Mr. Heeke stated this is a very generous gift and he thought it was important the Council acted in accepting this immediately. Mr. Ilyinsky moved the Council accept the donation of land as described by Mr. Doney. Seconded by Mr. Weinberg. On roll call, the motion carried unanimosuly.

Banyan Trees

B. BANYAN TREES. Mayor Marix advised she has been informed by Dr. Bart Moore that the nursery from which we procured some of the replacement trees for North County Road had three or four very large Banyan trees available and since these are not easy to come by, she would like the Council to consider having Dr. Moore negotiate with the nursery on a price and report back to the Council at the next meeting of the Council. Mrs. Douthit moved authorization be given to Dr. Moore to negotiate a price on the Banyan trees and bring this matter back to the Council at the August 14, 1990 meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

C. President Pro Tem Ilyinsky advised the Council of the death of the son of Lake Park's Vice-Mayor Wagner.

Adjournment

VI. ADJOURNEMENT. On motion of Mr. Ilyinsky, seconded by Mr. Weinberg, the meeting was adjourned at 9:35 AM.

Grace T. Peters, Town Clerk

TC Mtg.
8-14-90

TOWN COUNCIL MEETING MINUTES OF AUGUST 14, 1990

Roll Call

I. CALL TO ORDER AND ROLL CALL. The monthly meeting of the Town Council of the Town of Palm Beach was called to order by President Heeke. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilwoman Douthit, Councilman Weinberg. (Absent was Councilwoman Wiener).

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE. The INvocation was given by Father Hughes. Pledge of Allegiance was led by President Pro Tem Ilyinsky.

Appr. of Minutes

III. APPROVAL OF MINUTES OF JUNE 12, JULY 10, 20 AND AUGUST 3, 1990. Motion was made by Mrs. Douthit to approve the minutes of June 12, July 10, July 20 and August 3, 1990. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Appr. of Agenda

IV. APPROVAL OF AGENDA. Motion was made by Mr. Ilyinsky, seconded by Mr. Weinberg to approve the agenda as printed. On roll call, the motion carried unanimously.

Presentation

V. PRESENTATION:

A. Recognition of Joan Zmistowski - Par 3 Golf Course. Mayor Marix presented Mrs. Zmistowski with a plaque in recognition of her service with the Town for 17 years.

B. Recognition of Palm Beach Police Department and Other Law Enforcement Agencies for Services Rendered on July 28, and 29, 1990. President Heeke read a letter of commendation recognizing Chief Terlizzese and his Police Department Personnel, and other personnel employed in the Fire-Rescue Department and the Public Works Department and the Town Administration, as well as the Florida Department of Law Enforcement, the West Palm Beach Police Department, Lake Worth Police Department, Palm Beach County Sheriff's Office, Boca Raton Police Department, Greenacres City Police Department, Mangonia Park Police Department and the Palm Springs Police Department for their excellent assistance to the Town.

Comments of the Mayor

VI. COMMENTS OF THE MAYOR: Mayor Marix indicated her comments today would be focusing on trees and gardens. "The Town recently has had a very close call on maybe losing one of our greatest attractions, the trees over County Road. At this time we have saved most of them and although we may still lose a few more, they are certainly beautifully trimmed and the replacements are excellent. In this matter, we owe a complete debt of gratitude to Dr. Bart Moore, who not only advised but supervised the trimming and helped find replacements far better than we had hoped for, however, this trimming and replacement is only part of the picture. I have been informed, as has the Town, that the problem with the trees was only partly due to the cold, but was also the result of long-term, poor pruning practices. As I mentioned before, I lived almost under those trees from 1945 when the family and I moved to Palm Beach, but it is only in recent years that the pruning has become so strange, as we have all noticed. I believe it is time that we seriously rethink this maintenance and take steps to correct the problem. I would like to the Town to consider our local resident, Dr. Moore, as an advisor on a part time basis. I know he was instrumental in guiding us to a very favorable pricing of plants, earlier this year, which saved the Town a great sum on plantings. I am concerned also about reports I've had concerning the Royal Palm bug, I think it is a beetle actually. It would seem that we differ with our neighbors on the seriousness of the problem and I would like to have much more information on this matter. I see more and more mulch in use. Most people do not realize that maleleuca can be used instead of cypress. One gets rid of a problem while the cypress robs our forest. Let us promote more maleleuca mulch or for cost savings, do like Riviera, process our own trimmings. I would like to see us re-examine the matter of mulching our trash. I am asking then for the following items to be examined: Consider asking Dr. Moore to help us on a regular basis and we are going to hear more about a tree bank later on by the way. His knowledge would probably offset his retainer. Restudy the Royal Palm bug problem. Consider mulching our trash and promote the use of maleleuca. That's it for the time being."

Licenses & Permits

VII. LICENSES AND PERMITS

A. Charitable Solicitations:

1. Paracare Assocaition of Palm Beach, No. 143-91.
2. Big Bank Hall of Fame, No. 234-91.
3. Raymond F. Kravis Center for the Performing Arts, No. 245-91.
4. Joseph L. Morse Geriatric Center, No. 248-91.

Mrs. Peters reported recommended for approval by staff are Items 2, 3 and 4. Motion was made by Mr. Weinberg, seconded by Mr. Ilyinsky that Items 2, 3, and 4 be approved. On roll call, the motion carried unanimously.

Mrs. Peters reported on the Paracare application, indicating the Finance Director has pointed out the revenues last year were $25,000 whereas in previous years it has been $200,000 and Mr. Doney has some comments.

Mr. Heeke called on Mr. Doney who stated while the application for the charitable solicitation permit meets the criteria of the Ordinance, he felt it was necessary administratively to bring to the attention of the Mayor and Council that there are continuing problems which exist relative to funds donated to the organization as they pertain to the Town of Palm Beach and the Fire-Rescue Department, as it is believed the funds that go to Paracare reduce the amount that would go to the Town of Palm Beach, which would eliminate the need to budget for certain items in the

Fire-Rescue Department. He has written a memorandum to the Mayor and Town Council dated August 10, 1990 and enclosed Ciief Elmore's memo of the same date. He suggested the Council, if they approve the application, require the applicant to eliminate the signage on the building as when the Council considered this in 1988, there were conditions under which the Council granted approval of the Charitable Solicitation Permit adn included the name change of the organization and the prohibition of using the word "Paramedic" except when used with the words "off-duty".

Mr. Doney noted that Chief Elmore's memorandum describes the continuing problems and while staff attempts to address these problems, they are difficult and sensitive issues.

Mr. Heeke wondered if Code Enforcement should look at the sign as it is supposed to say "Paracare" not " Town of Palm Beach Paramedics", although this may not be a Code Enforcement matter. Mr. Randolph did not believe it would be a Code Enforcement problem, since it was a condition imposed by Council in the granting of a Charitable Solicitation Permit.

Mayor Marix asked if the applicants were aware this was coming up today to which Mr. Doney responded, he did not notify them. Mr. Heeke felt they should have been notified. Mr. Doney noted the permit is not to commence until Dec. 1, so this could be deferred.

Mr. Heeke felt if it were approved, it should be subject to the sign being changed; and they should reword their stationery which states their organization is comprised of "Town of Palm Beach Paramedics (off-duty " and since Chief Elmore states in his memo this is not all of the paramedics, the wording could be changed to state Paracare is comprised of some of the Town of Palm Beach Paramedics (off-duty), which would be a more accurate statement.

President Heeke was not sure with respect to the Emergency Medical Data System cards, that that was routine huffing and puffing which vendors are permitted to do and he would not be in objection to that. Mayor Marix noted they may be cutting back as the figures quoted by Mrs. Peters make it appear that if there was confusion, it is being corrected, to which Mr. Heeke agreed.

Mr. Doney did not believe the Permit could be withheld because of the represented figures, but the medic wallet cards do present a potential problem for the administration and legally, as far as the representation in letter form that is going out. Mr. Heeke reminded all the Town is not sending out that letter and if Paracare is sending out information with which there is dispute, he wondered if the Town Council did grant the Permit, could they censor it in that fashion? Mr. Randolph believed it was a serious question as to what the Council can censor what they do as a private organization but when it comes to a point where there is an overlap of what Paracare does and what the Town does and there may be some confusion which would cause the public to believe the Town is somehow involved, then it could create a problem, but you can't dictate to a private organization as to how they advertise. Mr. Heeke felt it was a thin line, as though the Town Council might disagree with what they are saying about the usefulness of the Medic Cards and the system, that is not tied into the Town and he didn't believe it was any different from the bracelets people wear on medical information and it is hoped they have the right information on them. Mrs. Douthit believed the hospitals do not depend on the bracelets and always check out the blood type, etc. and are skeptical on what is written on the cards.

Mr. Heeke believed that if a patient is not able to communicate information, the doctor does verify that that type of information contained on a bracelet or on a card.

Mr. Doney stated this is a continuing perception problem and a problem by association which does affect severely the members of the Fire-Rescue Department.

Mayor Marix felt they had to be fair as what Paracare does, is not provided by the Town in any way and a lot of people have been very grateful for the service they receive from Paracare, although there is an identity problem.

Mr. Heeke read from the July 2nd letter sent out to a resident in the Town, by Paracare, which states: "Our records indicate that you had a medical emergency" and this could almost imply those are Town records. He felt if they had an independent source of records, that was one thing, but it should be phrased in such a way that it isn't giving the impression these are the official records of the Town of Palm Beach. He stated he had a lot of problem with the drafting of that phrase. He felt the Medical Emergency Data System are good things for those who want to have them as long as it is understood the medical treatment is going to follow independent protocol, and this could be quite helpful with regards to the nearest person to contact in the event the resident was unconscious. He felt they had to be even-handed in their criticism of the organization simply because they might be competing with dollars with the Town. He agreed with the objections as to thephrasing of that particular letter but he had difficulty in seeing how this could be denied, but he felt some of the things discussed here this morning need to be brought up and perhaps this should be deferred which will give Paracare an opportunity to change their sign and make some comments.

Mr. Weinberg noted there was no one here representing Paracare and inasmuch as there is confusion, perhaps the next thirty days will allow an opportunity to cooperate, and he moved this action be deferred until next meeting. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Beverag
License

B. Application for New Beverage License - Cornelius J. Van Schaffelaar/Jongenel & Jansen, Inc. c/b/a CJ's, 235 Sunrise Ave - 4 COPSRX Mr. Doney indicated this beverage license is recommended for approve subject to correction of all building code violations. Mr. Moore stated there are problems associated with the kitchen operation that this license is attached to in that there is electrical and gas work that has gone on without benefit of a permit. He stated the gas has been shut off as it was a direct hazard, but until some of these problems are solved, they recommend granting this subject to the clearance of the Building Code and Zoning problems. Mrs. Douthit moved the application for new beverage license be granted conditioned upon the Building regulations and zoning matters being resolved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Finance
& Tax.
Committee
Report

VIII. COMMITTEE REPORT

A. Finance and Taxation Committee - Report of July 13, 1990.

REPORT OF THE FINANCE & TAXATION COMMITTEE MEETING HELD ON JULY 13, 1990

I. CALL TO ORDER AND ROLL CALL: Meeting called to order by Committee Chairman Bernard A. Heeke. In attendance was Chairman Heeke and Committee member Nancy S. Douthit. Also attending were Mayor Marix, Councilwoman Wiener, Councilman Weinberg, Town Manager Doney, Town Clerk Peters, Director of Finance McPhail, Mr. Jakubiak and all other Department Heads with staff members.

Appr. of
Agenda

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

FY91 proposed gen. fund budget

III. FY91 PROPOSED GENERAL FUND BUDGET.

A. Status Report and Consideration of Summary Exhibits of Departmental and Program Budgets were given by

Mr. Doney and Mr. McPhail.

A. Status Report and Consideration of Summary Exhibits of Departmental and Program Budgets were given by Mr. Doney and Mr. McPhail,

Exhibit A was FY 91 Proposed General Fund Budget and Taxable Value Review with FY91 Taxable Value for operating purposes at $3,782,996,786 an increase of 4.84% over the FY90 figure which would result in a rolled back millage rate of 3.8833 mills. Mr. Doney explained this does not include a general pay increase or the proposed retirement benefit increases. Mr. McPhail indicated the General Fund Proposed Budget at this time is projected to be $25,729,960.

