TOWN COUNCIL MINUTES OF MEETING HELD ON SEPTEMBER 8, 1992

I. CALL TO ORDER AND ROLL CALL: A meeting of the Town Council was called to order by President Heeke 9:30 AM in the Town Hall Council Chambers on September 8, 1992. On roll call, the following Elected Officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilwoman Douthit and Councilwoman Wiener. Absent was Councilman Ilyinsky. Also in attendance for all or portions of the meeting were Mr. Doney, Mrs. Peters, Mr. Randolph, Chief Elmore, Chief Terlizzese, Mrs. Crozier, Mrs. Martinuzzi, Mr. Bitzer, Mr. Crouse, Mr. Dusey, Mr. Jakubiak, and Mr. Elwell. Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE - Invocation was given by President Heeke and Pledge of Allegiance was led by President Pro Tem Weinberg. Invocation

III. PRESENTATIONS Presentation

A. Retirement of John Mathis, Sanitation Walker - Public Works Department - Mayor Marix awarded a plaque to John Mathis in recognition of his 21 years and 2 months service to the Town. Mr. Mathis was congratulated by the Mayor and Town Council.

RECOGNITION OF TOWN EMPLOYEES: President Heeke remarked he would like to exercise the prerogative of the Chair to thank the sterling efforts that many people in this Town exhibited with the Town Manager and staff maintaining communications throughout the night of Hurricane Andrew and worked from 8 AM Sunday morning to Noon Monday. He congratulated the Town Manager, the Fire-Rescue personnel, the Police Department and the Public Works Department, Data Processing Manager and his staff, Barbara Martinuzzi, Risk Manager, Finance Department, Town Clerk's Office, Purchasing Agent, as well as other employees on their tremendous efforts.

President Heeke stated Town equipment was made available and staff and personnel were provided for South Dade County pointing out an example is Ralph Scioti who used his overtime money to purchase a chain saw which he donated to the relief effort and took a week of vacation to volunteer his services.

IV. ORGANIZATIONAL ITEMS Organizational Items

A. Appointment of Town Manager - Pursuant to Section 4.02 of Town Charter and Ordinance No. 13-90 - Mrs. Douthit moved that Mr. Doney be appointed for another year. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

B. Appointment of Administrative Officials - Pursuant to Section 2-3 of the Town Code and Ordinance No. 13-90 Mr. Heeke recognized all of the Department Heads and Administrative Officials. Mr. Weinberg moved the Administrative Officials be reappointed as in the memorandum of Mr. Doney to the Mayor and Town Council dated September 1, 1992. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Those reappointed administrative officials were:

GRACE T. PETERS, TOWN CLERK
ROBERT L. MOORE, DIRECTOR OF PLANNING, ZONING AND BUILDING
JOHN C. RANDOLPH, TOWN ATTORNEY
ALBERT P. DUSEY OR HIS DESIGNEE, TOWN ENGINEER
WILLIAM C. CROUSE, PERSONNEL DIRECTOR
RUSSELL E. BITZER, RECREATION DIRECTOR
CHIEF OF POLICE JOSEPH L. TERLIZZESE
FIRE-RESCUE CHIEF VINCENT K. ELMORE
DIRECTOR OF PUBLIC WORKS ALBERT P. DUSEY
ACTING TOWN MANAGER: PETER B. ELWELL

V. COMMENTS OF THE MAYOR: Mayor Marix recalled she had seen pictures of the devastation of Hurricane Andrew, noting that all of the FP&L cement poles were down and lying across the road and thought if they couldn't be installed securely and better, she thought perhaps there should be a rule that these electric poles be installed further away from the roadway so it wouldn't create a complete blockage of the roadway when there is a catastrophe. Mr. Doney advised he would write a letter to FP&L about this concern specifically with regard to Palm Beach. Comments of the Mayor

Mrs. Douthit suggested perhaps they could contribute to putting the wires underground, which could help to alleviate the total problem.

VI. APPROVAL OF AGENDA. Motion was made to approve the agenda by Mr. Weinberg, seconded by Mrs. Douthit, with the following changes: XII.C-4 Variance 48-92 for Mr. & Mrs. J. Ryan has been withdrawn; C-9 Variance No. 56-92, Eugene Applebaum has requested postponement to the next Town Council meeting, October 13, 1992; XIII.D.2 - Flagler System cost apportionment - requested a postponement until the Nov. 10, 1992 Town Council Meeting; consideration of Charitable Solicitation Permit for the American Red Cross will be considered on the Regular Agenda. On roll call, the motion carried unanimously. Appr. of Agenda

Mrs. Wiener explained she would like a clarification on something and that is with the opening of the Kravis Center, there will be a lot of charitable events being held there in West Palm Beach and she knows that the Jewish Guild for the Blind is one of those and she wished to have a clarification as to what is a Town event and what is not

Mr. Heeke asked that the Staff look into this and report to the Council.

Mrs. Wiener moved for approval of the "Approved Agenda". Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

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

VII. APPROVAL OF MINUTES OF APRIL 16 AND JUNE 9, 1992

Licenses & Permits

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

Char.Sol.

1. Palm Beach Community Chest/United Way, Inc.; No. 8-93
2. The Jewish Guild for the Blind; No. 23-93
3. The Schepens Eye Research Institute, Inc.; No. 107-93
4. Rosarian Academy; No. 127-93
5. Paracare Association of Palm Beach; No. 143-93
6. Florida Conservation Association; No. 251-93

New Bus.

IX. NEW BUSINESS

Charitable Solicitation Permit No. 20-93, American Red Cross. Mrs. Peters explained the American Red Cross wishes to host a third event with the proceeds to go to the Hurricane Andrew victims and if the Council wishes to approve this, it should be done with the proviso that the approval is conditional, pending all of the documentation being submitted and staff review. Mrs. Peters advised they were late in submitting the results of their last year's solicitation. Mrs. Wiener stated she doesn't have a problem with the American Red Cross and under these circumstances, there is no question about their holding the event, and she moved the American Red Cross charitable solicitation permit be granted, pending the approval of staff and the receipt of the results form. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

A. Bid Award

Sealed Bid 023-89/90

1. Sealed Bid No. 023-89/90 - Consideration of Renewal of Agreement with Coral Building Services for Janitorial Services for FY93.

REGULAR AGENDA

Old Bus.

X. OLD BUSINESS

A. Appointment

Appt. - Code Enf. Board

1. Code Enforcement Board - Two Alternate Members for a Term of Two Years to Expire April 1994 -

Mr. Weinberg nominated Paul Rampbell for a seat on the Code Enforcement Board. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mrs. Wiener nominated Dr. Joseph Rogatnick for a seat on the Code Enforcement Board. Mayor Marix noted there also is a letter of request from Mr. John Wilbur to serve on this Board. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Other

PEP Reef Project

1. Consideration of PEP Reef Project at Mid-Town Regarding AT&T Cables at Clarke Avenue Beach Area and Other Project Issues.

Attorney Gary Lickle addressed the Council on behalf of American Coastal Engineering advising the Council that it was luck to not have the full force of Hurricane Andrew and as many of the members of the Council are probably aware, there was a small section of the reef aligned but there are 100 units which have not been aligned. He reported there has been a base line study started which has been required by DNR and at this point, there is an issue about scour. He believed the alignment of the reef is necessary for the purposes of being able to have the reef curve with the topography of the shoreline, and an interlocking system is being developed not only for stability but for the ability to turn the reef in whatever direction it needs to go. He stated as a result the reef segments are offset as opposed to being lined up directly and as a result of this installation method, it has been determined by the engineers that there is a scour effect being created at the toe of these segments and the segments are settling more than they should. He stated it has been discovered that if the reef segments were continuously in line, it should eliminate the scour and according to the surveys, that was also found to be the case, as the units sitting in the sand had no settlement and no scour.

Mr. Lickle advised American Coastal has developed an engineering solution of putting in a key lock which would allow the reef segments to line up directly and they are moving forward with that plan and will take care of it at no cost to the Town. He stated the issue is a timing one as they have been working diligently to install the reef by the October 1 deadline and have two weeks of weather days accumulated at this point and would perhaps need an additional two weeks to do the reinstallation.

Mr. Lickle reported in the center section of the aligned reef segments, although it is not conclusive as yet, there is a one foot accretion build-up towards the shore line which was not evident in any of the other areas. He has sent a letter delivered today with the Coastal Tech report enclosed which shows their conclusions of their survey. He asked the Council to please keep in mind the time issue, as they would probably be asking for an extension of time.

Mr. Lickle reported the second issue is the method of billing and payment. He pointed out the sub-contractor, Murphy Construction has been working diligently with this project and had three barges instead of one and the fabrication and delivery of the units to the site has gone far faster than what was anticipated. He stated as a result most of the units are in the water, although have not been lined up.

He recalled under the terms of the contract, American Coastal is to submit their requisition in three phases, one would be the forms, two would be the fabrication and three the installation and alignment phase. He stated they are through the entire first phase and the second phase, they are probably two-thirds of the way through and Murphy Construction has requested a speed up in the payment of the modules as a result of the fact they have delivered the actual units to the site, although they are not lined up.

He stated under the third phase, it calls for payment only upon the alignment of the segments. He stated Murphy Construction feels, and American Coastal agreed, that it would be a great relief to their cash flow position if they were able to bill 50% of the third phase when the reef segments have been delivered to the site, as opposed to lined up and the balance of the 50% be paid upon alignment. He stated this has caused a serious cash flow problem to Murphy Construction and American Coastal is a conduit to this payment, so it is requested the Council consider a modification to that payment schedule. PEP Reef (cont'd)

Mr. Heeke called on Mr. Doney for his comments on the request. Mr. Doney stated there is a lot of material before the Council and a number of issues which are interrelated. He stated one important issue is the AT&T issue and the report from Mr. Sasso today brings another concern, as far as the position the Town staff had previously taken and the recommendation was to not pay for any units which were not fully installed and aligned and now as a result of the effects of Hurricane Andrew, there are some serious concerns documented and one of them is the settlement issue. He stated a further concern of the Town staff is to pay for any units placed in the water for which they are now requesting payment. He believed a crucial element to this is, from a contract administration perspective, the DNR's written approval and also the permitting agencies' written approval, prior to the Town Council giving its approval for this modified change and design should be a condition before any positive action is taken.

Mr. Dusey stated there is a settlement issue and the payment issue. He believed the settlement question is a lot more serious as the wave action that came with Hurricane Andrew was no more significant than two or three northeasters which this Town gets a year and the fact that the units settled is a great concern to him. He recalled Dr. Lin has submitted volumes of information with calculations that the units would not settle and that has not been the case. He would like to see a verification by an engineer with Errors and Omission insurance to assure the Town Council that they would not continue to have this problem of settlement every time there is a northeaster. He believed the investment in this project is substantial and he thought there was more needed than a letter indicating there would be no problem as they have found the solution. He agreed with Mr. Doney's statement that the DNR and other permitting agencies would have to approve of the changes and the structural installation method before the Council takes any major action on the payment, and that is the second issue. He believed that Mr. Murphy did an extraordinary job in getting the units into the water and Mr. Bowser and himself were willing to support the request to pay for 50% of the units which are in the water, but their recommendation has to be, because of the problem of the settlement, that the Town Council do not pay for the units until they are in place in a configuration that is approved by the permitting agencies.

Mr. Lickle pointed out the difference between the aligned sections and the sections that are sitting on the ocean floor in a scattered condition is that there is no scour as to the units sitting in the sand, and as calculated by Dr. Lin, the installation method of the interlocking off-set units was something that was done after Dr. Lin's study of a continuous reef and it had a design modification for the installation. He stated on the one hand, they were fortunate enough to have storm conditions to make the determination that apparently the off-set at the base of the reef segments exacerbated scour. He stated scour is an issue that comes up on any of these projects. He recalled Dr. Lin was comfortable that once the reef segments are aligned, there would not be an offset at the base and that will eliminate the scour, which has been shown by the engineering studies. He stated American Coastal is willing to take care of that issue and have the units aligned. He thought the Council needed to understand there is good data at this point which shows the existing segments did not incur scour.

Mr. Doney asked about the additional segments which are not interlocked and put in place with the original design of the Reef as the whole performance of the reef is predicated on a specific design and installation and he doesn't believe that is relevant. Mr. Lickle responded that the tank test and the analysis is one continuing segment which demonstrates the no scouring and what has caused the additional scour is the fact that the segments that are in there now are not exactly lined up and are offset to each other which creates two vortices at the base of the reef segment and causes the sand to undermine it, and they have been able to videotape it and identify it as the particular problem. He advised that problem does not occur with the individual segment sitting by itself or the long continuous reef segment. Mr. Doney recalled this element has not been discussed with Beth Mitchell but he thought the Council needed to consider whether the engineer would certify to this being the recommended design, subject to the permitting agencies' approval and the fact there is adequate Errors and Omissions Insurance to fully protect the Town should problems occur as they may be faced with continuous maintenance problems, which would be the Town's responsibility and he asked if Mr. Lickle could address that point. Mr. Lickle stated he was not prepared to address the Errors and Omission Insurance is either available or otherwise, but he thought they should put this into perspective from the standpoint that this is an experiment, which has been tank-tested and field-tested somewhat on a smaller version and DNR and the other permitting agencies do realize this is an experiment and they will all learn through this experiment as to what the problems are and to look for a guaranteed solution on something that has not been tried would be difficult. He stated American Coastal and other engineers are continuing to access the performance of the reef as they go along, and it may be in theory, but for Hurricane Andrew providing storm conditions in the installation phase.

Mr. Heeke asked if American Coastal had any discussion with DNR on the accretion of the sand and absence of compacting being a factor, and would payment be made directly to Murphy Construction Co. and the other issue of the offset as originally it was to be a certain contour and now what will happen to that contour? Mr. Lickle responded on the contour issue, American Coastal says it is still possible but it will make installation a little more difficult, as under the old system, there was plenty of room to allow them to turn with each other and now it will become more critical, so the installation will probably be slower. Mr. Lickle responded with regards to the payment of Murphy, the payment should continue to go through American Coastal as Murphy is a subcontractor. He stated with regards to DNR being consulted about this, they have not been consulted as these results have just come out last Friday.

Mr. Lickle recalled DNR's permit requires one continuous 4000' reef with the design that American Coastal has put forward and he can hazard a guess that there will not be a serious issue as to whether the segments are offset or aligned as that was never brought up as a design question by any of the permitting agencies. He stated this was just a design for easier installation and American Coastal has discovered that is exacerbating the scour. He emphasized that scour is one of the main issues on many of these projects and it is not that DNR and the other agencies are unfamiliar with this situation and it is one of the main criteria to be monitored under the Test Plan. He stating having witnessed the scour and what the offsetting has done, American Coastal will go back in and line them up.

