town Code of Ordinances -

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

B. Appointment of Administrative Officials - Pursuant to Section 2-3 of the Town Code of Ordinances -

Mr. Doney recommended the appointment of the following administrative officials in accordance with Section 4.04 of the Town Charter and Sections 2-2 and 2-3 of the Town Code:

Town Clerk:	Mary A. Pollitt
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
Chief of Police	Joseph L. Terlizzese
Chief of Fire Rescue	Vincent K. Elmore
Director of Public Works	Albert P. Dusey
Acting Town Manager (In the event of absence from duty of Town Manger Doney)	Peter B. Elwell

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

IV. COMMENTS OF THE MAYOR -

The Mayor had no comments at this time.

Mrs. Smith made two announcements at this time:

1. The Crime Watch Day scheduled for September 16, 1995 was cancelled.

2. The Flagler Memorial Bridge would be closed as of September 13, 1995, with the date of re-opening scheduled to be October 27, 1995.

V. APPROVAL OF AGENDA - The following items on the agenda were added to the "Approved Agenda" by the Town Council and approved under one motion:

XI.C.1. page 4 Sealed Bid No. 95-12A - Uniform Rental Service

XI.E.3. page 4 Request Authorization for Town Manager to Execute Contract for Town Physician for FY96

XI.E.4. page 5 Request Authorization for Town Manager to Execute Fire Inspector's Agreement for October 1, 1995 to September 30, 1998

XI.E.5. page 5 Request Authorization for Town Manager to Execute Management Agreement for the Operation of the Seaview Tennis Courts for FY96

XI.E.6. page 5 Request Authorization for Town Manager to Execute Management Agreement for the Palm Beach Municipal Golf Course for FY96

XI.E.8. page 5 Consideration of Renewal of Agreement with Advanced Protective Service, Inc. for Dock Security Services for FY96

XI.E.9. page 5 Consideration of Renewal of Computil Agreement for Collection of Parking Fines for FY96

Motion made by Mr. Wyett to add the above items to the Approved Agenda. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

The next items to be moved to the Approved Agenda were as follows:

XIV.A. page 6 Major Matters Previously Considered by the Architectural Commission at its meeting of August 23, 1995 - Minutes Available in Town Manager's office.

The Major Matters considered by the Architectural Commission were:

B57-95 Demolition of residence at 253 Seminole Avenue for 250 Everglade, Inc. c/o Robert E. Deziel, Attorney - Approved with conditions.

B58-95 Demolition of the manager's residence at the Bath and Tennis Club, Inc., 1170 South Ocean Boulevard - Approved with conditions.

B59-95 Demolition of a residence at 200 El Vedado Way for Whittmann Building Corporation - Approved with conditions.

B60-95 Renovations to a residence at 262 Orange Grove Road for Robert E. Jackson, Jr. - Approved with conditions.

B54-95 Construct two story residence on lot 36, Emerald Lane for Mr. and Mrs. Mark Katzenberg - Deferred to the September meeting.

C28-95 Install gates at a residence at 7 La Costa Way for Mr. and Mrs. Lewis Rudin - Deferred to the September meeting.

C31-95 Construct wall at a residence at 180 Barton Avenue for James Harpel - Deferred to the September meeting.

C33-95 Construct two story addition at 320 Polmer Park for Kenneth Newberger - Deferred to the September meeting.

B65-93 Revisions to a previously approved new residence at 230 Clarke Avenue for Dr. and Mrs. Stone - Deferred to the September meeting.

B33-95 Addition to a residence at 209 Wells Road for Gregory Holloway - Deferred to the September meeting.

B36-95 Construct second floor addition to a residence at 198 Via Marina for Ms. Sally Ross Soter - Approved.

B43-95 Construct new residence at 180 Atlantic Avenue for Mr. and Mrs. Paul Pellitieri - Deferred to the September meeting.

B44-95 Remodel a residence at 127 Ocean View Road for Palm Beach Development Group Limited III, Inc. - Deferred to the September meeting.

C05-95 Construct new townhouses at 230-232 Brazilian Avenue for Longwolf J.V., Dr. Michael Longo and Raymond Wolf - Approved.

XII. page 5 Approval of Warrant Registers and Funds Expenditures Report for August, 1995.

Motion made by Mr. Shaw to move the above items to the Approved Agenda. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

A motion was needed to defer item XIV.C.2, Mr. Randolph's report on property rights. Motion made by Mr. Wyett to defer this item. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

APPROVED AGENDA (ITEMS VI. THROUGH

VI. APPROVAL OF MINUTES OF JULY 25, 1995 AND AUGUST 8, 1995

VII. LICENSES AND PERMITS

A. Charitable Solicitation Permits

Regular

1. Cystic Fibrosis Foundation; No. 72-96
2. Boys & Girls Clubs of Palm Beach County, Inc.; No. 104-96
3. Planned Parenthood of Palm Beach Area, Inc.; No. 120-96
4. Rosarian Academy; No. 127-96
5. Northwood University; No. 136-96
6. Big Band Hall of Fame; No. 234-96
7. Seagull Industries for the Disabled, Inc.; No. 370-96
8. Share of Palm Beach County, Inc.; No. 391-96
9. American Orchid Society, Inc.; No. 392-96
10. Women's American ORT - Regional Office; No. 393-96
11. South Palm Beach County Jewish Foundation, Inc.; No. 394-96

Other

1. Failure to File Results Within Prescribed Time - Three Times

   a. The Jewish Guild for the Blind; No. 23-96

2. Failure to File Application in Prescribed Time - Administrative Processing Fee of $25 Paid

   b. Comprehensive Aids Program; No. 337-96

B. Alcoholic Beverage Licenses

1. Application for a Transfer of a 2COP Alcoholic Beverage License by Charles W. Schooley, III for Le Monegasque, Inc. at 2505 South Ocean Boulevard

The following changes were made to the Regular Agenda:

DEFER TO 10/10/95 XIV.C.2 page 6 Report by Town Attorney John Randolph Concerning Property Rights Law Per Letter (With Enclosure) Dated July 25, 1995.

Motion made by Mr. Wyett to defer this item to the October Town Council Meeting. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

DEFER TO 10/10/95 XIV.C.3 page 6 Variance No. 28-95, Mr. and Mrs. Lewis Rudin, 7 La Costa Way.

Motion made by Mr. Shaw to defer this item to the October Town Council Meeting. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

DEFER TO 10/10/95 XIV.C.4 page 6 Variance No. 31-95, James Harpel, 180 Barton Avenue.

Motion made by Mr. Shaw to defer this item to the October Town Council Meeting. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

DEFER TO 11/14/95 XIV.C.12 page 7 Variance No. 41-95, Fred Keller, 225 Dunbar Road.

Motion made by Mr. Shaw to defer this item to the November Town Council Meeting. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

DEFER TO 10/10/95 XIV.C.13 page 8 Variance No. 42-95, Bankers Trust of Florida, 350 Royal Palm Way.

Motion made by Mr. Wyett to defer this item to the October Town Council Meeting. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

DEFER TO 10/10/95 XIV.C.15 page 8 Variance No. 44-95, Lowell and Marla Paxson, 780 South Ocean Boulevard.

Motion made by Mr. Wyett to defer this item to the October Town Council Meeting. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

MOVED ITEM 20, Special Exception 21-95 with Variances and Site Plan Review, Robert Spiegel, Royal Poinciana Plaza, to OLD BUSINESS, TO BE HEARD AFTER ITEM 6, Special Exception No. 15-95.

Motion made by Mr. Wyett to move this item to Old Business, to be heard after Item 6. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

ADDED ITEM 11 UNDER XI. NEW BUSINESS, E. OTHER to consider Mr. Shaw's attendance at the Florida League of Cities meeting in Orlando.

Motion made by Mr. McLendon to add to the Agenda Item XI New Business E. Other to consider Mr. Shaw's attendance at the Florida League of Cities meeting in Orlando. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

ADDED ITEM 12 UNDER XI. NEW BUSINESS, E. OTHER to consider the "Save Our Homes" rule to be heard by the Governor and Cabinet on September 14.

Mr. Shaw made a motion to add to the Agenda Item 12 under XI. New Business, E. Other, to consider the "Save Our Homes" rule to be heard by the Governor and Cabinet on September 14. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

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

The Regular Agenda was approved as amended on motion from Mr. Wyett. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

Mrs. Smith pointed out a correction to the minutes of the Special Town Council Meeting held on July 25, 1995 on page 5, where it was stipulated that in 1976 approximately 34% of the total tax monies was going to the Town; now in 1995 the percentage was 23%. The 1976 date should have been 1986.

REGULAR AGENDA

VIII. LICENSES AND PERMITS - None

IX. COMMITTEE REPORTS

A. Report of the Water Committee Meeting of August 9, 1995

REPORT OF THE WATER COMMITTEE MEETING HELD ON AUGUST 9, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Water Committee was called to order by Chairman Samuel McLendon at 10:05 AM on August 9, 1995, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Wyett were found to be in attendance. Other Elected Officials attending for all or part of the meeting were: Mayor Ilyinsky, President Pro Tem McDonald and Councilman Shaw. Members of the Town Staff attending the meeting were: Robert J. Doney, Town Manager; Peter Elwell, Assistant Town Manager; Albert Dusey, Director of Public Works; James Bowser, Town Engineer, and Jacquelyn Reedy of the Town Clerk's Office. Mr. John E. Potts, P.E., Vice President of Hutcheon Engineers also attended the meeting.

II. APPROVAL OF AGENDA: Agenda was approved as printed.

III. WATER SUPPLY MATTERS

A. CONSIDERATION OF NON-POTABLE WATER SUPPLY STUDY DATED APRIL 5, 1995, FROM HUTCHEON ENGINEERS.

The Committee members, and the Town Staff reviewed the initial report submitted by Hutcheon Engineers regarding the feasibility of a separate non-potable water supply system for the Town of Palm Beach.

Mr. Wyett commented that the price of water is continually rising. Mr. McLendon stated that within the Town, approximately 4 to 5 million gallons of water per day is used for irrigation purposes, and the average daily demand for all water used in the Town is 8.4 million gallons per day. Also, a 4% increase in water fees by the City of West Palm Beach which is limited to 1998 is a potential problem.

Mr. McLendon said that the Town should be able to control their water distribution system, and the only way to do that is to own it.

Both Mr. Wyett and Mr. McLendon advised Mr. Potts that an above ground storage tank at Phipps Park would not be acceptable, even though system transmission costs probably would increase.

Considerable discussion followed relating to canal source availability during droughts. Most believe South Florida Water Management would look favorably on supplying some water even if there is no canal overflow, if the Town makes use of aquifer storage and recovery facilities to reduce annual potable use.

Even though not studied in detail, Mr. Potts advised that expected shallow aquifer storage and recovery would be in the 50 to 100 million gallon range, and can drastically reduce distribution system pipe sizes by providing widespread points of entry from aquifer storage and recovery wells. Treated non-potable water would enter the transmission distribution system, and would be directed 100 percent to the aquifer storage and recovery well systems until irrigation use starts. The percentage of the flow to the aquifer storage and recovery wells would decrease until the irrigation load equals the non-potable supply available rate, after which the aquifer storage and recovery well pumps would be activated as needed to make up the difference. The procedure would be revised as irrigation demands are reduced. The procedure would then repeat the next day.

There are potential problems in the number of days in which the canal source may not be available, or must be reduced. It may not be possible to store enough water to recover more than a two week need if the canal source is not available.

Wells would be shallow, in the 20 to 25 foot range, and would cover most of the Town where the aquifer is adaptable, and would create a variable depth bubble of fresh water on top of the saline water. The wells will probably be a mixture of vertical and horizontal. Canal withdrawal and treatment sites were discussed with three alternatives to consider. Treatment is expected to be multimedia including filtration and chlorination.

The shallow aquifer storage and recovery study which was projected to cost $22,000, would evaluate expected feasibility of use of shallow aquifer storage and recovery effectively for the non-potable systems. Should exploratory wells be required for hydrogeology projections, an additional $40,000 may be needed.

Committee and Staff are in agreement that the shallow aquifer storage and recovery system is vital to the non-potable potential plan, and should be authorized and incorporated with the already authorized "Irrigation" report.

THE COMMITTEE RECOMMENDED THAT THE TOWN COUNCIL CONSIDER EXPENDING $22,000 TO PROCEED WITH THE AQUIFER STORAGE AND RECOVERY (ASR) ELEMENT OF THE WATER STUDY, AND THAT THIS RECOMMENDATION BE CONSIDERED AT THE 5:01 PM PUBLIC HEARING MEETING OF SEPTEMBER 6, 1995.

The Water Committee also has asked Mr. Potts to inquire about the airport, I-95 noise site availability.

IV. ANY OTHER MATTERS: None.

V. ADJOURNMENT: Meeting was adjourned at 12:10 PM.

WATER COMMITTEE

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SAMUEL C. MCLENDON, COMMITTEE CHAIRMAN

ALLEN S. WYETT, COMMITTEE MEMBER

Mr. McLendon stated that the primary purpose of the meeting had been to review the Preliminary Report on Non-Potable Water for Irrigation, using the C-51 Canal as a primary source. It was agreed to do a shallow aquifer storage and recovery study for $22,000 (an item in the Hutcheon Engineer proposal to the Town Council), which was needed before finishing the non-potable report and recommendations. Mr. McLendon reported that the Water Committee recommends to the Town Council that this work be authorized.

Mr. McLendon added that he and staff had met with Mayor Graham and staff on September 11, 1995 and discussed many of the outstanding issues in the Draft Agreement sent to them earlier in the summer. After discussion, it was agreed that comments and revisions would come back to the Water Committee for review.

Mr. Shaw made a motion to accept the Report of the Water Committee of August 9, 1995. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Mrs. Smith asked Mr. McLendon why the response from West Palm Beach had been so slow?

Mr. McLendon replied that they had other pressing problems during the summer, and that he was quite disappointed in the lack of positive action.

Mayor Ilyinsky urged that the position of the Town in this matter be identified and positive action be taken.

Mr. McLendon stated that one positive thing heard in the meeting of September 11, was the indication that the City of West Palm Beach would not oppose the Town if it was decided to lay non-potable pipe.

Mrs. Smith stated that she was not sure that the $22,000, with the addition of a possible $40,000 would be the answer to the problem, but that she was willing to listen.

Mr. Wyett stated that water conservation may be very important in the future, and the study would not be lost money.

Mrs. Smith stated that West Palm Beach had not put anything in writing.

Mr. McLendon stated that an intelligent recommendation of the irrigation water study could not be made, in his opinion, without having the information from the shallow aquifer study.

Mrs. Smith asked how the study would bring leverage to the table in the negotiations with the City of West Palm Beach?

Mr. McLendon replied that he did not know how much leverage it would provide.

Mr. Shaw stated that he believed it was not a question of whether West Palm could re-sell the water, but whether they could re-sell it at the same rate obtained from Palm Beach, and that the other issue was the projection of rates. He made a motion to go forward with the shallow aquifer study. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

Mr. Doney requested that the funding for the project be authorized from the Undesignated General Fund balance of the current year's budget.

Mr. Wyett made a motion to approve the funding from the Undesignated General Fund balance. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

B. Report of the Public Works Committee Meeting of August 9, 1995

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING OF AUGUST 9, 1995

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order at 1:00 p.m. by Chairman Leslie A. Shaw. On roll call, Chairman Shaw and Committee Member Samuel C. McLendon were found to be in attendance. Other Elected Officials attending were Mayor Paul R. Ilyinsky, President Lesly S. Smith, President Pro-Tem Jack McDonald, and Councilman Allen S. Wyett. Others attending the meeting were Town Manager Robert J. Doney, Public Works Director Albert P. Dusey, Solid Waste Division Manager Ronald L. Meadows, Assistant Town Manager Peter B. Elwell, Director of Planning, Zoning and Building Robert L. Moore, Chief Code Enforcement Officer Brian K. House, and Town Clerk Mary A. Pollitt.

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

III. CONSIDERATION OF YARD TRASH ISSUES:

Chairman Shaw stated the problems associated with yard trash pickup schedules for residential, condominium, and commercial customers. Mr. Dusey addressed the issues related to a potential trial program that could be conducted in the north end of Palm Beach utilizing containers that could be picked up and emptied by a unit attached to a vehicle. Comments were heard from Mrs. Polly Earl, 209 Seaspray Avenue, and Ms. Imogene Willis, 229 Orange Grove Road, both of whom objected to being required to store and move large containers filled with yard trash.

Mr. McLendon suggested that a Tuesday through Saturday pickup schedule would be preferable to a Monday through Friday schedule. He said that something must be done to reduce the hazards and the eyesores of the piles.

Mr. Wyett suggested that yard trash piles could be placed on condominium parking lots, south of Sloan's Curve, in the summertime when large cutbacks occur. Those piles could be picked up by the crane which is currently used, thus saving the piling of this material on South Ocean Boulevard.

Mr. John Matich, 3475 South Ocean Boulevard, Co-Chairman of the Citizens Association South of Sloan's Curve, agreed with Mr. Wyett's suggestion and said he would bring up that issue with the thirty condominiums who belong to the Citizens Association South of Sloan's Curve. Mr. Matich noted that presently three of the condominiums pay for yard service that includes the removal of all yard trash from the island without piling it on South Ocean Boulevard for pickup.

After hearing the comments of President Smith, Mr. Doney, Mr. Dusey, Mr. McLendon, and Mr. Wyett, THE COMMITTEE RECOMMENDED THE FOLLOWING:

IV. CONSIDERATION OF RESIDENTIAL AND COMMERCIAL GARBAGE AND RECYCLING ISSUES:

After discussing the amount of recyclables collected in Town and hearing the comments of Mr. Shaw, Mr. McLendon, Mr. Wyett, Mr. Doney, and Mr. Dusey, IT WAS THE RECOMMENDATION OF THE COMMITTEE THAT THE PUBLIC WORKS DEPARTMENT BE DIRECTED TO STUDY THE ISSUE OF RECYCLING TO DETERMINE IF IT HAS REDUCED THE VOLUME OF GARBAGE SIGNIFICANTLY ENOUGH TO ALLOW A WEEKLY RECYCLING PICKUP DAY TO COUNT AS A GARBAGE COLLECTION DAY AND TO DETERMINE THE EFFECT THIS PROPOSED SWITCH WOULD HAVE ON THE TOWN'S SOLID WASTE COLLECTION COSTS.

Mr. McLendon suggested that, as time permits, the Public Works Department should evaluate a three day per week garbage pickup schedule.

V. ANY OTHER MATTERS: None.

VI. ADJOURNMENT: The meeting was adjourned at 2:55 p.m.

PUBLIC WORKS COMMITTEE

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LESLIE A. SHAW, COMMITTEE CHAIRMAN

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SAMUEL C. MCLENDON
COMMITTEE MEMBER

Mr. Shaw stated that the Public Works Committee had met to discuss the issues of yard trash, and how it impacts the Town of Palm Beach. Suggestions were looked at that came both from the Committee and from Mr. Dusey as to ways of eliminating some of the trash on the streets.

Mr. Wyett made a motion to accept the Report of the Public Works Committee. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Shaw then repeated the recommendations of the Public Works Committee as stated in the report.