Exhibit B was explained by Mr. McPhail noting the actual total amount expended for FY89 was $22,669,757 the budgeted amount for FY90 was $26,180,077; and the anticipated expenditure for FY90 is $25,992,879; and the FY91 proposed figure is $25,729,960. He stated the other five pages in this exhibit show the four expenditure groupings by each program.

Exhibit C submitted showed the FY91 Proposed General Fund Budget by program titles with a percentage increase or decrease of the Proposed FY91 Budget over the FY90 estimated figures, with the bottom line being a difference between FY91 Proposed and FY90 anticipated of $262,919 or a one per cent decrease.

Exhibit D was explained by Mr. McPhail which shoed the General Fund Revenue Summary for all revenue sources.

B. RETIREMENT ISSUES:

Retirement Issues

1. Consideration of Costs for a two per cent Annual Compounded Cost of Living Adjustment (Currently one per cent non-compounding, Annual Cost of Living Increase) applicable to Members retiring after 9-30-90 (with three year deferral). After consideration the COMMITTEE RECOMMENDS the two per cent annual compounded cost of living adjustment be approved with the cost being borne on a 50-50 basis by the Town employees and the Town.

2. Consideration of "Rule of 65" Proposal - Police and Fire-Rescue Departments. The COMMITTEE RECOMMENDS the approval of the Rule of 65 Plan with the Police and Fire-Rescue Department employees paying for the entire cost of the financing of this plan.

3. Consideration of request by General Employees for Benefit Improvement (Average Final Compensation Multiplier Increase from 2.0 to 2.4). After consideration, the COMMITTEE RECOMMENDS the average final compensation multiplier increase be 2.2 for the General Employees, with the cost being borne on a 50-50 basis by the Town employees, and the Town. Staff was authorized to check with the Actuary on what the ratio of benefits would be for the General Employees compared to the Pulbic Safety members with regards to 2.2, 2.3 and 2.4 percentages.

Certification
f Taxable
alue

IV. CONSIDERATION OF 1990 CERTIFICATION OF TAXABLE VALUE FROM COUNTY PROPERTY APPRAISER. Mr. Doney explained the Certification of Taxable Value has been received from Palm Beach County and the taxable value amount for FY91 is $3,782,786 as certified by Rebecca E. Walker, the Property Appraiser for Palm Beach County.

V. DISCUSSION OF FRIDAY, AUGUST 3, 1990, 9:00 AM SPECIAL TOWN COUNCIL MEETING TO SET "TENTATIVE OPERATING (GENERAL) FUND MILLAGE RATE FOR FY91. He reported the Special Town Council Meeting at which the tentative millage rate will be set is scheduled for 9 AM on August 3, 1990.

VI. ANY OTHER MATTERS:

Cost of Living Gen. Pay Increase for FY91

A. COST OF LIVING GENERAL PAY INCREASE FOR FY91. Mr. Doney explained the survey done of surrounding areas has not been completed as only eight of sixteen jurisdictions have provided a response to their proposed general pay increases for FY91 and this survey will be available in late August or early September, 1990. After discussion, the COMMITTEE RECOMMENDS the general pay increase (cost-of-living) for FY91 be set at three per cent at this time and be reconsidered after Mr. Crouse's survey results are available.

Medical Transport Fees

B. MEDICAL TRANSPORT FEES. After discussion, it is the COMMITTEE'S RECOMMENDATION that staff complete their research and report to the Mayor and Town Council and same be considered preferably during the Season so there can be citizen input; and a representative from the billing company will be asked to be in attendance at the Town Council meeting when this matter is considered.

Adjournment

VII. ADJOURNMENT. Meeting adjourned at 1 PM.

SIGNED: Bernard A. Heeke, Chairman and Nancy S. Douthit, Committee member.

Mr. Heeke explained the report. After hearing his comments, a motion was made by Mr. Weinberg, seconded by Mr. Ilyinsky to accept the Report of the Finance & Taxation Committee of July 13, 1990. On roll call, the motion carried unanimously.

Mr. Heeke noted there are two areas which the Council needs to discuss and one is the improvement for the General Employees benefit and the Committee recommended 2.2 as the multiplier contingent upon the actuary making a determination as whether or not this would create a problem with Sections 175 and 185 of the Florida Statutes. Mr. Doney reported that the Actuary, Mr. Smith looked at the issue as to whether the increase in Average Final Compensation from 2.0 to 2.4 for General Employees would create an imbalance with the amount of revenue which we receive from the State and it is the Actuary's opinion, it would not create an imbalance and the additional cost would be $35,000. Mrs. Douthit moved the Town Council approve the 2.4% as the General Employees' multiplier with the employee picking up 50% of the cost. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Heeke recalled the second item that needs to be resolved is the cost of living increase, as recommended was three per cent and although all of the survey information has not been received from the other municipalities with which we compare ourselves, to which Mr. Doney concurred, noting the budget as was tentatively approved on August 3, 1990 did include as a separate item and additional one per cent general pay increase, which was to be based upon the survey results, which will be completed within the next two to three weeks. He noted everyone is in this same cycle we are in and he is hopeful by the end of August, he will have the results of the survey and it can be considered by the Mayor and Council at their September 5, 1990 meeting. Mr. Doney reported eight municipalities have their best estimates (out of the 16 we generally survey) and there is an average of slightly over four per cent.

Mr. Heeke asked if they took the millage rate suggested and the 2.4% items were added, would it increase the recommended millage which was made by the Finance & Taxation Committee? Mr. Doney stated the millage rate would not be increased form what was recommended. He noted they now have ten months experience and the non ad valorem revenues projections for FY91 were increased by approximately $150,000.

Mayor Marix believed before this was discussed, there was to be small amounts of expenses to be cut from every department in order to cover this, not increasing the ad valorem revenues and she asked if there were any reductions? Mr. Doney responded he had requested the department heads to advise him of what could be cut and what level of service would be provided and the estimated impact it would have on the level of service. He indicated he has a list of seven items that he would recommend which will eliminate an additional $38,000 approximately. Mayor Marix asked if that was all that could be cut from a twenty-seven million dollar budget? Mr. Doney advised further cuts could be made but it would probably affect the level of service.

Mr. Heeke didn't want to have to adjust the budget in mid-year because of the need to alter the mid-point ranges. Mr. Doney suggested the Mayor and Town Council allow the staff to report back the complete results of all the available information so that can be considered when they adopt the budget on first reading on September 5, 1990. He noted a few years ago, the general pay increases were two per cent and we fell behind. Mr. Heeke wondered if they might be running the same risk of falling behind if they gave three per cent, when most other municipalities are averaging more than four per cent? Mr. Doney agreed. Mr. Heeke indicated that was what he wanted to avoid, as that is not good fiscal planning nor is it good for the morale of the employees. Mayor Marix agreed but stated her disappointment in the fact that in order to try to make this work, she wanted to take care of the fact there would be no catch up and no bad morale but hoped they oculd come up with $150,000 or $160,000 of savings on the budget and she didn't want to believe that that was not possible. Mr. Doney stated that is possible but the Council and the Mayor needed to be aware of what the impact would be.

Mr. Doney explained there is one other item that they have no definite information on and that is the Solid Waste, the Yard Trash and the mandatory Solid Waste Assessment Program, however this is a separate consideration.

Mr. Doney explained the Public Works Department through Mr. Dusey recommends the elimination of $5,000 from the Water Pollution Control Operation budget for the contractual painting of the ejector stations; and he recommends that we eliminate soft ware that has been purchased out of the current year's year's budget for the Administrative Deaprtment, which amounts to $350 to $400. Mr. Doney explained Mr. Dusey recommended the elimination of the program for continuing the Lethal Yellowing Injections which could save $82,253 on an annual basis. Mr. Heeke noted they are in the process of underplanting these trees. Mr. Doney recalled the program was initially established to buy time to allow residents in Town to underplant Jamaican Cocoanuts with resistant cocoanut palms and the program is a little over ten years old which is sufficient time to underplant.

Mayor Marix stated she would be very hesitant about eliminating this program without a great deal of more thought.

Mr. Doney indicated it was not his recommendation to eliminate this program, as there could be a negative effect, even though there is a lot of underplanting.

Mr. Doney stated additionally, he would, based upon the Fire-Rescue Department's review of their budget, recalling in July, the Mobile Intensive Care Units sealed bids came in with prices that would allow them to purchase the on-board items of equipment out of the donated funds and eliminate them from the FY91 proposed budget which will amount to one life pack at $10,000 and two pulse oximeters at $6,000, or a reduction of $16,000.

Mr. Doney indicated the Police Department have reviewed their budget and recommends that a sworn officer in the Crime Scene Unit who has left to go to law school be replaced with a civilian and salary and benefits would reduce the budget approximately by $14,111.00. He stated based upon the Law Enforcement Television Network Training activities which they are associated with and the need tohave satellite reception which has been eliminated, an additional $2,928.00 can be eliminated.

Mr. Doney noted all of these items total $38,389 which he recommends be eliminated from the FY91 Budget. Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit that the Town Manager's recommendation to reduce the budget by $38,389 be authorized. On roll call, the motion carried unanimously.

Mr. Doney indicated there are other cuts which the Department Heads have made, however, he would not recommend them. He stated the first item is the Planning, Building & Zoning Department - $3,000 for purchase of a noise meter for the Code Enforcement Officer which would eliminate the need for the Police Officers to operate this noise meter during the daytime. He noted one does have to be certified to operate this meter. He would not recommend this item be eliminated but they will do the best they can, if the Council wishes this item to be eliminated.

Mayor Marix asked why they couldn't use the Police Department's noise meter? Mr. Moore explained there are times when the Police Department is using the Noise Meter and the Building Department cannot have that use, so there is a user problem and that is why the Building Department wished to purchase its' own. Mrs. Douthit believed this hampers the response time to which Mr. Heeke agreed, noting the complaints come in and you have to respond to them while there is activity.

Mr. Doney noted the second item which has been identified by Mr. Moore is the dollar amount budgeted for Landmarks Designation purposes and he is not recommending this as the Comprehensive Plan expenses will decrease which will permit the Landmarks process to continue witnout increasing the budget. Mr. Heeke asked how many were being projected? Mr. Moore responded they are projecting the maximum to be 25. Mayor Marix indicated she wouldn't want the Landmarking program hampered in any way.

Mr. Doney stated there is a State funding grant program which could be eliminated from the budget, however, it is not his recommendation this be done. He noted this year we were awarded $7000 for intern work and it is a bookkeeping matter, but if we don't budget for the interns next year, they will not be available for the designation report activities work. He stated he was hopeful the Town will qualify for the funding which revenue will offset the expense for the interns and it would be a wash.

Mr. Doney reported another item that had been suggested by the Building Department, which he also would not recommend, was the elimination of the Fax Machine telephone line. Mr. Heeke agreed that this should not be eliminated.

Mr. Heeke asked if there were any members of the Council who wished to pare the Building & Zoning items which were not recommended by the Town Manager. Mrs. Douthit pointed out they have a noise ordinance and it is imperative the response to that ordinance is immediate, so she would not like to see that item eliminated. Mayor Marix did not know how often they have not been able to respond to the complaints due to the fact that the noise meter is in use by the Police Department. Mr. Moore indicated he has excellent cooperation from the Police Department, but if the certified person is not available or the noise meter is in use, there have been problems in his Department responding to the complaints.

Mr. Heeke assumed the Council would not want to eliminate any of the items proposed by the Building Department. He called on Mr. Doney for any further recommendations on reductions? Mr. Doney responded he had none, and requested a confirmation on the proposed tennis court lighting, noting it has been budgeted for FY91 to replace two sets existing lights and to remove it from the neighboring residential properties and put into the budget the monies to illuminate two additional courts, but there would be discussion by Mr. Bitzer with the Seaview Park Commission to make a determination whether or not the lighting for the two additional courts could be raised from donations. Mr. Heeke clarified this was budgeted but there were other considerations, such as the concern of the residents, and to monitor the effect of the first two lighted courts which were installed.