Mr. Weinberg stated he is influenced by the engineering expertise of Mr. Dusey which he didn't think Mr. Lickle had, and Mr. Dusey has expressed his fears and it is Mr. Weinberg's thought that DNR approval should be received before any more monies are spent. Mr. Lickle stated he agreed with Mr. Weinberg on the engineering background as he has none, but he relies on the expertise of Mr. Harvey Sasso, who did the surveys and compiled the data. Mr. Weinberg asked if the approval of DNR would have to be received on the key lock to which Mr. Lickle referred to earlier? Mr. Lickle responded that American Coastal is moving ahead with the key lock at their risk as they don't feel that will be a major issue with DNR.

PEP Reef (cont'd)

Mrs. Douthit made the comment that the hurricane may have been a blessing in disguise as now we have exhibits of what happened with the aligned and the unaligned units as one has scour and the other does not, and eventually they will have to pay for the units and the request was for a 50% payment and the correction to the existing interlocking will be financed by American Coastal so she was prepared to make a motion as the whole purpose of this is to protect the Town's infrastructure.

Mr. Lickle appreciated the comments recalling American Coastal has been before this Council many times with numerous financial issues and as they are aware in projects of this kind, there are tremendous hurdles to overcome and he believed American Coastal has continued on and they have talked about issues of additional monies which may be required and in many instances, they have been able to get over the hurdles without passing on substantial additional amounts to the Town and he mentioned this so that can be recognized. He thought American Coastal looked at this as a real partnership and obviously, if this is successful, not only will the Town benefit but American Coastal will also.

Mayor Marix commented that they do have these problems, as Mr. Lickle has pointed out, recalling they all knew that and as Mrs. Douthit points out, they do want to try and protect the infrastructure, but she thought they should all realize they had the choice of going along with this project or just doing nothing. She stated they did not have the choice of putting in sand, which she thought was fortunate, as they did not have the money, and in a way perhaps that was fortunate as other communities have since renourished their beaches with sand several times. She knew it was a fact that these sand renourishments have to be redone on a regular basis, but the fact still is there was no alternative that the Town could handle, except this one, and it is known it is experimental and there is every reason to believe it should work. She agreed that the fact that this problem has come up now but it is a small problem and it could have been bigger. She believed it was most important that Murphy Construction is not penalized for doing a good job and it is equally important that American Coastal is not penalized for having gone as fast as they can go. She believed they were in this thing together as they are trying to achieve a certain result which could not be achieved in any other way and she believed that it is only right and fair that they do pay the half requested, so as to not penalize Murphy Construction or American Coastal. She felt they had no choice but to do what they are doing so they should do it properly, understandingly, patiently and honestly.

Mrs. Wiener recalled when she first used the word "experimental" going back in time, there was a lot of headshaking, and now they are coming back and stating this is really an experiment and they don't really know how certain things should perform and that is what her problem has been from day one. She doesn't care if there are other ways of doing this but her main concern is spending taxpayer's money on experimental projects. She recalled asking Mr. Lickle for certain financial data some time ago about the corporation and his response was they were a private corporation and therefore, that information would not be forthcoming. She has concern about that as she is representing a governmental entity and there are certain things we are required to know about people with whom we do business. She believed the request today goes to the heart of why when asked some of the questions she did, as she didn't believe there was any legal arrangements the Town had with the sub-contractor of American Coastal to which Mr. Lickle responded probably yes, through American Coastal. Mrs. Wiener did not agree as the contract the Town has is with American Coastal and asked again if the Town had an accommodation with Murphy Construction to which Mr. Lickle responded "a direct accommodation, no." Mrs. Wiener stated that is why she was hopeful of determining how stable American Coastal Engineering was financially as if it is, there would no problem like any other supplier servicing the Town of American Coastal paying its bills and at the appropriate time, American Coastal would be paid for their services by the Town, but she thought they were under constant pressure and she hasn't been given any comfort otherwise, and there seems to be a cash flow problem of this corporation that the Town is doing business with, and that is a serious problem to her. She believed they will continue to have this problem and this will go on and on and she felt the Town is being bled. She has felt this way from the beginning as she believed there wasn't enough there to hang a governmental hat on and she continues to feel this way.

Mr. Lickle responded the cash flow is always an issue in multiple construction projects. He stated Mr. Murphy has to pay his subcontractors. He stated they all know this is a large contract and when contractors and subcontractors are being contracted with on a contract such as this, there is always an issue of cash flow and the timing becomes critical to any company. He recalled in the beginning American Coastal in 1990, they put forth a bill of $8000 in expenses for research and development. Mrs. Wiener recalled American Coastal begging for that privilege and she thought if everyone could be up front and straight with each other, and if they looked at past meetings, they would see at that time there was a great deal of contention on the Council side of the table and in the end, they were given it and they were delighted to have it but now we hear that they did it as a major favor and she thought they needed to keep this in perspective. Mrs. Wiener felt when you go back later on and when you have not followed the letter of the law, you will get into trouble. Mr. Lickle stated he would hope that everything has been done in accordance with the letter of the law. Mrs. Wiener pointed out he is talking about changing things under the contract, such as the alignment, which has not had the approval of DNR, and her concern is that the taxpayers will be the ones to pick up the tab.

Mr. Dusey pointed out Mr. Harvey Sasso, Coastal Engineer, is in the room and he has done a lot of work on this project and perhaps the Council would like to hear from him. Mr. Dusey asked Mr. Sasso if the potential problem of the scour had been examined by Mr. Sasso? Mr. Sasso responded based on the survey information they have received from the American Coastal surveyor and his personal site inspection, a preliminary assessment has been made of the conditions contributing to that scour. Mr. Dusey asked if he believed it was the offset which has caused the settlement? Mr. Sasso stated this would seem to be a major contributor to that settlement. Mr. Dusey asked if Mr. Sasso believed that the solution will prevent that from again happening? Mr. Sasso responded that based on the information received on the original experimentation, it would seem that the laboratory tests which were done initially indicated when there was not that offset, the units would not have received that extent of settlement and that data supports one-half foot of

PEP Reef (cont'd-)

settlement. Mr. Dusey asked if Mr. Sasso could give assurances that with the modifications, it would not be expected for the reef to settle again to which Mr. Sasso responded he did not think he could assure this Council of that.

Mr. Dusey asked if there could be assurances with some degree of certainty that there may be a 50-50 chance they would not settle, or anything like that? Mr. Sasso responded that basically he was brought in as an objective third party to monitor first, the securing of the permit; and second, monitoring and observing and trying to put forth an objective opinion as to what the data was showing but were not involved in the original design of the structure or in any testing. He stated they have never been asked to give any assurances as to how this would perform and if Mr. Dusey was asking for his professional opinion or his intuition, he would say "yes' and he would expect there at least to be a 50% improvement in the settlement by virtue of the elimination of the discontinuity and this is an intuitive feeling, based on the extent of research that has been done. Mr. Dusey stated the reason he was asking the questions is because he does have great respect for Mr. Sasso's knowledge on things that happen in this environment. He asked if he would expect no more than one foot or one and one half foot of settlement? Mr. Sasso stated this is strictly based on intuition and what he has seen and he would expect that would be the worse case scenario which they might be anticipating, but again, it is not based on anything as the data would suggest that it would be better than that and he has no reason to believe that the data is not accurate.

Mr. Heeke believed what Mr. Sasso was actually saying that since he did not actually perform the tests, that these are not matters within his control to which Mr. Sasso agreed. Mayor Marix stated she thought between what Mr. Sasso was saying and the questions asked, there are quite a few items which need to be looked at to be legal as this must be discussed with the DNR and there will have to be some adjustments made, and they will have to have them and there will be some time spent on these things in order to do what they possibly can for the Reef, which is another reason why they should go ahead and pay Murphy so that American Coastal isn't pressured to get the thing in quickly in order to be paid back, as that would be giving the wrong incentive. She thought the right way to handle this is to pay for what Murphy needs at this point and be deliberate in doublechecking the figures and she didn't see why, except for taking care of the people who worked very hard to get the units into the water, they wished to put themselves in a position of hurrying along on things that might be relatively small and it would have a big side effect and this is why she believed they should pay the half and then deliberately and carefully examine exactly what will be the correct next step.

Mr. Heeke asked Mr. Dusey if he thought it would be in order to make the payment with the condition that there would have to be some approval from DNR to which Mr. Dusey agreed. Mrs. Douthit asked what would the time frame be on this? Mr. Dusey responded he thought DNR would have to review and then respond and he has no idea of what that time frame would be. Mayor Marix thought that could take weeks and will jeopardize our relationship with Murphy and others we are doing business with and she believed they would hurt themselves by doing that. Mr. Dusey reminded a contract has been signed to pay on a certain schedule and they will meet that schedule, and he viewed this request as an acceleration of payment. Mayor Marix stated it is an acceleration because instead of using one barge, they used three to get the units in the water and they weren't tied down because of the storm and she viewed this as a different story as they (American Coastal and Murphy) were trying to help the Town as because of certain delays by DNR, they accelerated the installation of the units, so she would not exactly call this a request for accelerated payment, but a request for altered payment as they accelerated certain aspects of the work.

Mr. Dusey stated he agreed with the Mayor's thinking and he and Mr. Bowser were willing to support the request as they thought it was reasonable, but now because of the settling problem and not knowing what DNR's reaction will be, and the future scheduling of the alignment, the widgets that fit between the two units must be manufactured and that will take some time. He is concerned that they may pay for something that they may not get a chance to use. Mayor Marix asked if he was saying they would not be using the reef at all? Mr. Dusey responded he does not know as he has no idea what DNR's response will be. Mayor Marix did not believe DNR would be saying they could not go on at all, although they might say they wanted a certain type of units and she didn't believe it would be a long time frame to get these extra things made to connect the units. Mr. Lickle responded that would involve part of the request for the additional time for the installation.

Mr. Heeke asked Mr. Sasso for his comments. Mr. Sasso responded he was involved in assisting to get the Notice to Proceed from the DNR and he does quite a lot of work with the DNR on an annual basis. He believed that DNR was not looking at the interlocking staggering issue throughout the entire process and their focus is more on the performance of the structure, its influence on the beach system, its stability, its potential for overturning during storm activities and the potential for settlement. He recalled it was not until very late in the process that one of the agents was surprised when he found out there would be a staggered configuration, and it was his feeling that the DNR would not see this issue as a major component of the design and in terms of the changes in the project, he doesn't see it as a substantial change in the permit and if he were required to provide the final certification as the engineer of record, he would comfortable in doing that and treat this as a construction change and identify it as a non-substantial change which may not even warrant going back to the DNR.

Mr. Dusey commented that the question is, not with respect to construction techniques, but if they went to DNR and stated there were 55 modules installed and the storm came through and they sunk two to three feet and would the DNR be interested in that. Mr. Sasso responded he thought they would be and there would be cause for them to explore that and there could be some delay in the project and his intuition tells him it might be a two to three week delay to give DNR time to explore this as they too are looking at it as an experiment.

Mrs. Douthit believed it may be that this will not be finished this year, but she didn't think the DNR could stop the Town for doing what they contracted for. Mr. Heeke stated he thought the Town would be obliged to point out to DNR what is happening as he thought they should be put on notice. Mayor Marix believed they should but that is why she believed they should go ahead on the 50% payment, as knowing it will take some time for DNR to sort it out. Mr. Sasso agreed thinking perhaps they could take a little more survey data so that what has occurred can be clearly documented, and he would be inclined to take the data, alert the DNR to the facts and then move forward and have DNR come back and state if they wish the project stopped or not. He thought if they stop and ask DNR what to do, they are asking for a delay in the project, and a decision needs to be made as to what they want to do and do the survey and advise DNR what they are doing and proceed until DNR stops them. He didn't believe that was being unfair with the DNR and he thought this was a reasonable course of action to take. He did not think the discussion on payment of the contractor represents an accelerated payment but a change in the payment schedule and method because there has been a change in the construction technique which was not anticipated when the contract was originally executed.

Mr. Sasso stated he was involved in summarizing the data into a package for presentation to the DNR and he sees no problems with the data but did believe the predicted settlement was not unreasonable, especially based on he experimentation which was done.

PEP Reef (cont'd)

Mr. Weinberg asked what reaction would they get from DNR with regard if all the modules are placed in the water and we then notify DNR there is a one foot deviation in settlement, as we have already consumed the product. Mr. Sasso believed a decision has to be made on what they want to do as the test plan and the experimental nature of the program requires they have some contingency in the event some portion of the performance criteria is exceeded. He stated in the program, they have tried to identify as many contingencies as is possible. He did not believe the DNR was saying that if they exceeded one of the project's criteria, that would cause the project to stop or would cause them to do something drastic, but he believed they wanted to have developed some sort of contingency to deal with the observed condition and he recommends they decide what they want to do, which would be to build the interlocking gasket to align everything and do a survey and send a letter to DNR before they proceed further along than what they are and identify the survey, what has happened, and set out a contingency plan and the action taken to correct it and present a schedule for proceeding further. He stated this would not be that they were stopping and telling DNR there is a problem, but explain the contingency program.

Mr. Heeke asked Mr. Dusey's opinion on the recommendation made by Mr. Sasso. Mr. Dusey thought it was a sound recommendation to come up with a solution and then approach the DNR stating what the outlined plan is, however, he was not sure it could be done unilaterally in total because DNR has major control over what can or cannot be done and he didn't believe they could change the program without letting DNR know and getting their approval.

Mayor Marix understood the recommendation is to tell DNR we have a problem and lay out the alternative plan and up front, they can approve or not approve, but she didn't think Mr. Sasso was saying we should finish the project and then tell them, but what he is suggesting is that we develop all of this and let DNR know what the problem is and what is proposed for a solution. Mr. Lickle agreed that was a sound approach to DNR. Mayor Marix was sure DNR would like to examine what is proposed and see if they are happy with it so they wouldn't have to say no and that is where she believes the time shouldn't be rushed and that is why she thinks they should pay the half, so the best possible product can be secured.

Mrs. Douthit made a motion stating she was making it on on the grounds that the Town does owe this money, be it today or next month, and therefore, she moved to request payment to American Coastal for half of the money and also, requested that they proceed to implement the contingency program recommended by Mr. Sasso.

Mr. Dusey asked for clarification and if this was half of the money or half of the value of the units now in the water? Mrs. Douthit responded she thought it should be half of the original bill. Mr. Dusey asked if this was for the units in the water? Mrs. Douthit agreed, noting the units were in the water but were not aligned.

Mr. Heeke asked Mr. Dusey how he felt about that type of a motion as he asked for a clarification and normally, Mr. Dusey would not have called for a prepayment or an advanced payment when there had been an accelerated performance, even though the contract may not have called for it, but the problem is whether the settling, down the road, will jeopardize the project. Mr. Dusey stated his concern is for the people who are paying for this program, the taxpayers, and he is trying to protect their interest, and it is not to say it is wrong to pay 50% as a policy matter, as he doesn't view this as wrong. Mr. Heeke asked what the performance bond guarantee? Mr. Dusey responded it would guarantee that the work would be completed if it is decided that they didn't wish to complete the project, then the Bond would protect the Town against defective workmanship. Mr. Heeke asked if it protected the Town against the settling? Mr. Dusey responded it would not, advising he has taken a conservative view on the financial implications but a policy decision to pay it is not a wrong decision.