1. MR. DUSEY BE DIRECTED TO POLL THE TRASH BUREAU EMPLOYEES TO DETERMINE IF THEY WOULD CHANGE WORK DAYS TO TUESDAY THROUGH SATURDAY IN LIEU OF MONDAY THROUGH FRIDAY; ALSO STUDY POSSIBLE SCHEDULING CHANGES TO FACILITATE RESIDENTIAL YARD TRASH PICKUP WHICH WOULD UTILIZE CURRENT METHODS BUT REDUCE OR ELIMINATE ON-STREET YARD TRASH PILES THAT REMAIN ON-STREET ALL WEEKEND.

Mr. Wyett stated that yard trash is left sitting all weekend, and on several streets he traveled on only very narrow parts of the streets were available to him.

Mr. McLendon made a motion to direct Mr. Dusey to poll the Public Works employees working days. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

2. STUDY METHODOLOGY OF HOW TO CHARGE COMMERCIAL PROPERTIES FOR YARD TRASH PICKUP AND DISPOSAL.

Mr. Wyett commented that he had discussed the issue with Mr. Dusey, and it seems that commercial trash was approximately 10% of all trash picked up, and that it would be possible for Mr. Dusey to analyze costs. Mr. Wyett made a motion to instruct Mr. Dusey to study the charges to commercial properties for trash pick-up. Seconded by Mr. Shaw.

Mr. McLendon asked Mr. Randolph if there was a possible discrimination issue between residential and commercial?

Mr. Randolph replied that he did not believe there was a discrimination issue involved.

On roll call the motion carried unanimously.

3. STUDY CONTAINERIZING OF YARD TRASH TO DETERMINE IF IT WOULD PROVIDE BETTER CONTROL, REDUCE COSTS, AND REMOVE YARD TRASH PILES FROM THE STREETS, WITHOUT UNREASONABLY BURDENING TOWN RESIDENTS.

Mrs. Smith asked who was going to study this question? She said the residents who would be stuck with containers outside their windows would not study this.

Mr. Shaw replied the containers were slightly larger than their garbage cans.

Mrs. Smith said she thought this was a ridiculous idea, and the residents would have to have these containers on the inside of their property. Cranes would have to reach the containers, and the amount of yard trash placed on the streets is huge. Mrs. Smith said it was wrong to inflict this issue on the residents of the Town because some persons do not want to see the yard trash on the streets.

Mr. Wyett said he concurred with Mrs. Smith's thoughts, and the idea was not practical. He continued that the idea behind the containers was for the clippings to be put into the containers which would make them more economical to pick up. Mr. Wyett said he did not think the practical side of the container issue worked.

Mrs. Smith said the residents of the Town of Palm Beach have tremendous pride in the beauty of their Town, and no one is attempting to destroy the look or the beauty of the Town by placing their trash clippings on the street. She said if there is a problem that the residents will address it, and when one returns from traveling, the cleanliness and beauty of the Town of Palm Beach are amazing.

Mr. McLendon said he was not a proponent of containers, but he did not have a problem with the Public Works Department looking at the issue and advising the Council. Mr. McLendon said he was very concerned about the yard trash being placed on the street, not only from an appearance point of view, but from a safety point of view. He continued he was not sure of the solution but he felt the issue should be addressed.

Mr. Wyett said that two different issues were involved; one being the container issue. The other issue was an off-street retention area on the home owner's property such as some of the residents on North Lake Way have. He said that some of the property owners have large enough areas to build a retention area that would solve some of Mr. McLendon's concerns.

Mrs. Smith noted that the Town has different sections, and some of the main thoroughfares have major problems.

Mayor Ilyinsky asked Major Croft from the Police Department if he had an estimate of the number of accidents reported to the Police Department because of the trash piles?

Major Croft replied he could not cite a specific accident, and he was aware of a handful of accidents involving trash piles in the last twenty years. Major Croft added the Police Department receives a large number of complaints mostly from other residents concerning the large amount of trash placed on the streets. He said that many of the residents are aggravated that the yard trash is placed in excess of the restrictions by their neighbors.

Mayor Ilyinsky recalled that the State had objected to the trash piles on A1-A and pads had to be constructed to hold the trash.

Major Croft said that if the trash piles are a public safety hazard, the police officers contact the residents who are responsible, and they are told to move the trash.

Mayor Ilyinsky said this issue is more of a police matter than a public works problem.

Major Croft said trash piles are dealt with when they become a public safety issue, and the trash piles are not constant problems.

John Matich, 3475 South Ocean Boulevard, addressed the Town Council and mentioned that most of the cutting is done by commercial people. He said the easiest thing would be to cut the vegetation and place it in front of the building. He continued that some of the condominium units are using companies who bring chippers to the site. These companies haul the vegetation off the island, and there is no ugly site. Mr. Matich said he thought the Town was protecting the commercial people who make money by cutting the vegetation and leaving the hard part to the Town of Palm Beach. He said the Town should consider the issue of the commercial companies taking care of the vegetation that they cut.

Mrs. Polly Earl, 209 Seaspray Avenue, addressed the Town Council and stated she agreed with Mr. Matich that the commercial companies have the capabilities to do chipping. She said that was a very logical solution for a condominium building that is contracting with a commercial contractor.

Mrs. Earl commended the Council for their willingness to look at the different sections of Town, the size of the lots, and whether the yard trash comes from condominium buildings or individual residences. Mrs. Earl suggested that the majority of homeowners are dealing with smaller contractors who may not have chippers. She said that many times the volume of yard trash is too great to put out on the street for the three day period that is allowed.

Mrs. Earl said she thought the system has worked; however, in the summertime when the major trimming is done, large volumes of vegetation is generated. She added that it was important for the Town Council to consider the microcosm and the situations of individuals. Mrs. Earl said she did not have any room to store a container on her property that would not be visible from her living room or block her driveway.

Mr. Shaw said he felt there were some misunderstandings, and the issue was not that the Town would put a thirty yard steel container on someone's property to hold all of their major trimmings. He said the discussion was to eliminate the problem of the gardener with a small pile that may not be able to put it out on Monday morning or Tuesday morning but could easily put it into a 96 gallon container that according to Mr. Dusey and other communities is able to handle the small, residential yard clippings. Mr. Shaw said the containers may be an option not a mandate. He gave the example of a resident doing yard work on the weekends, putting the yard trash in the container, and wheeling it out for the scheduled pickup day.

Mrs. Smith said she thought the problem was the perception of what the container was. She suggested bringing a sample container to the next Public Works Committee meeting.

Mr. Shaw replied they are like the yellow and blue recycling containers the Town is presently using. He said the container stands approximately four feet high.

Mrs. Smith reiterated that she did not know what the containers look like and suggested a container should be shown to the Public Works Committee who could then decide if it would work for the smaller property owner who would be handling the container.
She confirmed with Mr. Shaw that he was talking about the smaller weekly cuttings, rather than the cuttings taking place in May, June and October.

Mr. Wyett remarked that as he understood it, the homeowner would have the option to utilize the 96 gallon container in a year round situation.

Mrs. Smith asked Mr. Dusey if his department would pick up these containers?

Mr. Dusey addressed the Town Council, stating that there was equipment specifically designed to pick such containers up and dump it, which the Town presently did not have and would have to purchase.

Mr. Shaw made a motion to authorize Mr. Dusey to look into the cost of cantainerization of yard trash. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

4. STUDY OFF-STREET (ON-SITE) CONTAINMENT AREAS FOR BUSY NORTH/SOUTH STREETS TO ALLOW PLACEMENT OF YARD TRASH OFF OF THESE STREETS.

Mr. Wyett made a motion to authorize Mr. Dusey to study off-street containment areas for placement of yard trash. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

5. STUDY THE ISSUE OF RECYCLING TO DETERMINE WHETHER THE GARBAGE COLLECTION DAYS NEED TO BE REALLOCATED.

Mr. McLendon made a motion to authorize Mr. Dusey to study the issue of recycling and reallocation of garbage collection days. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

C. Report of the Ordinance, Rules, and Standards Committee Meeting of August 9, 1995

REPORT OF THE ORDINANCE, RULES & STANDARDS COMMITTEE MEETING
OF AUGUST 9, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Ordinance, Rules & Standards Committee was called to order by Chairman Jack McDonald at 3:00 p.m. on August 9, 1995, in the Town Council Chambers. On roll call, Chairman McDonald and Committee Member Leslie Shaw were found to be in attendance. Also attending the meeting were Mayor Ilyinsky, President Smith, Councilmen McLendon and Wyett, Town Manager Doney, Assistant to the Town Manager Jakubiak, and Town Clerk Pollitt.

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

III. CONSIDERATION OF CONFLICT OF INTEREST ISSUES: Mr. Shaw suggested, in an opening statement, that the State has well defined the standards regarding the code of ethics and the Town should not tighten the standards.

Mr. Wyett stated the Statutes of the State of Florida that serve as a guideline for the entire State are inadequate as guidelines for business intense towns such as the Town of Palm Beach, and transgressions of conflicts of interest occurred in the past, but not in the present Council. He continued that the State of Florida recognizes a conflict only if personal gain is involved. Mr. Wyett contended if commercial safeguards were part of the ordinance, a Council person or member of a board could legally be recused from voting on an issue. Mr. Wyett read his proposal as outlined in Town Attorney Randolph's letters, dated August 3 and August 4, 1995, (copies attached) to Mr. Wyett: "No council member or member of any appointed board within the Town shall vote in his or her official capacity upon any of the following measures:

1. Any matter involving a subject which may inure to the benefit of a corporation, holding company, or subsidiary thereof where the council member or appointed board member is a member of the board of directors of said corporation, holding company, or subsidiary thereof.

2. Any matter where the council or board member had a business relationship with an applicant or an attorney for the applicant within two (2) years prior to the date of application.

3. Any matter where the council or board member has a business relationship with any architect, realtor, broker, or other professional who may have a direct involvement with an applicant pending or where such relationship has existed within two (2) years prior to the date of application.

4. Any matter where the applicant is a friend or an individual with whom the council or board member has a close personal relationship and where said applicant will stand to benefit by way of a commercially financial gain in regard to said application. This provision shall not apply to variances for residential properties.

Any council member or appointed officer of the Town, prior to a vote being taken on any measure described above shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting and, within fifteen (15) days after the vote occurs, disclose the nature of his or her interest in a public record and a memorandum filed with the Town Clerk who shall incorporate the memorandum in the minutes. The voting conflicts described herein are intended as conflicts in addition to specific conflicts described by Florida Statute in Section 112.3143 thereof."

Mr. Wyett pointed out a change in the ordinance would allow a Council person to legally recuse him or herself from voting on an issue, and he suggested the conflict of interest issue should be tightened.

Mr. Shaw questioned item 3 in the list referring to a business relationship between a council or board member and realtor, broker or other professional. He considered this to be an exclusion clause that would not allow an architect, realtor, or lawyer to sit on the Council or a Board and discuss Town matters. He said this was not a fair way to approach this issue, and the election procedure is the method that addresses any problems.

Ned Barnes, Palm Beach Civic Association stated the Association was concerned about the "perception" issue. He said he had requested written responses to a questionnaire he had mailed to the members of the Executive Committee who were away for the summer. Mr. Barnes stated the conflict of interest regulation should be strengthened at the local level to protect the elected and appointed officials and to avoid any public perception of impropriety. He continued that often issues arise where the Town's representatives, while receiving no direct benefit, do have a business interest, a relationship or an affiliation with those who stand to gain from a pending decision, and in these instances, the Civic Association felt it would be advantageous, at the time of consideration, if a Town Code of Ethics or a previously adopted guideline could be cited by the official in question to abstain from the deliberations and voting on the final decision.

Mr. McDonald reported that the Town Attorney, Mr. Randolph, had concerns that the Town had the ability to pass an ordinance in addition to the State Statute and the Town Council would need to enforce the ordinance, if same were adopted.

Mr. Wyett added, that after many meetings with Mr. Randolph, Mr. Randolph suggested that if an ordinance were drafted, it would be submitted to the Attorney General of the State of Florida for an opinion.

Mr. McDonald read from Mr. Randolph's June 14, 1995, letter (copy attached) to Mr. Wyett which stated: "Although there is a provision within the Code of Ethics of the Florida Statutes which provides that a municipality may be more stringent than the statute in regard to disclosure requirements, I believe that provision is specifically applicable to disclosure requirements, not to voting conflicts." Mr. McDonald said he shared Mr. Randolph's concern, and the statement supposed the Town could increase the amount of disclosure required but voting conflicts could not be added. Mr. McDonald said, as Chairman of the Committee, he would not offer an opinion on the issue.

Mrs. Smith reported that she had discussions with Mr. Randolph, and individuals may write to the Commission on Ethics for the State of Florida to challenge a sitting or appointed official in any vote he or she may have taken. She added this is a way for the voters of the Town of Palm Beach to take action against a public official by citing them before the State of Florida Commission on Ethics which in effect does enforce the present statute for the State.

Mrs. Smith said that letters are currently being sent to the Mayor and Town Council and all applicable Town boards and members of commissions with a disclosure form addressing the change in the ruling regarding communications with elected or appointed officials who serve on boards or commissions who act in a quasi-judicial capacity and who would have ex-parte communications with persons not on their boards or commissions relating to matters that may be presented to their boards or commissions. This form is to be filled in by all members, appointed or elected officials, prior to the review of an application, and this is now part of the legal process.

Mayor Ilyinsky said that it was not in the best interest of the Council or its governing body to tighten the rules up, above and beyond what they already are.

After hearing the comments of Mayor Ilyinsky, President Smith, President Pro-Tem McDonald, Councilmen Shaw, McLendon and Wyett, and Mr. Doney, IT WAS THE RECOMMENDATION OF THE COMMITTEE TO REFER THE CONFLICT OF INTEREST ISSUE AS OUTLINED IN MR. RANDOLPH'S AUGUST 4, 1995, LETTER TO THE TOWN COUNCIL FOR FURTHER DEBATE.

IN PARTICULAR, THE COMMITTEE RECOMMENDS THE MAYOR AND TOWN COUNCIL CONSIDER THE FOLLOWING AT THE SEPTEMBER 12TH TOWN COUNCIL MEETING:

NO COUNCIL MEMBER OR MEMBER OF ANY APPOINTED BOARD WITHIN THE TOWN SHALL VOTE IN HIS OR HER OFFICIAL CAPACITY UPON ANY OF THE FOLLOWING MEASURES:

1. ANY MATTER INVOLVING A SUBJECT WHICH MAY INURE TO THE BENEFIT OF A CORPORATION, HOLDING COMPANY OR SUBSIDIARY THEREOF, WHERE THE COUNCIL MEMBER OR APPOINTED BOARD MEMBER IS A MEMBER OF THE BOARD OF DIRECTORS OF SAID CORPORATION, HOLDING COMPANY OR SUBSIDIARY THEREOF.

2. ANY MATTER WHERE THE COUNCIL MEMBER OR BOARD MEMBER HAD A BUSINESS RELATIONSHIP WITH AN APPLICANT OR AN ATTORNEY FOR THE APPLICANT WITHIN TWO (2) YEARS PRIOR TO THE DATE OF THE APPLICATION.

3. ANY MATTER WHERE THE COUNCIL MEMBER OR BOARD MEMBER HAS A BUSINESS RELATIONSHIP WITH ANY ARCHITECT, REALTOR, BROKER OR OTHER PROFESSIONAL WHO MAY HAVE DIRECT INVOLVEMENT WITH AN APPLICATION PENDING OR WHERE SAID RELATIONSHIP HAS EXISTED WITHIN TWO (2) YEARS PRIOR TO THE DATE OF APPLICATION.

   ANY COUNCIL MEMBER OR APPOINTED OFFICER OF THE TOWN, PRIOR TO A VOTE BEING TAKEN ON ANY MEASURE DESCRIBED ABOVE SHALL PUBLICLY STATE TO THE ASSEMBLY THE NATURE OF HIS OR HER INTEREST IN THE MATTER FROM WHICH HE OR SHE IS ABSTAINING FROM VOTING AND, WITHIN FIFTEEN (15) DAYS AFTER THE VOTE OCCURS, DISCLOSE THE NATURE OF HIS OR HER INTEREST IN A PUBLIC RECORD AND A MEMORANDUM FILED WITH THE TOWN CLERK WHO SHALL INCORPORATE THE MEMORANDUM IN THE MINUTES. THE VOTING CONFLICTS DESCRIBED HEREIN ARE INTENDED AS CONFLICTS IN ADDITION TO SPECIFIC CONFLICTS DESCRIBED BY FLORIDA STATUTE IN SECTION 112.3143 THEREOF.

Mr. Shaw stated, for the record, that he did not approve these three items but felt they should be presented to the Town Council for discussion.

Doyle Rogers, Attorney, addressed the Committee and asked if the Town could not request an opinion from the Attorney General for the State of Florida regarding the issue? He suggested a proposed ordinance could be submitted for an opinion, and in most cases, a lower body can always make a provision stricter.

IV. CONSIDERATION OF DRAFT CUSTOMER SERVICE STANDARDS ORDINANCE AND REPORTING

PROCEDURES OF COMCAST CABLEVISION

David Jakubiak, Assistant to the Town Manager, reported to the Committee that the Town requested that Comcast Cable prepare a report outlining ways to improve their telephone reporting system to provide the Town with Town specific customer complaints. Mr. Jakubiak suggested that a cable hotline be established by the Town, for the residents, utilizing a recorder, and penalties would be assessed based on monthly telephone call totals of specific types of customer complaints that did not meet specific standards. He added that penalties could be appealed to the Town Council by Comcast. Mr. Jakubiak stated that an ordinance could be prepared incorporating all of the details.

Diane Christie, Comcast Director of System Development, expressed her concern that residents would call the hotline telephone number when they actually needed to be contacting the cable company directly for such problems as cable outage or billing. She added that a provision for a "written notice to cure" should be incorporated in any proposed ordinance relating to the assessment of penalties to allow for circumstances such as interruption of telephone service that would not be the cable company's fault.

Staff indicated that it does not agree that a "notice to cure" would be possible since the violations would have already occurred. Mr. Jakubiak reported he had previously discussed with Mr. Randolph that a "notice to cure" provision would not be necessary if an appeal process is provided to Comcast.

After discussing the issues of Comcast's service to the Town residents, the costs and purpose associated with a telephone problem resolution line, and hearing the comments of Mr. McDonald, Mr. Shaw, Mr. Doney, Mr. Jakubiak, and Mrs. Christie, THE COMMITTEE REQUESTED THE TOWN COUNCIL AUTHORIZE A PROBLEM RESOLUTION LINE WITH MR. JAKUBIAK WORKING OUT THE DETAILS FOR THE LINE WITH A COST ALLOCATION OF $500 FOR THE FIRST YEAR WITH THE COSTS TO BE MONITORED THEREAFTER. THE COMMITTEE REQUESTED THAT MR. JAKUBIAK PRESENT A DRAFT OF A CUSTOMER SERVICE STANDARDS ORDINANCE AT THE NEXT ORDINANCE, RULES & STANDARDS COMMITTEE MEETING.

VI. ANY OTHER MATTERS: There were none.

VII. ADJOURNMENT: The meeting was adjourned at 4:45 p.m.

ORDINANCE, RULES & STANDARDS COMMITTEE

Jack McDonald, Chairman

Leslie A. Shaw, Committee Member

Mr. McDonald stated that four issues would be referred to the Town Council as follows:

1. No Council Member or member of any appointed board within the Town shall vote in his or her official capacity upon any of the following measures:

   a. Any matter involving a subject which may inure to the benefit of a corporation, holding company, or subsidiary thereof, where the Council Member or appointed board member is a member of the Board of Directors of said corporation, holding company, or subsidiary thereof.

   b. Any matter where the Council Member or board member had a business relationship with an applicant or an attorney for the applicant within two years prior to the date of the application.

   c. Any matter where the Council Member or board member had a business relationship with any architect, realtor, broker, or other professional who may have direct involvement with an application pending, or where said relationship has existed within two years prior to the date of the application.