Mayor Marix asked if they could delay purchase of the chairs as this seems to be an item every year. Mr. Doney explained the replacement of the stacking chairs was on a five year program with 40 chairs being added each year at $2800 to accommodate the types of groups who use the facility.

Mayor Marix asked if the Recreational program for this year was successful to which Mr. Bitzer responded affirmatively. Mayor Marix asked if there could be a successful program next year also? Mr. Bitzer responded there could be, however there are times when people have to be asked to sit on the floor or bring their own chairs. He noted this is a long range Capital Improvement 5 year plan and this is the third year. He noted originally it was to be 80 chairs being obtained each year, and that was reduced to forty per year and he could reduce it, if the Mayor and Council wish him to purchase twenty chairs this year, which would be a saving or $1400, he will do so, however this will extend the time within which they will replace the chairs, so it will be a request again next year.

Mr. Heeke asked what this will do to the level of service? Mr. Bitzer responded he could get by. Mayor Marix ponted out the Recreation budget is up quite a bit from last year. Mayor Marix suggested a way be found on how they can charge people for use of the tennis courts in the evenings, which will increase the revenue, as she vewed the method now employed as losing out on quite a bit of revenue. Mr. Bitzer responded he has been working on this and suggested perhaps a fencing of the area, or a security type card system to gain access. He reported both of these systems are expensive, as the fencing would be between ten and twelve thousand, however, it will collect money and he recommended that they provide a part time staff member, as the fees would pay for that expense on the evenings the Recreation Center is not open. He estimated the cost would be approximately $5000 and it will be closely monitored and if it didn't pay for itself, it would be discontinued. He believed it might just be a wash, but it could produce a bit more revenue, but is is impossible to predict this at this point in time until after it has a track record. He reported the Seaview Park Commission is adamantly opposed to the installation of further fencing and it is his recommendation they not proceed with the fencing or the card system, due to the additional expense.

Mayor Marix asked if there was any way the monitoring could be handled without hiring a part time person. Mr. Bitzer stated this staffing would be 5-8 PM, five days a week, 52 weeks a year and it would be approximately $5000, but there has to be a person there who would be collecting the money and process it on the register and provide the necessary record keeping. Mr. Doney agreed it needed to be done with good accounting principles. Mr. Bitzer recalled he did use one of his regular part time employees for a one month test period and the revenues received did cover the cost of the employee.

Mr. Ilyinsky moved the Recreation Budget be reduced by $1400 for the reduction in the number of chairs requested from 40 chairs to 20 chairs. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Mr. Doney reported he has no additional recommendations and wished to state the FY91 proposed General Fund Budget includes an increase of staffing of one and one half persons, which is one additional person in the Purchasing Divison and a part time person in the Public Works Department.

Mr. Heeke indicated they would now be discussing the cost-of-living increase. Mrs. Douthit noted the Report authorized a three per cent, and they have budgeted an additional one per cent, and it doesn't increase the budget recommended by the Finance & Taxation Committee. Mr. Heeke recalled the average so far from the eight communities surveyed are in excess of four per cent.

Mrs. Douthit moved that the cost-of-living as recommended by the Finance and Taxation Committee by upped by one per cent, which is included in the overall budget figure. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Doney noted there is a continuing requiest of the Department Heads that they constantly monitor their budgets, especially after looking at the 11th month actual expenditures, and if there is a way that items can be further eliminated from the FY91 proposed budgets, he will report to the Mayor and Town Council at the September 5th meeting. He reported documentation will be available by September 1st which would identify any changes made today and any identified later.

Old Business

IX. OLD BUSINESS:

A. OTHER:

Water Supply Fe[illegible]bility

1. Water Supply Feasibility Study by James M. Montgomery Consulting Engineers, Inc. - Progress Report by Staff. Mr. Dusey addressed the Council summarizing that since the last Town Council meeging, James M. Montgomery has done additional work on the siting of the proposed water plants, including availability of power from the Florida Power & Light. He stated he also has completed a preliminary design on the water plant, both full size and partial size, depending on the option they wish to pursue. He has done the Distribution Network Analysis, which is a major portion of the study and the computer runs were run and determinations as to what additional piping would be required. He reported they are now working on construction estimates as to what those items will cost. He explained on the Permitting, the Town and consultants together and separately have met with the South Florida Water Management District and the State Department of Environmental Regulation to discuss permit issues and as is the case it appears that the permitting process will be difficult and tedious. although not impossible.

Mr. Dusey stated they have asked the City of West Palm Beach for financial information regarding their system and it took about 5 weeks to receive that and because of that delay, they are looking at a completion schedule at mid-September.

Mr. Doney noted Erick Olson, the Director of Utilities for the City of West Palm Beach is in the Council Chamber and the Town staff has received good cooperation from the City of West Palm Beach Utilities Department and it is a complicated issue.

Mayor Marix asked when there would be a meeting on this after the information is completed? Mr. Dusey stated they would be ready in October but it would be up to the Town Council to set the date for a Special Town Council Meeting or perhaps they would choose to wait until later inthe season when the winter residents will be in Town. Mayor Marix asked if the report would be in final form by mid-September to which Mr. Dusey responded affirmatively. Mayor Marix asked if there would be copies available for such persons like Mr. Ford or Mr. Poland? Mr. Dusey stated he would do whatever the Council wishes him to do. Mayor Marix recalled there was interest expressed by three or four companies.

Mr. Doney asked if they wished to receive a draft report and have a workshop on this subject before it is finalized as he thought that might be beneficial. Mayor Marix recalled she received a copy of the report which was done for Highland Beach and it was technical and she felt a report like this would be of much more interest if it was given to the ones that have expressed an interest in doing the job for the Town. Mr. Doney felt the alternatives and the cost of the alternatives needed to be identified and presented and he believed it may be beneficial to have questions directed to them which need to be answered at a Workshop prior to their production of a final report. Mr. Dusey did not agree as this report is a compilation of technical data regarding siting, cost and sizing and things like that, not policy in nature and the decision to proceed would be up to the Council.

Mayor Marix Believed DuPont in order to make an offer will have to have some answers to certain questions in order that they can come up with a cost figure.

Mr. Weinberg also wanted to know how much, but there will be many tentative questions which have to be answered and thought about and considered, as this is a tough situation and it must be studied as it is important they know what they are doing in this situation. He felt for general information, when. as and if the Council decides to go ahead with this project, it would take three or four years before there is anything happening. Mr. Doney advised Mr. Weinberg has devoted many hours to this subject as it is a complicated issue and we are currently analyzing the comparative costs of the alternatives of staying with the City of West Palm Beach, based upon their ability to provide water at a comparative cost.

Mr. Heeke felt a draft report would be of no great help and he sees the need for a workshop to discuss the final report. Mayor Marix agreed.

Status Report of Solid Waste Authority

2. Status Report of Solid Waste Authority (SWA) of Palm Beach County's Reconsideration of Determination to Disallow Credit to Town Property Owners for Town's Separate Yard Trash Disposal Program as Same Relates to Mandatory Solid Waste Assessment Program by SWA and Proposed Commercial Billing System by SWA. Mr. Dusey reported the SWA is not firm in what it is going to do. He believed residential dwellings, including apartments, will be assessed in the upcoming year and those assessments will be sufficient to cover the bond indebtedness of the SWA. He thought commercial properties will not be assessed and the municipalities will be charged $85 per ton of commercial generated garbage compared to $45.50 which is now being charged. He stated his immediate reaction was how to separate the commercial from residential, but the SWA will work with us and calculate what should come from the residential units, based on their averages and they would have to pay any tonnage in excess of that calculation.

Mr. Dusey indicated the figures from SWA should be forthcoming shortly and once he has those figures, he will be in a better position to report but form a budgetary standpoint, it has been the policy to charge the commercial facilities for solid waste pick-up and they did attempt to cover the costs and when the tipping fees were raised for commercial garbage, he recommended they raise the commercial fees to cover that. He knows the SWA is proposing a $20 per ton surcharge for trash disposal at the Landfill. He stated the SWA staff has not responded to the Town's concerns regarding a credit to the residential properties for the trash that is not taken to the landfill and until they do have time to respond, he thought it premature to try to react to this problem but he knows that other municipalities face the same problems.

Mr. Heeke wondered if there could be a deadline on this as he would like to have the Town Attorney file an action, as this is clearly an inappropriate manner in which they computed these charges, and perhaps this needs to be judicially determined as to what is a fair way to determine these costs, as we should certainly get credit for what we are putting in Skees Road and Okeechobee Road, and he views this as an attempt for them to continue to deceive us and make us be inactive and fail to protect our position.

Mayor Marix asked if it would be appropriate for the Council to instruct the Town Attorney to start legal proceedings? Mr. Heeke thought a time frame should be put on it within which the Solid Waste Authority could respond to us and if they didn't, we should proceed legally. Mrs. Douthit asked what would be appropriate time frame? Mr. Dusey responded perhaps a few more weeks. Mayor Marix did not agree. Mr. Dusey stated Riviera Beach who disposes of all of their yard trash by mulching were told they would have to assess the full amount for this coming year and if adjustments are made, they would be made in future years.

Mr. Weinberg reported there are cabanas in many of the multi-family housing and they were subject to an equal amount of tax that was being paid by each apartment and he made some noises about that, and a decision was made that there would be no tax for the cabanas.

Mr. Ilyinsky moved to instruct the Town Attorney to proceed in an appropriate manner to protect the Town's rights and the citizen's rights as they are not benefiting from the disposal of the vegetative waste which the Town disposes of itself. Seconded by Mrs. Douthit. Mr. Heeke did not think a time limit should be put on this and the Town Attorney should proceed within a time limit that he deems appropriate. On roll call, the motion carried unanimously.

X. NEW BUSINESS

New Business

A. Ordinances - First Reading

Ord.14-90

1. Ordinance No. 14-90 - Parades and Assemblies on Public Streets. Mr. Heeke advised this ordinance will not be considered today as there was a Workshop Hearing this morning at 8AM and there are additional refinements to be made to the initial draft of this Ordinance.

Ord. 15-90

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

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH PALM BEACH COUNTY FLORIDA AMENDING CHAPTER XI, ARTICLE II, OF THE CODE OF ORDINANCES OF THE TOWN RELATING TO PENALTIES FOR PARKING VIOLATIONS, INCRESING THE PENALTY FOR VIOLATING HANDICAPPED PARKING RESTRICTIONS FROM $100 TO $250; INCREASING THE PENALTY FOR VIOLATING GENERAL PARKING REGULATIONS FROM $20 TO $30; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

Mrs. Douthit moved for approval of Ordinance No. 15-90 on first reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

B. Resolutions:

Res. 62-90

1. Resolution No. 62-90 - Recreation Fee Schedule and User Fee Rates. Mr. Randolph read the Resolution by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER XI, ARTICLE II, OF THE CODE OF ORDINANCES OF THE TOWN RELATING TO PENALTIES FOR PARKING VIOLATIONS, INCREASING THE PENALTY FOR VIOLATING HANDICAPPED PARKING RESTRICTIONS FROM $100 TO $250; INCREASING THE PENALTY FOR VIOLATING GENERAL PARKING REGULATIONS FROM $20 TO $30; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

Mrs. Douthit moved for approval of Ordinance No. 15-90 on first reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

B. Resolutions:

Res. 62-90

1. Resolution No. 62-90 - Recreation Fee Schedule and User Fee Rates. Mr. Randolph read the Resolution by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING THE RECREATION DEPARTMENT FEE SCHEDULE CLASSIFICATIONS AND INCREASING USER FEE RATES.

Motion was made by Mrs. Douthit to approve Res. No. 62-90. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Res. 66-90

2. Resolution No. 66-90 - Increasing Dock Rates for Winter Seasonal Transients and Winter Seasonal Rates. Mr. Radnolph read the Resolution by title:

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

A motion made by Mrs. Douthit to adopt Res. No. 66-90. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

C. Bid Awards

Sealed Bid
028-89/90

1. Sealed Bid No. 028-89/90 - Okeechobee Boulevard Yard Trash Site Groundwater Monitoring - Consideration of Res. No. 64-90. Mr. Randolph read the Resolution by title:

A RESOLUTION OF THE TOWN COUNCIL, TOWN OF PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO ENVIRONMENTAL CONSULTING SERVICES, INC. FOR THE OKEECHOBEE BOULEVARD YARD TRASH SITE GROUNDWATER MONITORING.