Mr. Heeke asked how much money were they talking about? Mr. Dusey responded approximately $200,000. Mr. Heeke noted this is a two million dollar project and passed the gavel to President Pro Tem Weinberg and seconded the motion.

On roll call, the motion was a 2/2 tie with affirmative votes by Mrs. Douthit and Mr. Heeke and negative votes by Mrs. Wiener and Mr. Weinberg. Mayor Marix broke the tie by voting for the motion, Motion carried 3-2.

A short break was taken. Meeting reconvened by President Heeke. President Heeke commented that during the break, he looked at the contract which was executed with American Coastal and he wished to have the motion reconsidered and he passed the gavel to President Pro Tem Weinberg and made a motion seconded by Mrs. Douthit to reconsider the previous motion. On roll call, the motion carried unanimously to reconsider.

Mr. Heeke stated he wished to call on John Martin, who has lived in the Town for over forty years. Mr. Martin addressed the Council advising years ago, he learned about the ocean from a man by the name of Henry Holmes who did a lot of diving and installed buoys. He believed the Council was exhibiting a cavalier attitude about paying this contract and although they are obligated to pay, the materials have been sunk in the ocean ahead of time, and he thought they could just as easily have stood on land and be placed in a more proper organized manner instead of having them disbursed over the ocean bottom. He stated another point is they are considering paying 70% of a contact which is not 70% completed. He heard the comment earlier that the Town is going to have to pay it and that may be so, but he believed it should be made in a manner the Town wishes to pay it as leverage is important when paying off a contract.

Mr. Martin wondered what would happen with the scattered pieces if they are semi-buried in sand and wondered when and if the pieces are moved, what will happen if they tear apart and break. He wondered whose responsibility it would be. He thought the government agency which will give the final approval on the construction adjustments which will have to be made, should be involved and that approval should be had before any payment is made. He believed it was American Coastal's responsibility to pay their subs, and he viewed this as American Coastal using the Town of Palm Beach as their bank.

Mr. Martin wondered if the units were going to be able to be moved into place, as if it is removed, the suction will be tremendous and pulling them up and moving them around might not be an easy task. He believed the payment should be made on the basis of what has been accomplished. He believed if they were putting the units in ahead of the storm, that was their responsibility and the Town shouldn't be paying them on that basis. Mayor Marix informed Mr. Martin it wasn't this storm that made them hurry, it was the fact that this time of the year was the perfect time to take the barges out there with the concrete modules on them as if the waves are more than one and a half or two feet, the barges are not allowed out of the Inlet, so the idea was to get all the pieces out in the water, while they still could when the waters were calm. She didn't believe the modules were scattered all over the ocean floor and as she understood the units that were not tied down were the units that did not sink but the ones that sank were the ones hooked together. PEP Reef (cont'd)

Mr. Martin stated that may be so but the other issue is that they are so desirous of paying the sub-contractor, noting the Town's contract is not with the subs, and it is the general contractor who is responsible for taking care of the subs and they should have the financial wherewithal to do so and if they don't have it, he should go to a financial institution and get the monies he needs to pay the subcontractor.

Mr. Lickle advised on this project, there have been no up-front payments and everything was billed, as completed, and the payment they are asking for now, is a completed payment. He recalled the contract calls for payment in Phase 3, after transportation and installation of reef segments have occurred. He advised the transportation has already occurred and that is the portion they are looking for. He stated Phase 3 is transportation and Phase 4 is the installation. He stated Murphy Construction accelerated the program and happened to get the transportation phase completed so the work has been performed and that is what they are asking for.

Attorney Randolph advised it has been agreed under the contract that there is a specific obligation to make this payment at this time, however, it is now a matter of the contractor coming to the Council asking for their consideration of the payment, so the risk is with the Town Council in doing so, and that has been discussed and it is up to the Council as a policy decision. He thought the Council had to recognize that the ultimate decision from a policy statement point stands with the Council, but the staff wishes the Council to have all the information available for a final determination to be made. He recalled one of the things pointed out by staff is with regard to the permit itself as under the Special Permit Conditions in the Contract, there is a paragraph which states: "By accepting the Permit, the applicant agrees to the following conditions:

"The Permittee shall carry out the work or activities for which the Permit was granted, in accordance with the Plans and Specifications which were approved by the Department as part of this Permit. Any deviation therefrom, without written approval from the Bureau, shall be grounds for suspension of the work and revocation of the Permit, pursuant to Sub-section 120.60 (7), Florida Statutes, and may result in the assessment of civil fines or issuances of an order to alter or remove the unauthorized structure or both.

"No other construction or activities shall be conducted. No modification to project size, location or structural design are authorized without prior written notice from the Department."

Attorney Randolph stated the purpose of staff wishing him to read this to the Council is to let the Council know that in making this payment, the risk is with the Council as there is no assurance that the modification is going to be allowed and he didn't believe there was any intent on the part of the applicant to go forward without getting approval from DNR.

Mr. Lickle advised he was very much aware that DNR would have to pass on this. Mr. Heeke asked if he was requesting 50% of the payment of the transportation cost? Mr. Lickle advised it was 50% of the per unit price, half of which would be transportation and half would be the alignment, so as to the segments that have been transported to the site, it would be 50% of the $1900 per unit. Mr. Heeke asked what was the actual amount? Mr. Dusey responded it would be approximately $200,000 as not all units are in place. Mr. Martin reminded they are paying up front as there is no DNR approval and he thought that should be obtained before they started paying out the money. Mayor Marix believed there was a difference here as the rest have not been delivered and there is a difference on the ten per cent. Mr. Martin asked if this was including just the transportation and not the installation to which Mayor Marix responded affirmatively.

Mr. Heeke noted American Coastal feels the change is not substantial as far as the realignment is concerned, and asked Mr. Lickle if there was a motion to be made to approve the payment contingent upon DNR's approval of the straight alignment versus the staggered, that would still leave the issue which Mr. Sasso had discussed. Mayor Marix believed the design has to be made by American Coastal and then they have to present it to DNR who will obviously take their time to examine whether they are happy with the change, and her point is that since the transportation has taken place, they should be paid so they can pay Murphy, however, now that the units are almost all in the water, they don't want to pressure anyone in not spending the time necessary to be assured they make the right changes and give the proper approvals. She felt if the Town told them they couldn't get the money until after DNR approves, that could take weeks. She believed that since Murphy did do everything they could to get the modules into the water this soon, she thought the payment should not be contingent on the timing of the DNR's approval, especially when they have further monies to act as a leverage. She believed the idea was how to work the safest, most efficient and the most honesty with the people who are trying to achieve the results and it has to be done right.

Mr. Lickle pointed out that in order to keep the project moving forward, they want to be careful not to put themselves back into a position of having DNR control the timing on the project, as over the years they have had timing problems with DNR, particularly, getting the Notice to Proceed and if they are subjecting this project to DNR approval, it could be a long time. He felt the way to handle this is to notify DNR of the problem, and they design the proposed solution, but keep moving forward with that solution, which is obviously subject to the DNR approval. Mr. Lickle advised American Coastal is going ahead with the fabrication of the solution and is taking the risk of going forward on that, which is of substantial cost to them. Mr. Weinberg wondered what would happen if DNR told them to cease and desist. Mr. Lickle responded that as to the continued fabrication of the fix, American Coastal would have to absorb that loss.

PEP Reef (cont'd)

Mr. Weinberg asked if the reef had to be removed, then who would be responsible? Mr. Lickle advised the Town would have to remove it. He pointed out the personal key locks which are being fabricated to allow the reef segments to be aligned exactly is an additional cost. Mayor Marix stated the scouring problem is something they are trying to handle with the fabrication they are making, and that is subject to DNR approval, but the scouring is not the life and death of this particular item to which Mr. Lickle agreed, advising the State has an vested interest in this program in monitoring it and determining whether it will be a tremendous solution for beach erosion control. He stated the monitoring project will be at least three years in order to determine the effectiveness of the reef.

Mrs. Douthit stated she will reiterate the motion made earlier. Mr. Doney commented from a contract administration perspective, he wished to advise what the staff believes to be the Town's ultimate obligation, and in conjunction with Mr. Randolph, as he had a concern relative to the fact that the Town as the owner of the permit should get the written approval of DNR before any modification is made and also that should be a precedent to any further action on this project. He believed they also needed to report to the DNR the performance problem as a result of Hurricane Andrew. Attorney Randolph advised there was nothing heard by him today that was in conflict with the interpretation given by Mr. Doney as it is his understanding the representation of the Town's agent, American Coastal will be seeking approval prior to any modifications, and the Town as the owner, is not moving ahead with any modifications without approval. He believed the only thing that is being asked for today is a change in the payment schedule under the contract and he thinks Mr. Doney was correct in letting the Council know about these provisions, as the risk is with the Town Council in making the payment, however, he hasn't heard anything which is contradictory to the contract thus far.

Mr. Heeke believed Mr. Sasso feels the procedure he outlined this morning would be the appropriate way for American Coastal to go, that is, address the staggered unit problem, and also the settling problem, which may be because of the staggering. He felt before there was any further installation, DNR's approval will be obtained with the correction as proposed by American Coastal. He believed there has been partial performance by the delivery of the units and the contract states we pay when installed, which they have not been, but they have been delivered at an accelerated rate, presumably for the Town's benefit as well as anyone's, since it is important for the reef to be installed as soon as possible. He understood there was roughly $700,000 in the contract remaining to be paid, if this payment is made, so that partially addresses the leverage. He didn't believe what was addressed was why accelerate the payment when the installation has not taken place. Mayor Marix believed this was not an accelerated payment, as rightly or wrongly, the concrete modules were put in the water quickly and the original idea was to bring a module and tie it down and then bring in another and tie it down, etc., but because of the fact they could get three barges to deliver the modules and the storm season rapidly approaching, they did so but they didn't tie them down, however they were transported quickly and the question is whether we should pay now for the transportation and not for the installing.

Attorney Randolph stated from a practical standpoint, he thought she was correct but from a legal standpoint, a request has been made that the payment schedule be accelerated because under the contract, the payment is not due until the second phase. Mayor Marix believed there was a difference here as they have done more on the tail end, but less on the up front. Mr. Randolph stated this is not required under the contract and the Town will be amending the contract if the request is granted. Mayor Marix believed they were penalizing Murphy for doing a good job.

Mr. Heeke asked how much was of the $200,000 was for Murphy? Mr. Lickle responded $182,538. Attorney Randolph stated when they talk about amending this portion of the contract so as to allow payment prior to the installation, are they talking about that or are they talking about those which have already been delivered that they are asking for the 50% transportation charge and this interpretation would not necessarily apply to the remainder of Phase 3, as he viewed this as not really amending the contract but accommodating this particular request to which Mr. Lickle agreed. Mr. Randolph remarked that if there are other sections that have not as yet been delivered, he would not want today's actions to be an interpretation that Phase 3 of the contract has been amended to which Mr. Lickle agreed.

Mrs. Douthit stated she wished to repeat her original motion. Mr. Heeke summarized the motion which is for the payment of $200,000. Mr. Dusey stated this is an approximate figure as he didn't want to see them get tied into something larger. Mr. Heeke believed the motion should have a "not to exceed" figure and we have heard it is $182,538 which will be going to the people who delivered the product; and there will be no further installation of the modules without DNR approval of the proposed solution.

Mrs. Douthit stated she also wanted the motion to state they would proceed with the implementation of the contingency program. Mayor Marix stated it would not be to implement but to design. Mrs. Douthit believed they had to proceed with DNR. Mr. Heeke stated DNR's approval would have to be received and he believed that was implicit. Mrs. Douthit agreed. Mr. Lickle believed the payment would be limited to the units already delivered to the site. Mr. Heeke handed the gavel over to President Pro Tem Weinberg to chair the meeting and seconded the motion.

Mr. Doney asked if the motion would be that approval would be from all permitting agencies. Mr. Lickle agreed.

On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion. Mr. Weinberg believed they had a responsibility to the people who delivered the material and there would be no further installation until such time as DNR and the other agencies approved and that is why he voted for the motion.

Lunch break was taken.

Meeting reconvened by President Heeke.

Consideration of PEP Reef Project at Mid-Town Regarding AT&T cables at Clarke Avenue Beach Area and Other Project Issues.

Mr. Lickle indicated that in addition to the AT&T issue, he has been advised by Attorney Randolph that the suit by Mr. Crater was dismissed without prejudice. He stated AT&T has three cables which service Europe, the Bahamas and Cuba and two are analogue and one is fiber optic. He has met with the AT&T representatives two weeks ago together with the Town staff and their main

PEP Reef (cont'd)

concern was the placement of the reef modules in the area of the cables. He advised the AT&T representatives agreed that the solution to the cable problem as outlined in a letter to Mr. Doney which outlines the issue and after reviewing Dr. Lin's reports with their engineers, AT&T felt comfortable with the reef segments placed on top of the analogue cable, but preferred not to place them on the fiber optic cable. He continued stating since that time, through the development of the engineers to create a gap in the reef, American Coastal has decided to not install any modules over the cables but create a gap, which makes AT&T very comfortable. He stated what is requested is for Mr. Doney to sign a letter that AT&T has sent which agrees to this Resolution and that would be that AT&T will further bury the cables and shield with armor shielding and this will be at substantial cost to AT&T and he knows this is at substantial expense and he commends AT&T for that. He advised in addition they are requesting cooperation from the Town in a future project which involves laying a fourth cable in this same area and it has been resolved that if they need to lay this cable in the reef area, American Coastal will remove one of the segments.

Mr. Lickle stated the construction solution for the gap is to place four pins through the ends of the reefs and anchor them.

Mr. Heeke asked Mr. Robert Wargo of AT&T to introduce himself and Mr. Wargo indicated he was a Submarine Cable Protection Supervisor and it is his job to ensure that the AT&T cables do not get broken. Mr. Heeke understood the Town has liability if their is a project installed and the cables are broken to which Mr. Wargo agreed. Mr. Heeke asked what was the solution chosen? Mr. Wargo responded the engineers have satisfied AT&T that they are getting as much protection as possible for their cables, but as far as liability, if one of the reef modules should break loose, it would still be the Town's liability.

Mayor Marix stated the Town is very anxious to have the Clarke Avenue Beach protected, however, when she sees the problems they have had with the small zig zag which was discussed earlier today, she is concerned that if there is a gap, there may be something happening which is not expected, such as further scouring and she hopes that doesn't happen, however, she would like this to be officially excused from monitoring as much as they wish to save the Clark Avenue Beach, she doesn't want any problems because of the gap that the Reef would not perform as it should. Mr. Lickle responded noting the Mayor was wanting to know whether or not the gaps would cause a glitch in the study of the overall performance of the Reef. Mrs. Douthit stated she would like to make a motion in light of the liability question and with much thanks to AT&T for their armoring, and her motion would be that the Reef stop shortly south as possible of the AT&T cable, as there is nothing to prevent them from installing something in the future after they have had a chance to check out the reef, and if we install it with a gap, it will be monitored and they can see what happens and then they can discuss the cable when there has been experience as to how the reef is performing.