Any Council Member or appointed officer of the Town, prior to a vote being taken on any measure described above shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting, and within 15 days after the vote occurs, disclose the nature of his or her interest in the public record in a memorandum filed with the Town Clerk, who shall incorporate the memorandum in the minutes. The voting conflicts described herein are intended as conflicts in addition to specific conflicts described by Florida Statute Section 112.3143 thereof.

2. Discussion of resolution of complaints dealing with the service by Comcast.

After discussion, it was decided that the Committee would recommend that the Town Council authorize a problem resolution line with Mr. Jakubiak working out the details for the line with a cost allocation of $500.00 for the first year, with the costs to be monitored thereafter.

Mr. McDonald stated that the Town would try to resolve any problems with Comcast that a subscriber had not been able to resolve by themselves. The Town would then become involved in the problem resolution, and that would require the installation of a telephone in one of the Town offices, and that phone would be used only for people calling with regard to Comcast services.

Mr. Wyett made a motion to accept the report of the ORS Committee. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mrs. Smith stated that there could have been some confusion as to the discussions at the ORS Meeting. It had been a discussion of changing or going beyond the statute of ethics for the State of Florida, and that she would like to think that this would not turn into a discussion of personalities, or personal innuendoes, or castigation upon any members presently sitting or past members of the Town Council.

Mr. Wyett recommended that only part 1 of be adopted and that parts 2 and 3 be dropped and replaced the following:

"Any Council Member or member of any appointed board within the Town shall reserve the right to recuse themselves, upon self determination, that there exists commercial, business or personal involvement which the official perceives as being for profit or loss for the applicant."

Mr. McLendon asked Mr. Randolph if these recommendations were in addition to the State Statutes?

Mr. Randolph replied that it was his understanding that this was an attempt to include other potential conflict situations that were not addressed by State Statute. Mr. Randolph read the definition of conflict under State Statute:

No County, Municipal or other local public officer shall vote in his official capacity upon any measure which would inure to his special private gain or loss, which he knows would inure to the special private gain or loss of any principal by whom he is retained, or to the parent organization or subsidiary of a corporate principal by which he is retained, or which he knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to a vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting, and within 15 days after the vote occurs disclose the nature of his interest as a public record.

Mrs. Smith asked Mr. Randolph what the definable difference was between the State Statute and what Mr. Wyett had just read?

Mr. Randolph replied that he would have to study Mr. Wyett's statement.

Mayor Ilyinsky stated that he objected to the suggestion that anyone sitting on the Council would not recuse himself if he felt that was necessary.

After a short break, Mr. Randolph had reviewed Mr. Wyett's suggestion, and he advised that the language gave him some concern because of the provision of the Florida State Statute, which said that a Council Member may not abstain on an item unless there was a conflict as defined by State Statute. He noted that he had advised Council Members in the past that even though there was no technical conflict by way of the Statute, if a Council Member felt it was a close call, then it would be appropriate to abstain.

Mr. McDonald stated that if there was not a legitimate conflict of interest, the chair could enforce the vote of a Council Member.

Mr. Shaw made a motion that this issue be deferred until Mr. Randolph could determine if this was a viable clause under State Statute. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

The next item on the ORS Report was the recommendation on Comcast Cable. Mr. McDonald reiterated the recommendation to expend $500.00 annually for the installation of a problem resolution line, and that Mr. Jakubiak could address any questions in this regard.

Mr. Jakubiak addressed the Town Council stating that the phone would have a recorded message format that would be gone over on a daily basis, with the reason being that the resolution line would be a way of tracking complaints and assessing penalties if the complaints became excessive. It would additionally be tied to an ordinance that the Council would have to review and approve.

Mr. McDonald stated that there were presently no penalties in the Ordinance, so information could be collected, but penalties could not be assessed at this point.

Mr. McDonald made a motion to approve the expenditure of $500.00 annually to set up a problem resolution line in connection with Comcast Cable complaints. Seconded by Mr. McLendon.

Mr. Wyett suggested that the motion be amended to have a one year time limit, which was agreed to by Mr. McDonald.

Mr. Wyett asked Mr. Jakubiak if any other communities had done similar type things?

Mr. Jakubiak replied that the reason it was being recommended was because of the problems of getting reported information related to the Town from Comcast.

On roll call the motion carried unanimously.

X. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 8-95 - Amendment to Application Fee and Privilege Fee for Abandonment of Rights-of-Ways and Easements

Mr. Randolph read Ordinance 8-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING ORDINANCE 19-93, RELATING TO THE VACATION AND ABANDONMENT OF RIGHTS OF WAYS AND EASEMENTS WITHIN THE TOWN SO AS TO INCREASE THE APPLICATION FEE TO COVER ALL COSTS RELATING TO SAME, AND SO AS TO AMEND THE METHOD OF CALCULATING THE PRIVILEGE FEE SO AS TO BASE SAME ON A CURRENT INDEPENDENT APPRAISAL AS OPPOSED TO A VALUE ESTABLISHED BY PALM BEACH COUNTY PROPERTY APPRAISER RECORDS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Shaw made a motion to approve Ordinance 8-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

2. Ordinance Amendments to Town Boards and Commissions:

a. Ordinance No. 9-95 - Amendments to Golf Commission Ordinance

Mr. Randolph read Ordinance 9-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER 14 OF THE TOWN CODE OF ORDINANCES RELATING TO PARKS AND RECREATION AT ARTICLE II, GOLF COMMISSION, SECTION 14-15, SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL OF MEMBERS, AMENDING PROVISIONS RELATING TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Shaw made a motion to approve Ordinance 9-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

b. Ordinance No. 10-95 - Amendments to Seaview Park Commission Ordinance

Mr. Randolph read Ordinance 19-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 14 OF THE TOWN CODE OF ORDINANCES RELATING TO PARKS AND RECREATION AT ARTICLE I, SEAVIEW PARK COMMISSION, SECTION 14-1 SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL OF MEMBERS, AMENDING PROVISIONS RELATING TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. McLendon made a motion to approve Ordinance 10-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

c. Ordinance No. 11-95 - Amendments to Architectural Commission Ordinance

Mr. Randolph read Ordinance 11-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5 OF THE TOWN CODE OF ORDINANCES, RELATING TO BUILDINGS AT ARTICLE IX, ARCHITECTURAL REVIEW AND PROCEDURE, SECTION 5-279, SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL, AMENDING SECTION 5-380 RELATING TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. McLendon made a motion to approve Ordinance 11-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

d. Ordinance No. 12-95 - Amendments to Landmarks Preservation Commission Ordinance

Mr. Randolph read Ordinance 12-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 16 OF THE TOWN CODE OF ORDINANCES RELATING TO PLANNING AT ARTICLE III, LANDMARKS PRESERVATION COMMISSION, SECTION 16-35, SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL OF MEMBERS, AMENDING PROVISIONS RELATING TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Shaw made a motion to approve Ordinance 12-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

e. Ordinance No. 13-95 - Amendments to Zoning Commission Ordinance

Mr. Randolph read Ordinance 13-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 16 OF THE TOWN CODE OF ORDINANCES RELATING TO PLANNING AT ARTICLE I, ZONING COMMISSION, SECTION 16-1, SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL OF MEMBERS, AMENDING PROVISIONS RELATING TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 13-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

f. Ordinance No. 14-95 - Amendments to Code Enforcement Board Ordinance

Mr. Randolph read Ordinance 14-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CODE OR ORDINANCES OF THE TOWN AT ARTICLE 10 RELATING TO CODE ENFORCEMENT BOARD AT SECTION 2-177 THEREOF, RELATING TO ORGANIZATIONS SO AS TO PROVIDE THAT CONSIDERATION BE GIVEN TO THE APPOINTMENT OF A MEMBER WITH EXPERIENCE IN PUBLIC HEALTH, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 14-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

3. Ordinance No. 15-95 - Amendments to Section 14-33 of the Town Code of Ordinances, Regarding Spearfishing Equipment

Mr. Randolph read Ordinance 15-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RESCINDING SECTION 14-33 OF CHAPTER 14 OF THE TOWN CODE OF ORDINANCES,

ENACTING A NEW SECTION 14-33, PROVIDING FOR THE PROHIBITION OF SPEARFISHING EQUIPMENT ON CERTAIN DEFINED AREAS OF THE PUBLIC BEACH WITHIN THE TOWN, PROVIDING FURTHER FOR THE REGULATION OF SPEARFISHING EQUIPMENT AT OTHER PUBLIC BEACHES, PROVIDING FOR DEFINITIONS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Shaw made a motion to approve Ordinance 15-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

4. Ordinance No. 16-95 - Amendments to Chapter 15, "Pensions and Retirement"

Mr. Randolph read Ordinance 16-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES RELATING TO PENSIONS AND RETIREMENT AT SECTIONS 15-15 AND 15-18 TO PROVIDE EARLY RETIREMENT OPTIONS FOR BENEFIT GROUP GENERAL EMPLOYEES, AT SECTION 15-18, TO PROVIDE BENEFIT GROUPS FIRE FIGHTER AND POLICE OFFICER INCREASED BENEFITS FOR CREDITED SERVICES RENDERED AFTER SEPTEMBER 30, 1992, AND FURTHER INCREASE BENEFITS FOR CREDITED SERVICE RENDERED AFTER SEPTEMBER 30, 1995, AT SECTION 15-19 TO RESTATE SAID SECTION BY PROVIDING EXAMPLES, AT SECTION 15-25 TO CHANGE THE AUTOMATIC SURVIVOR PENSION ON DEATH AFTER RETIREMENT TO PREFER SURVIVING MINOR CHILDREN TO THE SURVIVING SPOUSE, AT SECTION 15-26 TO PROVIDE MINOR CHILDREN IN LIKE MANNER AFTER DEATH WHILE IN TOWN EMPLOYMENT, AT SECTION 15-27 TO INCREASE SURVIVORSHIP BENEFITS WHEN DEATH OCCURS WHILE WORKING, AT SECTION 15-28 TO ALLOW THE NAMING OF A SURVIVOR WHO IS NOT A DEPENDENT OF THE MEMBER, AT SECTION 15-33 TO INCREASE THE BENEFIT GROUP GENERAL MEMBER CONTRIBUTION RATE, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Shaw made a motion to approve Ordinance 16-95. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

B. Other

1. Consideration of Beach Erosion Matters

a. Consideration of the Lake Worth Inlet Sand Transfer Plant - Status Report on Restoration by Palm Beach County

Mr. Robert Clinger of Palm Beach County, addressed the Town Council, stating that the engine for the Sand Transfer Plant had been delivered and was in the process of being installed, with hopes that it would be running by the end of the week. The pipe connections would be completed by the end of the following week. He was pleased that everything was moving along and timetables would be met.

Mrs. Smith asked Mr. Clinger if he still anticipated the Plant being up and running at the end of October/beginning of November?

Mr. Clinger replied that he hoped so, and did not see anything that would stop it.

b. Update on Mid-Town Beach Restoration Project, Including Use of PEP Reef Units as Groins

Mr. Dusey addressed the Town Council, stating that the PEP Reef units had been removed in total, and drainage improvements had been initiated for the fill project. Major permits had been issued, and derelict structure removal had started and should be completed by October 2, 1995, with the fill project beginning the first week in October.

Mr. Jim Koontz, 232 La Puerta Way, addressed the Town Council, stating that the beach erosion plan for the Town was a product of Applied Technology and Management, Inc., the prime contractor. He commented that the preliminary report of ATM on its 6-phase Inlet Study was full of mistakes, with the second edition dated March 31, containing the same mistakes. Mr. Koontz noted that was the study the Town was currently using. Mr. Koontz expressed some technical and cost concerns relating to beach erosion and the ATM plan, adding that the ATM plan was endorsed by the Town Council failed to meet a single criterion. He remarked that the policy of the Town Council for the last five years had led to the current state of the mid-Town beach; he asserted that those policies were the direct result of the failure of the Town Council to seek independent expert advice. He added that Dr. Charles Finkel, Professor of Marine Geology at Florida Atlantic University had offered to address the Town Council at its convenience.

Mr. McLendon stated that Mr. Bowser and he had met with Dr. Finkel for a review of the plans for the project and said that he had no problem with the plans. The only thing that he had reservation about was that he would have preferred the sand mining point further away from the Inlet.

Mrs. Smith added that Mr. McLendon had written a very comprehensive memo for the Town Council and the staff about his meetings with Dr. Finkel, which was a part of the record.

XI. NEW BUSINESS

A. Ordinances

1. Consideration of Ordinance No. 22-95 - Valet Parking

Mrs. Smith reported that at the Public Safety Committee meeting where this was discussed by Mr. Wyett and herself, it was the recommendation that Mr. Randolph draft this ordinance. She asked Mr. Randolph if a motion was required to send the ordinance to the Florida Department of Transportation for review?

Mr. Randolph replied that he understood the Town Council wanted to review the draft of the ordinance prior to sending it to the State for review. He said if the Town Council feels the ordinance is at a point where it should be submitted to the State for comment then a motion to do that would be appropriate.

Mr. Wyett referred to page 3 of the ordinance, "The application shall be accompanied by a schematic plan, sized at 8.5 inches by 11 inches...". Mr. Wyett asked if that size would be large enough to provide the information needed by the Police Department, diagramming the location, the location of the transfer parking area, and other associated information? Major Croft affirmed that the size was sufficient for the required information.

Mr. Wyett asked if the fee should be greater than $250 per year because the cost to the Town would be higher, and the cost could not be recaptured? He asked if the $250 was an annual fee or a one time fee?

Mr. Randolph replied it was intended to be an annual fee per ramping space and if an individual wanted three ramping spaces the fee would be three times $250.

Mr. Wyett said he agreed since the Police Department decided how many ramping spaces were necessary per establishment. Mr. Wyett noted that on page 7 only parallel parking spaces may be used for the staging area. He cited Cafe L'Europe's new location that has angled parking. He asked how that would be handled?

Major Croft from the Police Department responded that location was the only one where parallel parking does not exist, and it will present a problem for the owners of that restaurant and a valet service to obtain a permit.

Mr. Wyett asked if that issue could be addressed and a plan made to alleviate a potential problem?

Major Croft recalled that restaurants have occupied that location previously and had valet parking, and the parking in the area was parallel parking at that time. He noted the parallel parking has been changed several times over the last ten years.

Mr. Wyett remembered using a valet service when Mario's was open, and he angle parked until the valet moved the automobile.

Major Croft said it was not his recommendation to alter the parking situation that exists.

Mrs. Smith asked how the new restaurant could be covered by valet parking? She said a situation should not be created where they could not obtain a valet parking permit.

Mr. Randolph suggested that provision could be eliminated from the ordinance and allow the Police Department the discretion to review the application for valet parking. He suggested removing that section in the ordinance that related to parallel parking.

Mr. McLendon said he thought it would be better to leave the section in as a requirement unless excepted by the Police Department.

Major Croft added that normally it would be the recommendation of the Police Department not to approve a valet parking permit if the parking were solely diagonal.

Mr. Wyett said that a few parking spaces would be eliminated if the angled parking were dropped and a problem would be created during the daytime. Mr. Wyett asked Major Croft if diagonal parking could be handled during the day and parallel parking at night?

Major Croft said the lines would be confusing.

Mr. Randolph suggested the following wording for Item 4:

> Only parallel parking spaces may be used for the staging area unless for public safety purposes, another method is approved by the Police Department.

Major Croft said that an additional option would be to move the valet parking to Brazilian Avenue.

Mr. Doney responded that only a portion of Brazilian Avenue abuts the commercial zoning district.

Mrs. Smith suggested Mr. Randolph's wording should be incorporated and see how the ordinance works.

Mr. McLendon added he did not think the valet parking should be forced away from the front door of the restaurant unless necessary.

Mr. Shaw said that the Council was assuming the front door would be on South County Road. He added that the possibility was considered to attempt to have establishments that have on-site parking to utilize the back entrance in their design, and this would alleviate the need for a valet permit.

Mrs. Smith said it was not the Council's position to re-design a restaurant that is currently being planned with an ordinance that is not in effect at this time. She supported Mr. Randolph's suggestions for changes in the language, and asked Major Croft if that language was acceptable to him?

Major Croft said it was acceptable, but he did want to go on record that only diagonal parking exists in front and that is the ideal location for valet parking. He added, that location would probably not be looked at favorably by the Police Department.

Mr. Wyett asked if the ordinance had a provision to allow the Police Department to determine the number of valet parkers required to make sure the system works smoothly?

Major Croft replied that the best way to handle that was to allow the Police Department to handle that on a case by case basis with close scrutiny and review. He did not think that there was an equation that would apply because some valet services are more efficient than others, some of the parking facilities are closer to the restaurant, and other factors may determine how quickly cars can be parked.

Mr. Wyett suggested a provision in the ordinance to the effect that it would be the responsibility of the valet service to provide an adequate number of valet parkers to not cause problems.

Major Croft responded that provision was already in the ordinance.

Mr. Randolph said there was a general portion on page 6 which leaves a great deal of discretion as it relates to public safety with the Police Department. He quoted: "When determining whether the staging area or storage area will accommodate the proposed valet service use, the Chief of Police will be guided in his determination by the application of pertinent traffic regulations of the State of Florida, ordinances of the Town of Palm Beach, and the regulations of any other agency having jurisdiction over the right-of-way, as well as basic considerations of the public health, safety and welfare. No permit shall be issued if the Chief of Police determines that valet service will substantially interfere with the use of public right-of-way etc...". Mr. Randolph said it would not hurt to indicate that it shall be the responsibility of the applicant to assure that the applicant has enough employees to accommodate the valet service.

Mr. Wyett suggested that the inability to supply sufficient valet parkers should be a reason to revoke the valet permit.

Mr. Shaw referred to page 3, fees, and noted that the application is a joint application between the valet service and the restaurant. He asked, if the valet service were changed, would the restaurant reapply for a permit?

Mr. Randolph responded that the owner would have to indicate who the new valet service was, and the valet service would have to come to Town Hall and sign on, providing particulars regarding the insurance, etc.

Mrs. Smith asked for a motion to send this proposed ordinance to DOT for consideration?

Motion made by Mr. Shaw to send the proposed ordinance to the Department of Transportation for consideration. The motion was seconded by Mr. Wyett.

Mr. Wyett referred to page 8 and read: "Vehicles in the possession of the valet service should be identified by a ticket stub attached to the rear view mirror which includes the valet operator's and the establishment names." He questioned if that was necessary since the cars were being parked on a lot? He asked if there was an advantage for the Police Department knowing if the cars in the lots were valet cars?

Major Croft replied that was a security option that the Police Department felt was a good idea when the parking lots were being patrolled. He said it is a quick indication to the Police to enable them to determine if the car has been legally parked or should be checked out.

Mr. Wyett asked if the proposed ordinance contained any language that valet parkers should not park any vehicles on the public way? Major Croft replied affirmatively.

Mr. Randolph stated that a "typo" existed on page 3, Section 11-80, and the permit shall not be submitted to the Town Engineer. The permits will be submitted to the Town Manager or the Chief of Police whichever the Town Manager selects.