Mr. Dusey explained this is required by the Department of Environmental Regulation because there used to be an incinerator there and we disposed of our ash at that location and there is some concern that we may have contaminated ground water because of that use some thirty or forty years ago. Mr. Heeke asked if this needs to be done periodically in the future to which Mr. Dusey responded affirmatively. Mr. Dusey explained the initial cost of $13,000 is to sink the wells and the monitoring will not cost as much in the future. Motion was made by Mr. Weinberg to adopt Resolution 64-90 awarding the bid to Environmental Consulting Services, Inc., in the amount of $12,119.60. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Sealed Bid
027-89/90

2. Sealed Bid No. 027-89/90 - A-5 Pumping Station Wet Well Rehabilitation - Consideration of Res. No. 65-90. Mr. Randolph read the Resolution by title:

A RESOLUTION OF THE TOWN COUNCIL, TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING A CONTRACT TO MURRAY LOGAN CONSTRUCTION, INC. FOR A-5 PUMPING STATION WET WELL REHABILITATION.

Mr. Dusey reported this is a Capitol Improvement project and is budgeted. Motion was made by Mrs. Douthit to approve Resolution No. 65-90. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Ten Minute Break was taken. Meeting called back to order by President Heeke.

Other

D. OTHER:

Mr. Heeke explained the Council will be taking a lunch break and he would like a motion to consider Items D-1, 3, 4, and 5 at this time and hear Item D-2, Consideration of the PEP Reef first thing after lunch, as that item will take some time for their presentation. Mr. Weinberg moved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Ibi[illegible]sle Condo
req[illegible]st to
replace light
post and hedges

1. Consideration of Request by Ibis Isle Central Condominium Association - Request to Replace Light Posts and Hedges at Entrance to Ibis Isle with the Total Expense to be Paid by the Association. Mr. Doney advised he was in receipt of a letter dated July 19, 1990 from Mr. Pusateri, Vice-President of the Ibis Isle Central Condominium Association who advanced a proposal which would include the replacement of the light posts and the hedge at the entrance to Ibis Isle, as a beautification improvement project. He stated the total expense would be borne and paid for by the Association. Mr. Doney forwarded this to staff members to investigate the zoning regulations and right-of-way areas as it enters into State Road A-1-A. Mr. Doney referred to the memorandum from Mr. Bowser through Mr. Dusey dated 8-2-90 and Mr. Moore has pointed out that if this is considered favorably, it would require Architectural Commission approval and the formal filing and notification procedures for a variance application. He concurred with the recommendation of Mr. Dusey and Mr. Bowser as far as the replacement and the request for indemnification.

Mr. Miller of the Ibis Isle Central Condominium Association addressed the Council requesting some sort of approval from them today and then they will spendall the money that is necessary to proceed further.

Mr. Heeke asked about the nature of the variance, recalling variances have been granted in the past on the height requirements for walls and posts. Mr. Moore agreed they have granted variances, but this request is a replacement of existing light posts and the fact they are on Town property is an issue before Council today to see if they would consider replacement in the nature of a concrete post rather than the wooden posts which are there today, plus the issue of a sign.

Mr. Weinberg felt anything that could be done to beautify should be acceptable and he would like to move this. Mr. Heeke stated they are receiving comments now. Mr. Weinberg explained this had his conceptual approval.

Mr. Doney suggested that Mr. Miller be given an opportunity to ask questions with regards to Mr. Moore's memorandum of July 23, or Mr. Bowser/Dusey memo of August 7, as if the Town Council wishes to grant approval, these are the conditions that staff recommends.

Mr. Weinberg asked if they would include the lamps on the posts? Mr. Miller agreed indicating one of the previous drawings submitted had no lamps which was a mistake.

Mayor Marix asked if this particular area was a part of the Green Space listings in the Charter? Mr. Randolph advised it was not. Mr. Randolph indicated they will need a variance and they need to take into consideration the conditions set forth in Mr. Bowser's memorandum but he thought in light of Mr. Miller's statement that a lot of money might be spent in regard to this prior to them coming back before the Council, if the Town Council does not wish to consider a variance for a structure on its' own property they should advise Mr. Miller of that fact.

Mr. Weinberg asked if Mr. Miller was familiar with the insurance protection the Town would like to have? Mr. Miller responded negatively. Mr. Weinberg read from the memo to Mr. Doney from Mr. Bowser dated 8-7-90 "The Ibis Isle Central Condominium Association should provide insurance protecting the Town for coverages and amounts and determined by the Risk Manager." Mr. Miller believed the Association would be able to provide the insurance.

Mrs. Douthit moved the approval of the statistics as contained in the memo to Mr. Doney from Mr. Bowser via Mr. Dusey dated 8-7-90, however this would not include any action on any necessary variances that need to come before the Council and this owuld also have to go before Architectural Commission. Mr. Randolph stated this approval is not the approval of a design and the height variance but a statement that it would be approved, if it is moved out of the right of way and onto Town property and if the proper insurance was secured.

Motion was seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Doney noted that he needs authorization from the Town Council to sign the variance application, however, their architect needs to prepare the appropriate drawings for submission to the Council. Motion was made by Mrs. Douthit to authorize Mr. Doney to sign the variance application for the project. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Artificial Reef

2. Consideration of Request by Mr. Hans G. Rauch, American Coastal and Engineering, Inc., to Install 4000 Linear Feet of Prefabricated Artificial Reef Offshore from Approximately Barton Avenue to Hammon Avenue - Presentation by John C. Dotterrer, Attorney. Mr. Heeke noted this item will be heard later in the meeting.

Bid with John's Towing

3. Recommended Renewal of Sealed Bid with John's Towing for One (1) Additional Year (FY91). Motion was made by Mr. Ilyinsky the bid be accepted from John's Towing. Seconded by Mrs. Douthit. On roll call, the motion carried unanimosuly.

Silverstein vs. Town of PB

4. Silverstein vs. Town of Palm Beach - Request for Authorization to Pay July 16, 1990 Court Directed Award, Provide Funding from Undesignated General Fund Balance and Initiate Related Actions. Mrs. Douthit moved the Town Council authorize the items as outlined in the memorandum from Mr. Doney to the Mayor and Council dated August 6, 1990 which were payment of an additional $15,540 with funding to come from the Undesignated General Fund Balance; the legal fees, appraisal fees and any related expenses after being negotiated by Town Attorney's Office be paid with the funding to come from the Undesignated General Fund Balance; and the Town Attorney and Town Manager are authorized to follow up on any related actions in order that this matter may be finally concluded. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimosuly.

Agreement for Compre-hensive Plan

5. Authorization for Town Manager to Execute Proposed Agreement with Adley, Brisson, Engman, Inc. for Comprehensive Plan Compliance and Implementation Services for FY91. Mr. Doney indicated this request is necessary so they stay in compliance with the requirements as identified in the Comprehensive Plan. Mr. Moore advised that additionally staff would like some feedback from Council with regards to the lake study as there was a problem with the docks and there is now a moratorium in effect on the building of docks. He advised he is having difficulty locating maps showing the contour of the lake bottom at low tide and they believe they need to look at the area from Everglades Island southward to Sloan's Curve.

Mrs. Douthit believed their hands were tied and they needed to approve the request with regards to the Comprehensive Plan. Mr. Moore explained this money has been budgeted. Mrs. Douthit stated she understood but she resents the fact there is a need for the Town to have to comply. Mrs. Douthit moved authorization be granted to the Town Manager to execute the proposed agreement with Adley, Brisson, Engman, Inc. for Comprehensive Plan Implementation Activities. Seconded by Mr. Ilyinsky.

Motion carried unanimously on roll call.

Sovereign Submerged Lands Easement

6. Authorization for Town Council President Heeke to Execute "Sovereign Submerged Lands Easement" Regarding Everglades Island Bridge. Motion was made by Mrs. Douthit to authorize President Heeke to execute the " Sovereign Submerged Lands Easement" regarding the Everglades Island Bridge. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. Mr. Winterfield addressed the Council wondering if the Mayor should sign this easement as that is the procedure as outlined in the Charter. Mr. Heeke responded he will confer with the Town Attorney and if that is the case, he will defer to the Mayor.

Recycling Grant to the State of FL

7. Consideration of Authorization for Town Manager to Apply for a Recycling Grant to the State of Florida for FY91. Motion was made by Mr. Ilyinsky to authoize the Town Manager to apply for the Recycling Grant. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Luncheon break was taken.

Meeting called back to order by President Heeke.

Presentation: Artificial Reef

2. Consideration of Request by Mr. Hans G. Rauch, American Coastal and Engineering, Inc. to install 4000 linear feet of Prefabricated Artificial Reef Offshore from Approximately Barton Avenue to Hammon Avenue - Presentation by John C. Dotterrer.

Mr. Dotterer addressed the Mayor and Council on behalf of American Coastal and Engineering, Inc., who are the inventor, designer and constructor of a prefabrication erosion protective reef, also known as PEP reef. He recalled in Feb. of 1989, this company appeared before the Town Council to hear information on the proposition that the PEP reef be constructed and placed at the Mid-Town sections of the Town and by letter of 2-9-89, the Town Manager, at the request of the Town Council sought a proposal from American Coastal to build such a reef. He recalled at that time, the Town was considering a sand pumping beach renourishment project to the Mid-Town section, which had various cost figures attached to it and at one time, it was over ten million dollars. He recalled at that time, there was one other reef located in the Town which was located off of South Ocean Blvd., north of Sloan's Curve and had been in place at that time for approximately nine months and the Town staff felt that it had not been in place long enough for them to review the results. He stated consideration of the placement of a reef in the Mid-Town section was deferred adn over the last two years, the Council had invited American Coastal to appear before it some four times. He stated the first reef has been in place for well over two years and a new proposal has been submitted to the Town as of 6-29-90 with a book of technical information studied by various universities and engineers.

Mr. Dotterrer believed it was well-known there is a drastic condition existing at the shore line in the Mid-Town section. He exhibited photographs taken at the foot of Worth AVenue, which showed there is no beach there at the present time. He pointed out the eroded condition of the shore line is not unique to the Mid-Town section as all will remember the condition just north of Sloan's Curve and he exhibited photographs showing what it was like along

South Ocean Boulevard and what it looks like today with a much wider beach. He stated the property owner along this stretch was very concerned about this condition and sought out the innovative solution of the protective reef.

Artificial Reef

Mr. Dotterrer advised the idea of a protective reef was derived from nature and American Coastal created the reef, not from coral, but from poured concrete, precast, modules or units which are placed on the ocean bottom and takes the brunt of the wave energy much in the same way that coral reefs do in other areas. He stated the owner of oceanfront property north of Sloan's Curve decided to give this system a try and his client went to Florida Atlantic University and had extensive studies done on the feasibility of such a system working in this particular area. He noted included in the materials submitted to the Town is the first study done by FAU, which includes the results and the laboratory wave testing and measurements. He stated this also utilized the application of mathematic formulas and the conclusion of this report is that it really works and with all of that, American Coastal decided to move forward with this project.

Mr. Dotterrer reported the first studies were constructed out of precast modules which were constructed in a pre-forming yard and large forms were made and prepared and designed accoring to what the wave tank had shown and this was all done locallv. He stated these modules were placed on trucks and moved to a barge which had a crane to the location which was permitted. He stated the workers put these units in place, lowering them with the crane from the barge and set them into a continuous wall along the ocean offshore of the beach which took six working days.

Mr. Weinberg noted some of the photographs exhibited were taken before the revetments were installed by DOT. Mayor Marix noted the bottom picture was taken after the reef was installed and the top picture shows there was no beach. Mr. Dotterrer noted there is an aerial photo taken of the reef in the water approximately eight months after it was installed and the build-up of the beach occurred without any sand pumping project. He recalled there was a revetment installed with the DOT digging out sand and putting in rocks and that sand was put on the seaward side of the rocks, but there was not a large scale beach renourishment program. He exhibited a photograph taken from the stairs which lead down to the beach and it shows the substantial augmentation of sand at this location compared to the installation prior to the revetment and the reef.