Mayor Marix asked if they stopped the cable, it would be stopped for about 400'? Mr. Rauch responded it would be approximately 500'. Mayor Marix believed they could use some of the modules at the south end at the Public Beach, but the Reef would then be two or three hundred feet shorter than planned, and she wished to revert back to how much the Town would not be paying if this does happen. Mr. Heeke believed they should stay on the subject.

Mrs. Wiener asked Mr. Randolph if this was a change to the contract - that is, changing the location where the modules are to be installed? Mr. Randolph responded he believed it was as it will modify the location of the Reef as well as the number of segments. Mrs. Wiener believed they were talking about five hundred feet. Mr. Randolph believed that will necessitate some sort of a modification to the contract. Mr. Heeke believed this would also require DNR's approval. Mrs. Wiener asked Mr. Lickle what his client's reaction was to the Mayor's suggestion? Mr. Lickle responded he is hearing several alternatives, one to install the reef as contemplated at the Clarke Avenue Beach with the gaps, which would require DNR approval; secondly, to move approximately five hundred feet of the project away from the north end and installing perhaps two hundred feet on the south end and asking whether there are any savings by doing that; third, was to simply hold up on the project in the Clarke Avenue area until sufficient data has been collected to observe what happens to the Reef itself.

Mrs. Wiener asked why this 500' was included in the first place to which Mayor Marix responded, this is to protect the Clarke Avenue Beach. Mr. Doney responded that American Coastal should address as to what the specific north and south limits will be. Mr. Heeke believed the question by Mrs. Wiener was that in the initial project, the north end of that project was included for certain reasons with part of it being covering this as a Public Beach. Mr. Lickle agreed, stating the Mid-Town section was the most vulnerable section and in order to get a longer expanse from an engineering standpoint, they were installing it at the Clarke Beach. Mrs. Wiener wondered how that would effect various other things, as they are now taking out one of the public beaches, and it's not just a matter of cutting out a piece here and putting it to the south and there are other questions to face.

Mr. Heeke recalled there were discussions between American Coastal and DNR on the bridged concept over the cables. He felt Clarke Beach was very important and it was his understanding that they wished to offer further protection for this area, but with the discovery there were cables there, there are two issues, one - if the bridging is done - would DNR and the other permitting authorities approve it as a modification to the Plan; and two, would it continue to be as effective as we hoped it would be? He wished also to know if the Town was under any liability with respect to the damage to the cable if there was slippage from the pins, and those are the main questions which need to be answered. He has no interest in the modules being placed beyond the Mid-Town Beach in the south. Mr. Lickle responded it was fair to say that a total elimination of any risk to the cables is probably impossible, and some risk will have to be assumed either by the Town and AT&t is assuming risk in their own regard by agreeing to this as a possible solution to the problem. He believed AT&T's links to communication are very vital and he did not think they would be here today if there was a possibility that their service will be interrupted and open the issue of whether or not they will collect damages from the Town of Palm Beach.

Mr. Lickle advised with regard to the scouring issue - he has been able to confirm there was no movement of any of the units, so they do remain in tact and in place. He advised the end units where the gaps are will have anchors to prevent any possibility of any movement.

Mr. Lickle referred to the suggestion of waiting to see what the Reef does to make sure the engineering solution is a proper solution for the scouring effect may be a possibility. He stated the units are fabricated and could not be installed until the Town is comfortable there is no

PEP Reef (cont'd)

problem , however American Coastal would like to be paid for the units now fabricated and could be paid for the installation after they are installed, and if the Town wishes to take a conservative appropriate posture to stay out of that area to see some test results of the actual reef, however, he didn't think this would not accomplish the protection of the Clarke Avenue Beach area.

Mayor Marix recalled there would be several gaps, one for the outfall pipe, and the other two or three for the cables, so each gap where there won't be a Reef, and they don't know exactly as yet where that comes on Clarke Avenue, and wondered if they did it this way, would any of the Clarke Avenue Beach be protected by the Reef? Mr. Hans Rauch of American Coastal advised the outfall pipe is at Royal Palm Way and that would be a maximum of twelve feet and would be out of the perimeters of Clarke Beach, however, there would be gaps for the two cables of approximately one hundred to one hundred and fifty feet apart and the other cable one hundred eighty feet apart, so the gaps would be two rather close and one farther apart. He reported the units which will be held by means of pilings as the reef is being discontinued and the pilings would be twelve feet into the ground and should any settlement take place, it would only be downwards. He stated additionally there would be a gravel matting placed on top of the sand consisting of 8 inches deep permeable matting 25' off shore so any scour that could possibly take place would also be considered. He related that the movement from north to south would also be held by pilings and the space between would be protected by the matting and the gravel. Mayor Marix asked what would keep the gravel there? Mr. Rauch stated the gravel and the sand, according to coastal engineers, will prevent scouring n the gaps. He recalled there also was a study conducted on the effect of the gaps in relation to the shoreline and being as narrow as twelve feet, wave height and length give them the perimeter to measure the effect of the waves in the shadow of the reef, and according to the studies, it will be either very slight or not noticeable.

Mr. Heeke asked if the twelve foot gap for the outfall near Royal Palm Way was initially approved by DNR to which Mr. Rauch responded preliminary drawings were presented to DNR some time ago and to the best of his knowledge, there have been no objections.

Mr. Heeke asked starting at Barton Avenue and coming southward to Clark and Seabreeze, in relation to the three gaps, where would the openings be for the gaps? Mr. Lickle responded noting that Clarke Avenue Beach begins between Clarke Avenue and Seabreeze Avenue and it looks like 50' would cover Clarke Avenue and after that, the gaps would begin for a period of one hundred fifty to two hundred feet and then the reef would begin again about fifty feet to the south of the north line of Clarke Avenue Beach.

Mrs. Wiener asked Mr. Wargo about a worse case scenario in 1992 dollars and what would the Town's liability be to which Mr. Wargo responded the figure they commonly use for the fiber optic cable is approximately one million dollars per hour, plus repairing it and the restoration costs. Mrs. Wiener asked how quickly would they be able to repair it to which Mr. Wargo responded AT&T would want to get the lines back in service as quickly as possible. Mrs. Wiener stated she was uncomfortable with the figure quoted to which Mrs. Douthit agreed, wondering what would happen if there was a storm and they couldn't get at it to make repairs. Mr. Wargo stated that always is a possibility. Mayor Marix wondered what would happen if the Town got a really bad storm and the cables are torn up, then who would pay? Mr. Wargo stated AT&T would.

Mrs. Wiener stated the whole part of this exercise is the Town is putting something there and she would like to get a figure attached to what is being put there. Mr. Wargo stated another thing that the Council should know, is the engineering solution has been discussed by AT&T, with American Coastal and with representatives from the Town and they came to what they thought was a reasonable solution to the problem. He felt they have worked well with the Town to get to the solution and are as comfortable as they can be with that solution. Mrs. Wiener stated she would be very comfortable if they would just say it would not be the Town's liability. She knows they all sat down together and worked out a solution, but the Town still has the liability. Mr. Wargo stated there is nothing he can do about that as they must do as much as they can to protect their cable, but that wouldn't relieve the Town of liability in the event they are damaged from actions of the reef. Mrs. Wiener understood they do have to protect the cable but she had to feel the same way from the Council side of the table.

Mayor Marix asked if AT&T paid the Town anything to install the cables which have been there for quite a while and she understood their concern about losing their cable but the Town has a concern about losing a beach and a million dollars, or losing the right-of-way because AT&T, which is an excellent company but it is a money making company and they are making their livelihood off the Town as they have the cable there for free? Mr. Wargo was not sure it was for free. Mayor Marix asked if they paid the Town for this? Mr. Wargo did not know. Mayor Marix asked Mr. Doney if he knew if they were paid for this to which Mr. Doney responded to the best of his knowledge, the Town had received no monies. Mr. Heeke did not think this was germane to the subject. Mayor Marix did not agree as the Town is being faced with the possibility of being responsible for large amounts of dollars for liability and they have to decide what is right, so even if the answer is not known, it is all germane. Mr. Lickle suggested to help with the discussion, American Coastal had also asked AT&T about the potential for damages and while it is an alarming number, AT&T also incurs cable breaks or damage to cables several times a year, so it is not as thought that this doesn't happen and he recalled there have been recoveries but the highest has been a few million dollars for a direct break.

Mrs. Douthit asked where the fiber optic cable was located to which Mr. Wargo responded the fiber optic cable is the most northerly. Mr. Wargo stated the fiber optic cable has the capacity of placing 40,000 simultaneous calls.

Mr. Heeke understood there were three options - one, approve the recommendation made by American Coastal which has been approved by AT&T; secondly, to take no further action until the matter is further clarified; thirdly, to stop the project immediately south of the southernmost proposed bridge and add on to the southern end of the project. He pointed out any of these alternatives would be a modification to the project.

Mr. Doney advised the AT&T letter spoke of having the reef modules go directly over the two analogue cables and that would have to be modified, however, from an engineering design perspective, how far south of the southernmost of the three AT&T cables would the PEP Reef have to stop to make the possibility a remote one that the units could move and potentially damage the southernmost cable. Mr. Lickle responded AT&T was happy with the solution of going across the analogue cables and American Coastal is proposing that not even the slightest chance be taken.

Mr. Lickle stated they are confident the gaps will be acceptable to the DNR people. Mr. Heeke believed the next question is what will happen if the Council does not wish to take that kind of risk. Mrs. Wiener stated that is why she brought up the question as everyone is comfortable with the proposed solution, but this side of the Council table. Mr. Lickle responded to try and make the Council feel more comfortable, the suggestion has been made that the project be installed up to the Clarke Avenue Beach area, and they work with DNR in obtaining information on the gap and at the same time, further assess the risk, etc. and determine how the reef functions and whether the scour problem has been stopped and those units can be installed at a later date. Mrs. Wiener felt it was still the same bottom line and that is the Town is liable. PEP Reef (cont'd)

Mr. Lickle stated what he is proposing is the units not be installed in the Clarke Avenue area until the Council is comfortable. Mrs. Wiener stated they are never going to be comfortable with the thought that the liability is going to be one million dollars per hour. She asked them to imagine if Hurricane Andrew hit here and what the liability might be and the only way to feel comfortable is for DNR to take the liability or AT&T or American Coastal. Mayor Marix thought she heard Mr. Lickle state if they bridged over the cables with room to spare and with the anchoring of the end units, the liability wouldn't be there since the units are not sitting on the cables and it is bridged and anchored, and basically it would not be more of a liability than it is right now. Mr. Randolph responded the liability may be minimized but it would still be there. Mayor Marix stated right now there is a risk to the cables and it is not the Town's risk to which Mr. Randolph responded, there is always a risk.

Mr. Heeke suggested they move on to another subject until they are in a position to make a decision on the cables. Mr. Doney requested American Coastal address the insurance issue to which Mr. Heeke responded they will have to bring it back with the other as they don't have all the information and no-one knows where DNR will stand on the overall project.

Mayor Marix noted basically they are back to Mrs. Douthit's motion to go ahead with what they can with the Reef but not this cable bit, until some of these items are clarified. Mr. Lickle agreed that they should go ahead with the installation of the Reef up to the Clarke Avenue area.

Mr. Heeke stated he would like them to come back and talk to the Council after they have the decision of DNR to which Mr. Lickle agreed. Mrs. Wiener agreed as there are too many things outstanding, and she recommended if it is possible that when they have to address Reef business, it be at a special meeting or at the end of the agenda.

Mayor Marix asked for a clarification that American Coastal was not going to do anything until they talked to DNR about the bridging or could they go ahead with the other things discussed earlier about working on the alternatives? Mr. Heeke believed they could go ahead with what was authorized this morning and then come back with clear intentions.

Mr. Heeke believed there was a third issue and that would be an extension of the performance time on the contract and he felt they were in a position that the Council knows they cannot meet the time deadline and since they want to see the project through, the time limit should not be the death knell of the total project. Mr. Lickle asked if it would be permissible to request a thirty day extension to which Mrs. Wiener suggested it should be more. Mrs. Douthit suggested it be sixty days. Motion was made by Mrs. Douthit to extend the time to sixty days but no later than the November Town Council meeting. Seconded by Mr. Weinberg. On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion.

Mr. Randolph reminded the Council there is a letter from AT&T and Mr. Wargo is here, and although they have not decided on which option they wish to exercise, nevertheless, AT&T has given assurances in their letter, and he asked if the Council wished to take any action in directing the letter be signed at this time? Mr. Heeke asked if there was an expiration date on the assurances? Mr. Doney stated the letter would have to be modified based upon the redesign to which Mr. Randolph did not agree, as he believed AT&T has looked at this from an engineering standpoint and has said to the Town, if the Town does these things, they will do certain things but if the Town chooses not to do that, Mr. Randolph felt the letter didn't take effect, however, if they decide to go with the bridging, AT&T will protect their cables with armoring and he wondered for what reason the Town Council would go ahead and accept that. Mr. Heeke asked if he was saying that the Town Council is not saying they will proceed with the bridging by signing the letter and still had some options open to stop the project at the south end of the Clarke Avenue Beach. Mrs. Wiener did not believe AT&T would run away with their offer. Mr. Heeke stated this was a continuing offer to which Mr. Wargo agreed.

Mr. Lickle asked if on the already fabricated units for the Clarke Avenue area and whether or not payment would be forthcoming on those units, pending the resolution of this matter? Mr. Heeke responded he felt the Town is buying a completed project and if they are not able to complete the project as this cable problem should have been resolved beforehand, he didn't know why the Town should be liable if they didn't have all their ducks in a row. Mayor Marix understood there has been monies spent and the Town knew about the AT&T cables.

Mr. Heeke noted there is a conflict problem of Mr. Wearn and with permission of the Council, he would like to consider the item under Development Review, XIII.C.1, Variance No. 82-91 at this point in time to which the Council agreed.

B. Appeal

1. Appeal of August 21, 1992 Administrative Decision Concerning North Boundary for Tennis Court Setback with No Change in Actual Location Per Approved Variance No. 52-91 (See Item XIII.C.1.) Appeal - Var. 52-91

1. Amend Variance No. 52-91 - Ralph J. MacDonald, 300 El Brillo Way; permitting the tennis court to remain at its present location that may be 1' from a property line, in lieu of the 6' approved under subject variance. R-A District. (See Item XIII.B.1.) Amend Var. 52-91

Mrs. Wiener asked if the basic difference here was that they were going to be not talking about the Tennis Court and not about the swimming pool, to which Attorney Wearn agreed. Mrs. Wiener stated she had no problem with the request. Mr. Wearn understood the Public Works Department is taking the position that they would need a removal agreement concerning the wall, with no utilities to the south of the wall and this would cover an easement area, with no surveys

Amend Var. 52-91 (cont'd)

show to exist south of the wall. He stated the wall has been there for more than thirty years since the property has been developed with no utilities to the south of the wall covering an easement area, and in the event any utility wishes to use that area in the future. He believed the common law would address that question quite adequately and since this is landmarked property, a Certificate of Appropriateness would have to be obtained before the utility company could go in and do anything on the property. He noted the area is south of the wall where there has been no utility ever utilized and they believe that north of the wall, there is probably fifteen or twenty feet for utilities and they have been installed there for all the homes which are now existing and there really is no showing of a need.