Mr. Doney replied that through the day to day administration and implementation of the permitting, the Chief of Police would be the proper choice.

Mrs. Smith said a motion and a second were made to send this ordinance to DOT with the changes that were discussed. She requested a roll call, if there was no further discussion.

On roll call, the motion carried unanimously.

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

Mr. Randolph read Ordinance 23-95:

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

Mr. Randolph stated that the whereas clauses explained what had happened--there was a glitch, where the first ordinance was adopted in 1990 and amended before codification. Therefore, the purpose of this present ordinance was a housekeeping process, In addition, the definition of lot split had been redefined so as to read in a manner that was more workable for the Building Department.

Mr. Shaw made a motion to approve Ordinance 23-95. Seconded by Mr. Wyett.

Mr. Wyett inquired about a petition that had been denied involving a corner lot and changing an address from one street to another, and questioned whether this situation was addressed by the ordinance?

Mr. Moore addressed the Town Council, pointing out that the Ordinance stated that it there were more than three lots on one street frontage it was a subdivision; while less than three would be a lot split. The lot that Mr. Wyett was referring to was the former Ivan Lendl property, which had one lot on South County and two lots on Banyan.

Mr. Wyett asked if the ordinance could be changed so that a property owner could determine the address for his front door?

Mrs. Smith remarked that Mr. Moore could give the background on this, which was quite complicated.

Mr. Moore stated that the application of Mr. Lendl was atypical, and the problems associated with it were not an ongoing problem.

On roll call the motion carried unanimously.

B. Resolutions

1. Resolution No. 34-95 - Designation of Town Depositories and Authorization to Sign Checks for FY96

Mr. Randolph read Resolution 34-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING TOWN DEPOSITORIES FOR FISCAL YEAR 1996 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. Wyett made a motion to approve Resolution 34-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

C. Bid Awards

1. Sealed Bid No. 95-12A - Uniform Rental Service

This item was previously approved under the "Approved Agenda".

2. Sealed Bid No. 95-15A - Replacement Reserve Mobile Intensive Care Unit

Assistant Fire Chief Rick Neal addressed the Town Council, stating that bids had been sent out to replace a 1985 Ford unit and it was being requested that the number three bid be accepted based on economics and practicality of repair work.

Mr. Wyett made a motion to approved Sealed Bid No. 95-15A. Seconded by Mr. McLendon.

Mrs. Smith stated that it was fortunate to be in the position of purchasing a new unit through the ongoing generosity of Palm Beach residents who support all of the programs in Town, and this unit replacement was from a donation given by Mrs. Murielle Botcher in 1991 and it now stood at $106,181.00. Mrs. Smith expressed appreciation to Mrs. Botcher.

EMS Coordinator Charles Price noted that the new unit would have a different suspension system that would give an easier ride on the patient. In the future, after seeing how the unit works out, other donated monies would be used to purchase other replacements.

On roll call the motion carried unanimously.

Mr. McLendon asked if the record should include that the number three bid was the lowest responsible bidder?

Mr. Randolph stated that he believed the comments of the Chief had included that, and the responsibility of the Town Council was to give it to the lowest responsible bidder.

Mr. Doney pointed out that a memorandum dated September 1, 1995 from Chief Elmore gave specific details concerning the purchase of the new unit.

D. Appointments

1. Mini-PERC Commission - One Four-Year Term to Expire September 1999

Mr. Wyett made a motion to reappoint Mrs. Helen G. Hoffman as the Town Public Employee Relations Commission Member, who had served on the Commission since 1988. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mrs. Smith thanked Mrs. Hoffman for her services.

E. Other

1. Consideration of Request for Easement from Mr. Georges Benarroch, 1232 North Ocean Way

Mr. James Bowser, Town Engineer, addressed the Town Council, stating that Mr. Benarroch came to the Town approximately two years with some drainage problems on his unique piece of property. Mr. Bowser said that because of its elevation, gravity drainage was not possible on the property. Mr. Bowser stated that a number of alternatives had been explored with Mr. Benarroch, with the conclusion being that the original proposal of Mr. Benarroch was the best alternative. This included constructing a small pump station on the property with a force main out to the Town drainage system. The force main would go out to North Ocean Way and head southerly to the next street. Town policy prohibited private utilities in rights of ways and easements in this manner, therefore it was being requested that an easement be granted upon the road right of way in the favor of Mr. Benarroch. Mr. Bowser continued that five conditions had been included for approval:

1. A UTILITY EASEMENT WILL BE RECORDED FOR THE BENEFIT OF THE PROPERTY IN PERPETUITY.

2. AN AGREEMENT WILL BE RECORDED, TO RUN WITH THE PROPERTY WHICH DESCRIBES THE TERMS AND CONDITIONS UNDER WHICH THE STORM DRAINAGE FORCE MAIN IS TO BE COMPLETED.

3. THE PROPERTY OWNER SHALL INSTALL, OWN, OPERATE AND MAINTAIN THE STORM DRAINAGE FORCE MAIN IN ACCORDANCE WITH APPLICABLE TOWN STANDARDS.

4. IF THE PROPERTY OWNER FAILS TO PROPERLY OPERATE AND MAINTAIN

THE STORM DRAINAGE FORCE MAIN, THE TOWN MAY HAVE REPAIRS MADE AND LIEN THE PROPERTY.

5. THE PROPERTY OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE TOWN FOR ANY DAMAGES CAUSED BY THIS STORM DRAINAGE FORCE MAIN INSTALLATION. LANGUAGE SHALL BE PREPARED BY THE TOWN RISK MANAGER.

It was the understanding of Mr. Bowser that Mr. Benarroch had agreed and consented to all of the conditions, and Mr. Bowser noted that staff recommended approval of the easement.

Mr. Wyett asked if the area would be paved or unpaved?

Mr. Bowser replied that the request would be to put it in the paved area because other utilities occupied the edges of the roadways.

Mr. Shaw asked why this request was being made?

Mr. Bowser replied that if a connection into the Town system was made in a perpendicular property then there was no requirement for an easement, however, in this case Mr. Benarroch would come out of his property and run 100-200 feet down the street in the road right of way, and if everyone did that it would encumber the rights of ways and easements with a lot of private service lines. That was why it was normally not permitted, however, this case was an exception to policy.

Mr. Wyett made a motion to approve the easement for Mr. Georges Benarroch, 1232 North Ocean Way. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

2. Recommended Town Medical Plan for FY96 - Request for Authorization for Town Manager to Execute Agreements and to Proceed with Related Details -

Mr. William Crouse, Personnel Director, addressed the Town Council, stating that he had outlined the medical plan, the history, and recommendations for premiums for the upcoming year in his memorandum of August 22, 1995 to Mr. Doney. He continued that each year the premiums were scheduled based on actuarial assumptions and on actual experiences with the medical plan. Next year, unlike any other, and in continuance with saving money in the plan, recommendation of an inducement to utilize the new managed care plan was being made. The managed care plan was the Florida Health Choice select plan, which was an EPO and offered significant reductions in costs to claims. With the approval of the Town Council, the implementation of the tiered system of premiums would be made for those who chose to go into the EPO. Mr. Crouse stated that if a number of people chose the EPO, premiums coming to the Town would be reduced by approximately $58,000. Mr. Crouse continued that the savings realized, by the utilization of the plan, based on projected claims, would be over $200,000.

Mrs. Smith pointed out page 2 of the report wherein it was stated, "we determined it would not be necessary to incur the additional expense to have the actuarial report completed." She asked how much the actuarial report would have cost?

Mr. Crouse replied that the cost would have been approximately $3,500, but what the actuary was going to do was something that could be done by staff.

Mrs. Smith remarked that the report indicated that overall claims were down by $646,956 and asked Mr. Crouse to explain the amount of previous claims.

Mr. Crouse replied the number was for the claims for the previous year. He explained the budgets and expectations are based upon the projections of claims, and the claims were under the projections by $646,956 for that fiscal year.

Mrs. Smith remembered that the Town had three extraordinary claims the year before with major medical.

Mr. Crouse confirmed that and added those claims add costs to the plan.

Motion made by Mr. Shaw to approve the recommended Town medical plan for FY96 and to authorize the Town Manager to execute agreements and to proceed with related details. The motion was seconded by Mr. Wyett.

Mr. Wyett requested Mr. Crouse to consider some new ideas that would reward employees through an incentive plan to keep their medical costs under control. He said a number of articles were recently published that indicated high success levels using this method.

Mr. Crouse responded that had been discussed before, and he would be looking into that for the next fiscal year to determine what innovative measures would be viable. He said the department had incorporated some incentives into the program since 1985, and it has paid off. Mr. Crouse stated that inflation has helped medical care costs.

Mrs. Smith said that Mr. Wyett's suggestion was something that she and Mr. McDonald had discussed with Mr.

Crouse at the Finance & Tax Committee meeting, and he would be looking into that suggestion for next year.

On roll call, the motion carried unanimously.

3. Request Authorization for Town Manager to Execute Contract for Town Physician for FY96

This item was approved under the "Approved Agenda."

4. Request Authorization for Town Manager to Execute Fire Inspector's Agreement for October 1, 1995 to September 30, 1998 -

This item was approved under the "Approved Agenda".

5. Request Authorization for Town Manager to Execute Management Agreement for the Operation of the Seaview Tennis Courts for FY96

This item was approved under the "Approved Agenda".

6. Request Authorization for Town Manager to Execute Management Agreement for the Palm Beach Municipal Golf Course for FY96

This item was approved under the "Approved Agenda".

7. Recommended Program for FY96 Annual Property/Casualty Insurance and Claims Management Services - Request for Authorization for Town Manager to Execute Agreements and to Proceed with Related Details

Mrs. Barbara Martinuzzi, Risk Manager, referred to her memorandum dated September 6, regarding the property and casualty insurance renewals. She said she was pleased to present the Town's program which she considered one of a kind compared to today's market place. She reported the Town's increase is a nominal 3%.

Mrs. Smith asked the members of the Council if they would like to hear Mrs. Martinuzzi present the entire package as was provided as back up material before the meeting?

Mr. McLendon complimented Mrs. Martinuzzi on the good job she did preparing the package.

Motion made by Mr. McLendon to approve the recommended program for FY96 annual property/casualty insurance and claims management services and to authorize the Town Manager to execute agreements and to proceed with related details. The motion was seconded by Mr. Shaw who extended his compliments.

Mrs. Smith asked Mrs. Martinuzzi how Fireman's Fund was added to the insurance program?

Mrs. Martinuzzi replied the Town had a problem with the capacity levels this year with Signa Insurance Company. She said that Signa was a large writer for the Town's insurance programs for the past several years, and they had re-structuring in their corporation during this past year. Signa was only offering a portion of the capacity that was offered in previous years. Mrs. Martinuzzi said the Town had a $24 million layer of property that needed coverage. The market place was solicited, and Fireman's Fund was anxious to be a partner in the Town's program. Mrs. Martinuzzi said the competitive prices received from Fireman's Fund were largely due to the Town's commitment and dedication to loss prevention and control which has been demonstrated over the past few years.

Mrs. Smith asked Mrs. Martinuzzi if she had a problem with the fact that Signa had been down rated to B+?

Mrs. Martinuzzi replied negatively. She followed the best guide book ratings and was aware that down rating was going to occur. Mrs. Martinuzzi explained that part of the down rating had to do with Signa's restructuring of their insurance companies--they have 11 subsidiaries in the corporation and the companies have been broken out according to the types of lines of businesses they are writing. She said the Signa Specialty Company the Town deals with is writing predominantly municipal business. She added the rating has to do with Signa's ability to pay claims and their reserves, but the rating is also based upon the parent company and Signa's own assets and their position. Mrs. Martinuzzi said she was comfortable that the Town has a good carrier, and they will be around for a long time. She thought Signa would move up to an "A" rating this year.

Mr. Doney mentioned he would like to recognize the Gallagher Bassett representatives who attended the meeting with Mr. Crouse. He said that thanks to the efforts of Mrs. Martinuzzi and Mr. Crouse with these two very important insurance programs, the costs to the Town have been reduced. Mr. Doney added that the Town is always very hopeful that the Town has good experiences and has no storm experiences.

On roll call, the motion carried unanimously.

8. Consideration of Renewal of Agreement with Advanced Protective Service, Inc. for Dock Security Services for FY96

This item was approved under the "Approved Agenda".

9. Consideration of Renewal of Computil Agreement for Collection of Parking Fines for FY96

This item was approved under the "Approved Agenda".

10. Consideration of Proposed Town Comments on Draft Coastal Armoring Rule Dated August 18, 1995, from Florida Department of Environmental Protection

Peter Elwell, Assistant Town Manager, addressed the Town Council and referred to a memorandum dated September 6 from Mr. Doney to the Mayor and Town Council. Mr. Elwell summarized that this draft rule was under development in the State process for approximately two years. The Town has previously submitted comments to the Department of Environmental Protection, and the DEP has been very responsive in this instance to the submitted comments. Mr. Elwell reported the rule has been changed in several respects to accommodate, not only the Town, but other coastal municipalities. He recommended a brief letter be sent to the Florida Department of Environmental Protection, thanking them for the opportunity to comment and expressing no further comments at this time.

Motion made by Mr. Wyett to approve the drafting of a letter, under Mrs. Smith's signature, to the Florida Department of Environmental Protection. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

11. Consideration of Mr. Shaw's Attendance at the Florida League of Cities meeting in Orlando

Mrs. Smith said Mr. Shaw's trip to Orlando would be discussed.

Motion made by Mr. McDonald to approve Mr. Shaw's trip to Orlando to attend the Florida League of Cities meeting. Motion seconded by Mr. Wyett.

Mrs. Smith asked if the Town Council was going to put a limit on Mr. Shaw's spending?

Mr. Doney responded it would be standard per diem expenses.

Mrs. Smith replied that there is no per diem for Council Members and this Town Council does not give per diem. Mrs. Smith said that Mr. Shaw knows that. Mrs. Smith asked for any further discussion?

On roll call, the motion carried unanimously.

Mr. Shaw asked what expenses were approved?

Mrs. Smith replied he was getting a walking trip to Orlando for one day with no food. She added Mr. Shaw should be reasonable.

12. Consideration of Cabinet Hearing on "Save Our Homes" Rule

Mr. Doney stated that the Florida League of Cities had asked for an instant action by the Mayor and Town Council, and Mrs. Crozier had found some additional information as well.

Mrs. Marie Crozier, Finance Director, addressed the Town Council stating that the Florida League of Cities was asking the Town Council to authorize and concur to send letters to the Governor and Cabinet Members stating their endorsement of the Department of Revenue rule as it related to Amendment 10. The issue of interpretation was that Amendment 10 essentially said that the assessed value of homes could not increase more than 3% or the CPI, whichever is less. The group of property appraisers challenging the rule contend that the intent of the amendment was to hold assessed values at 3% or CPI, whichever was less, except that if the market value did not increase, then the assessed value could not increase at all. The Department of Revenue was taking the position that any alternative to its current rules would be contrary to the language of the amendment as adopted by Florida voters. The Department of Revenue held the belief that strict constitutionality of the amendment was very important. Mrs. Crozier recommended that the Town Council authorize sending letters endorsing the support that the Florida League of Cities was giving to the Department of Revenue.

Mr. Wyett made a motion to authorize the Town Council to send letters of support to the Governor and Cabinet Members. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

XII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR AUGUST 1995 - APPROVED UNDER THE "APPROVED AGENDA"

XIII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Dr. Sanford Kuvin spoke concerning the subject of beach erosion, and the Lake Worth Management Plan. He stated that he had attended the Florida Beaches and Shores Conference and had comments about the feeder beach at the north end. That feeder beach had been the feeder beach to the entire length of Palm Beach, including the mid-Town beach. Part of the reason the mid-Town beach was in its present state was because of the 5-year hiatus, with no sand being pumped to the north beach, which had therefore not been allowed to feed the southerly flow into the mid-Town beach. Dr. Kuvin reiterated his opposition to the proposed 3,000 ft. pipe line of the Lake Worth Management Plan, predicated on the fact that any sand flow north would be removed by the Army Corps at no cost to the Town of Palm Beach. Dr. Kuvin asked the Town Council to proceed with great circumspection.

There were no further comments by citizens.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of August 23, 1995 - Minutes Available in Town Manager's Office

This item was approved under the "Approved Agenda".

B. Time Extensions

1. Special Exception No. 23-93 - Hals Realty Associates, 401 South County Road; request by Mr. Peter S. Broberg for a 90-day time extension

Mr. Peter Broberg, representing the applicant, addressed the Town Council, stating that in October of 1994 the Town Council had granted an approval to extend a previously granted Special Exception for one year. That approval would expire in October of 1995, and the plans for the project were in process and almost completed. Mr. Broberg was requesting a 90-day grace period on the extension.

Mr. McDonald made a motion to approve a 90-day time extension regarding Special Exception No. 23-93. Seconded by Mr. Shaw.

Mrs. Smith asked Mr. Broberg if all conditions on the original approval were still in effect as part of the extension being granted?

Mr. Broberg responded affirmatively.

On roll call the motion carried unanimously.

2. Variance No. 56-93 with Site Plan Review - Aspinwall Property, 3000 South Ocean Boulevard; request by Mr. James R. Brindell for a One-Year time extension -

Mr. James Brindell, on behalf of Mrs. Aspinwall, addressed the Town Council, stating that Mr. Aspinwall had passed away in July of 1995, leaving Mrs. Aspinwall the task of reordering her affairs. This extension request was being made as a first request since the approval had been given. In addition, Mr. Brindell mentioned that last year an application for re-zoning had been made. It had been deferred, and Mrs. Aspinwall appealed that deferral. He continued that in the context of that appeal, the Town responded in July of 1995 to the allegation that she would have her interests adversely affected by the deferral. He said that the Town responded that as a result of the deferral by the Town Council on the re-zoning application, the petitioner would not be denied the use of her property as her application for approval of the site as a restaurant was approved by the Town Council in September, 1994. Mr. Brindell noted that the appeal had not been resolved, and the extension would preserve the status quo and not further complicate matters.

Mr. Shaw made a motion to approve a one-year time extension for Variance 56-93. Seconded by Mr. McDonald.

Mr. Wyett stated that he was concerned about the proper use of the property as well as the quality of life in that area of Town and the effect of a restaurant in that location. He continued that many area residents had come forward at the Zoning Hearing, and the previous Town Council had deferred the matter for more review. Mr. Wyett stated that he felt a shorter period of time should be considered, as well as deleting a specific reference to a restaurant.

Mrs. Smith asked Mr. Randolph for a response to some of the questions raised in the presentation of Mr. Brindell.

Mr. Randolph replied that one of the defenses raised by the Town in regard to the appeal that was filed was that the use of the property had not been taken or diminished as a result of the matter being deferred to the next Zoning season, because as a result of granting the Special Exception there had been a specific use. Therefore, in the response to the lawsuit a good deal of reliance had been placed on that. Mr. Randolph continued that particular defense would be gone if the extension was not allowed. In addition, Mr. Randolph said that there were other concerns, such as the pattern of actions in the past relating to extensions, and whether or not an extension was really necessary, as the Variance had been granted subject to a site plan review being granted, which had been granted one year after the granting of the Variance. Mr. Randolph noted that there may be a question of whether or not the Special Exception had lapsed.

Mr. McLendon asked whether the Special Exception had been for a particular restaurant or for restaurants in general?