Mr. Dotterrer referred to the photographs that were taken eight months after the reef was installed which showed a wide stretch of sand which had formed directly behind the reef. He encouraged them to go this area and they will see a large vertical mass of sand which has filled the crevices of the rocks which were installed as a part of the revetment. He stated the Company and the DNR were further interested in examining exactly how this has worked out at the site and FAU's Dpt. Of Ocean Engineering came back and performed another study under the Field Test Study Tab in the booklets furnished each member of the Town Council and the Mayor and they prepared a very exhaustive report at this stage. He stated this allowed them to come to the site and set up wave gauges outside of the reef, behind the reef and alonside of the reef and these gauges measured the velocity of the waves which determines the energy carried by the waves. He stated there is a diagram as part of the report which shows a profile of the wave energy and height of the waves.

Mr. Heeke asked Mr. Dotterer to explain why he understood these graphs so very well to which Mr. Dotterrer responded in addition to being an attorney, he holds a degree in Environmental Engineering from the University of Michigan.

Mr. Heeke announced Mr. Rauch had retained a partner in his law firm and therefore, he would declare a Conflict of Interest and would not participate in the deliberations on this matter.

Mr. Dotterrer reported the wave amplitudes are knocked down by the reef which was borne out by the University's research and are greatly diminished, which results in a reduction in the wave energy hitting the beach and is very effective in reducing settlement loss. He stated his client agrees and it has been substantiated in Corps of Engineers' reports that approximately 90% of the transport of sand occurs in an on-shore/off-shore direction, and only 10% occurs in the littoral direction and that is the reason the report attributes the reduction in the wave energies as measured by the wave gauges to the reef being tremendously effective in reducing the settlement loss. He stated another conclusion in this report done by FAU is that the placement of the reef at this location does not in any way interrupt, impair, diminish or impede the littoral drift, or the natural movement of sand along the coastline because in other types of structures, whether it be piers or groynes or any other structure in the water, this sometimes has been a problem where the natural flow along the shoreline had been somehow interrupted, but this report is conclusive in its finding that that is not the case in this case.

He stated it also has been determined that this reef does not create the tombolo effect which sometimes occurs around structures, which can affect properties near the structure.

Mr. Dotterrer showed a diagram of how this system works, noting the reef is placed on the ocean bottom on sand, and the waves come in with a given energy having been blown across the ocean and when they hit the reef, they are in effect tripped as the bottom is cut out of them. He explained the reef sits several feet below the surface of the water and this takes most of the energy out of the wave and the remaining wave which goes to the shoreline contains much less energy and ability to claw the sand off of the beach. He stated it also forms a barrier here that if sand does go out, it doesn't go to the depths where it is no longer recoverable or out of the localized circulation cell. He states the third benefit is that many waves have suspended sediments and when they pre-break over over the reef before they reach the shore, the velocity is slowed down quite rapidly which creates an environment of the deposition of the sediments which are deposited on the ocean bottom or on the beach.

He noted the scientific review and examination has been quite extensive and the next study was to go to the reef location and measure what actually happened to the profiles of the beach. He explained the company hired a professional surveyor to do these measurements of the sand contours and the way this was done was to take a base line along the beach eastward to the seaward side of the rock revetment, which runs north and south parallel to the road. He stated from this line they projected sixteen perpendicular lines out into the ocean, going from south of the PEP reef, behind it and north of it. He noted along each of these profile lines, they dispatched a rod man who measures elevation and they had another survey with a level which is an instrument which measures elevations and they took readings on each of these sixteen profiles and this was done at four different points of time. He stated the first one was at the time the reef was built and the others were at intervals thereafter, with the last measurement taken on March 6, 1990 and these elevation readings, both under water and above water on the beach were reported by the survey and a licensed professional engineer, Mr. Patrick Martin, who is the District Engineer for the Lake Worth Drainage District, took those readings and computed the total volume of the sane and those results are reported on the graph and these computations show that within the first year, the total volume of sand at this location increased nine per cent, without any sand pumping. He noted the zero point was taken after the rock revetment had been installed. He noted the last reading shows a sixteen per cent gain over what was there at the time the PEP reef was constructed. He stated the graph cannot show them the entire increase in the sand valume as the surveyors didn't measure any elevation toward the rocks and encouraged them to visit the site and they will see there is a lot of sand between the rocks which has not been measured, so based on the volumetrics, one can see the PEP Reef confirmed what was predicted in the laboratory and by the applied mathematics and it worked extremely well in the real world.

Mr. Dotterrer indicated whenever any sort of structure is being considered to be placed in the waters, the need to be concerned about the impact it is likely to have upon marine environment and that has been positive in the experience of the PEP reef and he exhibited photographs which illustrated that point. He felt this will not harm anything in the marine environment but will instead enhance the environment and creates a new vibrant marine community. He noted the photographs show this is a new home to a great deal of fish life and confirms the concept of the natural coral reef and if the marine organisms are given a solid substrate to which they can fasten themselves, a coral based marine community can grow from that and this has only been a little over two years and the growth has been quite dramatic. He stated this too was studied by university researchers and there is a report entitled "Habitat Untilization and Evnironmental Quality Evalutations of Modular Erosion Prevention Technology, An Overview" which is issued by the Division of Marine Biology and Fisheries, University of Miami dated April, 1990 which concludes that over fifty different species of fishes have chose to directly associate themselves with the PEP Reef and over twenty species of invertebrates, which represent five different filia of the animal kingdom are growing on the reef. He noted the Florida Lobster also inhabits this reef, so the environmental impact has been exceedingly positive.

Artificial Reef

Mr. Ilvinsky asked if this hampered the sea turtles nesting on the beach? Mr. Dotterrer responded this was formerly an area that was totally inhabitable by sea turtles and is now criscrossed with turtle tracks and nests. He noted the Town did a study and found in 1988, there were a total of 43 nests and last week, there was discovered five green turtle nests, which is an extremely endangered species.

Mr. Weinberg noted there is quite a build up of sand in the area where he swims a little south of the reef and asked if they measured the sand north of the area as well as south of the area? Mr. Dotterrer stated the measurements were taken south and north and behind the reef and one of the reasons was to determine if there was an interruption of the littoral drift, and the other reason that when a reef is placed, and this is a relatively short reef, but that is all the property that Mr. DuPont owned, so that is as long as it could be made which is approximately 600'. He reported waves do come in at different angles, depending on which way the winds are blowing, so if the wind prevails from the southeast, which is the case many times during the summer months, the reef will block the waves in part north of the reef and thereby benefit that section and conversely, if the winds are from the north or the northeast, which generally generate the larger waves, that also benefits the south of the reef, but measurements were taken at all three locations, which showed a build-up at each segment. He believed the most dramatic was behind the reef. He noted this has been in place for two years and there has been a sufficient amount of time to examine the results and this volumetric study shows there has been a dramatic increase without pumping any sand.

Mr. Weinberg wished all to be aware of the fact that turtles are in abundance along South Ocean Blvd. and the fact they happen to be in the PEP reef area does not influence him.

Mr. Dotterrer then went to the proposal at the Mid-Town Beach noting that Mr. Rauch has been before the Council four or five times and originally the Council requested a proposal from him to build the reef at Mid-Town, but then a decision was made that perhaps they should wait a while as it was only in place for nine months at that time. He felt thay now have a two year period of very intensive studies and is exhaustively documented by researchers and several disciplines of scientists. He stated his client has revised and updated the proposal for the Mid-Town section, which is the area which is most badly eroded.

He indicated a proposal letter has been submitted which is dated June 22, 1990 and requested consideration on the July agenda and the Town staff and engineers needed more time to review the facts and figures and they were moved to the August meeting. He noted the proposal is to build an American Coastal PEP Reef off of the Mid-Town section which would run from Hammon Avenue on the south to Barton Avenue on the north and it would be a continuous wall and it would be located 250' off-shore from the present shore line. He reported the total length is 4000'. He stated his client hired a marine biology company to examine the proposed location underwater and they actually went into the water with divers and video cameras to see what was there and to see if there was any way they would be interfering with the marine environment which is now there. He stated they found this is basically a solid sand bottom and there should be no interference and invited Don Deiss of Continental Shelf, Inc. to show a video he took who came to the podium reporting they were hired to investigate the environmental permissibility of this project.

Mr. Deiss noted they were asked specifically to survey the line of placement of the proposed reef which they did and the major part of the transect is sand, although there are a few manmade features, such as a groin, an outfall, (which is actually like a coffer dam type of structure) and the Worth Avenue Pier rubble. He exhibited the video which showed the area where the placement of the reef is recommended which is an eight and one-half mean low water.

Mayor Marix asked if at low tide the reef would be submerged at about three feet of water to which Attorney Dotterrer responded that was correct, indicating it would be marked with buoys so it would not present a navigational hazard.

Attorney Dotterrer talked about the cost, which would be $496 per linear foot and if the structure was 4000 feet long, that would come to a bit less than two million dollars. He noticed in earlier reviews of this matter, the Town asked one of the consultants who had been concentrating on the method of sand pumping as part of the renourishing project, who gave a preliminary cost of putting boulders in the ocean and that preliminary cost estimate was $3000 per linear foot, which would be six times as much as the proposed PEP reef. Mayor Marix asked what the cost would be with the sand added? Mr. Dotterrer stated the problem with sand is that it tends to wash away and then must be replaced. He felt it was a good idea to use a sand renourishment project in conjunction with the reef one to compliment the other which should keep the sand there, rather than wash out to sea. He believed the cost of the sand would be in the neighborhood of three and a half million dollars and they would have to review the necessity of continuing with that much sand. He explained another facet of the proposed project is what type of construction schedule would be expected and he viewed this as occurring within three phases.

He indicated the first phase would be permitting, the second would be fabrication and the third would be installation. He believed the project could be entirely completed by the end of June, 1991. He stated since the unit is lowered into the water by way of a barge, there would be only limited interference with the existing recreational use of the beach and no inconvenience.

He recalled the question was asked at the Town Council meeting of Feb. 1, 1989 as to whether this type of project would have to go through the process of specifications and advertising, etc., and the Town Attorney gave his response stating it was his understanding that where they were looking for a unique process, one that has been tested and which the governing body feels is not appropriate to its circumstances, they do not necessarily need to go through the process, particularly whdn the item is unique. He stated American Coastal believes there is no other such reef that has ever been permitted in the State of Florida, and has spent six years going through the University tests and it has a patent issued by the U. S. Government of the PEP Reef and it is the only such reef which has been placed in the waters off the east coast and he viewed this as a unique process and product.

Attorney Dotterrer felt this could work very well as a complement in continuing on with the beach renourishment project adn they would have the likelihood of keeping the sand in place and not washed away to the deeper levels and he felt it should be explored and there may be some savings to the Town in the sand-pumping process.

Attorney Dotterrer referred to the permitting and funding, since this was last considered the Florida Legislature enacted landmark legislation which recognizes the severe beach erosion problem suffered throughout the State of Florida and Chapter 175 of the Laws of Florida of 1989 was adopted stating: "Section 27-It is the intent of the Florida Legislature to encourage development of new and innovative methods for dealing with the coastal shoreline erosion problem being experienced by this State."

Artificial Reef

Mr. Dotterrer stating after expressing the legislative intent, the Statute does go on to allow innovative systems such as this reef to be installed and follow-up monitoring to occur. He recalled given this new mandate from the Legislature and the several Council meetings that this proposal was heard, the Council directed Mr. Doney to write a letter to Mr. Thomas Gardner, Executive Director of the Florida Department of Natural Resources, which he did on January 26, 1990 and posed several questions and requesting a written response. He noted the first question posed was "Is the DNR interested in permitting a larger erosion prevention reef to get a true evaluation of the reef performance?" Mr. Gardner responded on Feb. 12, 1990 "The Department would support testing a larger scale experimental project, provided it is sited, designed and constructed property, supported by adequate test plans with adequate safeguards incorporated to preent any adverse impacts to the beach dune system or adjacent properties."