Mr. Moore explained this matter is back before them out of an abundance of caution as the property line has been in dispute, this matter be returned to the Council, even though the tennis court has not been moved from the location granted, and it was at that time by property survey assumed to be six feet from the property line and that issue is up for debate at the moment.

Mr. Moore advised that the property owner would like to have a easement granted through the property which may possibly disrupt the tennis court and the wall. He advised currently the utilities do exist on the north side of the wall. He stated this is here for a technical variance more than any other reason.

Mr. James Bowser, Town Engineer, addressed the Council noting there are two requests here, they are getting a contingent variance, as on the Plat it is written there is a five foot utility easement lying south of the north property line. He stated this request will now conflict with the tennis court if it is given a one foot variance, four feet of that will lie within the utility easement and their policy has been when people make improvements upon the easement, we tell them if the easement does have to be used for utility purposes and the property owner is responsible for the improvements which are made.

He doesn't want to tear up decorative driveways or tennis courts. He stated there is a storm and sanitary sewer in the ten feet on the other side of this and at times, it is found to not be possible to reconstruct both utilities as sometimes they do lie on top of one another. He stated there may be a day when the Town wants to locate a line within that five feet, because of cost as it would be much cheaper for the Town to maintain service and to provide the service in that easement and they have a full right to do that.

He stated with the variance request revised, he thought it would be much more appropriate that they get the recorded instrument which states the property owner is responsible for those improvements, should it be the Town or any other public utility. Mr. Heeke asked if this as new construction to which Mr. Moore responded the wall exists, but the new construction would be the tennis court. He pointed out the utilities are located to the north of this wall and he doesn't know where Mr. Dusey or Mr. Bowser might choose to put future utilities but the current utilities are north of the wall in vacant space.

Mr. Bowser stated this does not preclude the tennis courts from being there, nor would it mean that the Town or any other utility, given the proper conditions, could go through there but the property owners are likely to say that we are responsible for restoration, which will be a lot more expensive than if it were just dirt.

Mr. Bowser gave an example that suppose there were a storm and sanitary line which were constructed one on top of the other and the lower line needs to be replaced, but the upper line is perfectly good and in order to replace them in the same easement, they have to tear them both out and this is expensive. He believed they could locate the one line to the south and save some money. Mr. Heeke stated he is concerned about establishing a property line by entering an agreement of this nature which could be construed by the property owner that the Town is making a judgment which it should not be making. He thought if the property line were ultimately determined to be adverse to the applicant, at that point, would Mr. Wearn enter into such an agreement.

Mr. Wearn responded as appropriate for the variance tennis court and its fence, he would have no problem. Mr. Heeke asked if today was a little premature to which Mr. Wearn agreed. He pointed out the wall has been there for over thirty years. Mr. Heeke called for a motion with a part of it being that the applicant has agreed that should the property line be determined that the tennis court would be over the easement, the applicant would at that time enter into an agreement. Mrs. Wiener stated the easement is there anyway. Mr. Heeke agreed but noted they don't know where the property line is. Mrs. Wiener felt if the property line is there and it includes the easement, it is there and if it is not, it's not, and we are not changing anything. Mr. Heeke believed if it were ultimately determined that the tennis court is in the easement at that point, the applicant would then enter into an agreement. Mrs. Wiener did not understand why as the applicant has no right to the easement. Mr. Heeke responded that is if the Town would ever had to use it, they wouldn't have to restore the tennis court. Mrs. wiener asked if that was not clearly what the easement situation is. Mr. Randolph explained that would not apply where the Town grants the right to build over it, as someone could come back at a later time and state the Town has given them the right to build over it.

Mrs. Wiener moved that they amend Variance No. 52-91 by permitting the tennis court to remain at its present location and that if indeed, at anytime the easement is required by the Town for repairs or removal, that the homeowner would have to restore the property at his own expense. Seconded by Mr. Weinberg.

Mr. Randolph explained this would include the ability for them to construct the tennis court with the one foot variance on the south side of the wall. On roll call, the motion carried unanimously.

Mr. Moore asked if this took care of the appeal as well to which Mr. Wearn responded if that was intended by the motion, yes.

Mr. Heeke stated they will now go back to the discussion they were having on the PEP Reef.

PEP Reef

CONSIDERATION OF PEP REEF WITH REGARDS TO THE AT&T CABLES AT CLARKE AVENUE BEACH.

Mayor Marix noted there was a comment made earlier that American Coastal should have known about the AT&T cables, and obviously, the Town knew about these cables and that should have been brought to the attention of American Coastal a long time ago. Mr. Heeke stated he wished to stay on the subject. Mayor Marix thought she was as they are talking about who pays. Mr. Lickle believed they resolved what they had been discussing and American Coastal is willing to take up at a later date the issue of the payment of the units already fabricated. He believed the staff's concern is where they should stop right now and how close the reef should be constructed to the cables and that is what he is looking for guidance on at this time. Mr. Heeke was not sure this was something on which the Council could make a decision. Mr. Randolph stated the way the contract is right now, unless some action is taken, the reef will be built up to 12' away from the analogue cables. Mr. Lickle indicated they have all looked at this and they believe they have come up with a proposed solution, but beyond that it is a risk question. He believed Mr. Randolph was correct in stating if they ask for American Coastal's and AT&T's opinion, twelve feet is fine and if that is what Council wants, that is what they will do and then talk to DNR and come back with the proposal they wish to make on the Clarke Avenue section and that can be handled at a later date. PEP Reef (cont'd)

Mr. Heeke asked if there would be any problems in stopping the modules at twelve feet south of the analogue cables? Mr. Dusey responded he had no problem if the reef didn't move and cut the cable. He didn't believe there was any specific distance that was safe against one being unsafe and he just couldn't say. Mr. Lickle stated if they went to the 12 feet the units would be anchored. Mr. Dusey did not believe they would get to it before October or November. Mr. Lickle did not agree. Mr. Doney thought it could be conservatively stopped at this point and they can always come back. Mayor Marix believed twelve feet was extremely close to the cables. Mr. Dusey agreed and felt twenty-four feet with an anchor would be more reasonable.

Mr. Weinberg moved the modules be placed within 24' of the analogue cables and they be anchored. Seconded by Mrs. Douthit.

Mr. Lickle noted they had not intended to put the anchor in at this point and it would go in at considerable cost and then would have to be taken out. Mr. Dusey stated he would accept fifty feet with no anchor. Mr. Heeke pointed out the problem is they wish to protect the Clarke Avenue Beach area and that wouldn't provide much protection. Mr. Heeke asked Mr. Dusey if he would be comfortable with 24' without an anchor to which Mr. Dusey responded negatively. Mrs. Douthit asked if it could be done with that proviso that the anchor be installed at wherever it would be accepted by the contour of the land in that area. On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion.

XI. NEW BUSINESS New Bus.

A. Resolutions

1. Resolution No. 36-92 - Designation of Town Depositories and Authorization to Sign Checks for FY93. Res. 36-92

Mr. Randolph read Res. No. 36-92 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING TOWN DEPOSITORIES FOR FISCAL YEAR 1993, 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.

Motion was made by Mrs. Wiener to adopt Res. No. 36-92. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Bid Awards

1. Sealed Bid No. 023-91/92 - Police Department Firing Range H.V.A.C. Modification - Consideration of Resolution No. 39-92 - Mr. Randolph read the Resolution: Sealed Bid 023-91/92

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A BID TO FARMER & IRWIN CORPORATION FOR PALM BEACH POLICE DEPARTMENT FIRING RANGE HVAC MODIFICATION.

Mr. Heeke stated this is pursuant to the recommendations of the Town Engineer and this is for the ventilation. He recalled the Mayor previously asked the staff to look into the original design element. Mr. Doney explained staff has looked into it. Mrs. Wiener believed it was the old story that when you are building a building of this kind and looking to save monies and to save a few dollars, there are problems like this which crop up later on. Mrs. Wiener moved the approval of Sealed Bid No. 023-91/92 and adoption of Resolution No. 39-92. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

2. Sealed Bid No. 024-91/92 - 1992/1993 Roadway Slurry Seal and Parking Lot Seal Coating - Consideration of Resolution No. 40-92 Sealed Bid 024-91/92

Mr. Randolph read Res. No. 40-92 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A BID TO ADEL CONSTRUCTION COMPANY FOR 1992/1993 ROADWAY SLURRY SEAL AND PARKING LOT SEALCOATING. Res. 40-92

Mr. Weinberg asked to which parking lot does this apply and Mr. Dusey responded there are none specifically budgeted in the next few years, but it was put in there in case one of them needed it. Motion was made by Mr. Weinberg to approve Sealed Bid No. 024-91/92 and adopt Resolution No. 40-92. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

C. Appointments Appts.

1. Mini-Perc - One Four-Year Term to Expire September 30, 1996 (Employer Member) Mr. Heeke noted Mr. Pryor is eligible for reappointment and has agreed to service again on that Committee. Mr. Weinberg moved Mr. Pryor be reappointed for a four year term to the Mini-Perc Commission. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Mini-Perc

Retire. Board

2. Retirement Board - One Four-Year Term to Expire September 1996 (Citizen Member) Mr. Heeke noted Mr. Harvey is willing to be reappointed. Mr. Weinberg moved that Mr. Harvey be reappointed for a four year term to the Retirement System. Seconded by Mrs. Douthit. On roll call,the motion carried unanimously.

D. Other

Seaview Park Loan for Tennis Shop

1. Consideration of Request by Seaview Park Commission for Extension to Repay Loan for the Seaview Tennis Shop with a New Due Date of April 8, 1993 - Mr. Heeke stated this is a joint venture to help to finance the Tennis Pro Shop and they have requested an extension of the loan, which is a joint effort by the private sector. Mrs. Douthit noted they are only short a small amount. Mr. Doney advised the amount is approximately $5,000 and over the upcoming season it should be accomplished through the extension of the time. Mrs. Douthit moved the request to extend the repayment date to April 8, 1993. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Southern Bell easement

2. Consideration of Request by Southern Bell to Purchase Easement from the Town at Seaview Park for an Additional Cabinet and Buried Cable <u>and</u> Request for the Town to Grant Easement at Australian Avenue Parking Lot for Cabinet/Cables to Upgrade Telephone Services in the Town - Mr. Dusey explained Southern Bell wishes to replace their standard cables with fiber optic for many reasons. He recalled they made this request about a year ago and the Town Council did not grant their request. He has discussed this with the Southern Bell representatives and it is Mr. Dusey's belief it is in the Town's best interest to grant Southern Bell an easement at that location as without this upgrade, much of the downtown area phone systems are in jeopardy. He stated there is a 5' easement on the western edge of the parking lot and a rectangular easement 10' x 6' next to the existing box which is located on the northwest side of the parking lot. He advised this will be underground so it will not inhibit the use of the parking lot at all.

Mayor Marix asked if there was any space lost at all for the location of the box? Mr. Dusey stated they do not lose any spaces for parking but they do lose a 10 x 6 piece of property, which is now green space. Mr. Dusey advised there will be cabinet placed there on a concrete slab and he doesn't believe there is any alternative as he has explored this with Southern Bell and it is the staff recommendation that the easement be granted with the conditions:

1. Southern Bell provide a legal description of the easement and record same to the satisfaction of the Town Attorney.

2. The easement be granted only for the installation and maintenance of the fiber optic cable and cabinet and is not to be used in the future for additional expansion of services by placing new cables and/or cabinets within the easements.

3. That Southern Bell agree not to request any additional easements in Seaview Park.

4. That the new cabinet be appropriately screened with landscaping approved by the Public Works Department.

5. That Southern Bell pay the Town of Palm Beach $1000 for the easement.

6. That restoration of the excavation be made to the satisfaction of the Public Works Department.

Mrs. Douthit moved approval of the Southern Bell request for easement at Seaview Park subject to the six conditions as outlined in Mr. Dusey's memorandum of August 28, 1992. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Dusey stated there is a second request to grant an easement at the Australian Avenue Parking lot to upgrade telephone services in the Town and Southern Bell would move the present box to the new location. He stated the present box is across from the Police Department and it contains all the 911 and cable and should it be struck by a vehicle, it would wipe out all communications. He reported Southern Bell is looking for a location for their splice box and these two would be combined and installed in the Australian Avenue Parking Lot in the parkway and it would be screened from view. He recommended the easement be granted at no cost and they would relocate the Police Department's cable at no cost, subject to the three conditions in his memo of August 28, 1992, which were:

1. Southern Bell will supply a legal description of the easement and record same in a manner acceptable to the Town Attorney.

2. Southern Bell agrees to relocate the Police splice box to this easement at no cost to the Town.

3. Southern Bell will restore the area and re-landscape it to the satisfaction of the Public Works Department.

Mrs. Wiener moved that Southern Bell be granted the easement to be in the Australian Avenue Parking Lot, conditioned upon the conditions listed above. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Town Medical Plan for FY93

3. Recommended Town Medical Plan for FY93 - Request for Authorization for Town Manager to Execute Agreements and to Proceed with Related Details - Mr. Heeke indicated this recommendation is outlined in Mr. Crouse's memorandum of August 31, 1992. Mayor Marix hoped that the staff was investigating reducing premiums referring to a letter she received from an insurance company who wrote of their savings, and she felt it was incumbent upon the staff to investigate these matters, especially if it resulted in savings. Mr. Doney stated this is an ongoing process and he didn't believe the Mayor and Council would want to be informed of every letter they receive about insurance as there are many.

Mrs. Wiener didn't think they should pay attention to form letters which guarantee savings, unless they are willing to offer a lower premium for a minimum of a three year period.

Mr. William Crouse, Personnel Director addressed the Mayor and Council indicating they have been working on this and in fact major plan changes were made earlier this year, which after six months, they have saved in the area of $142,000. He felt with the prescription card services program, they will see savings in that area also. He thought if they looked at the projections for next year, the projections for claims based on the PPO's and the prescription card services, they are projected to have a 3.6% decrease. Town Medical Plan FY93

He indicated he has written a memorandum to Mr. Doney under date of August 31, 1992 on this subject and the Town has been doing something about this every year and if they take a look at the track record, he believes they have a done a reasonable good job in a highly inflationary situation. Mr. Heeke agreed this is an ongoing process and it is something that needs to be continued.

Mr. Crouse stated they have finished some survey information which brought to light some interesting facts and that is in January of 1992, there were ten Medicare plans which are allowed (A through J). His survey on those plans in the State of Florida and A is the least liberal Plan and J would be the one with the most benefits. He stated the Town's Plan is a richer plan and it is not supplemental because it coordinates anything that is not picked up under Medicare. He stated the premium cost for the Town's Plan and compare them to the ten plans, the Town's total premium cost of $1266 are 45% of the premium costs of the "J" Plan in the State of Florida. He stated the Town's Plan is less expensive. Mayor Marix stated her worry is that since this is aiming at people who are Medicare and Retirees, if they get sick, the Town has to pay for their hospital, because we are self-insured. She thought they are acting in a risky fashion and her concern is that they are an open check book and so far they have been lucky that no-one has found it. She thought it was something they should seriously consider not doing because of the risk to the taxpayer and the Town's money.