Mr. Randolph replied that it was for a restaurant in general; at that time the conditions which were imposed could apply to any restaurant willing to accept the conditions.

Mr. Moore stated that the Variance that was granted going from one nonconforming use to another nonconforming use was conditioned with a condition of approval for site plan review. Mr. Moore noted that it was staff opinion that Mr. Brindell be present today for this application, and it was staff opinion that the conditions would apply to any restaurant that would accept those conditions applied to that particular site plan review.

Mr. Brindell pointed out that there was a very extensive hearing on Variance and site plan, however, there was then the re-zoning matter which prompted the appeal. He stated that he was not in a position to agree to delete the reference to restaurants since the Variance that was granted under the Ordinance was specifically for that use. Mr. Brindell stated that a different period of time for the extension would not be unreasonable, however.

Mr. Wyett stated that his concern was that residents south of Sloan's Curve were unaware to appear for the Variance hearings, and it was only during the Zoning season that citizens turned out and convinced the Town Council to defer it. Mr. Wyett stated that he was concerned about the size and type of restaurant that was proposed.

Mr. Brindell replied that there was a site plan approved now with 15-20 conditions on it.

Mrs. Smith stated that if Mr. Brindell would agree to a 7-month extension the maker of the motion could amend it to a 7-month extension.

Mr. Shaw agreed to amend the motion to 7-months. Mr. McDonald amended his second to conform to same.

Mr. John Matich, 3475 South Ocean Blvd., Co-Chairman of the Citizens Association South of Sloan's Curve, addressed the Town Council, stating that there were grave doubts about having any establishment there that would raise the noise level and the problems already existing. He urged the Council to seriously consider the matter before approving any extension.

Mrs. Ann Herman, 2778 South Ocean Blvd., Vice-Chairman of the Citizens Association South of Sloan's Curve, addressed the Town Council speaking as a private citizen. She expressed concern about the large restaurant, increase of traffic, and resulting problems. She suggested that the Town Council should address the problem.

Mrs. Smith asked Mr. Matich would other use he could suggest for the property?

Mr. Matich stated that the property had been used as a radio station, which had been perfectly acceptable. He added that it would be a perfect site for an engineering concern, consulting firm, or another business that would not increase the noise level.

On roll call the motion failed 4/1.

After some discussion, Mr. Shaw made a motion to defer this item, to include a one-month extension, until the October Town Council meeting. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

At this point, Mrs. Smith asked that anyone speaking before the Town Council on Items 1 through 20 be sworn in. Mrs. Pollitt administered the oath to all speakers.

Mrs. Smith stated that it was the responsibility of the Mayor and each Town Council member to make disclosure relative to any ex-parte communications they may have had concerning each application. She asked that each member speak to any ex-parte communications prior to each agenda item being heard.

Old Business

1. Consideration of Study Items for 1995/96 Zoning Hearings

Mr. Moore addressed the Town Council stating that the final list of study items for the 1995/96 Zoning Hearings had been submitted.

Mr. Shaw made a motion to approve the items.

Mr. McDonald said that he wanted to recommend an addition to the list.

Mr. Shaw withdrew his motion.

Mr. McDonald recommended that the Zoning Commission consider the issue of tennis court lighting as Item No. 28 on the Study Item List. He would like to see the prohibition on tennis lighting lifted and allow the Zoning Commission to set criteria for tennis lighting to be considered on an individual basis.

Mr. Wyett suggested the Zoning Commission look at time limits for night club operations as an inclusion for Item 9 on the Study Item List.

Mr. Shaw made a motion to approve the amended list of Study Items for the Zoning Commission. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

2. Report by Town Attorney John Randolph Concerning Property Rights Law Per Letter (With Enclosure) Dated July 25, 1995

This item was deferred earlier in the meeting.

3. Variance No. 28-95 - Mr. & Mrs. Lewis Rudin, 7 La Costa Way; to allow installation of two driveway gates in the front yard, setback 6' from the pavement, in lieu of 15' required per Section 5.36(b) of the Town Code. R-B District (Deferred from July 11, 1995 and August 8, 1995 Meetings) - **Request for Deferral to October 10, 1995, per letter dated August 31, 1995, from Mr. Robert E. Deziel**

This item was deferred to the October 10, 1995, Town Council meeting earlier in the meeting.

4. Variance No. 31-95 - James Harpel, 180 Barton Avenue; to allow construction of 12' high wall at County and Barton in lieu of 6' maximum allowed per Section 5.36(a) of the Town Code. R-B District (Deferred from July 11, 1995 Meeting) - **Request for Deferral to October 10, 1995, per letter dated September 5, 1995, from Mr. A. Paul Prosperi**

This item was deferred to the October 10, 1995, Town Council meeting earlier in the meeting.

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

Mr. Greg Kino from the law firm of Boose, Casey and Ciklin, addressed the Town Council, representing Jeffrey Collins. He went over the data presented last month, stating that the existing quadriplex on the property was in deteriorating condition with 2 units that were less than 350 sq. ft. each, as well as 2 one-bedroom apartments. He continued that it was the only one-story structure on the block, did not meet current structural, electrical, plumping, or parking codes, and was not architecturally significant. He noted that it required 8 parking spaces, with 6 of them being on-street, and the elevation was 2-feet below FEMA standards. He stated that due to these conditions the property had not rendered any return for the last several years and renovation was not reasonable. He continued that it was proposed to replace the existing quadriplex with a duplex which would be consistent with the multi-family nature of the neighborhood, thereby reducing the density by 2-units, eliminating the need for 6 on-street parking spaces, and the architectural design would be compatible with the area.

Mr. Kino commented that the property was zoned RC, medium density residential, and the dimensions of it were 50' x 125'. He added that the situation was unique because there was no use for the property permitted without variances. Mr. Kino stated that the variance standards had been addressed in detail in the application.

Mr. Kino noted that the legal standard for a hardship required competent, substantial evidence that no reasonable use could be made of the property without a variance. Mr. Kino continued that there were several uses that could be allowed because the property was zoned R-C there were severable allowable uses (single family, two family townhouses, and multi-family), but due to the lot configuration and size there were realistically only three uses: the existing quadriplex, a single family, and a two family. Mr. Kino indicated that the only reasonable use was the two-family, based on expert opinion.

Mr. Kino explained that last month it had been asked that his client come back with the report on contacts with the adjacent property owner and whether it could be utilized, and contact had been made, which Jeffrey Collins would address.

Mr. McDonald stated that he had been contacted by Jonathan Commander, the agent for the current owners.

Mr. Jeffrey Collins addressed the Town Council, stating that he had again contacted the owner of the adjacent property, Mr. Beard, who represented that he did not want to do anything with his property.

Mr. Kino addressed each of the alternative uses, in an attempt to explain why the duplex was the only reasonable use:

He began that the existing quadriplex was in deteriorated condition and the only one story on the block. He added that Code did not allow renovations outside of the existing structure for a nonconforming use. The unit sizes were small and on-street parking was required. Mr. Kino stated that these conditions rendered it economically infeasible. He had submitted a letter from Jonathan Commander, the Trustee, who indicated that there had been no return on the property for the last few years, and it had been on the market. Mr. Kino continued that he had submitted a letter from Doug Lawson, who was an appraiser and MIA with Lawson and Powell, Inc., who concluded that the current apartment building had no historical or architectural significance and was in below average condition with poor curb appeal; living units were smaller than typical and functionally obsolete. The building did not meet the test of economic feasibility and had been available for sale for an extended marketing period; therefore, the existing quadriplex was not a reasonable use of the land.

Mr. Kino explained that they had asked an appraiser to give a fair market value of the structure, which had been submitted to the Town, as less than the assessed value of $53,000. Mr. Kino stated that if renovation costs would exceed 50% of the fair market value then the entire structure would have to be brought up to Code. Mr. Kino stated that that a letter from Jeff Collins, as well as a report from Glenn Harrisey, project architect, regarding this issue, with the conclusion that renovation was not feasible.

Mr. Moore stated that the position of the staff was the same as it had been, and that one problem with the application was that there was a request for a density variance of 6,000 sq. ft., which was a tremendous variance.

Mr. Kino stated that he would like to continue addressing some of the other issues. He noted that the request did involve 6,500 sq. ft., however, single family use was 3,700 and experts had agreed that single family use was not a reasonable use of the property because of the multi nature of that block. Mr. Kino continued that there were 4, 5, and 6 story structures on the block, including 53 units on the south side of the block. There are 5 four-unit structures on the north side of the street. There is a 6 unit structure to the south on Peruvian, and there is a 3 unit structure immediately to the east. Mr. Kino stated that there were two remaining single family homes with one built in the 1920s, one in the 1940s, and no one had tried to build a single family home in over 50 years, because it was not reasonable. Mr. Kino stated that a letter had been submitted from Mr. Lawson, who concluded that there had been no single family residences built in the 400 block of Chilean Avenue in over 45 years, and that this was due to the cost of the site, demolition costs, and existing development patterns, and that in his opinion the most reasonable use was as a two family residence. Mr. Kino continued that there was also a letter submitted from Carol Hoff, who stated that it was her professional opinion that based on the multi-family nature of the area and market demands, that a two family dwelling would be a reasonable use of 410 Chilean Avenue. Mr. Kino concluded that the extent of the variance was not the issue in this case, but the reasonable use.

Mr. Kino then addressed the issue of a duplex in mass and scale. He stated that the front loading garage could be re-designed, and that the design was compatible with the area. Mr. Kino exhibited a graphic of the proposed building showing scale. He added that a compatibility and massing study had been done. Mr. Kino stated that without the variance, the scale could not be brought down to proper proportions. Mr. Kino related setback dimensions on other properties in the area, and stated that Mr. Harris had concluded that without the 10' setback variance the proper design features would be precluded. Mr. Kino noted that the side yard setback was an issue of reasonable use, and not one of scale and mass, and that if a single family was built on this lot the structure would be of the same size and mass as the duplex, with the same lot coverage of 35%.

Mrs. Smith asked Mr. Kino if any changes had been made since the application had been heard last month?

Mr. Kino replied that a statement from the architect had been submitted indicating that the front yard was re-designed with front loading garages.

Mrs. Smith stated that she was asking if there were any changes to the Variance Application that had been made last month?

Mr. Kino stated that they had attempted to address those issues that the Town Council needed more information on in order to make a decision.

Mrs. Smith asked if any changes had been made in the Variance Application from last month?

Mr. Kino replied negatively, and that they had justified their request. He continued that he would like to ask Mr. Moore some questions about his review of the structure itself, as decisions must be based on evidence and not on desires of a particular group or person.

Mr. Kino asked Mr. Moore if he had evaluated the structure for the feasibility of renovation, and if any staff members could give opinions as to appropriate uses of the property.

Mrs. Smith stated that it was the applicant's responsibility to present the hardship for the variance.

Mr. Randolph stated that this was a quasi-judicial hearing at which the applicant had the right and opportunity to cross-examine anyone who had testified. Since Mr. Moore had testified, Mr. Kino had the right to cross-examine.

Mr. Kino then proceeded to ask Mr. Moore if he had been able to analyze the interior of the structure to determine if it was feasible to renovate?

Mr. Moore responded negatively.

Mr. Kino asked if there were any experts on Town staff that could give an opinion as to the reasonable use of the property for single family, as opposed to duplex use?

Mr. Moore replied that he did not understand that question.

Mr. Kino asked if there were any staff members who reviewed the application to determine what the market demands would be for a single family in this area?

Mr. Moore responded negatively; that there were no appraisers on staff.

Mr. Kino asked if there were any realtors or staff members with those qualifications to dictate what market demands were for the property?

Mr. Moore responded that there were no marketing experts on staff.

Mr. Kino stated that he realized that letters of support were not evidence either way, but that letters from support from the neighborhood had been received. He said that if there had been overwhelming objections, a second attempt at coming before the Town Council would not have been made, but letters of support had been received from neighboring owners. Mr. Kino respectfully requested that the variance be granted based on the fact that the duplex was a reasonable use of the property.

Mrs. Smith stated that letters were always made part of the record, and if Town Clerk Pollitt had received any other communications on this matter, they would go into the record. Mrs. Smith asked if there were any members of the public that would like to speak regarding the application?

Mrs. Bettina Anthony, 211 Dunbar Road, addressed the Town Council, stating that she owned property at 424 Chilean Avenue. She stated that she thought Mr. Collins had a wonderful idea for the property in question, since the property was currently run down and did not go along with the rest of the property in the block. She stated that she totally approved of the venture, and she felt that the duplex was the way to go.

There were no further public comments.

Mr. McLendon asked if variances had been required for a four family unit 50 years ago when the building had been built?

Mr. Kino replied that part of the hardship was that the Code had changed after the property was developed.

Mr. Wyett asked if the upcoming Zoning Hearing would address this type of problem?

Mr. Moore replied that the variance today was a substantial variance, and the use that was found in the R-C Zoning District was a mixed use, and one of the study items for this year's Zoning season was to take a look at the nonconforming lots that exist in the Town in all residential zoning districts, as well as the existing structures on those lots. The Zoning Commission itself would be asked to examine the possibility of rebuilding the structures in the same footprint and mass. Mr. Moore continued that there was a possibility that this particular property would fall under guidelines recommended at the end of the Zoning season. Mr. Moore stated that staff was not given any indication to believe that there was any effort made to reduce other variances that would be needed, such as the side yard variances that were being requested because of scale of the structure, which would not fit any form of hardship. Mr. Moore continued that the criteria stated that one of the things that must be considered was the minimum variance necessary to accomplish the redevelopment, and two units were not the minimum use that could be made of the property. Mr. Moore stated that staff did feel that this was a substantial request on a small piece of property, although the matter was being studied this Zoning season and possible relief for this property could be accomplished after the Zoning season.

Mr. Randolph commented that the purpose of disclosure was to disclose all quasi-judicial communications, which were not necessarily limited to communications from persons outside the Town. He continued that it was his understanding that discussions with Mr. Moore in regard to the application prior to it coming before the Town Council had taken place, and the applicant should be advised of that as part of the disclosure requirements, so that he would have the opportunity to know that and confront Mr. Moore with whatever was discussed.

Mr. Kino said that he could make that assumption that discussions had taken place with Mr. Moore. He stated that as far as the side yard setbacks were concerned, the reason that the existing setback was used was because it was already existing, and that it would give a better design. Mr. Kino stated that, based upon a setback study, the setbacks were well within what other properties on that street were; however, if the Council suggested the elimination of a side yard setback, they would be willing to discuss it, but it would result in a shoe box effect.

Mr. McLendon commented that he personally felt that what he saw would be an asset to the neighborhood.

Mr. Shaw stated that the advantage to accept a deferment until the zoning issue was resolved would be the elimination of one of the major obstacles of this variance, which was to rebuild on a lot that was substandard, utilizing the same footprint. Then, the only variance needed would be to build a greater cubic content because the footprint would not be expanded upon.

Mr. Glenn Harris, the architect on the property, addressed the Town Council, stating that one concern he had in working with this was the side yard setback, and had they been looking at a single family home the massing, the scale, and the side yard setbacks would be almost identical to what was being shown as a two family. In fact, he added, they were trying to present a very residential flavor to the architecture and create something of a less dense, lower scale, more single family oriented design while still maintaining the two family concept.

Mr. Shaw responded that the question was not one of design, but one of the minimum variance acceptable to utilize the land. He suggested that if they could wait until after the Zoning season, they could then possibly request a minimum variance to expand the cubic content, as the variance for the footprint would then possibly not affect them.

Mr. Moore stated that there was a proposal for study that would allow for the same footprint and the same structure to be rebuilt, while density was another question altogether.

Mr. Kino stated that they would be willing to remove the minimum variance and go back to the 12-1/2, but that would leave a product that would not be the best type of design for the Town.

Mrs. Smith stated that there was no guarantee of what the Zoning Commission would determine.

Mr. Harris stated that if they stood with what was there today, and came back and proposed a single family home, those 10 ft. side setbacks would be acceptable because they would meet the Code. He continued that what would then be looked at would be a volume and massing, not unlike what was being proposed as a two family. The difference was that if the side setbacks were constricted, i.e., make them wider, then the massing would be closed in and there would not be the opportunity to move to one story versus two story, versus in and out, etc. By allowing the 10 foot setbacks the appearance of the structure would be much more pleasing.

Mr. Moore cautioned from an administrative standpoint that this was Architectural Commission material that did not have anything to do with the Variance Request.

Mr. Wyett stated that his concern was that the Town Council was obligated to give the minimum variance in this type of situation, and that would be 3,700 sq. ft., and that he did not want to see a precedent set in this situation.

Mrs. Smith asked the members of the Council to take some action on this application, as there was nothing more to be said.

Mr. Shaw asked if a deferral would be an acceptable alternative?

Mr. Kino replied that they were not in a situation where they could take a deferral.

Mr. Wyett made a motion to defer this variance until the end of the Zoning season, based on the fact that this was too great a variance. Seconded by Mr. Shaw.

Mr. Randolph suggested that the deferral be made to the next Town Council meeting in October.

Mr. Wyett and Mr. Shaw accepted that amendment to the motion.

On roll call the motion carried 3/2 with Mr. McDonald and Mr. McLendon casting negative votes.

6. Special Exception No. 15-95 - Ellis B. Dean, the Brazilian Court Hotel, 301 Australian Avenue; to allow church services in an R-C Zoning District. R-C District. (Deferred from August 8, 1995 Meeting)

Mr. Ellis Dean, of the Palm Lake Baptist Association, addressed the Town Council, stating that he was requesting permission to use a conference room at the Brazilian Court Hotel for the purposes of bible study and church services. He added that Dr. David Rayburn had agreed to serve as the ordained minister and would be directly involved in this.

Dr. Rayburn addressed the Town Council, stating that two issues had been raised last month concerning this request; one had to do with the parking, and they had received a letter from the Brazilian Court that said they had 62 parking places during this period of the year with 25-30 being the normal use, and it was anticipated that 8-17 of those would be used. Mr. Rayburn continued that during the peak season they had access to the Apollo North parking lot, which had an additional 130 parking places. Mr. Rayburn stated that they had a list of names and addresses verifying that 50% of the membership were residents of Palm Beach, workers from Palm Beach, or guests, which would address the Town-serving aspect.

Mrs. Smith suggested that the letters be made part of the record, and reminded Council members about declaration of ex-parte communication.

Mr. McDonald made a motion to approve Special Exception 15-95. Seconded by Mr. McLendon.

Mr. Wyett asked if the church had been formed?

Mr. Rayburn replied that they were not a legal entity yet, as part of the process was having a location.

Mr. Wyett asked if they needed approval before they could complete the process?

Mr. Rayburn replied that they were meeting as an organized body, were in the process of developing a constitution and by-laws, and it was his understanding that when they filed constitution papers they needed an address.

Mr. Wyett asked how the church would be affected if the Brazilian Court Hotel found they needed the space for another purpose?

Mr. Rayburn replied that they hoped to move in a short time to another location.

Mr. McLendon asked if they had any relationship with the Southern Baptist Convention?

Mr. Rayburn replied that they had a voluntary relationship with the Southern Baptist Convention; however they were an autonomous body that had only a voluntary relationship to any other institution

Mr. Moore stated that the Town-serving issue and parking issue had been addressed.

Mr. Shaw asked how many people the conference room held?

Mr. Rayburn replied 105.

On roll call the motion carried unanimously.