He reported another question the Town Manager directed to the DNR was: "To what extent would the DNR be willing to cost share such a project" and Mr. Gardner responded: "As mentioned in Rep. Messersmith's letter to Mayor Marix (around the same time period) should the Town of Palm Beach be interested in participating in such a project and be able to utilize a public beach with all interfering structures, such as old groins, removed, the Department may be willing to participate in the financing of such a project, if it is constructed as part of an approved beach nourishment project." He stated that indicated to him there is an interest at the State level, not only in permitting this, but also in sharing the cost.

Attorney Dotterrer indicated it has been a long hard struggle on the part of American Coastal but there has been a tremendous amount of data compiled on this PEP reef and in the process, new ground has been broken in coastal engineering. He indicated another PEP reef could be built in the mid-Town secion in an effort to bring back the shore line, which could be done in conjunction with the beach renourishment project and the cost to build it would be far less than most shore line projects and is a comparatively small investment, two million dollars, to the Town and is much less than going back every year or so to continue to pump sand onto the beach, which everyone knows will wash away.

He summarized the benefits of a PEP Reef, prevents erosion; protects the shore line; saves money in that it is a one time investment instead of a repeated expense; it creates a favorable marine habitat; it supports the environment; and it is also believed this will actually increase recreational safety because it puts a barrier in the water marked by buoys to keep the boats out and the swimmers in and would serve to mitigate some of the riptide.

He suggested the Council direct the Town staff to apply for all applicable permits to build this project and American Coastal Engineering would be willing to serve as the agent for the Town and its consultant in the application process; and they would agree to perform this service for the Town in the permitting process for a flat fixed cost of $8000, plus any actual out-of-pockst expenses. HE believed the next step should be to make the application and suggested the Town enter into a contract to build such a reef and he furnished the Mayor and Council with a copy of same and this would be subject to and contingent upon the issuance of all applicable permits and if the permits are not granted, there would be no obligation on the part of the Town except for the $8000.

President Heeke summarized where they were at this point; Mr. Dotterrer has supplied them with information first on the PEP reef which has been installed at the DuPont location; and then a proposal for a similar reef to be installed from Barton Avenue southward to Hammon Avenue; they propose the Town seek permitting for such a reef and American Coastal will act as the agent for that permitteing for a flat fee of $8000 plus what ever out of pocket filing expenses would occur; and a proposed contract has been submitted which they would like the Town to consider for the contruction of the Reef.

Mr. Dotterrer reminded all that the contract would be contingent on the securing of the appropriate permits. Mr. Heeke stated since he cannot participate in the discussion, he would like the Council to make their comments or ask any questions that they may have.

Mayor Marix gave her comments, indicating she was very impressed with the reef which has been installed and has been to that site many times. She is firmly convinced that the long term solution has to be a reef and if the State or the Federal government does give us some money, it would probably be the last time they would as she has spoken to the legislators at great length and they are fed up with the amounts of monies they have spent on similar projects which has just been poured into the ocean. She asked since the beach built itself back in front of the DuPont property, she understood there was a requirement they had to backfill with sand and which in the long run never had to happen as it filled itself up and wondered if there was a good possibility that they could expect that to happen in Mid-Town? Mr. Dotterrer explained one of the conditions of the DNR permit for the reef installed was that a large volume of sand be placed by American Coastal on the shoreline at the same time and there was amodest amount of sand which had been dug out to form the foundation for the revetment project and Mr. Rauch was trying to design a chute whereby he could slide the sand from the roadway to the beach and after the DNR saw how the beach was building up and how difficult it would be to bring the sane in by trucks, they modified the permit and agreed to release that condition that sand be put on the beach, so the sand there now is the small amount that was excavated and then the build-up that occurred. Mayor Marix asked if there was a reason to expect they would get a build-up of sand in Mid-Town? Mr. Dotterrer responded this would be possible if the reef performs at Mid-Town they way it has performed in the south end, however, he noticed the water is up against the seawall at Mid-Town, so there is no portion for it to start to accrue and there might be a little bit of reflection back off the seawall of the waves and therefore, it might be prudent to continue with the plans to pump some of the sand there and give immediate gratification to the beachgoers.

Mayor Marix felt two million dollars was a lot of money and wondered if there was any advantage to perhaps doing the reef half as long, would it be just as effective and would this seriously damage the project? Mr. Dotterrer responded if it was just half, they would still expect it to work because the one that was done before was 600' and 2000' would be a lot more. He stated the length was chosen because of the contour of the shoreline here and this coveres several of the public beaches and there are some unsightly groins there that would be pulled out and this would give a good continuity of placement and below the southern terminus, the sand would form into small beaches and with any construction project, it is always easier to do something all at one time, however it would be possible to do it for a shorter length.

Mayor Marix understood there was one particular person in Tallahassee who seems to be extremely unhappy on the subject of reefs and she asked if they knew what the problem was with this particular person? Mr. Dotterrer responded he didn't know as they feel the documentation is overwhelming that the reef does work and he knows this particular engineer sees to have a fetish with what is called the mean high water line, which is a defined distance which is chosen by a national survey and is a vertical distance below a bench mark on the road somewhere, which might even be a couple of miles away from this beach, and it is really more of a theoretical line than a useful line. He stated the Town Director of Pulbic Works has reviewed the mean high water line and wrote the Town Manager in a memorandum dated 3-29-89 and stated: "The plot of the mean high water line is not in my opinion of any significant value since sand moves from dry beach to submerged sand bars and back and forth, depending on the season. The beach profiles are much more effective in demonstrating how the PEP reef is performing."

Artificial Reef

Artificial Reef

Mr. Dotterrer stated that due to the fact there is constant changing, that is why they did the volumetric studies to compute the total value of the volume of sand on the beach which is a much more meaningful computation.

Mr. Weinberg asked what the relationship was between Mr. Gardner and Mr. Manson-Hing? Mr. Dotterrer stated Mr. Gardner is the superior of Mr. Manson-Hing. Mr. Weinberg noted the Town is awaiting an updated report from Mr. Gardner who wrote on July 26, 1990 it will be shortly forthcoming. Mr. Dotterrer thought what they probably will say is that is should have more study and that is why they state an application be filed for this particular project to see what their response is to a definitive project.

Mr. Weinberg noted they are suggesting a two prong project, the sand renourishment and PEP. Mayor Marix thought the PEP reef would be first, then the sand. Mr. Dotterrer thought that probably would be the best way as the amount of sand could be adjusted and some of the cost offset.

Mrs. Douthit moved the Town Manager be authorized to expend $8000 towards permitting, plus out-of-pocket expenses up to $4000. Mayor Marix didn't believe it would be that much. Mrs. Douthit agreed but wanted to put a cap on it. Mr. Heeke asked if it would be the Town's permit? Mrs. Douthit stated it would be the Town's permit. Mr. Dotterrer explained the Town would be the applicant and the permittee. Mrs. Douthit amended her motion to state the permit would be for the Town of Palm Beach with American Coastal Engineering acting as agent.

Attorney Randolph advised there are other considerations with regards to the bidding process and he suggested the Council look at several other items: (1) There is current litigation pending between Creter Vault Corp. and American Coastal Engineering, Inc. regarding the patent on this item and one of the things which his research has indicated which would allow the Council to go to a particular organization, without having to go to bid, is if that organization has a patent which will do exactly what the Town Council wants it to and no-one else has that patent. He stated there is a dispute over that patent and he has been in touch with the attorneys for Creter Vault who indicate to him that the litigation is ongoing and with that pending, he wondered if consideration of bids from that particular organization may be what the Council should do or whether or not they might be stepping into a lawsuit if they hire American Coastal. He stated another item is he agrees with the general statement he made previously, which was quoted by Mr. Dotterrer, but he advised Council they must be convinced that indeed this situation is so unique and it does provide what they are looking for to the exclusion of other systems which might be available that can do the same thing and they must be satisfied that is the case before they go out for invitations for bid. He stated if this is the only reef of its kind that had been permitted and the Council was going to be in a situation that it already had been permitted, it would help in making the determination that they may not have to go out to bid on this situation.

Mayor Marix stated she is familiar with the lawsuit and understood that the other people were issued a patent for their type of reef by the same man who issued the American Coastal people a patent and this man was fully aware of the other one, but it is a different type reef located above the water and is not submerged which would be a problem for the turtles as they don't climb over walls extremely well. She felt the fact that they are quite different and were patented in different directions, she did't believe it was the same type of reef as it is more like a seawall. She stated she didn't believe they were under any commitment here other than the commitment of spending $8000 as she didn't believe after they get the permits, they are committed to go through with it. Mr. Randolph agreed they wouldn't have to go ahead with the reef after the permits are secured. Mayor Marix felt it was quite possible the Town may not get the full funding for the sand. Mr. Doney explained the current status is 3.2 million appropriated by the State and the Federal government is 1.6 million and we have requested an additional 5.4 million, based upon the project eligibility and the balance would be 2.8 miooion, which would be the Town's portion. Mayor Marix did not believe they would be getting the 5.4 million dollars from the Federal Government and they do know they will have to renourish again. Mrs. Douthit noted when they have renourishment projects, it is perfectly clear the sand comes from a "borrow" area.

Mr. Weinberg asked if they are going with the 2000' and then stop and then go back and do the additional 2000', if they find the first 2000' serves as an adequate pilot? Mr. Dotterrer supposed the application could be framed in that fashion, making the request it be done in phases, as many projects are.

Mr. Randolph asked if the offer to pay the $8000 fee was contingent upon the Town going ahead with American Coastal for the installation of the project? Mr. Dotterrer responded negatively. He wished to state that to get the DNR Permit for the PEP reef in this State took his client almost two years. Mayor Marix pointed out that was before the new legislation was adopted. Mr. Dotterrer stated there is no other organization in this State has ever received a permit and American Coastal has, after a lot of work and development in coming up with this unique system and now there is a permit in place and a further report will be issued on it as to whether or not it should be studied more or whatever. He stated the DNR and the DER and the Army Corps of Engineers have issued their permits, after a position of no-objection by the Town of Palm Beach and that was a long, long process to get to that stage.

Mr. Heeke restated the motion which was for the Town to expend $8000 plus costs for the application of a reef in the Mid-Town Section of 4000' and utilize that $8000 to cover the cost of American Coastal Engineering to serve as agent for the Town in processing the application and the permit would be the Town's permit. Seconded by Mr. Ilyinsky for discussion purposes only.

Mr. Weinberg asked if the permit is applied for and for some reason, it is denied, would the monies be refunded to which Mr. Dotterrer responded negatively. Mayor Marix pointed out they would be risking the $8000 and that is why she asked about having this shorter as if part of this is done, perhaps there may be people in the area who might be interested in helping with the additional cost. Mr. Dotterrer believed the State will contribute.

Artificial Reef

Mr. Doney advised the filing of the application and the authorization to expend the $8000 and out of pocket expenses up to $4000 to pay American Coastal Engineering, Inc. to prepare all necessary materials in order to file the application and in that respect, the only action required of the Town would be based upon American Coastal's Full preparation of a permit appliction, and he would as Town Manager be authorized to execute that application with the DNR to which Mrs. Douthit responded that was her understanding. Mayor Marix asked if American Coastal would need any particular back-up or help from the Town? Mr. Doney asked if this was an all incluseive fee that will fully and totally complete the permit application to the full satisfaction of the DNR? He thought they also needed to get into the other permits and whether this also includes the permitting applications for the other agencies. Mr. Dotterrer responded affirmatively. Mr. Doney asked if this did include everything? Mr. Heeke asked him to bear in mind that this was the Town's permit. Mr. Dotterrer expleined that was correct but it would have to be a cooperative effort as the Town is in possession of certain data which is needed to support the application as a lot of money has been spent in the past for consultants to survey the ocean bottom and to draw contour lines.