Mrs. Wiener moved the recommendation that the Town medical plan for FY93 be approved as outlined in Mr. Crouse's memorandum of August 31, 1992 and the Town Manager be authorized to move forward with the Medical Plan. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

4. Request Authorization for Town Manager to Execute Contract for Town Physician for FY93 - Mr. Weinberg moved that authorization be given for the Town Manager to execute the contract with Dr. Ojea for FY93. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Town Contrac

5. Request Authorization for Town Manager to Execute Medical Director's Contract for FY93 - Mr. Heeke referred to the memorandum of Chief Elmore of August 19, 1992 and his recommendations. Motion was made by Mrs. Douthit, seconded by Mr. Weinberg to authorize the Town Manager to Execute the Medical Director Contract for Dr. McCurdy for FY93. On roll call, the motion carried unanimously.

6. Request Authorization for Town Manager to Execute Management Agreement for the Palm Beach Municipal Golf Course for FY93 - Mr. Heeke noted a memorandum has been received by Mr. Bitzer concerning this contract with Rick Dytrych. Motion was made by Mrs. Douthit to authorize the Town Manager to execute the Management Agreement for the Palm Beach Municipal Golf Course for FY93 with Rick Dytrych. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

7. Request Authorization for Town Manager to Execute Management Agreement for the Operation of the Seaview Tennis Courts for FY93 - Motion was made by Mrs. Wiener to grant authorization for the Town Manager to Execute the Management Agreement for the Operation of the Seaview Tennis Courts for FY93 with James M. Hay. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

8. Consideration of Renewal of Computil Agreement for Collection of Parking Fines for FY93 - Mrs. Douthit moved the renewal of the Computil Agreement be authorized.Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

9. Consideration of Renewal of Agreement with First Union National Bank for Banking Services for FY93 - Mrs. Douthit moved authorization be granted to renew the agreement with First Union National Bank for Banking Services for FY93. Mr. Weinberg seconded the motion. On roll call, the motion carried unanimously. Mr. Doney clarified that this is with two one year options of renewal subsequent to this first year.

10. Recommended Program for FY93 Annual Property/Casualty Insurance and Claims Management Services - Request for Authorization for Town Manager to Execute Agreements and to Proceed with Related Details - Mr. Heeke noted a memorandum has been received on this subject from the Risk Manager, Barbara Martinuzzi dated September 4, 1992. Mr. Weinberg noted there was an item which states: "The host liquor liability was endorsed to included coverage for employees who dispense liquor at the Palm Beach Par 3 Golf Course." Mr. Doney stated this is the Pro Manager's license. Mr. Weinberg asked if the Town was insuring him to sell the beer? Mr. Doney responded the Town is protecting itself. Mrs. Martinuzzi explained the Golf Pro Manager does have a liquor license in his name and he sells the beer and provides the Town with liquor liability insurance which protects the Town. She stated her concern was that some of the employees who work in the cash register area are the ones who are actually dispensing the beer and collecting the money, so there could be a liability to the Town. Mr. Weinberg asked if the Pro Manager should not also be covering those employees as well? Mrs. Martinuzzi responded he is protecting the Town as an additional insured but that does not protect the Town's employees, so it was thought best to extend the policy to protect the employees, at no additional cost. Mr. Doney advised this has been an expanded coverage during the past fiscal year and Mrs. Martinuzzi has been able to negotiate with Gallagher-Bassett to provide this extended coverage.

Mayor Marix asked if they were covered in events such as in the Public Works Department when liquor is being dispensed and wondered if there was an exposure there to which Mrs. Martinuzzi responded there is an exposure but the Town is protected under this liquor liability although there is coverage available of up to five million dollars per occurrence.

Mr. Doney noted there were recommendations made in the memorandum on page 3, to obtain quotations for general liability at increments of ten million and twenty million or additional increments, if the Town Council so requests, which he felt were quite appropriate under today's exposures. Mr. Heeke stated he would like to see them explore those recommendations. Mr. Heeke and Mrs. Wiener suggested they go up to fifty million dollars, to which the rest of the Council agreed.

A motion was made by Mrs. Douthit to accept the recommendations that the program for 93 Annual Property Casualty Insurance and Claims Management Services be authorized and to proceed with related details included the obtaining of coverage up to fifty million dollars as outlined in Mrs. Martinuzzi's memorandum of September 4, 1992 to the Town Manager. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

11. Consideration of Renewal of Agreement with Advanced Protective Service, Inc. for Dock Security Services for FY93 - Mr. Heeke noted there is a memorandum on this subject from Mr. Dusey dated August 31, 1992 who recommended the contract be extended for one year. Mrs. Douthit moved that the renewal agreement with Advanced Protective Service, Inc. for the dock security services for FY93 be authorized. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

XII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR AUGUST 1992 -

Motion was made by Mrs. Wiener, seconded by Mr.Weinberg to approve the Warrant List and Fund Expenditures for August, 1992. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

XIII. DEVELOPMENT REVIEWS

Major Matters - Architect. Comm.

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of August 26, 1992.

Mrs. Douthit moved the Major Matters considered by the Architectural Commission at their meeting of August 26, 1992 be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

The major matters considered were:

B37-92 - Satellite dish, sign and remodel for Testa's Hotel & Restaurants, Inc., 231 Royal Poinciana Way. Approved the Satellite Dish and removed the sign from the agenda.

B4-90 - Gates, Posts, Fountain/Planters for Leonard Sessa, 5 South Lake Trail - Deferred.

B42-92 - New commercial building for A. Paul Prosperi/John Whelton, 275 Sunrise Ave., Approved conditionally.

B43-92 - New residence and Landscape Plan for Daniel Manella, 625 Island Drive - Approved

B47-92 - Sign for One Royal PalmWay Condo, 100 Royal Palm Way. Approved conditionally.

B4-92 - Revise addition to residence for Mr. & Mrs. Joseph Berkow, Lot 1, Sloan's Curve.

B51-92 - Demolishing and new residence for J. Sirigots, 256 Miraflores Dr. - Approved demolition. Deferred new residence.

B55-92 - Remodel Allied Dunbar Property, Inc., 237-243 Worth Avenue - Approved.

B58-92 - New residence for Rosenberg Dev. Co., #2 LaCosta Way. Approved.

B59-92 - New residence for Bernard Green, 582 N. Lake Way. Approved conditionally.

B65-92 - New roof for Dr. Juan Tavares, 256 Mockingbird Trail. Approved conditionally.

B66-92 - Demolition and new residence for Sandy Palm Beach Properties, 248 Bahama Lane, Approved conditionally.

B67-92 - Revise facade of Arthur Levin, 355 N Lake Way. Approved.

B68-92 - Remodel home of Robert & Lynn Fessler, 1015 S. Ocean Blvd. Deferred

B69-92 - New residence for Angela and Malcolm Healey, 1341 S. Ocean Blvd. - Conceptually approved with conditions.

B70-92 - Addition to Temple Emanu-el, 220 and 222 Seminole Ave. - Approved conditionally.

B71-92 Statues for Arij Gasiunesen, 118 Seaview Ave., - Deferred.

B-92 - Addition to residence of Uta K. Ortis-Patino, 598 S. County Rd. - Deferred.

C. Variances, Special Exceptions and Site Plan Reviews

Old Bus.

Old Business

Var. 43-92

2. Variance No. 43-92 - D. Dixon and Pauline B. Boardman, 5 South Lake Trail; to allow construction of a 12' high property line fence along a portion of the south lot line in lieu of the 6' height limitation in Zoning Ordinance Section 5.36(a), (c), (d), and 5.45. R-A District. Postponed from August meeting.

Attorney Frank Chopin addressed the Council on behalf of D. Dixon and Pauline Boardman, noting the property to the south of the Boardman property is the old Anthony property, noting the property was purchased by Mr. Sessa who torn the building down. He noted a letter was received from Attorney Thibedeau on behalf of Mr. Sessa who points out the house is being built without any variances and is in every respect in compliance with the RA Zoning which attaches to the property. He wished them to focus on that part of the problem, noting the Boardman's property is somewhat irregular and has a total square footage of a little over 20,000 and it is zoned R-A which requires a minimum lot size of approximately 20,000 square feet. He stated the Sessa property is zoned R-A. He recalled in the past certain members of the Council have recognized that when dealing with larger estates, they could create an anomaly by having R-A rather than R-AA as it relates to a particular property and that is what they have here, as the Sessa property is zoned R-A and they are entitled to build with a 15' setback, however, at the same time because they have 120,000 square feet of property, they are entitled to put a large home on the property without running afoul of any of the zoning requirements. Var. 43-92 (cont'd)

Mr. Chopin noted there is a large home of approximately 12,000 square feet with a 14' underground garage which is being built close to the Boardman property. He stated since the Boardman property has been built, there are flood control elevation standards which require they have to fill in to build up to a certain level. He recalled that was not a provision for older houses that were built and particularly with respect to the Boardman property, so as a consequence, they not only have a massive house which rises up much higher than the Boardman property because of the filling of the property under the now existing standards. He stated it is located close to the Boardman property and not quite fitting in what one would expect in the RA zoning, but more in keeping with what would be found in R-AA, but there would be a larger setback of 60'. He stated part of the problem has been alleviated when Mr. Sessa appeared before the Architectural Commission with his landscape plan as he intended to put a hedge along the property to shelter and buffer the property, however, it was found that due to the fact there is no light in this area, that type of landscaping would not grow at all, or if it did, it would be sparse and it was not possible to put in this kind of hedging and expect it would have any longevity and the Architectural Commission tried to work out with all parties a way to resolve this and trees were planted and the Boardmans put in a six foot fence. He stated the trees were quite tall but not full at the bottom and there was very little sheltering at the lower level, although the six foot fence did help to some extent but didn't solve the problem as the houses are very close together. He felt the only way to effectively create a buffer between the two properties would be to increase the size of the fence.

He explained what they would like to do is increase the height of the fence at certain areas where the Sessa house appears to be massive.

Mr. Chopin stated the hardship is they can't do anything to screen it out as it is a massive house to the south and suggested that perhaps R-AA zoning should be applied to these larger estates which would be a better way to control of how they fit into the neighborhood. He stated the fact is the Flood elevation standards have allowed the house to be built much higher, so it is a massive house. He recalled during the early stages of construction of the Sessa house, Mr. Moore visited the property and found a six foot construction fence being built along the whole of the property and there was a problem of the height variation between the two properties, it was not helping in any way and Mr. Moore requested a 12' fence be installed.

He stated his clients do not have an effective sound barrier or view barrier so as to provide privacy in this area between their house and the Sessa's house and he considers that a hardship not created by the Boardmans and it could be solved if the height of the fence could be increased.

Attorney Paul Thibedeau representing Leonard Sessa addressed the Council, indicating he has been working with Mr. Chopin on this problem and he thought perhaps it might have been solved when the trees were planted, however, apparently it has not been solved and his client just doesn't want to view a 12' fence from his property. He didn't believe they had any criteria for a variance application except for the fact that they didn't create the problem and he has sent a letter covering the topic which he thought explained this succinctly. He recalled they are asking for two hundred per cent more than would what is allowed as in certain areas only a 4' fence is allowed. He believed the Boardmans could install landscaping on their property for privacy and that should not be the basis for a variance as it will create too many precedents which could be used throughout the Town.

Mr. Moore reported if a variance is going to be considered because of the topography of the ground of the Sessa house, he didn't think that would be appropriate. He advised the area affected is only 40 to 50 feet and the remainder of the 141' to the east would not be an affected area in the application. He believed the request was for the 12' fence to run to the east the whole way.

Mrs. Wiener asked what is the hardship? Mr. Moore responded the hardship is that the Boardman property is lower than the Sessa property.

Mr. Chopin stated the problem arises because the two houses are close together and the landscape architect for the Boardmans has indicated there will be difficulty in growing a hedge as there is not enough light in this particular area. He stated there was no zoning variance required when Mr. Sessa built his house, since the property was in an R-A District and required only a 15' setback and he was able to build this extremely large house in the R-A District which required a 15' setback and there is an anomaly in the Zoning Code, which is nobody's fault but produces a result which in a typical neighborhood would not be allowed to be created by a zoning variance. He stated if they would stand in the front yard of the Boardman house and would look at the house next door, you would find it to be massive and at least ten or fifteen taller than the Boardman House, but it is massively deep. He believed they could live with something less than the 12', but what they can't do is to landscape it as Mr. Thibideau suggested. He recalled Mr. Thibideau also suggested the fence be moved on the other side, but that is not a practical solution due to the location of the Boardman house.

Mayor Marix asked if there would be any problem with putting in the higher fence, as the house won't be completed until February, and they should see how it looks and how the present landscaping and trees work with it, especially since the landscaping is not as yet complete. Mr. Thibideau stated that would presuppose that the Boardmans would be willing to remove it after the construction is completed. Mayor Marix stated it is not presupposing but at least they can see what happens and they could be neighborly by shielding the present construction. Mr. Thibideau explained they have been very neighborly and gracious and part of the problem faced at the Architectural Commission meeting was they imposed a condition on it which perhaps they didn't have a right to do. He stated the issue is the variance. He wishes to continue to be good neighbors but the issue is if there is sufficient showing to grant a variance and he just didn't think there was. Mr. Heeke agreed. Mrs. Wiener agreed.

Mrs. Wiener stated she has heard a lot about the anomalies in the Zoning Ordinance. Mr. Moore advised the piece of property in question was subdivided and at one time it was in R-B area and on the issue of cooperativeness, he believed Mr. Sessa has been cooperative as he planted the hedge and put up a fence during the construction and ARCOM did grant them permission with conditions.

Mrs. Wiener asked if there were any variances of 12' granted in the past for fences or walls? Mr. Moore responded only to match existing walls or fences in the neighborhood. Mayor Marix asked if the higher fence problem was coming up in the next Zoning Commission hearings? Mr. Moore responded it is but only for the front yard area but not in rear and side yards.

Mrs. Wiener hoped they might be able to work something out between them but in the meantime, she wished to move that Variance 43-92 be denied. Mr. Heeke handed the gavel to Mr. Weinberg to chair the meeting and seconded the motion. On roll call, the motion carried 3-1 with Mrs. Douthit voting against the motion.

Var. 47-92

3. Variance No. 47-92 - C.W. Miller, 1 Leaman Lane; to allow a permitted six-foot fence at the north property side yard to exceed six feet when measured from the grade of the north neighbor's property. R-B District. Postponed from August meeting. Attorney Peter Broberg addressed the Council thanking the Council for the extension of the time on the Seaview Park loan.

He advised he was here on behalf of Mr. & Mrs. Miller who have constructed a six foot fence on their north property and exhibited pictures which shows the grade goes down in that area. He stated that Mr. Miller has not done anything since he acquired the property and the survey does show that the topography does vary.