20. Special Exception No. 21-95 with Variances and Site Plan Review - Robert Spiegel, Royal Poinciana Plaza; Site Plan Review and Special Exception approval of a request for modifications to the parking lot. Additionally, variances are requested to allow 3 tandem (attendant) parking spaces in lieu of 2 permitted, and to allow elimination of some required landscaping. C-PC District

Doyle Rogers, Attorney, Alley, Maass, Rogers & Lindsey, addressed the Town Council. Mr. Rogers said he represented the principal owner, Sidney Spiegel and the Poinciana management.

Mr. Rogers stated the number of parking places in the Plaza would be increased to 749 if the Town Council approved the site plan. He said the modification of the site plan required obtaining the two variances. The first variance would permit the owner to install valet, tandem parking for three as opposed to the two which is permitted and allowed under section 6.26 of the Code. Mr. Rogers said the second variance would permit the owner to modestly rearrange the landscaping on the northern entry area into the Plaza and the existing tandem in the southwest section of the Plaza.

Mr. Rogers stated these requests were submitted to the Town Council with the understanding that the management of the Plaza would manage and control all valet parking services in the Plaza at several valet stations for all tenants of the Plaza. The management was confident by using this valet service that they control to insure that all the parking spaces in the Plaza will be sufficiently utilized.. Mr. Rogers said the management will attempt to assign employee parking to the north end to accommodate valet parking.

Mr. Rogers said that parking, especially during the lunch hours, has become a hardship in the Plaza. He stated that the valet service could control the parking, and his firm, as a tenant of the Plaza, welcomes the idea. Mr. Rogers said the parking hardship has been caused during the last few years by the success of several of the tenants, and as a result, the less intensive tenants need relief. Mr. Rogers added that for the stated reasons, the Plaza owner and management seek a resolution of the hardship throughput this application to the Council. He requested that the Town Council not impose any restrictions on any one tenant that are not imposed on any other tenants.

Mr. Rogers introduced Eugene Lawrence, Architect, who illustrated the site plan which has the solution to the hardship. Mr. Rogers praised Mr. Lawrence's efforts in the resolution of the parking problem at the Plaza. Mr. Rogers said that Mr. Sidney Spiegel, owner of the Plaza, would speak after Mr. Lawrence was finished. Additionally, the manager of the valet parking, Mr. Tony Symonds, would address any questions regarding the valet parking.

Eugene Lawrence addressed the Town Council and explained the site plan showing the existing parking at the Plaza, the Slat House which contains Dempsey's Restaurant, the shopping area, the Royal Poinciana Playhouse, and the Poinciana Club. Mr. Lawrence said the site plan showed four areas that would be affected. He continued that the green space in one row of Royal Palm trees would be removed; however, turf block would be installed and would allow complete permeability under the trees. No trees would be removed, and buffering would be added to the east and west ends of the property. These changes would allow the addition of 48 parking spaces.

Mr. Lawrence identified the second area as the northwest where turf block would be installed, the trees retained, and parking places added. An additional four spaces would be added in an extended area identified as the third area. Mr. Lawrence said that the entrance to Royal Poinciana Way, area four on the site plan, would have three car spaces omitted to improve the traffic flow out of Royal Poinciana Way. That would allow stacking from the center aisle. Mr. Lawrence summarized that a total of 64 parking spaces would be added as indicated on the site plan.

Mr. Lawrence said the tenants would like to remove approximately 250 square feet of green space in front of Dempsey's to address the valet stacking problem in front of Dempsey's. This green space would be recovered in another area. Mr. Lawrence noted that a request for a second valet station was received from the tenants, and the site plan would be amended to show those changes.

Responding to questions from Mr. Wyett, Mr. Lawrence identified the three tentative, mobile, valet stations which may be moved as needed during periods of heavy traffic volume in any particular area.

Mr. Wyett noted that one of the locations would be in front of Toojay's and the provision for a station on the north side of the Plaza would alleviate the stacking up of cars on the south side of the Plaza. Mr. Wyett asked if the reserved parking spaces for the doctors' offices would continue to be reserved?

Mr. Lawrence replied that he assumed so, and the plan showed no changes in those areas. Mr. Lawrence said he would look at the possibility of including some of the under-used doctors' parking spaces in the valet program.

Mrs. Smith asked what landscape changes were to be made under the Mysore fig tree on the south side of the Plaza?

Mr. Lawrence said no changes would be made since the roots are three feet high. Responding to questions from Mrs. Smith, Mr. Lawrence explained where the stacking would occur using a photograph. He added that no trees would be removed on either side of the Plaza.

Mr. Shaw asked how many parking spaces existed on the entire property?

Mr. Lawrence responded the record showed 695; however, the actual count was 685 and 64 spaces would be added if this plan were approved.

Mr. Shaw asked how many spaces were required based on zoning standards for the present occupancy?

Mr. Lawrence replied he would have to do a survey of the entire center to make that determination. Mr. Lawrence said he knew that at one point, the Town had an agreement with the Plaza that a certain number of parking places was required.

Mr. Shaw asked if the valet service would have sufficient personnel to handle triple stacking, especially at the lunch hours for three restaurants? Mr. Shaw suggested the employees not park in the diagonal areas throughout the property.

Mr. Lawrence replied that was a good thought and referred to Mr. Symonds who will be in charge of the valet parking.

Mrs. Smith asked Mr. Moore to present the Staff's comments.

Mr. Moore responded that this project was completely beneficial for the Plaza, for the Town, and for all the uses within the Plaza; however, the Town wishes to have three key aspects addressed:

1. The employee parking must be assigned on the north side and should be part of any agreement or approval.

2. Any approval should be conditioned that the reserved spaces that remain open consistently as observed even on Playhouse days, assigned to certain businesses within the Plaza, be eliminated.

3. The valet service should be operated by the Plaza rather than the individual business owners within the Plaza.

4. The entrance and exit on Royal Poinciana Way should be cleaned up to make it more attractive for users to both enter and exit from Royal Poinciana Way rather than causing congestion along Cocoanut Row.

Mrs. Smith asked any members of the Council or the Mayor if they had any EX parte communication on Special Exception Number 21-95? There was no communication.

Mr. Randolph commented that all Town Council members have contact with the Building Department, individually, and discuss all of the Development Review matters with the department.

Mrs. Smith concurred that these meeting take place monthly prior to the meeting.

Mr. Shaw reported that he had conversations pertaining to the Poinciana Club regarding parking.

Mrs. Smith said this Special Exception was for the Plaza, and a different application was made by the Poinciana Club.

Tony Symonds addressed the Town Council and said he had been associated with the Poinciana Plaza for the last six years. He said he had handled the parking for the Poinciana Theater, Poinciana Club, Dempsey's, and Au Bar. He said the site plan presented to the Town Council had ample parking for everything that was going on in the Plaza. Mr. Symonds noted the plan called for controlled lots with gates which contained plenty of parking. He added he would be able to staff the valet parking, and the customers would be able to get in and out in a timely manner.

Mrs. Smith asked Mr. Symonds if he knew the number of persons he would employ to handle the valet parking for the entire Plaza?

Mr. Symonds responded that he would employ approximately ten valets every day during the season. Responding to Mrs. Smith's question concerning the parking during matinee presentations at the Playhouse, Mr. Symonds said a system is in effect where a shuttle system is utilized with buses, and there would be no problems on Wednesdays.

Mr. Wyett questioned the 250 additional cars above the mean average that would be parked in the lot between the hours of noon and 2:00 p.m. He asked how Mr. Symonds would handle the additional 250 cars with the additional 64 spaces? He questioned where the balance of the spaces would come from?

Mr. Symonds replied that when a parking lot is controlled, the entire parking lot can be utilized. He added that at the present time, the way the lot is set up, the crunch of cars cannot be handled.

Mr. Wyett said he had difficulty with Mr. Symonds' testimony. Mr. Wyett reported that he observed approximately a potential of fifty spaces may be open on the north side during the busiest times. He continued that if the Town Council granted this valet parking proposal and an additional 64 spaces were added, that would make a total of approximately 110 spaces, and he questioned how Mr. Symonds would handle additional cars at peak periods?

Mr. Symonds replied that over the past six years he has worked there, the Poinciana Club scheduled lunches with Saks Fifth Avenue that brought in 300 people, and he was able to handle the parking without the requested additional 64 spaces. Mr. Symonds explained that one of the valet parking stations would be in front of Dempsey's Restaurant as presently exists and another station would be at the Poinciana Club, next to the theater.

Mr. Lawrence said that one of the valet stations was added since he met with Mr. Shaw, and one additional station could be added, during season, in front of the office building on the north side. Mr. Lawrence said that the stations were not permanent structures, and they could be moved and used as needed.

Mr. Shaw asked Mr. Symonds if ten valet parking attendants were not sufficient would the number of valet parkers be increased? Mr. Shaw said he would like to be sure that guests would not have to wait a half an hour or an unreasonable length of time for their cars.

Mrs. Smith replied that if the valet service does not perform, she would be sure that it would be replaced.

Motion made by Mr. McDonald to approve Special Exception Number 21-95 with Variances and Site Plan Review subject to the conditions stated by the Building Department. The motion was seconded by Mr. McLendon.

Mr. Rogers addressed one of the Building Department's conditions concerning the designated parking spaces in front of some of the tenants' spaces. Mr. Rogers stated that those spaces are part of leases, and those leases must run out before those spaces are available. Mr. Rogers said the applicant would comply with the Building Department's request when the leases were up.

Mr. Moore replied that the Staff observed these designated spaces were under utilized; however, if that presents a problem with leases, he would suggest those parking spaces would be open to all upon the expiration of the leases.

Mr. Lawrence identified between 12 and 15 spaces that were currently designated spaces for two doctors.

Mayor Ilyinsky expressed concern that patients of Dr. Dietz need to park outside of the office, and if they could not park there, Dr. Dietz' business may be destroyed. He suggested an arrangement may be necessary to provide drop off and pick up service for patients at the door.

Mr. Wyett said he was concerned that the Council would give a blanket approval for the valet parking, and if it did not work, he questioned the outcome.

Mr. Rogers replied in a free enterprise system, patrons go where the parking is convenient, and if this does not work, people simply will not return.

Mrs. Smith asked Mr. Wyett if he were asking the maker of the motion to modify the motion? Mr. Wyett replied negatively.

Mrs. Smith asked the Town Clerk if any communications were received concerning this project? The reply was negative.

Mr. Randolph said he would like to make the record clear that this was an application for a special exception as well as for two variances and a site plan. Mr. Randolph asked if the motion incorporated all of those issues, and if it did, was there a finding setting forth that all the criteria under the Code for the granting of variances have been met.

Mr. McDonald, the maker of the motion, clarified that the motion did include the two variances and the special exception. The hardship conditions were met. He asked if the applicant understood that when the leases expired, the designated parking spaces would be converted into the valet system?

Mr. Rogers replied that it was clear, and he discussed the issue with Mr. Sidney Spiegel, the principal owner of the Royal Poinciana Plaza. Mr. Rogers said that Mr. Spiegel agreed to that condition.

On roll call, the motion carried unanimously.

7. Special Exception No. 17-95 - Peter Beck, The Poinciana Club, Inc., 70 Royal Poinciana Plaza; to allow continuation of a special exception use as a Town-Serving establishment pursuant to Schedule B Use Regulations footnote (3). C-PC District. (Deferred from August 8, 1995 Meeting)

Mr. James Wearn, representing the Poinciana Club, Inc., addressed the Town Council, stating that as he would be a witness in this matter he would pass the lead for representation to Mr. Robert Montgomery. He introduced Mr. Peter Beck, the owner of the Poinciana Club.

Mr. Robert Montgomery addressed the Town Council, stating that he was requesting that the new Occupational License be granted to the Poinciana Club. He stated that he was a resident of Palm Beach and a member of the Poinciana Club. He added that when a new owner takes over an existing entity, then that new owner must come before the Town Council in order to obtain an occupational license. He declared that an application for an occupational license had been made, but it had not yet been issued.

Mr. Montgomery stated that the Special Exception uses revert back in footnote (3) B Schedule of Use Regulations simply to determine whether the entity remains and continues to be Town-serving. In this instance, he noted that there was a report from Haus, Dias, Inc. that 69.45% of the total membership was made up of Town persons, meeting the requirements of the Code. Mr. Montgomery requested that the new occupational license be issued.

Mr. Moore stated that Mr. Wearn had been asked to address some matters discussed at the Town Council meeting last month.

Mr. Randolph stated that as he understood it, the only thing that was the issue today was 6.40L, and whether or not the Town Council would authorize the granting of the Special Exception.

Mr. Montgomery stated that they were entitled to it; that they were Town-serving; that it had been proved before the Town Council; and that they wanted the occupational license.

Mr. Randolph stated that the application before the Town Council today referred to the footnote concerning 6.40L, and because a Special Exception was granted to the property subsequent to 1980, when there is a change in ownership the matter comes before the Town Council to make a determination as to whether or not the property continues to be Town-serving.

Mrs. Smith asked Mrs. Pollitt, Town Clerk, if she had any communications on this matter. Mrs. Pollitt replied negatively. Mrs. Smith asked the Mayor and members of the Town Council to disclose any communications they may have had.

Mr. Wyett replied that he had two communications; one from Mrs. Ann Downey and one from Mr. Robert Deziel.

Mr. McLendon replied that he had a telephone conversation and a letter from Mr. Wearn.

Mayor Ilyinsky replied that he had approximately 300 communications, and that many of his friends were members.

Mrs. Smith stated that she had also spoken to an enormous number of people, and that her late husband was one of the founding directors of the original Poinciana Club.

Mr. McDonald replied that he had spoken to Mr. Wearn.

Mr. Shaw replied that he had spoken with a few people.

Mrs. Smith stated that she knew that at the Town Council meeting last month there were questions about the Poinciana Club, with hopes that some of the questions would be answered today; such as whether they would be serving lunch, dinner, and how the Club would be used.

Mr. Montgomery pointed out that was not the subject, and that this matter should be bifurcated in order to determine the Town-serving status; then if other aspects of the Code could be looked into.

Mrs. Smith stated that her questions were merely of interest.

Mr. Montgomery stated that after the vote they would be happy to discuss the plans.

Mr. McDonald asked Mr. Randolph if the only decision required today was limited to 6.40L, the Town-serving aspect.

Mr. Randolph responded affirmatively.

Mr. McDonald made a motion to approve Special Exception 17-95. Seconded by Mr. Shaw.

Mr. Shaw asked when the issue of Club use would be relevant?

Mr. Randolph stated that he thought it was important to note that if the Poinciana Club had not come to the Town Council for the Special Exception with Variance previously, then they would not need to come before the Town Council now under the footnote. Secondly, Mr. Randolph indicated that the two issues were separate and independent issues, and that the decision today should relate merely to considerations related to the footnote.

Mr. Wyett stated that he understood the restrictions of 6.40L, however, he suggested that they come back and review the entire situation.

Mrs. Smith asked if there was any member of the public that would like to speak?

Mr. Peter Broberg, on behalf of a group called Palm Beach Restaurants, addressed the Town Council, stating that there was a concern with what was really taking place. It appeared that this issue was a step transaction. When Albin Holder was the applicant, the Town Council reviewed the application for the twenty year use of the Poinciana Club which included the expansion of the kitchen and an outdoor deck. Mr. Broberg stated that he recalled reading in the minutes regarding the application that there was a question as to intensity of use, and parking requirements. Mr. Broberg said that the Special Exception was granted, and that he did not believe any conditions of consequence had been attached to that Special Exception. Now, Mr. Broberg, pointed out, there was a change of ownership, and the new owner was coming in for proof of Town-serving. Therefore, step one was the Special Exception, and step two was the new owner. Mr. Broberg stated that the concern was that the Special Exception may have different conditions attached to if it had been known there was going to be a new owner, and the intensity of use of the new Poinciana Club may be changed. Mr. Broberg stated that he believed it should be re-noticed and re-heard, and that the playing field should be level.

There were no other members of the public wishing to speak.

Mr. Wyett referred to the minutes of May 10, 1994, where the question of lunch was raised, and that he thought this should be settled as it concerned parking and traffic problems.

Mrs. Smith asked Mr. Montgomery if he and his clients would continue the dialogue after the vote?

Mr. Montgomery replied affirmatively.

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

Mr. Wyett asked Mr. Beck if he intended to serve lunch without seating restrictions, as well as if luncheons would be held during the lunch period?

Mr. Montgomery stated that there were other conditions that had been arranged by Mr. Beck: for example, all employees would be parking off-site.

Mr. Wyett stated that he was not concerned with the number of lunches, but how many lunches would cause parking problems, as there were 330 seats involved.

Mr. Peter Beck addressed the Town Council, stating that he would close the Poinciana Club for the eight days that the Poinciana Theatre had matinees, and 50 parking spaces had been secured from Temple Israel, and employees would be shuttled back and forth. Mr. Beck stated that for a full luncheon seating approximately 110 parking spaces would be needed.

Mr. Wyett asked if that was based on theory?

Mr. Beck responded that it was based on his experience.

Mr. Wyett replied that he was concerned with the parking accommodations of the Poinciana Plaza, and that he was concerned about traffic for all residents of the Town. Mr. Wyett asked if Mr. Beck would voluntarily limit the lunches to 200 until such time as it was found that parking accommodations were sufficient?

Mr. Beck responded that he did not know how he could police that.

Mr. Wyett stated that he could accept reservations only up to that number.

Mr. Shaw pointed out that in the May 10 meeting Mr. Wearn had made the statement that there was no change in the intensity of use, and he asked Mr. Beck if he intended to operate as a seasonal club, closing for a period of time over the summer months, and did he intend to serve lunches, not just be open for luncheons.

Mr. Beck replied affirmatively.

Mr. Shaw asked Mr. Beck if he intended to be a seasonal club, closing at any point.

Mr. Beck replied negatively.

Mr. Shaw asked if he felt that was an increase in the intensity of use?

Mr. Montgomery replied that in May 10, 1994, there were 330 seats in the club, and a Special Exception had been granted, and that Mr. Beck had much success with restaurants. He assured that his client would do everything he could to alleviate any parking problems.

Mrs. Smith asked Mr. Montgomery if there was a proposed dock for the Poinciana Club?

Mr. Montgomery replied that he did not know.

Mr. Beck responded negatively.

Mrs. Smith questioned if it was possible to have a dock at the Poinciana Club.

Mr. Moore replied that the docks would be Special Exceptions, but dredging would have to be a permit from the Corps of Engineers and the County Department of Environmental Protection.

Mrs. Smith stated that she had raised the question of whether there would be lunches served on a daily basis at the Poinciana Club in 1994, and she had been told by Mr. Wearn that he did not know.

Mr. Wyett asked Mr. Beck if he knew the closing hours?

Mr. Beck replied they would be whatever the city closing hours were.

Mr. Wyett asked if he then planned to stay open as late as 3:30 A.M.?

Mr. Beck said that he did not even know what the closing time was.

Mr. Wyett stated that most clubs in the Town were closed by 12:00 A.M.

New Business

8. Variance No. 37-95 - Ralphael Beriro, 124 Clarke Avenue; to allow enclosure of a second floor patio thereby permitting an addition at a side yard setback of 13.2' in lieu of 15' required per Section 8.11 of the Town Zoning Code. R-B District

Mr. Ralphael Beriro, 124 Clarke Avenue, addressed the Town Council, stating that he had not paid attention to a portion of the renovation permit that required a 15' setback, and the house now stood at a 13.2' setback. He explained that the construction had been started and it had been stopped by the Town, however all of the infrastructure had been done. In order to avoid more damages to the house due to heavy rains, Mr Beriro had signed a letter to the Town stating that if the Town Council would not accept the variance, he would pull back the wall 1.8'. He stated that the hardship would be of an architectural nature, and the situation would affect the neighboring house.