Artificial Reef

Mr. Ilyinsky felt if Mr. Rauch calls up for information extensively, essentially the Town Manager is filling out the permit and he believes the administration will be bombarded with questions and that needs to be worked out now. Mayor Marix agreed stating obviously it has to be a cooperative effort. Mr. Dotterrer contemplated they would to most of the work but would need cooperation from the Town to assemble information, etc. Mr. Heeke noted they would also need access to this study that was made. Mr. Doney stated that is no problem as all of that type of information is available. Mr. Heeke stated he didn't want Mr. Doney to be enmeshed in an overburdening of his office. Mr. Doney stated or the Public Works Director and Mr. Bowser. Mr. Heeke commented the agent is being employed to do the bulk of the work. Mr. Doney stated he would like to know that the understanding is the $8000 plus the out of pocket expenses is a maximum fee and that will be the total fee for any resubmissions required for any of the regulatory and permitting agencies in order to apply for the permits. Mrs. Douthit believed that was so but if something unforeseen should come up, she would expect them to come back to the Council. Mr. Heeke stated the motion states this is the fee quoted, period. Mr. Ilyinsky wondered if there should be a time frame? Mr. Heeke did not believe there should be a time frame on it.

Mr. Dotterrer thought it would be helpful for the Council to put some time parameter on this to prevent an undue delay. He stated with regards to the expenses, what is contemplated would be the actual Department"s application fee and the company may need to go to outside professionals for surveys that the Department requires and they will make every effort to contain that cost. He felt it would be the out of pocket expenses which might enlarge if things go the wrong way, but if that were to happen, they will come back to the Council and present the situation and they would be free to say yes or no or American Coastal would have to absorb it.

Mayor Marix asked about the contract wondering if the permits are not secured, the contract would become null and void. Mr. Dotterrer agreed stating there would be no obligation. Attorney Randolph asked if this action contemplated that this contract be singed conditioned upon the application being received? Mr. Dotterrer responded affirmatively. Mr. Randolph thought previously he responded negatively because if that was the case, the Council must be absolutely certain if they do decide to go ahead with the application that this does not have to go out to bid and this reef is unique enough that it doesn't require them to get proposals from other people who can do similar things, etc. and that was the purpose of his asking with the Council going ahead with this $8000, if that meant also they go ahead and execute a contract. Mr. Dotterrer stated that was their proposal and they would consider it in a two-step process, if possible, but would prefer to do it all at one time.

Mr. Weinberg asked to hear from Mr. Dusey. Mr. Heeke noted there was a motion addressing filing for a permit, the question was asked if they had to do business with American Coastal and he responded negatively? Mr. Dotterrer did not believe he said that but wanted to make clear their poroposal was that this would all be taken care of in one step, but they owuld be prepared to go forward with the motion to simply file the application and American Coastal will assist them in that process and the contract will need to be reviewed by the Town Attorney and staff before a final decision can be made and that facet can be deferred to a time when the Town has a greater opportunity to consider that and he would be willing to go along with the motion. Mr. Heeke reiterated this would be the Town of Palm Beach's permit to which Mr. Dotterrer agreed.

Mr. Doney understood this will be two phases and the expenditure of the $8000 would mean that there would be no further obligation for the Town to later enter into an agreement with American Coastal Engineering to actually construct the project, and from a practical perspective, if the application is applied for the permit and it is based upon the design criteria of a PEP reef, which is by design a patented product, hasn't the Council then limited its consideration because the permit is based upon specific criteria and information, so if it is granted, it would limit it exxlusively to the PEP project which means Part B is a committed conclusion if the Town gets the permit. Mayor Marix thought they could forget it or go to a different one and they have lost $8000 if they do that, that is the worse they would do. Mr. Doney suggested they reflect back to Mr. Randolph's initial three questions. Mr. Heeke asked if there was another company the Town Council wanted to use, it may necessitate getting a new permit or modifying the existing permit to comply with whatever another company would be coming up with. Mr. Randolph agreed. Mr. Heeke noted they would still have the option under that scenario. Mr. Randolph said this would depend upon whether they had any resistance from the applicant and they should also consider how easy it would be to modify the terms of the permit if they were willing to have it drafted by a particular applicant in such a specific manner so as to fashion it only to that particular company. He stated another way to consider an application for the permit is not to talk about it in generic terms, such as a reef similar in design, rather than a PEP reef, and he didn't know if that was considered by the Council or not.

Mrs. Douthit felt they had in a way as the rocks were suggested to them from the Bahamas at five times the expense. Mayor Marix felt all they had to lose was $8000. Mrs. Douthit agreed. Mayor Marix felt if they didn't get a permit, they they will know that but if a permit is secured and they decide they don't want to use this reef, all they are out this entire subject has been covered by the media and no-one has come in to say they have a reef which is better than this one, even the Creter one would not be allowed, as it is above water. She felt they could sit here and let the Island wash away or they could see if a permit can be secusred, and she didn't think they had anything to lose as they are not signing a contract, except the $8000 authorized. Mr. Weinberg asked the Town Attorney his opinion? Mayor Marix asked if they made a deal to give them $8000 to see if they can get the permit in the Town's name, how could they get caught? Mr. Randolph stated only because they are choosing to go forward with an application for a permit with a particular company. He stated if they are satisfied that that particular company is the one they want to proceed with and they are taking the first step down the road to going with this particular company and that may very well be legal for them to do that, but he didn't know if they had came to the conclusion or what staff has to say about that and whether or not there are other reefs which can do the same thing so an application can be made for "a" reef without attaching themselves in the beginning to a particular company. Mayor Marix pointed out they have been talking about this for years and years and we have been to Tallahassee and we still don't have the money we need and asked if the staff has spoken to any other company who had any kind of a reef. Mr. Doney responded they have received information for a different type of shoreline stabilization from Mr. Janus. Mayor Marix recalled that was sand bags on the beaches. Mr. Doney indicated there have been others submitted and his interest admistratively is to ensure the Town in his professional estimation is doing the right thing and will not get into a commitment down the road which it can't get out of. He recalled one or two others have been received also. Mayor Marix recalled some of them have been really looney. She felt an off-shore reef is a serious consideration for this Council because erosion is very serious and surely if there is another reef installed with a track record which we can see has worked in the State of Florida, we should find out about it.

Artificial Reef

Mr. Doney asked Mr. Dusey if he was aware of any others, as over the years, he has received correspondence from many companies stating this is their product or what they are doing. Mayor Marix felt if that was the case, they would have been looking at them. Mr. Doney stated the reason the Town entered into the beach nourishment process in 1986 was because in 1985, the Town had its own beach management plan completed by Cubit and in 1986, the State completed a State Beach Management Plan in which beach nourishment was the recommended alternative for stabilizing and protecting the shoreline, knowing full well it would have to be done at intervals. Mayor Marix believed the State Legislature has ultimately realized they cannot go on pouring millions of dollars into sand and Legislators have told her they have stopped asking for sand money and are looking for alternatives and now they have adopted legislature to make permitting for reefs an easier process. She felt if the reef proposed which is a bigger one, does work, it will save the State millions of dollars every year and they do need to have this tested and if it happens to be the Town of Palm Beach who will be testing it, the Legislature would be happy with us. She doesn't want to get into a legal mess, but if we are only risking $8000 plus expenses and unless staff knows of any tried, tested reef which is permitted, under water and not a hazard to the turtles or anyone else, then we should know about it. Mr. Dusey addressed the Council indicating the Corps of Engineers publishes a Shore Protection Manual which contains numerous devices that have been field tested, not necessarily in Florida but in other parts of the country and in the world that are successful, so there are other devices out there. Mayor Marix felt many of them would not be acceptable in the State of Florida. She knew there were some marvelous inventions in Holland and off Capetown, there are other jacks used, but many of these things, the State of Florida will not allow. Mr. Dusey stated jacks are in the Shore Prevention Manual. Mayor Marix stated other places have groins but they too are not allowed here, and she was sure that there were other possibilities, but many of them are not allowed in Florida and are not acceptable to the environmentalists. Mr. Dusey indicated he could not answer that until they apply for a permit for any particular item. Mr. Doney recalled the Town has been through the permitting application process with DNR and DER and the staff of a regulatory and permitting agency will not grant a permit for a generic request, as they want to know the design specifications of the particular proposal they will be considering. He reported the DNR is in the process of evaluating the final monitoring reports of American Coastal Engineering and they will provide us with their comments. Mr. Doney believed if the Council wants to make a determination at this point that they believe this is a unique off-shore breakwater and one in which the Town would want to expend $8000 plus expenses to apply for a specific permit application with the intent that if a permit is granted with conditions, they need to think it through as to what would be the funding source for the Town's share of the project. Mr. Heeke noted the motion doesn't address the funding adn it would be premature at this time to think about the funding for the construction of the reef, it that is the way the Town wishes to go, however the funding for the $8000 would come from the Undesignated General Fund Balance. Mr. Ilyinsky stated he was satisfied as long as there was a way later of cutting this off.

Attorney Randolph advised that since this will be a "Town" permit, he wondered if the applicant would indicate to the Town that it would not stand in the way, if at a later time, the Town decided to modify the permit in any way to use a different type of breakwater, without having to waste the work or lose the time involved and they would not stand in the way of modifying the permit, if the Town gets to the point of deciding what type of breakwater to use, they would assign waive any right, in fact, assign those rights to anyone else. Mr. Dotterrer indicated they did not contemplate having any ownership rights to the permit but simply wish to act as an agent with the help of the Town in obtaining it as they have been through four years of doing just that with various agencies and if the Town wished to modify the permit at a later time, that would have to be addressed by the Town at that time. He felt if was premature to anticipate all of the conditions and discussions the particular agencies may embark upon in this permitting processes, as it is a time consuming process, but the Town will be the owner of the permit. Mr. Heeke noted the Town is also the applicant to which Mr. Dotterrer agreed, indicating that is precisely the way this was done with the first reef and his client was the agent only. Mayor Marix thought if there were no strings attached and they get the permit, there was nothing that could be lost as there is no one on record in the State of Florida who can do this, the possibility that we would get someone else to do this is quite remote. Attorney Randolph felt they have tainted any subsequent bidding process if they do decide to go to a bidding process, but if the Council today is certain there is nothing else out there, the action they are taking is entirely appropriate, but if they are saying they haven't come to that conclusion and think there is nothing wrong with going ahead and filing for an application for a PEP reef, the $8000 doesn't concern him but what does concern him is the subsequent allegation by someone that they have tainted the bidding process because they have chosen to go ahead with an application with the State for a PEP reef and now are they coming in and asking what they have to offer but actually they have already decided in their minds what they wanted to do. Mayor Marix stated as far as she knew, there isn't another one out there. Mrs. Douthit did not know of any in the State. Mr. Rauch advised as far as he knew, there is no other tested one in the State of Florida. Mayor Marix asked what was built near St. Petersburg and they had problems with it and had to make it lower. Mr. Rauch responded these ere boulders from Tennessee.

Mayor Marix believed there were no other reefs of this type being built in Florida, to which Mrs. Douthit agreed. Mr. Heeke noted Mrs. Judy Schrafft in the audience has indicated she is not aware of there being another reef of this kind.

Mr. Heeke restated the motion which was to employ American Coastal Engineering, Inc. at a flat fee of $8000 to make an application on behalf of the Town with the Town being the applicant and American Coastal beint the agent, for a 4000' artificial reef and the funds are to come from the Undesignated Fund Balance; and out of pocket expenses not to exceed $4000.

Mr. Dotterer asked if the notion could include the application be filed within a period of perhaps thirty days? Mrs. Douthit amended her motion to state this should be done as quickly as possible and within thirty days. Mr. Ilyinsky agreed to the amendment, but stated he was concerned about the out of pocket expenses-Mr. Weinberg pointed out there was a cap on it. Mr. Ilyinsky asked if this was for a certain period of time?

Mrs. Douthit responded if they need more monies, they must come back to the Council. Mr. Ilyinsky stated he wouldn't second the motion unless there is a definite cap on the expenses. Mr. Heeke stated there is a cap of $4000. Mr. Ilyinsky commented this will be the total out of pocket expenses until the permit is in our hands. Mr. Dotterrer stated that was included in the motion. Mayor Marix stated they might not spend it all. Mr. Dotterrer indicated he hoped it would not be necessary, but if something unforeseen occurs, they will come back and ask the Council. Mr. Weinberg stated they will cooperate with us and help pay the expenses.

Artificial Reef

Mr. Doney clarified that there are permits required from DER, Army Corp of Engineers and asked if that were all required? Mr. Dotterrer responded affirmatively.