Mrs. Douthit asked who built the retaining wall? Mr. Broberg responded the retaining wall was there when the property was acquired by Mr. Miller in 1981. Mrs. Wiener noted it is a six foot fence that was installed to which Mr. Miller responded he went to Budget Fence to screen his property and he purchased six foot boards and his son and he put them up over a weekend and it never occurred to him that he was breaking any laws and all he wanted was a little privacy. Mr. Moore stated they have to measure from the lowest side and in this case, it is higher than six feet due to the topography.

Mayor Marix asked if there was a permit issued to which Mr. Moore responded there was no permit issued.

Mr. Moore gave the staff comments, indicating the Building Department has no objection as these type of variances with a slight difference of the land on either side have been granted in the past, although it was installed without a permit.

Mrs. Wiener moved that the Variance No. 47-92 be approved providing that the building permit be issued after the fact. Mr. Heeke asked where are the variations in the land? Mr. Moore responded they estimate it at some points to be at seven feet and eight feet as measured from the low side. Mr. Heeke realized it was an innocent error, but nevertheless it would not be permitted.

The motion was seconded by Mr. Weinberg.

Mayor Marix stated the fact is the Council has just turned down a fence where the people were willing to come down to eight feet in the previous variance and now these people for this variance have put it up without a permit, so she wishes to point out that people have to be treated equally and if this one is granted perhaps they need to revisit the other one.

Mr. Broberg did not believe there was any similarity between the two applications as the topography varies here which makes it to be 7.5 or 7.2 on the other side. Mayor Marix understood, but she wanted her comments to be made about the fence which is above the limit.

On roll call, the vote was affirmative by Mrs. Wiener and Mr. Weinberg and negative votes were cast by Mrs. Douthit and Mr. Heeke. Mayor Marix broke the tie voting against the motion. The motion failed to carry for approval by 3-2.

Mr. Broberg thought variances were supposed to be allowed by the Code, if in fact there was a hardship as to the land not caused by the applicant, and it is diminimus in nature, which he felt was the case here, and requested them to reconsider the motion and the applicant will remove the fence, apply for the permit and put it back up again. Mrs. Douthit stated she voted against it because of the lack of a permit.

Mayor Marix commented she hoped someone on the prevailing side would make a motion to reconsider this as she would like to treat all fairly. Mrs. Wiener responded that she thought they should consider each application individually and what they were doing here was playing political games as the previous application was dealing with a higher fence and it had nothing to do with this one.

Mr. Heeke handed the gavel to Mr. Weinberg to chair the meeting and made a motion the previous motion be reconsidered. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously. Mr. Heeke resumed the chairing of the meeting.

Mr. Heeke believed Mr. Broberg was persuasive in pointing out this was a minimal variance and had unusual features which put a greater burden on the applicant.

Mrs. Wiener moved that Variance No. 47-92 be granted providing the applicant apply for the building permit and pay the fee for same. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Moore advised the cut-off date for adding items to the Zoning Calendar for next year is September 18, 1992 and if the Mayor and Council wished to add the wall height as an item for the Zoning Commission agenda, they should so advise him. Mr. Heeke asked if there was a consensus from the members of the Council? Mrs. Douthit asked if this was because of the ground level being varied? Mayor Marix stated that was not the case as she was looking at changing the height on fences and walls. Mr. Moore stated they have a proposal right now to go from four feet to six feet in the front or rear or side yards and there was nothing to go higher than six feet, but if they wished to add onto that height, he would need direction.

Mayor Marix suggested it be seven foot in height but they should discuss the possibility of raising it somewhat and it should be studied as it could be a wall or a fence. Mrs. Douthit suggested it be an addendum to the height that they look into the different level bit. Mr. Moore responded if the Council wishes them to go forward with it, they would need a figure and instructions from the Council. Mr. Heeke stated he would like to see it debated by the Zoning Commission. Mr. Randolph suggested they just ask for an amendment to the height. Mr. Moore stated he needed a figure as they have to start somewhere. Mayor Marix suggested seven feet. She believed the previous fence variance turned down for the Boardmans should be reconsidered as they had a neighbor with a higher ground elevation and with the Miller one was a different height on the inside compared to the outer one and that is basically what happened with the other variance. Mr. Heeke stated there were other issues involved such as the size of the house, and whether increased setbacks should be required for that size house. Mayor Marix pointed out the land was raised to which Mr. Heeke agreed.

Mr. Moore stated if they wished, he will use the seven foot figure to be discussed and debated by the Zoning Commission as well as Mrs. Douthit's suggestion to take into consideration as to how the fence or wall is measured and perhaps it could be an average between the high and the low, to which the Council agreed.

4. Variance No. 48-92 - Mr. and Mrs. Jay Ryan, 250 Osceola Way; to allow applicant to rebuild a portion of the rear of the residence which would increase lot coverage from 26.4% to 27.1% (77 square foot increase) in lieu of the 25% maximum permitted. R-B District. Postponed from August meeting. Letter dated September 1, 1992 from Jay Ryan requesting withdrawal. This matter was withdrawn. Var. 48-92

<u>New Business</u> New Bus.

5. Variance No. 52-92 - Power Love Associates, 250 Worth Avenue; to allow a variance to Section 8.21 of the Town Zoning Ordinance permitting enclosure of an existing second floor overhang of 17.28 square feet to this nonconforming structure, and to allow a variance to off-street parking requirements that would subsequently require an additional parking space. C-WA District. - Var. 52-92

Attorney Peter Broberg addressed the Council on behalf of the applicant, Power Love, which is a spin off of an application that was before the Council previously which was denied based on a larger request and this is a variance from the off-street parking requirement of the Code and also Section 8.21 which requires a variance for any alteration or reconfiguration of a nonconforming use. He noted in this Via the building is configured where there is a two story overhang and to close it in on the first floor would require 17.28 square feet of addition to this footprint. He stated this is a very diminimus variance needed and to allow this additional square footage, they will need an additional quarter of a space for parking and they would like the Council to waive that provision.

Mr. Moore advised this is a minimum variance request and the staff has no objection. Mayor Marix asked if this was before them at a previous time? Mr. Moore responded there was a variance request which requested a lot more expansion of a nonconforming building, and this particular request was a very minor portion of that variance.

Mrs. Wiener asked if the enclosure was on the south or the north? Mr. Moore responded it was in the middle of the building.

Mrs. Douthit moved for approval of Variance No. 52-92 for the 17.5 square feet of addition and the waiving of the additional parking. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

6. Variance No. 53-92 - Patricia K. Tracy, 244 Nightingale Trail; to allow the enclosure of and addition to a carport located 10' from the west property line in lieu of 15' required. R-B District. Var. 53-92

Attorney Daniel Booth representing Mrs. Tracy addressed the Council, indicating they wish to enclose an existing carport which is an integral part of the structure of the house. He advised the existing carport is a flat roof structure and a one story section of the house and the existing west wall of the structure is ten feet from the west property line and they need a variance for the five foot encroachment into the sideyard setback. He indicated the hardship is the house was built when a ten foot setback was the requirement and the Site Plan shows there is no other area where a garage could be built on the site. He advised this area is set back quite far enough from the road, (46') and is well behind the existing front of the residence.

Mrs. Douthit asked if there was any effect on green space involved in this? Mr. Moore responded there was not. Mayor Marix noted this was a nonconforming house and this would enlarge the nonconformity.

Mr. Moore gave the staff comments, indicating staff has no objection as this is a minimum variance and these have been granted before when the minimum is necessary to accomplish what they want to do.

Mayor Marix stated she would much rather see a garage rather than a carport but she had a problem with the fact that this would be increasing a nonconformity. Mr. Moore responded it is nonconforming, which is addressed by Section 5.17. Mr. Booth advised this is the hardship. Mayor Marix believed it would be great to do this, but it is also enlarging a nonconformity and they might be setting a precedent. Mr. Moore advised this has been done many times before. Mr. Weinberg moved Variance No. 53-92 be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

7. Variance No. 54-92 - Bernard Friedman, 616 Island Drive; to allow construction of a one-story addition providing a 9.5' south side yard setback in lieu of 15' required. R-B District. - Var. 54-92

Attorney Robert Deziel addressed the Council on behalf of Mr. Friedman. He advised what they are requesting is they wish to add a one story addition. He had received a letter from the neighbor who has no objection to the diminimus sideyard setback and they have a buffered area between the two neighboring properties. He indicated the lot has ample green space and the lot coverage is currently 21% and with the addition it would be about 22 1/4. He did not believe there was any other place on the property where they could add this addition.

Mr. Weinberg asked what was the purpose of the addition? Mr. James Paine, Architect responded the purpose is to provide a study which will complete the master wing.

Mr. Moore reported staff has no objection and it will be in line with the existing structure and is the only variance requested.

Mrs. Wiener moved Variance No. 54-92 be approved. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Var. 55-92

8. Variance No. 55-92 - Howell Van Gerbig, Jr., 12 Via Vizcaya; to allow installation of driveway gates providing a 3' front yard setback in lieu of 15' required. R-A District.

Mr. Van Gerbig addressed the Council noting the grade of his driveway goes up quite rapidly from the roadway and in the last few years there has been a lot of traffic in the circle and he would like these gates for security reasons and privacy. Mr. Moore advised the Town Engineer and Town Manager request if this is granted, the column and column footer be placed outside the five foot easement on the south property line. He advised the Building Department points out this is a low traffic street and they have no objection. Mr. Van Gerbig indicated he had no problem with the footer being placed outside of the five foot easement. Motion was made by Mrs. Wiener to approve Variance No. 54-92 with the condition that the column and the column footer be outside of the easement. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Var. 56-92

9. Variance No. 56-92 - Eugene Applebaum, 325 Via Linda; to allow construction of a wheelchair elevator less than 1' from the south property line and to construct 12' high retaining walls at elevator and along the south property line in lieu of 6' maximum allowed. R-B District. Letter dated September 3, 1992 from Thomas Kligerman requesting postponement to October meeting. This variance was postponed until the October meeting.

Var. 57-92

10. Variance No. 57-92 - Michael Price, 450 Worth Avenue; to allow a variance from Section 5.36(a) to increase the height of the site wall at Worth Avenue west of the entrance gate from 4' maximum permitted to 6' high. R-B District. -

Attorney Robert Deziel addressed the Council on behalf of Mr. Price, exhibited a Site Plan and a picture which depicts the fact there is a wall there four feet high and they wish to increase it to the six foot. He noted all of the other properties in this area have either a six foot or higher wall.

Mr. Moore gave the staff comments noting there were no objections as there are walls in the area already at that height.

Motion was made by Mr. Weinberg to approve Variance No. 57-92 to increase the wall height to six feet. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

At this point in time, 5:01 PM, this meeting was adjourned to hold the Budget Hearing.

Meeting reconvened at 7:20 PM to consider the remaining items on the Agenda. (Mayor Marix left the meeting at 7:21 PM).

Var. 58-92

11. Variance No. 58-92 - Malcom S. Healey, 1341 South Ocean Boulevard; to allow a variance from Section 5.18 to allow the natural grade to be raised along the southern boundary. R-AA District.

Attorney Dean Vegosen addressed the Council on behalf of Mr. Healey, the owner of Lot 7 of Casa Apava. He recalled last month the Council approved the location of the house to be within twenty-five feet of the Coastal Construction Line with an auxiliary structure which are steps leading to a terrace being located fifteen feet from the Coastal Construction Line. He stated the location was approved subject to a recorded agreement which has now been approved in form by the Town Attorney. He indicated at that time he found there was a portion of the area which needed to be filled in and he apologized to the Council as he thought the area to be filled was exclusively along the southern boundary of the property but that is not the case, as the area to be filled does not impact on the main residence but does impact on the garage, service and guest quarters. He stated the grade of the property is at its high point, or 21' and at the low point, it is 15' which is the area to be filled. He pointed out the maximum height he would be looking for is 19.5', so there would be two to three feet of fill in most of that area. He understood the ordinance which restricts the filling in of landing is intended to prevent one home from overpowering another and reminded the Mayor and Council that in this particular neighborhood, the property starts at 7' at the street level and goes up to 21 or 22 feet all along the strip and this home will not be built in such a way that it would overpower any other home.

Mr. Moore stated the prohibition on filling land, other than to meet the flood elevations which this property does. He stated what they are faced is the topography of the land which has some valleys in it and in order to fill those areas, a variance is needed and the staff finds no objection to the request.

Mr. Weinberg moved for approval of Variance No. 58-92. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Spec.Excep 21-92

12. Special Exception No. 21-92 With Variances - Clement Mimun, beachfront parcel east of 1144 North Ocean Boulevard; to allow construction of a pavilion. Variances are requested to allow construction on a lot 41.29' wide in lieu of 100' required, to allow a building width of 28% in lieu of 20%, and to allow the building length at 11'6" in lieu of 10' maximum allowed. Beach Area District.

Mr. James Martindale, President of Worth Builders, addressed the Council requested a variance to erect a pavilion for Mr. Mimun. He stated Mr. Mimun would be willing to reduce the size of the building as a compromise to be able to use the property.

Mr. Heeke asked if this was not an issue which the Zoning Commission had looked at a few years ago to which Mr. Moore responded affirmatively, noting that this particular lot was the subject of a lot split, prior to this application when Mr. Cole owned the property and built a beach house and he chose to split the property to make his lot conforming with regards to the length, but that left two nonconforming lots, one to the north and one to the south and Mr. Mimun purchased the northerly lot, and it is a sub-standard lot. Mr. Moore stated the staff believes that due to the fact the lot has been previously split and if the Council wishes to grant this request, he suggested the structure be built to Code and remain open in perpetuity by way of an agreement in the form of a deed restriction and at least 50% of the frontage of the 47' remain open for a vista.

Mr. Martindale noted the beach house is wide open and is for sunshading on the beach and there are no facilities for storage. Mr. Heeke felt it was too much of a variance for him to vote for. Mrs. Douthit agreed noting it was a 120% increase. Mr. Martindale understood what they were saying noting it is a small piece of property and they would like to have some use out of it. Mrs. Douthit suggested they simply use a huge beach umbrella. Mr. Martindale asked if the umbrella could be placed on a concrete slab? Mrs. Douthit did not agree as that would be a structure. Motion was made by Mrs. Douthit to deny the application for Special Exception No. 21-92. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously to deny the application.

13. Special Exception No. 22-92 With Variances - Chemical Bank Florida, 272-280 South County Road; to allow Chemical Bank Florida to occupy 12,384 square feet in lieu of 2,000 maximum permitted. Variances are requested to waive the requirement for 6 additional parking spaces per Section 6.21 and to allow some reconfigurement of the building prohibited by Section 8.21, alterations to nonconforming structures. C-TS District. - Spec.Excep. 22-92

Mr. Heeke noted he had a conflict of interest as his law firm does business with the applicant and turned over the gavel to Mr. Weinberg to chair the meeting. Mr. Randolph reminded all that since Mr. Heeke will not be voting on this matter, the vote would have to be unanimous by the three remaining Council members and offered the attorney for the applicant the opportunity to come back at the next Council meeting when there will be a full Council. Attorney Broberg indicated he wished to go forward with the application.