Mr. Moore stated that the applicant had indeed mistakenly not followed the plans that were approved with the notation to setback 15', however, this was a fill in type variance that had been looked at in the past, and generally favorable approval would be given to this type of variance, as it was not an intentional error.

Mrs. Smith asked Town Clerk Pollitt if she had any communication on this Variance? Mrs. Pollitt replied negatively.

Mrs. Smith asked if any Council member had any ex-parte communication regarding this Variance?

There had been none.

Mr. Shaw made a motion to approve Variance 37-95. Seconded by Mr. McLendon.

Mr. McDonald questioned who was responsible for doing the construction work?

Mr. Beriro replied that he and the contractor, Gary Rogers, had been responsible.

Mr. McDonald remarked that he would like the Building Department to note that.

Mr. Beriro stated that the contractor had not made the mistake intentionally.

Mr. Shaw added that the reason for approving the Variance was that it was the minimum that would aesthetically fill in the void, creating the proper lines and symmetry on the property.

On roll call the motion carried unanimously.

9. Variance No. 38-95 - J. Brent Finnegan, 260 Nightingale Trail; to allow replacement of a carport with a garage at the same 9.8' west side yard setback in lieu of 12.5' required. R-B District

Mr. Brent Finnegan, 260 Nightingale Trail, addressed the Town Council, stating that the Variance was to request relief from a side yard offset requirement. He added the Variance would permit replacement of the existing attached carport, with construction of a new attached single car garage. Currently, the residence had no enclosed garage, and an automobile must be parked either in the carport or in the driveway in full view of the street. Construction of a small attached garage was architecturally consistent and would substantially enhance the appearance of the property. A variance was required to build the garage, since no other reasonable location existed for it on the property. The majority of homes in the area had existing garages, and the existing carport was lightly supported and was not long enough to incorporate a full sized automobile. Simply enclosing the carport as a garage would result in a less attractive structure and would not be long enough for its purpose. Mr. Finnegan stated that he had purchased the property in 1993 and was a part-time resident of Palm Beach, with another residence in Boston, Massachusetts, and he would like to park his car in the garage when he is in Palm Beach. The carport was in existence when he had purchased the property, and he was seeking to construct a garage similar with neighboring garages. Mr. Finnegan stated that his next door neighbor had written to Mr. Moore in his support. Mr. Finnegan continued that garage facilities were an expected amenity in a neighborhood of this quality, and a lockable garage would provide further security. Mr. Finnegan stated that the Variance request was slight, and he respectfully requested approval of the application.

Mr. Moore stated that this home did originally have a garage that was converted to living space, and a conforming carport had been constructed. He stated that no hardship had been found for this application, as the existing carport could function as a single car garage if closed in.

Mrs. Smith asked Mr. Finnegan the width of the proposed garage?

Mr. Finnegan replied 11'9" x 12', and the difficulty was that a vehicle could not fit totally under the carport, and the vehicle would be exposed to the elements.

Mrs. Smith asked Town Clerk Pollitt if there had been any communications regarding this? Mrs. Pollitt replied that Mr. Finnegan had mentioned a letter.

Mrs. Smith asked if any member of the Council had any ex-parte communications to mention?

There were none.

Mr. McDonald asked Mr. Finnegan to explain the hardship.

Mr. Finnegan replied that if he could not enclose the garage he could not have a car when he was in Palm Beach.

He had not known the procedure in Town and had gone to ARCOM first, who had approved the project; the carport had been torn down, and heavy rains had damaged the inside of his home. He stated that his neighbor had supported the proposed garage and it was an amenity had by everyone else in the neighborhood.

Mrs. Smith clarified that the Variance was for a side yard, not a front yard, as that already complied.

Mr. Moore stated that there was nothing to preclude Mr. Finnegan from extending the footprint of the carport into the front yard, where he had extra room.

Mr. Finnegan stated that when the carport was originally built the variance on the side was closer, and since then the law had been changed.

Mrs. Smith asked Mr. Finnegan if his carport had lined up with the wall of the house?

Mr. Finnegan responded affirmatively.

Mrs. Smith asked if the proposed garage lined up with the existing elevation.

Mr. Finnegan responded affirmatively.

Mr. Shaw stated that Mr. Finnegan could build a new garage, bringing it off the property line two feet without any hardship.

Mrs. Smith stated that she was confused, as she was looking at a picture of a carport with a dumpster in front of it.

Mr. Finnegan stated that the picture was from two years ago when he had gutted the interior of the house.

Mrs. Smith asked Mr. Finnegan why he could not make the garage narrower thus eliminating the need for a variance?

Mr. Finnegan replied that he was trying to build it on the same footprint that was there now, and if he moved it three feet he would interfere with the kitchen window. He stated that all he wanted to do was bring the carport out 2' and enclose it.

Mr. Shaw made a motion to approve Variance 38-95, subject to a side entrance to the garage.

Mr. Wyett stated that he had checked with the Building Department and that would not be practical; that by moving the garage to the left the kitchen window would be lost. Mr. Wyett stated that although there was no hardship in the situation, there is a minimum amount of land on the side where his garage is located.

Mrs. Smith stated that the motion, therefore would be dropped

Mrs. Smith asked Mr. Finnegan to again explain the hardship.

Mr. Finnegan replied that the hardship was that he respected his neighbors enough that he would not leave his car in front of his house in the driveway three or four months at a time, and the only way to eliminate that would be to have an enclosed area that was aesthetically appealing.

Mr. Wyett made a motion to approve Variance 37-95. Seconded by Mr. McLendon.

Mr. McDonald stated that he did not see a hardship.

Mr. Wyett stated that there could be a hardship because of the way the house was placed on the land.

Mr. McDonald replied that Mr. Wyett had stated that there was no hardship.

Mr. Wyett stated that a hardship could be assumed because of the way the house was placed on the land.

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

Mrs. Smith stated that the Town Council Meeting would adjourn in order to have the second hearing on the Budget at 5:01 P.M.

The meeting was adjourned at 4:58 P.M.

The Town Council Meeting of September 12, 1995, resumed at 5:50 P.M. after the 5:01 p.m. Town Council meeting to adopt final millages and budgets for Fiscal Year 1996.

10. Variance No. 39-95 - David Gilmour, 5 Golfview Road; to allow installation of a backup

generator on a 4' x 4' pad, with enclosure, providing a front yard setback of 15.5' of 35' required. R-A District -

Mr. Robert Deziel, representing the applicant, David Gilmour, addressed the Town Council, stating that since he had filed the application he had the opportunity to speak with Mr. Moore of the Building Department, and he requested this item be deferred to the November 14, 1995, Town Council Meeting.

Mrs. Smith asked Mr. Deziel why he had not asked for the deferral earlier?

Mr. Deziel replied that it had not been timely for him to do that, and he made his apologies.

Mr. Wyett made a motion to defer Variance 39-95 until the November 14, 1995 Town Council Meeting. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

11. Variance No. 40-95 - Susan Gordon Barnhart, 236 Miraflores Drive; to allow replacement of an awning with a larger veranda awning, allowing a 31.6% lot coverage in lieu of 30% maximum allowed. R-B District

Mrs. Susan Barnhart, owner of the property at 236 Miraflores, addressed the Town Council, stating that she wished to clarify that the variance request was for a roof veranda, not an awning veranda, for shade across a portion of the south of the rear side of the house. She continued that a variance was necessary because if the veranda was allowed the house would exceed, as it presently does, maximum allowable lot coverage by 1.6%. She produced exhibits showing the proposed veranda. Mrs. Barnhart stated that for nine years the southern exposure of the backyard precluded the family from using the backyard because of the sun. She stated that she had three small children, and that her husband had been advised to limit his exposure to the sun. Therefore, they had not been able to use the backyard in the nine years that they had owned the home. Mrs. Barnhart stated that they now had an option to purchase additional property on the southeast side. With this purchase, Mrs. Barnhart felt that the variance request would be justified, because if the variance was granted the property would be purchased as a condition of the variance. A unity of title would then be recorded with the following results:

The percentage of existing lot coverage for the house was 31.6%. After purchasing the property and putting in the veranda, the percentage of lot coverage that exceeds the Code remains the same at 1.6%. Presently, the floor area ratio exceeds Code requirements. After the purchase and incorporation of this property, the floor area ratio would be brought completely into compliance. In addition, landscaping would increase from 53.9% to 55.6%, percentages of hardscape coverage and overall coverage would decrease, etc. She explained that those were listed in the exhibits.

Mrs. Barnhart continued that the obvious purpose of the Code in limiting the percentage of lot coverage was to prevent construction of residences that visually dominate or that overpower lots. She exhibited pictures of her residence and submitted that even though her house was presently in excess of the maximum allowable lot coverage, the result was not an overpowering or dominance of the lot. The veranda would be in the rear of the house, and would not be visible to the public. Mrs. Barnhart continued explaining the project with the use of the exhibits.

Mrs. Barnhart stated that she had spoken to neighbors on either side of her home, who indicated that they were in support of the Variance. Regarding the neighbor in the rear, Mrs. Barnhart stated that the developer of the Phipps Estate had indicated that he had no objection, and it was important to note that the lots platted in that location exceeded 196' in depth, so the houses would be far apart. Mrs. Barnhart stressed that this Variance request was a minimum variance, and was justified because the standard for most usable verandas was 10' or 12', and the veranda in question was limited to 9' so that it would match the lot coverage presently existing.

In conclusion, Mrs. Barnhart asked for support of the Variance for the following reasons:

1. This was a unique request because they had gone out of their way to attempt to purchase the additional property; it was something that would not be setting a precedent, and if approved the property would be in greater compliance than it is presently.

2. The beauty of the house and neighborhood would be enhanced, and give them the use and enjoyment of their backyard.

3. The people most intimately affected by the Variance are adjoining neighbors who are all in support of it.

4. The Variance is the minimum request to get a usable veranda.

Mr. Moore stated that staff believed that the nonconformity should not be continued, and it should come into compliance with the acquisition of the property. Mr. Moore continued that from a technical standpoint there was no hardship, however, other issues would bring the property into more compliance.

Mr. Wyett made a motion to approve Variance 40-95, based on bringing the lot and the house into compliance, and that he found a hardship in the southern exposure and the irregular shape of the lot. Seconded by Mr. McLendon.

Mr. Shaw asked Mrs. Barnhart if any calculations had been done on the basis of using an awning instead of a roof?

Mrs. Barnhart stated that there was an existing greenhouse on the side, and in order to put up an awning she thought that she would also need a variance.

Mr. Moore stated that the Code allowed for an awning in the rear of the property.

Mrs. Barnhart replied that there was a trellis on the side of the house and much of the soft cover had already been used. She continued that putting shade trees in the backyard was not an option because of easements running through the property. In addition, she stated that she believed that the situation was unique, and that additional property had been purchased so that greater compliance with the Code could be accomplished. She commented that she believed this variance could be differentiated from any other variance application as the property would be taken a step further towards compliance, and that this was legally significant.

Mr. McLendon asked if the house and property had conformed to Town requirements when the house was built, and if the nonconformance now was the result of a change in requirements after the house had been built?

Mr. Moore replied that the house and property had originally conformed; when lot coverage first came into the Ordinance it was initially 35%, so when the home was built it was under the permitted coverage.

Mr. McDonald asked Mrs. Barnhart to repeat the hardship.

Mrs. Barnhart stated that for nine years they had not been able to use the backyard.

On roll call the motion carried 4/1 with Mrs Smith casting a negative vote.

12. Variance No. 41-95 - Fred Keller, 225 Dunbar Road; to allow construction of a second story addition over a one-story that provides a 9.5' side yard setback in lieu of 15' required. R-B District **(This Item shall be deferred to November 14, 1995, per letter dated August 29, 1995, from Mr. Robert E. Deziel)**

This item was deferred earlier in the meeting to the November 14, 1995, Town Council meeting.

13. Variance No. 42-95 - Bankers Trust Co. of Florida, 350 Royal Palm Way; to allow a business sign to be located on a side wall of the building (the western facade) which is not the main wall (facing a right-of-way) as required. C-OPI District **(Request for Deferral to October 10, 1995, per letter dated September 11, 1995, from Ms. Kimberly M. Anderson)**

This item was deferred earlier in the meeting to the October 10, 1995, Town Council meeting.

14. Variance No. 43-95 - Mr. & Mrs. Mark Kessenich, 425 Worth Avenue, The Villas, Penthouse A; to allow construction of a pergola on an open balcony (west terrace), prohibited by Section 5.32(c) of the Town Zoning Code. R-D(2) District

Mr. Moore stated that this Variance was very similar to one heard last month, and was the replacement of an awning that had been taken away by a pergola, and staff had no objection.

Mrs. Smith asked if this item could be handled at the staff level?

Mr. Moore replied that it could not be dealt with at the staff level because the awning was gone and could not be replaced without permission, because nothing could be put on a balcony with the permission of the Town Council.

Mr. George Sanchez, representing the Kessenichs, addressed the Town Council, stating that they had not known that the removal of the awning could not be substituted with a pergola, and had considered the pergola a more open look and more acceptable to the Town than a closed awning.

Mr. McDonald made a motion to approve Variance 43-95. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

15. Variance No. 44-95 - Lowell & Marla Paxson, 780 South Ocean Blvd.; to allow a 513 sq.ft. conversion of crawl space into habitable space, thus creating a third story. R-A District **(Request for Deferral to October 10, 1995, per letter dated September 5, 1995, from Ms. Susan F. Delegal)**

This item was deferred earlier in the meeting to the October 10, 1995, Town Council meeting.

16. Variance No. 46-95 - Susan Leas, 234 Queens Lane; to allow construction of a second floor addition over the existing first floor which provides a 9.3' rear yard setback in lieu of 10' required, and provides a 9.1' west side yard setback in lieu of 15' required. R-B District -

Mr. Jim Ashley, representing Susan and Donald Leas, addressed the Town Council, stating that the Variance involved two setback requirements to add 950 sq. ft. to an existing house to make it more functional. He stated that Mr. and Mrs. Leas were expecting twins in November, and wanted to make their home more functional. He pointed out the area in consideration through the use of exhibits, and remarked that neighbors had not objected to the project. Mr. Ashley stated that the lot was 80' x 94', and the lots on either side were much wider and also lacked the required setbacks. The small house, small bedrooms, and the lack of a functional family room were conditions that were already there and did not result from the actions of the applicant. Mr. Ashley stated that the neighboring houses were all two story houses with the same setback problem. He continued that the applicant would be deprived of rights commonly enjoyed by other property owners, and since the proposed second story was directly over the existing first floor there would be no addition to the existing footprint. He stated that this was a minimum variance request, and the granting of the variance would be in harmony with the purpose of the Ordinance.

Mr. Moore stated that staff remarks were as follows: ARCOM felt that the design could conform with the Code; the Building Department had no objection as there was an undersized lot and new construction would be over existing walls.

Mr. Wyett made a motion to approve Variance 46-95. Mr. McDonald seconded the motion based on the hardship of an undersized lot both to depth and width.

Mrs. Smith asked Town Clerk Pollitt if there had been any correspondence relating to this item?

Mrs. Pollitt responded negatively.

On roll call the motion carried unanimously.

17. Variance No. 47-95 - Rocreation Corp., 1306 North Lake Way; to allow construction of a single family residence at 27.58' above the crown of the road in lieu of 26' permitted; and to allow a point of measurement variance to permit measurement to begin at elevation 10.5' NGVD in lieu of 7.5' required. R-B District

Mrs. Jacqueline Albarran de Mendoza, representing the owners of the property, addressed the Town Council, stating that the property was located a few houses south of the Sailfish Club on the Lake, and she produced exhibits of the property showing the structure, streetscape, and lake area. She continued that the percentages of the house were lower than what was required by the Code; lot coverage was 20%, when 30% was actually allowed; landscaping minimum was 45% and there would actually be 55%; floor area ratio had an allowable 45% and there would be only 32%; cubic content was 3.5 and the allowable was 4.5.

Mrs. Albarran - de Mendoza stated that the lake view was important to the property, however the property was unusual in that the Lake Trail was at elevation 8.5 in this area. They therefore proposed a 4' hedge above the Lake Trail for privacy, and adding 6" for a terrace and 6 additional inches for the interior of the house.

Mr. Moore stated that the request was unique and that there was no question that this was a difficult site; however, the Code did require that the 7.5' height be used. Mr. Moore stated that a surveyor could obtain height measurement information of the neighboring two story house to determine elevation. Mr. Moore asked if the house was being measured to the top of the beam?

Mrs. Albarran - de Mendoza replied it was being measured to the top of the beam and then to the top of the roof. She mentioned that the house to the south had a double lot and the house next to the proposed house was the largest. She referred to exhibits showing the site elevation.

Mr. Moore continued with staff comments: the hardship issue was one that they did not see, and the applicant had been asked to address the other issues of granting the variance for extra height. He suggested that one possible solution may be considering a lesser variance than what was being requested.

Mrs. Albarran - de Mendoza replied that the house was purposely designed to have the second story with the smallest profile.

Mrs. Smith asked what was across the street?

Mrs. Albarran - de Mendoza replied that there was a two story house with its frontage on the side street.

Mrs. Smith asked the approximate height of that house?

Mrs. Albarran - de Mendoza replied that it would be a fair statement to say that their lake view would be annihilated.

Mr. Wyett stated that he was familiar with the site, and the house replacing the existing one was far superior. He continued that the problem was that the land rises, and the solution was to lower the land, and he could not understand reducing the natural land height to enter into a conformity situation that could be best addressed by a Special Exception or a Variance. Mr. Wyett pointed out that the house to the south was a two story house with a one story garage and recreation room, and that one foot would not make any difference in blocking the view of the neighboring house. Mr. Wyett stated that he had found only one fault when he had examined the plans in that the fountain at the lake side seemed inappropriate. Mr. Wyett made a motion to approve Variance 47-95. Seconded by Mr. Shaw.

Mr. Shaw stated that he did not agree that the house had to be raised and did not see a hardship or justification to raising the terrace area off the lake.

Mrs. Smith asked the interior ceiling heights?

Mrs. Albarran - de Mendoza replied that the first floor was 10'9" and the second floor at 8'9".

Mrs. Smith asked if the plans had been approved by ARCOM?

Mrs. Albarran - de Mendoza responded that they were approved at the full height, but going with the 7'5".

Mrs. Smith stated that she would have no problem at the 7'5" measurement; however, she did have a problem when ARCOM had approved a plan and then it comes before the Council for a variance. She stated that she believed it should come to the Town Council first to see whether there was going to be a variance granted, and then go to ARCOM.

Mr. Wyett asked Mrs. Smith if the issue regarding the Architectural Commission could be put on the Agenda for next month. Mrs. Smith agreed that it would be placed on the Agenda.

Mr. Moore stated that the problem was that the house had been to ARCOM and the plan was in compliance with the zoning, and it was discovered after the fact that a zoning variance was needed. Mr. Moore stated that it would not be recommended that the plans go to ARCOM for zoning variance recommendations and then bring them back to the Town Council for granting of a variance based on a recommendation of ARCOM.

Mr. Wyett stated that, independent of this situation, Mrs. Smith had come up with a real situation that should be addressed, and it would be put on the Agenda for next month. He stated that he did have a suggestion that the roof could be flattened by one foot.

Mr. Moore stated that the point of measurement was from the top of the tie beam to the second floor, not to the roof, so they had two choices: lower the first floor and second floor ceilings, or take out one foot of dirt.

Mr. Wyett objected to the removal of natural soil, and the house had been designed with minimum interior ceilings and to lower them would be to lower the future value of the home. Mr. Wyett stated that zoning recommendations had not taken the homes on the lake into account, where lot values were extremely high, taxes on the land were extremely high, and people were being asked to build homes that would not allow the graciousness of the expensive property.

Mr. Shaw stated that the issue was not lowering the ceiling, but if they took the Lake Trail down to 7'6" they would have all the height issues resolved. He noted that the problem was that they were doing a floor elevation of 11'6" and that meant they were raising it. If all the elevations were taken down, some of the view would be lost at the pool level, but privacy would be retained. He stated that he believed the applicant was creating a hardship by raising the floor elevation to 11'6" and it could be brought down to 9'6".

Mr. Moore stated that it was important to understand that the applicant was actually planning on raising the land.

Mrs. Smith stated that houses were getting higher and higher and would be seen from the Lake Trail hanging right over the bike path.

Mr. Wyett withdrew his motion. Mr. Shaw withdrew his second.

Mrs. Smith asked what minimum amount would be acceptable to the applicant?

Mr. Wyett made a motion that a one foot variance be granted. Mr. Shaw seconded the motion.

Mrs. Smith stated that the motion was to allow the point of measurement of the building height at 10.5 feet to be changed to 8.5 feet. The second part of the Variance application was now moot.

Mrs. Smith asked Town Clerk Pollitt if there had been any correspondence on this item?

Mrs. Pollitt replied negatively.

On roll call the motion carried unanimously.

18. Special Exception No. 19-95 - Cucina dell'Arte, 257 Royal Poinciana Way; to allow an amendment to Sp.Exc. #21-94, requesting 36 additional seats for a total of 114 seats. Pursuant to Sec. 6.61 of the Town Code, applicant requests that 24 seats be relocated to the outdoors. C-TS District

Mr. Wyett declared that he had ex-parte communication with Mr. Deziel in this matter.

Mrs. Smith declared that she too had a communication with Mr. Deziel.

Mrs. Smith stated that a flat out statement should be made that every member of the Town Council had met with representatives from the Building Department prior to the Special Exception and Variance portion of the Agenda.

Mr. Robert Deziel, representing the applicant, Cucina dell'Arte, addressed the Town Council, stating that the application was an amendment to Special Exception 21-94, which had been approved on August 9, 1994. Mr. Deziel continued that the original approval allowed 78 seats for dining based on the then existing 17 parking spaces. Since the original approval the applicant had entered into an agreement for an additional 14 parking spaces to be available to the applicant by the landlord, for a total of 31 parking spaces. All of the 31 parking spaces were located on the restaurant parking lot located immediately to the north of the restaurant. Based on the increased parking availability and Town resident acceptance of the establishment, the amendment to the original application was before the Town Council today.

Mr. Deziel stated that the request was in two parts: the first was to increase the seating capacity within the restaurant, and the second was to allow some of that seating capacity to be placed in an outdoor open area in front of the restaurant. Mr. Deziel stated that he would like to amend the written request that had been reviewed by the Town Council. Originally, the request had asked for 114 seats within the restaurant and he was now amending it to 101 seats in order to meet applicable code requirements. In addition, he reduced the outdoor seating request from the 24 originally requested to 12 seats outside. This reduction was based on a meeting with Mr. Moore and discussions with Jim Bowser, the Town Engineer in regard to applicable code requirements.

Mr. Deziel produced exhibits as he verbally explained the issue to the Town Council.

Mr. Dana Dribben, a partner in the ownership of the restaurant, addressed the Town Council in response to questions concerning the photographs submitted. He stated that two different mock ups were shown; one with two seats per table, the other with four seats per table, each showing four tables.

Mr. Deziel explained that there was a technical requirement in the Code that said that a 10 ft. right of way had to be provided in front of the establishment for seating. In front of Cucina there was 10 ft., plus 32 inches, notwithstanding the fact that some of that 10 ft. belongs to Cucina. The Code provision said that it did not matter who owned it, the 10 ft. right of way must be provided. Mr. Deziel indicated that the applicant could fit the proposed tables inside the 32 inch area. The second part of the 10 ft. requirement was that the 10 ft. could be bitten into by a measure of 2 ft. to create the flower pot barrier that had been provided.

Mr. Moore stated that the figures Mr. Deziel was quoting were correct; that he could encroach into the 10 ft. by 2 ft. with decorative landscaping. Mr. Moore stated that the 32 inches was an area that would not be governed under the 10 ft. sidewalk and was an area that the Ordinance contemplated would not encroach into the right of way of the 10 ft. if there was outside dining. Therefore, the applicant would be entitled to put tables and chairs within that 32 inch area. Also, without the permission of Town Council, the applicant was permitted to put the two foot encroachment of landscaping into the right of way area.

Mr. Deziel stated that he was before the Town Council to obtain permission to put the tables in the 32 inch area, for which he needed a Special Exception.

Mr. Wyett asked how the tables would be serviced?

Mr. Dribben stated that the number of seats per table would depend on what the customers desired. People had been requesting to sit outside continuously.

Mr. Wyett asked how the four tables outside would be properly serviced?

Mr. Dribben replied that by allowing the seats outside, things indoors would be spread out, creating more room.

Mr. Wyett asked how valet parking would be handled. He stated that he had received many complaints since the restaurant had opened, and what little parking there was on the street had disappeared. He stated that he had observed times when only one valet parker was available, and he expressed concern that residents in the Town cannot park on the street.

Mr. Dribben replied that there were several factors to consider: they were the only restaurant on that block that had a no loading zone directly in front of the restaurant, which was a tremendous aid for everyone. In addition, their request fell well within guidelines in terms of the ratio of seats to the number of parking spaces required, and the parking lot was directly accessible to their patrons by way of a walkway.

Mr. Wyett stated that did not address his concern for residents of the Town who did not want to go to a restaurant, but want to park in the street, but because the valet parkers are parking cars on the pubic way they cannot.

Mr. Dribben responded that the restaurant employs a valet service and they make judgement calls as to where the valets are distributed.

Mr. Wyett requested that the valet people be instructed not to park the cars on the public way, which would open up a few spaces for the rest of the residents.

Mr. Shaw stated that a favorable trade off would be if all valet parking was moved to the back lot, which would eliminate the valet licensing permit, and the time limits necessary for patrons to wait.

Mrs. Smith asked where the 23 additional seats would be placed inside?

Mr. Deziel replied that the plan exhibited showed 101 seats, with the original 78 seats being well dispersed and divided between the front and the back.

Mr. Dribben stated that one of the areas was called the food bar, which were the seats near where the chef cooks. That accounted for about 10 seats out of the 23, and depending on reservations for a particular evening tables may be rearranged to accommodate groups.

Mr. Deziel stated that once the 23 additional seats were approved those tables and chairs would be plucked from the interior and placed out in front if the outdoor seating was approved, so that the total number of seats would still equal 101.

Mr. Moore stated that the area was covered now, so it could be considered for outside dining.

Mrs. Smith asked if there was an entrance from the back parking lot into the rear of the restaurant?

Mr. Dribben replied negatively, that the back entrance was the kitchen entrance, and stated that he believed the Fire Marshal required that exit remain as an egress.

Mr. Shaw stated that there was an exit into the alleyway that could be used.

Mr. Dribben responded that would be impossible as people would be entering the restaurant virtually where the kitchen was.

Mr. Shaw suggested that many restaurants manage to have a rear entrance and a front entrance.

Mr. McLendon asked if there had been a commitment to instruct valets not to use public parking places?

Mr. Dribben responded that he was not prepared to guarantee that because he could not be outside policing them every night, but he would be glad to issue those instructions to the valets.

Mr. Wyett stated that under the zoning proposal for valet parking, owners would be required to police the valet parking situations.

Mr. Dribben replied that he would adhere to whatever rules apply.

Mr. Wyett stated that he had a problem with giving 23 more spaces and further jamming the street.

Mr. Dribben requested that the overall parking spaces allowed per seat be considered, and that Cucina was probably the only restaurant in the area that fell underneath that ratio.

Mr. Wyett replied that did not answer the concern of residents that they could not get onto the street.

Mr. Deziel stated that Mr. Dribben would be willing to comply with directing the valets, and asked if it was possible that some of the concerns may be the outfall from the fact that the property was under a different use than previously existed.

Mrs. Smith stated that there were three restaurants on Royal Poinciana Way and at the height of the season on a busy night there was double and triple parking, which prohibited people from using the street. Mrs. Smith continued that if DOT did not like the valet parking Ordinance then it may be prohibited entirely. She added that fortunately Cucina and Testas had a lot behind them, and not all of the congestion was the fault of Cucina.

Mrs. Smith stated that she believed four tables seating four people each in the outdoor seating area were too tight, and suggested a smaller number initially to see how it works.

Mr. Deziel stated that they would agree to a restriction of 12 seats outside and no more than four tables.

Mr. Shaw asked if there would be a fence to prevent people from going through the hedge.

Mr. Deziel replied that the intention was to have a flower box.

Mr. Shaw asked if the 32 inches could be leveled to the same level as the interior door which would eliminate the need for a Special Exception?

Mr. Moore stated that any seats outside of the weather wall needed the approval of the Town Council.

Mrs. Smith asked if reservations in the front room were going to be taken in order to assure the number of seats?

Mr. Dribben replied that the reason that reservations were taken for the back area was as a service to the Palm Beach customers, but the problem was that they were a small restaurant and seating must be maximized, and reservations in the front room would prevent the maximum use of seats. He commented that a small restaurant must maximize seating or it would be out of business.

Mr. Moore stated that staff believed the amended application submitted by Mr. Deziel took care of many of the questions listed by the staff, and that staff believed the 23 extra seats were fine, as long as parking was provided. He continued that staff believed that only three tables of two would function within the 32 inch space, as well as two valets working at any time, and a solid divider between the 32 inches and the Town right of way similar to the one at Chuck and Harolds.

Mrs. Smith asked if the divider would be in addition to or in place of the flower pots.

Mr. Moore replied that the flower pots would be on the outside, but there should be a solid divider so that the pots would not creep further and further to the south in the right of way.

Mr. Wyett made a motion that three tables of two be allowed on the outside; that a solid divider be provided; that the applicant guarantee that he will have two valet parkers at all busy hours (6:30 - 9:00 P.M.); and that all parking be in the rear up to the point where the rear was full; and that the seating be increased by 23. Seconded by Mr. Shaw.

Mr. Shaw commented that he did not understand why there should be a limitation of tables and seats within the 32 inches, as long as there was no objection by the Fire Marshal.

Mr. Moore replied that there was an exiting problem, and there must be distance between tables in order to get out in conformance with the Building Code.

Mr. Shaw stated that if the plan had been approved by the Fire Marshal and the Building Department, why not allow four tables of two?

Mr. Wyett stated that he would amend his motion to be four tables of two.

Mr. Dribben addressed the concerns regarding valet parking; he had a contract with a valet parker, which stated that in season he would have two valet parkers.

Mr. Shaw stated that this was a year-round Town and Cucina was a year-round business.

Mrs. Smith stated that certainly on the weekends, even during the summer, Royal Poinciana Way was packed at night.

Mr. Dribben stated that valet parking was a tremendous expense, that it was difficult to stay in business over the off-season, and to have to commit to an expense he was not sure he could justify was something he could not do.

Mr. Wyett amended his motion to have two valet parkers on weekends.

Mr Deziel repeated the conditions: four tables of two chairs each, a solid partition at the 32 inch line and right of way, two valet parkers during the season and on weekends during the off-season, as well as instructions to valet parkers to park all cars in the rear until it was full.

On roll call the motion carried unanimously.

19. Special Exception No. 20-95 - McCann Coyner Clarke Real Estate, 333 Peruvian Avenue; to allow an 800 sq.ft. occupancy expansion up to 2,200 sq.ft., in excess of the 2,000 maximum permitted; and to allow said 800 sq.ft. to be on the first floor area that does not have frontage on or entrance directly onto a sidewalk fronting a roadway. C-TS District

Mr. Peter Broberg, on behalf of the applicant, McCann Coyner Clarke Real Estate, addressed the Town Council, stating that the application before the Town Council was two-fold, with two Special Exceptions being requested: the first one was exceed the C-TS limitation on 2,000 sq. ft., and the second was to put office space on the first floor in the C-TS District.

Mr. Broberg exhibited pictures of the property in question which he supplied the Town Council for review. He stated that the request was to go 800 additional sq. ft. on the ground floor, which was approximately 200 sq. ft. more than the allowed limitations in this zone, thus the need for two special exceptions. Mr. Broberg noted that he had a letter from an accountant certifying the Town-serving aspect which was 89.9% of business transactions. He also mentioned that review of the listing printout revealed that out of 35 listings, 33 of them were for Palm Beach and 2 were from West Palm Beach.

Mr. Broberg explained that the intent of the Code was to allow Special Exception use of the ground floor if it was not on the street front, and the pictures exhibited clearly showed that the property was well back from the street front and was protected by a wall.

Mr. Moore stated that this particular property had been considered for landmarking at one time, but had been rejected by the Town. He continued that the area sat quite a distance from pedestrian traffic along Peruvian, and the Town-serving issue had been addressed. Mr. Moore stated that staff had no objection.

Mrs. Smith stated that past Town Councils had been concerned with saving the property as a retail area, with the drawback being that the building was located so far back from the street that it could not actually be considered a retail area, and she felt that this was the best possible use for the property.

Mrs. Smith stated that she, as well as Mr. Wyett and Mr. McLendon had ex-parte communications with Mrs. Clark regarding this issue.

Mr. McDonald asked Mr. Randolph if it was necessary to disclose with whom the discussion had taken place?

Mr. Randolph replied that disclosures should indicate who the discussion had been with, and the nature of the discussion.

Mrs. Smith stated that she had a conversation with Mrs. Clark about the subject property.

Mr. McLendon stated that he had a conversation with Mrs. Clark, as well as an invitation to come and look at the property, which he did not do.

Mr. Randolph clarified that the Ordinance said that in the event of any ex-parte communication with a local public official, it shall be the responsibility of the public official to disclose the subject of the communication and the identity of the person with whom the communication took place.

Mr. Wyett stated that he had also had communication with Mrs. Clark.

Mr. McDonald disclosed that he had a conversation with Mrs. Coyner regarding the subject Special Exception.

Mr. Wyett made a motion to approve Special Exception 20-95. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

D. Other

1. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction Work, by Mr. James R. Brindell for Le Bateau Restaurant, Esplanade, 150 Worth Avenue

Mr. James Brindell addressed the Town Council, on behalf of Le Bateau Restaurant, stating that a time schedule had been provided with the application, showing that if the same schedule of work was continued, without extended hours, the project would be finished approximately December 15th. Mr. Brindell continued that the application was being made now, rather than wait until the first week of November, and the work would proceed along the schedule unless some relief could be granted on work hours and days. He explained that if work could start now with some extended period there was a chance that the work could actually be completed by November 15th. Mr. Brindell pointed out that during any extended hours any trucks would come inside the building and types of activities making noise would be prohibited during those hours.

Mr. Dale Hedrick, President of Hedrick Brothers Construction, addressed the Town Council, stating that they were asking for as many hours as the Town Council would allow.

Mr. Moore stated that they were specifically asking for 7:00 A.M. until 11:00 P.M., Mondays through Sundays, commencing immediately. Mr. Moore continued that the request was not an unusual request, and was supported by the fact that there was underground parking at the Esplanade, and it could handle any construction vehicles related to the project inside. Mr. Moore suggested that more reasonable hours be considered, such as from 7:00 A.M. until 9:00 P.M., exclusive of the Thanksgiving Holiday.

Mr. Wyett made a motion to approve hours of construction to be 7:00 A.M. to 11:00 P.M., with the conditions that all trucks and activities be confined within the building and that no noise whatsoever be emitted; any activity that would require noise must be conducted within the normal hours.

Mr. McLendon stated that he preferred the hours of 7:00 A.M. to 9:00 P.M.

Mrs. Smith agreed, and commented that she had a problem with Sunday hours, and that by tradition there had been no work on Sundays in the Town. She suggested that the hours be 7:00 A.M. to 9:00 A.M., excluding Sundays and national holidays.

Mr. Wyett amended his motion to approve hours of construction from 7:00 A.M. to 9:00 P.M.

Mr. Brindell clarified that the holidays would include Thanksgiving and Veteran's Day, which was November 10th.

Mr. Wyett stated that his motion was to allow construction from 7:00 A.M. to 9:00 P.M. Monday through Saturday, and on Sunday for limited hours, with all vehicles off the street at all times and no noise to be emitted from the property; also no work to be conducted on Thanksgiving.

Mr. Brindell suggested the hours of 10:00 A.M. to 6:00 P.M. on Sundays.

Mr. Wyett agreed to amend his motion to include hours on Sunday to be from 10:00 A.M. to 6:00 P.M. The motion was seconded by Mr. McLendon. On roll call the motion was denied 2/3 with Mrs. Smith, Mr. Shaw, and Mr. McDonald casting negative votes.

Mr. Wyett made the same motion to include no work be conducted on Veteran's Day. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

2. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction Work, by Mr. John C. Cassidy for 249 & 251 Royal Palm Way, Plaza Center Buildings

Mr. John Cassidy, President of John Cassidy Air Conditioning, addressed the Town Council, stating that he was requesting work hours outside the normal hours on weekdays and Sundays. Mr. Cassidy stated that it was to the advantage of the Town in that construction would involve putting a crane on Royal Palm Way, and Saturdays and Sundays would be better days to do that. Mr. Cassidy noted that the request was for working hours to begin at 12:00 A.M. on Friday and from 6:00 A.M. to 10:00 P.M. on Saturday and Sunday. He explained that the problem was that the equipment must be removed from the top of the building, and the new equipment must be up by Monday morning so that other tenants could come in and use their premises.

Mr. Moore stated that the weekend was the most advantageous time for both the Town and tenants in the building, and staff had no objections to the request.

Mrs. Smith asked Mr. Cassidy how long the working hours would go on?

Mr. Cassidy replied the hours would include three separate weekends, from 6:00 A.M. to 10:00 P.M. on Saturdays and Sundays, and starting at 12:00 A.M. on Friday.

Mrs. Smith stated that it would be very important to get the construction crew out of the area, as one bridge would be closed and traffic would be a problem.

Mr. Wyett made a motion to approve the hours of construction at 249 & 251 Royal Palm Way to be from 12:00 A.M. Friday, and from 6:00 A.M. to 10:00 P.M. on Saturdays and Sundays for the following three weekends:

SEPTEMBER 29,30 - OCTOBER 1
OCTOBER 6, 7, 8
OCTOBER 13, 14, 15

Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

XV. ANY OTHER MATTERS

Mr. Doney made an announcement that there would be a Water Committee Meeting on Wednesday, October 11, at 2:00 P.M.

XVI. ADJOURNMENT -

The meeting was adjourned at 8:00 p.m.

Mary A. Pollitt
Town Clerk