Attorney Peter Broberg then addressed the Council on behalf of the Chemical Bank Florida. He stated the Bank is asking to relocate its' premises from Royal Palm Way to the southwest corner of Royal Palm Way and County Road. He stated presently the Bank operates 6,156 square feet and the new space will be 12,384 square feet and the initial request is to exceed the 2000 square foot limit imposed upon the C-TS Zone.

Mr. Broberg recalled First Federal Savings was located in this particular space until recently and his client wishes to put in 5,747 square feet on the first floor and 6,156 square feet on the second floor which exceeds the 2,000 square foot limit by 10,384 feet. He stated the upstairs is predominantly offices with a large board room and a dining room which would be a lunch room for the employees and would house a Trust Department. He stated the use in the upstairs area would be less intensive than previously uses of that building. He has submitted a letter stating that average in the peak of the season, there should only be six walk-ins per day, as this is not a high volume commercial bank.

Mrs. Wiener asked about the Town-serving aspect? Mr. Broberg responded he has that in order. Mrs. Douthit asked about the shortage of six parking spaces? Mr. Broberg responded the present lot has 39 parking spaces, however 62 parking spaces are required. He stated the parking lot has been assigned to this building prior to the adoption of the present code and there are 56 spaces now, however, the six spaces will never be needed as in the guidelines for Special Exceptions it states .65 spaces per employee for a bank is required and for twenty employees, that would be 13 spaces and 25% of that is three more spaces, so the guidelines say only 16 spaces are required and they are providing upwards of 30 parking spaces. He stated if they were building the bank from scratch, they would only have to provide theoretically 16 parking spaces for the employees. He believed that no time in a practical sense are any of the six walk-ins going to be there at the same time, so the parking lot is clearly sufficient to handle any traffic that comes to the bank.

Mrs. Douthit recalled in other cases of this type, the Council has always required that the additional spaces be found off the site. Mrs. Wiener asked if their presentation for the Town-serving aspect was acceptable to the Town Attorney? Mr. Randolph responded there is nothing in the Ordinance which addresses what is actually needed as evidence, so he can't say from a policy standpoint as to whether or not it will be satisfactory as normally there have been statements received from someone outside of the organization who has confirmed the figures. Mr. Broberg responded Mr. Cooper is President of the Chemical Bank of Florida and he will address the Council and distinguish as they are both held by holding companies and are basically separate entities to the extent that this is a Florida operation and New York audits the Florida operations and the New York office is providing the information on the Town-serving.

Mr. Cooper addressed the Council stating the chief fiduciary officer did not give the letter until all the information was provided to him and the actual employer is an affiliate organization and they audit the Florida operation on a regular basis.

Mr. Weinberg asked if they were going to have an ATM to which Mr. Cooper responded negatively. Mrs. Douthit asked if they would like to have a drive-in window? Mr. Cooper responded they had no plans to do that at this time. Mrs. Douthit asked if that meant they would come back six months from now and say they needed a drive in facility to which Mr. Cooper responded they wouldn't do that but they are negotiating to execute a very long term lease. Mrs. Douthit suggested a condition be put on the motion that there be no ATM or drive-in service. Mrs. Wiener commented that they really can't stop them from coming back and requesting this in the future. Mr. Cooper advised they had no plans for any automatic tellers, and his only problem with this is he may not be around in 15 years and can't make a determination on what his successor would want to do.

Mrs. Wiener agreed that future Council actions cannot be bound by this Council. Mrs. Douthit noted there is another application coming up later from another bank and she would be making this request of all of the banks. Mr. Cooper responded they had not planned to put in an automatic teller machine.

Mr. Moore gave the staff comments, noting the Police Department would like the applicant to address the six parking spaces. He believed the Town-serving had been furnished. He heard Mrs. Douthit's comments on the potential of traffic on this corner with exterior ATM's and drive-in tellers. He advised the change in the building would have to be approved by the Landmarks Commission. Mr. Broberg commented he thought he had addressed the parking as there are 39 spaces provided and if they were starting anew, they would need to provide only 16. Mr. Moore stated another staff recommendation will be there be an employee cap.

Mr. Broberg noted there isn't any parking in this area and they can't get extra spaces within the neighborhood as all of the parking in the area is allocated, so there isn't any parking available. He felt they had a sufficient or even an excess of parking on their lot, but for what the Code says and he is requesting because they have 39 parking spaces, the Town to waive the requirement.

Mrs. Douthit moved to approve the Special Exception No. 22-92 and the parking requirement be waived; and a further condition that there would be no ATM or drive-in facilities.

Mrs. Wiener seconded the motion. On roll, the motion carried 3-0, with an abstention from Mr. Heeke. Mr. Heeke resumed the role of chairing the meeting.

Spec.Excep 23-92

14. Special Exception No. 23-92 With Variance - Northern Trust Bank, 440 Royal Palm Way; to allow a bank to locate into the C-OPI District. A Variance from off-street parking requirement providing 5 spaces in lieu of 6 required. C-OPI District

Attorney David Shaw addressed the Council on behalf of Northern Trust Bank. Mr. Shaw stated the Bank currently occupies 8,719 square feet of Royal Poinciana Plaza and they wish to move into the space currently occupied by Island National Bank and they would take over the 5,635 square feet plus 1300 square feet which is designated as a community room for after hours operation. He stated the total is 7,026 square feet which is virtually the same as the Island Bank is vacating. He stated David Freese is in the audience to address the Council for Northern Trust and the landlord's representative, George Straub is also in attendance.

Mr. Heeke asked Mr. Shaw if he knew whether or not Edwards and Angell had represented Northern Trust to which Mr. Shaw responded he was not aware of it.

Mr. Freese addressed the Council indicating the Bank has been in the Royal Poinciana Center since 1979 and as they have expanded, they have used the property as a holding operation and now find the opportunity to move to be very attractive as they can use lesser space as staff and certain operations have been relocated to North Palm Beach. He advised they are taking over 1300 square feet of space and will use it for a community room and it will be made available at no cost to charities for their activities in the evening hours. He advised there will be 12 staff members. He advised the Town Serving affidavit has been submitted over his signature.

Mrs. Douthit asked why they needed to relocate? Mr. Freese explained the new facilities are quite attractive and allows them to be located on one floor and with adequate parking and meets their needs at this point.

Mr. Moore advised Northern Trust has proved their Town-serving and submit their affidavit each year and the same restrictions which were placed on the Island Bank at this location should be addressed, one is there be no ATM machine outside and no drive-in facility. He advised there is a variance for one parking space. Mr. Heeke asked Mr. Freese if he agreed to the condition about there be no ATM and drive-in facility to which Mr. Freeze responded he had no problem with those conditions.

Motion was made by Mrs. Wiener, seconded by Mr. Weinberg to grant Special Exception 23-92 with variance and the conditions would be the applicant agrees there would be no ATM and no drive-in facility. Motion carried on roll call unanimously.

Spec.Excep 24-92

15. Special Exception No. 24-92 - Sun Bank/South Florida, N.A., 300 Royal Poinciana Plaza South; to allow a bank to locate to this C-PC District and to occupy 5,000 square feet in lieu of 2,000 maximum permitted. C-PC District. -

Mr. Heeke declared he did have a conflict on this application as his law firm has represented Sun Bank/South Florida N.A. Mr. Heeke turned the gavel over to Mr. Weinberg to chair the meeting. Attorney Robert Deziel addressed the Council on behalf of SunBank/South Florida, N.A.

Mr. Moore stated the staff comments are: The Town Serving aspect should be addressed, noting there was a statement from Arthur Andersen who indicate 63% of their customers are Town-serving. He stated they are taking over less space than what Northern had. Motion was made by Mrs. Douthit to approve Special Exception No. 24-92 with the condition there would be no drive-in facilities or ATM teller machines. Mr. Deziel agreed.

Seconded by Mrs. Wiener. On roll call, the motion carried 3-0 with Mr. Heeke abstaining.

Mr. Heeke returned to the meeting and took over the chairing of the meeting.

D. Other

Comcast - Waiver to Sect.12-50

1. Consideration of Request for Waiver from Comcast Cablevision of West Palm Beach, Inc. to Section 12-50, "Operation of Certain Machinery During Winter, Sundays and Legal Holidays," of Town Code -

Melvin M. Bijou, Jr., Plant Manager of Comcast Cablevision of West Palm Beach addressed the Council, explaining they have been in communication with the Town's staff concerning the needs of their company to make repairs at any time when certain circumstances do occur. He understood there are regulations that the Town has which prohibits certain machinery at certain times during the year and he would like to respect that Ordinance and not have to do any work during the winter season, but in many instances they are required to do so, because of the requirements of their customers and the franchise agreement that the Town has when certain situations arise, as well as rules and regulations of the FCC. He stated there is a problem in the industry called "signal leakage" and sometimes there are leaks and because these are mechanical connections, sometimes things do go wrong and instead of leaking water, the signals leak into the air and there is the possibility there could be interference with the FCC frequencies. He stated if there is a problem with cable cracking, , they must repair or replace that connection, so the signal does not leak out. He explained if the signal does leak out at a high enough level, there is a possibility it could interfere with aircraft communication. He indicated the FCC has ruled these leakages must be dealt with in a timely manner, which means between three and five working days. He stated if they wait any longer than that, FCC has the right to come in and shut down certain frequencies. He requested the Town Council allow his company to be able to repair the leakage or problems that may occur with the cable during the winter season. He advised heavy equipment would have to be used in the event of cable damage underground. He commented for the most part, most of the signal leakage are small leaks that occur in individual's homes so they are looking at situations that for the most part, no heavy equipment will be necessary for their regular service, but occasionally there may be some circumstances that would require the heavier equipment. Mrs. Wiener asked if that would be considered an emergency to which Mr. Bijou responded as far as the FCC is concerned, it is an emergency.

Comcast - Waiver to Sect.12-50

Mrs. Wiener asked if leakage is a normal every day maintenance problem to which Mr. Bijou responded that leakage is a situation that could occur every day of the week, but severe leakage have to be repaired immediately. Mrs. Wiener asked how often does this occur? Mr. Bijou reported the company is now in the process of rebuilding a cable plant and once that is completed, it will not be as regular an occurrence. Mr. Bijou stated most of the leakage has been aerial but several times it has been underground situations and they were not allowed to do so, as they would be in violation of the Town's Ordinance.

Mr. Dusey advised his department does allow emergency construction in the winter months with any equipment. Mr. Heeke asked if they could determine that administratively to which Mr. Dusey responded they have. He recalled last March Comcast made the request to do some emergency work on Island Drive and on North Lake Way and their request was denied as that would have been quite disruptive during the Season and he requested Comcast to come before the Council to get permission for those areas. He stated they are now before the Council to get permission on a blanket basis.

Mr. Bijou explained that in certain instances, the underground cable may have to be worked on and the FCC will accept no excuse for leakage and if it is repaired on a timely basis, they will come in and shut down the cable system and the Cable Company could also be facing a stiff fine. He stated FCC comes and inspects the cable on a random basis.

Mrs. Douthit suggested these matters be handled administratively and if Comcast is turned down, they can come to the Council. Mr. Heeke agreed stating then if FCC comes in and they are under a mandate, they can explain that to the Administration. Mr. Bijou stated the issue is the FCC regulation says the Cable companies must properly take appropriate measures to eliminate the harmful interference. Mr. Heeke asked how the cable company is made aware of the violations? Mr. Bijou stated they must patrol the areas and when they find the leaks, they must be repaired promptly. Mrs. Wiener believed it could be handled by the administration as if it is shown it is an emergency problem, the administration will allow them to proceed to get the work accomplished. Mr. Bijou explained they are not asking to come in and set up in the Town, but what they are asking is they will notify the proper Town authorities that the work has to be done and he is seeking Town Council guidance so that Comcast can go to the staff and explain cables must be replaced due to leakage and they would like to get permission to replace the cable.

Mr. Dusey asked how often they do patrol the Town to which Mr. Bijou responded they have a service technician in the Town constantly with a "sniffer' which discovers the leakages and that person is patrolling constantly. He stated the cable people come on a quarterly basis with their leakage department who does a quarterly sweep which is required by the FCC. Mr. Dusey asked if the quarterly sweeps could be scheduled so that two would occur in the construction season, which will minimize the amount of time they will be excavating the streets in season. Mr. Bijou explained they do have two sweeps during the Town's construction season.

Mr. Doney asked if these leaks can be detected from the main office to which Mr. Bijou responded negatively. Mr. Bijou explained the rebuild will be done by the beginning of the Season and all they will have to do is splicing at the houses and some activation type things, which require one person or an installation crew working on the property.

Mrs. Wiener believed they should be able to work with the Public Works' staff. Mr. Doney realized there are quarterly pending requirements, but in terms of trying to work with the Town, if they scheduled their field reviews to identify and accomplish as much of the underground construction from May 1 to December 1, it would go a long way to minimizing any underground construction from December 1 through May 1, and he hoped they would be able to be do that.

Mr. Bijou stated he had expectations that the rebuild will help to solve a lot of the leakage, but cables are in the environment and things do happen and there will be emergency type situations which will occur and they have no idea of when they will occur.

Mrs. Wiener commented the Town Council is not going to give them a blanket policy to come into the Town at any time and tear up the roads, but on the other hand, they do understand his problem and she is sure that Mr. Dusey will be helpful in working out administratively any special work that needs to be done to be within the guidelines of FCC. Mr. Heeke agreed noting that if there is a problem, the Town Council can convene during the season. Mr. Bijou thanked the Council and stated he appreciated the time the Town Council has given to this matter.

2. Consideration of Proposed Cost Apportionment Formula Between the Flagler System and Town of Palm Beach Regarding Storm Drainage Improvements - Deferred from June meeting. - This matter was deferred to the November 10, 1992 Town Council meeting.

XIV. COMMUNICATIONS FROM CITIZENS - There were none.

XV. ANY OTHER MATTERS

A. COASTAL CONSTRUCTION CONTROL LINE - COASTAL COMMUNITIES COALITION. Mr. Doney advised a letter has been received from the Town of South Palm Beach's Administrator on the Coastal Communities Coalition and he wished the Mayor and Council to know the Town staff and the Town

Coastal Construction Control Line

attorney are proceeding as authorized. He pointed out there are a number of communities to collectively work on the Coastal Construction Control Line issue and to date, the Town Attorney and Mr. McCracken and the Town staff have advanced technical information directly to the DNR to state the Town's opposition to the CCCL and this correspondence is whether or not the Town wishes to become a part of the coalition. He believed this would take up a considerable amount of staff time and it would be his suggestion to proceed through the Town Attorney unless otherwise directed.

Mr. Weinberg advised he has attended some of the meetings and he believes this will end up with costing the Town a lot of money and expend a lot of effort and produce very little. Mr. Heeke agreed and called for any other matters.

Annual Review

B. ANNUAL REVIEW. Mr. Doney requested each of the Council members and the Mayor consider individual meetings with him on a review during the months of October and November, as last year there was none to which the Mayor and Council agreed.

Adjournment

XVI. ADJOURNMENT - There being no further business, the meeting was adjourned at 8:35 PM.

Grace T. Peters
Town Clerk