On roll call, the motion carried 3-0 with Mr. Heeke abstaining.

Restoration of Gazebo on Casa Bendita

8. Restoration of Gazebo on Casa Bendita - Consideration of Request for Indemnification from Mr. Jeffery Smith. Mr. Heeke noted Mr. Smith has volunteered to do the architectural work on this and a draft letter has been prepared by the Town Manager, which has the Town attorney's approval. Mr. Randolph indicated Mr. Smith wanted to be assured that if he does the design work for the Town, they would not come back and make any claim against Mr. Smith and rather than sign an agreement to that extent, he recommends a letter be sent to Mr. Smith indicating we would not bring such a claim. Motion was made by Mrs. Douthit to approve the execution of the draft letter dated August 14, 1990. Seconded by Mr. Ilyinsky. On roll call, the motion carried.

Ficus Nitida Trees on North County Road

9. Ficus Nitida Trees on North County Road from Wells Road to Miraflores Dr. - Consideration of Proposal by Dr. Bart Moore for Town to Purchase Additional Replacement Trees and Temporarily Locate Same at Palmo Way Nursery. Dr. Bart Moore addressed the Council, he was requested to report to the Council by the Town Manager on his suggestions about the replacement trees. He recalled a low bid of $750 was received for the six trees which required replacement on North County Road. He recalled originally forty trees were scheduled to be replaced and that figure was adjusted downward. He stated the six trees were installed by the low bidder of $750 including the cost of hauling the tree from the nursery and the installation and staking of the tree and now it is up to the Town to water them and properly maintain them. He stated as a consequence of that original action, the Mayor has asked him to see if there was a possibility of purchasing for the Town additional trees. He inspected the proposed trees with Mr. Ugi of the Town staff and they are okay and could be groomed. He investigated this further and found another source and they inspected those trees at a price of $250 for the 18' to 25' size and $300 for the 25' to 30' trees. He stated the trees are acceptable and it is suggestion that they purchase six trees, four of them in the 20' range at $1000 for all four; and the two large ones at $300 or $600, or a total cash outlay of $1600. He informed the Mayor and Council a front loader would be required to move the trees from their location to the Town's nursery. He stated if the trees are moved by Town's staff, the cost would be $600, with three of the ficus trees being hauled on a flat bed at one time. He sated in addition, the trees would have to be planted and he recommended this be done by Sid's Tree Crane Service, who charges $75 per hour with a two hour minimum. Dr. Moore felt this could be accomplished in four hours if the holes were dug, which would make that total amount for the crane service $300, which would bring the grand total of purchasing and installing the trees to $2750, if the Town was able to provide the personnel to do the digging, but if the total installation would have to be done by outside people, it would be $4750. Dr. Moore volunteered his services for the supervision of the project.

Mayor Marix felt since some of these large trees are not available, there should be a tree bank, as there still is a possibility we may lose two or three of the trees which are on North County Road. She felt that perhaps if there is a big building project about to commence and trees would have to be removed, perhaps the Building and Zoning Department could alert us and have the trees moved to the Palmo Way site and this would expand the "tree bank", which she felt would be a great asset to the Town. She recalled Dr. Moore has saved the Town a great deal of money with his knowledge on where flowers and other nursery items could be purchased quite nominally and she would like the Town Council to think strongly about having Dr. Moore as an advisor on these types of matters.

Mr. Heeke recalled the estimations for the tree bank were $1600 for the trees; and if they were installed in-house the cost would be $2750 or if we go outside to a contract it would be $4050. Dr. Moore recommended it be done in-house. Mr. Dusey advised he really didn't have the personnel to dig the holes.

Mrs. Douthit moved the six trees be purchased, with four at the slightly lesser height and two at the greater height and they be placed in a "Tree Bank" at the Palmo Way Nursery. Mr. Dusey advised the monies allocated for the North County Road project have not been totally expended and there would be monies in that allocation for this purpose if they would like to use it. Mrs. Douthit renewed her motion that the six trees be purchased and the amount of $4050 be spent to install the trees in the Palmo Way property and the monies come from the allocated monies that were made last meeting for the North County Road trees. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Heeke asked Dr. Moore if he would be willing to act as a consultant to the Town on horticultural matters, to which Dr. Moore responded affirmatively. Mr. Heeke explained this will be taken up later in the agenda under "Any Other Matters".

Warrant List

XI. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR JULY 1990. Motion was made by Mr. Weinberg to approve seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

XII. DEVELOPMENT REVIEWS:

Major Matters Arch.Comm.

A. Major matters previously considered by the Architectural Commission at their meeting of July 25, 1990 - Mr. Moore explained there is a neighbor who was concerned over the second story addition on item B64-90 - Mr. and Mrs. Christian Odasso, 201 W. Indies Dr. and he suggested all items be approved with the exception of B64-90. Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit that all the major matters considered by the Architectural Commission at their meeting held July 25, 1990 be approved with the exception of B64-90 - Mr. & Mrs. Christian Odasso. On roll call, the motion carried unanimously.

The major matters were:

B6-90 - Additional and remodeling. Mr. & Mrs. Holden Luntz, 234 Seminole Ave. Deferred.

B27-90 - Second story addition. Mr. John Raimondi, 1420 N. Ocean Blvd. Approved conditionally.

B5-90 - Addition. Mr. & Mrs. Alfonso Fanjul, Jr., 1161 N. Lake Way. Removed from the agenda.

B40-90 - New Residence. Palm Beach Land Investments, Lot 3 Graham Eckes Academy (3 Windsor Ct.) Approved conditionally. Landscape Plan deferred.

B44-90 - Guest House and Pool. Gerard Haryman and Denise Valentini, 137 Dunbar Rd. Deferred.

B45-90 - Addition and Renovation - L $ V Investments, Inc., 112 Woodbridge - Deferred.

B24-90 - Storefront renovation Stefan Richter 224 Worth Avenue - Approved.

B28-90A - Revisions to 133 Wells Road - Deferred.

B51-90 - Demolition - Lowry Bell, 120 Jungle Rd. Deferred.

B52-90 - Renovation Francis Brewster Co., 301 Worth Ave. Approved.

B53-90 - Roof addition, move doors. June Martino, 901 N. Ocean. Deferred.

B54-90 - Remodeling - Richard Harrington, 679 Island Dr. Approved.

B57-90 - Gates - Mrs. Janes Wood, 726 Hi-Mount Rd. - Removed from agenda.

B60-90 - New Residence for Mr. & Mrs. David Mack, 1020 N. Lake Way - Approved conditionally.

B61-90 - Storefront remodeling - Spencer Galleries, 234 Worth Ave. - Approved conditionally.

B62-90 - Garage addition; new pool house, Dr. & Mrs. Welch, 144 Everglade Ave. - Approved garage. Deferred pool house, loggia, driveway and landscaping.

B63-90 - Mary Frances Turner, 123 Chilean Ave. - Partially approved.

B65-90 - Mrs. William B. Meyers, 620 N. Lake Way. Approved.

B66-90 - New residence for Mr. & Mrs. Claude Clement Mimun, 1150 N. Ocean Blvd. - Deferred.

B67-90 - Renovation - Richard Danton, 342 Cocoanut Row. Approved conditionally.

B68-90 - Entry Renovation for George and Shiela Switlyk, 141 Dolphin Rd. - Approved.

B69-90 - Demolish apartment builidng and construct townhouses. Josephine Defina Stetson, 247 Seminole Ave. Approved conditionally.

B70-90 - Addition Mrs. Lojuis Arnold, 141 Gulfstream - Approved.

B72-90 - Addition. Mr. & Mrs. Donald Farry. Approved.

B73-90 - New residence. David J. Mahoney, 1296 S. Ocean Blvd. Approved conditionally.

B74-90 - New garage - Ann Dillard, 245 Barton Ave. - Approved.

B75-90 - Addition - Ralf Gschwend, 460 Worth Avenue - Approved.

B64-90

President Heeke advised they would now consider B64-90, Mr. & Mrs. Christian Odasso's addition at 201 West Indies Drive. which was recommended for approval by ARCOM, however a neighbor has raised an objection on the west elevation. Mr. Moore explained there is no problem from a zoning standpoint but there was an objection raised by a neighbor to the west and he suggested Mr. Bennett be allowed to present his case. Mr. Bennett, Architect for the Odassos, addressed the Council. Mrs. Douthit asked if this was a privacy problem? Mr. Moore responded the neighbors do object to the sliding glass doors which he feels view his back yard area. Mr. Bennett indicated he has prepared a site plan and he distributed same to the Mayor and Town Council. He stated the glass doors are on the second floor of the building on the right, and as one looks out of the doors, they would be looking at the roof of the house next door and not looking into the pool area which is the north. He stated there are screens on the doors and they can be opened to get ventilation. He stated there is a railing. Mrs. Douthit asked if the neighbor would think better of this if it were converted to windows, as she didn't see any reason for the sliding glass doors as it doesn't lead to any place. Mr. Bennett responded this is an architectural prerogative and there are second story buildings all around them. Mr. Ilyinsky questioned whether there was any planting between the two houses to which Mr. Bennett responded there is an existing eight foot high ficus hedge, which continues along the property line from the front to the rear.

Mr. Moore reiterated there are no zoning violations, nor is there direct jurisdiction by the Architectural Commission, and the options are to have the applicant return to the Architectural Commision; secondly, the applicant can be requested to change the design and the glass doors could be eliminated and windows installed; or accept the Architectural Commisison's action and allow the project to be continued.

Marciso Gillette, the immediate neighbor, addressed the Council stating his objection, indicating there is an awning on the rear of their property and they entertain continuously there. He stated they have a portable telephone on their porch and the side of his house facing the Odasso property has three bedrooms, so they are constantly annyed. He knows they are entitled to a second floor but he hoped they would install it without any openings and just have a flat wall with no openings. Mr. Bennett stated they have to have windows in the sleeping room and his clients have requested the glass sliding doors.

Mr. Moore suggested perhaps there could be a compromise with a mimimum size window installed that would meet the Fire Code on the west side. He stated he would like to have it on the record that he has had tried to explain to Mr. Gillette that this is the homeowner's prerogative to have the sliding glass doors just as it was on the homeowner's design to not have windows on the east and west elevations on the home on Wells Road and as a property owner, they have the freedom of design. Mr. Heeke noted there was no violation of any setback requirement and ARCOM technically does not have jurisdiction over this side of the house. Mr. Moore stated the ARCOM does look at all elevations of new construction but from a technical standpoint they do not have jurisdiction, but they do review all elevations to try and take this type of concern into consideration.

Mayor Marix asked if there was an awning over the back area which is not legally built and a swimming pool? Mr. Moore stated he would have to have someone check on this.

Mr. Ilyinsky moved the report of the Architectural Commission on Item B64-90 be accepted. Mrs. Douthit and Mr. Weinberg indicated they would not second the motion as there should be some compromise. There was no second to the motion.

Mr. Gillette stated he has no animosity with his neighbors, as he has lived there 28 years and has never had any trougle but this family is encroaching with their noise, and they have children who are noisy and they entertain until two in the morning and his bedrooms are on this side of the house and this is only two feet from his bedrooms.

Mr. Ilyinsky restated his motion to uphold the Architectural Commission. Mr. Heeke handed the gavel to Mr. Ilyinsky to chair the meeting and seconded the motion. On roll call, the motion carried unanimously.

B. Variances, Special Exceptions and Site Plan Reviews:

New Business:

New Business

Var. 38-90

1. Variance No. 38-90 - John and Chandler Mashek, 1290 S. Ocean Blvd.; to allow that portion of the front garden wall which is situated 25' from the center line of S. Ocean Blvd. to have a total height of 7' measured from the crown of the road, in lieu of 4' as permitted by Sec. 5.36 of the Town Zoning Ordinance. R-AA District. Attorney Frank Chopin addressed the Council on behalf of the Masheks. Mr. Chopin stated this wall is further set back from the street and is the same height as the wall of the adjoining property. Mr. Moore advised the staff has no objection to the application providing it does not exceed the height of the neighboring properties.

Motion was made by Mr. Ilyinsky to grant Var. 38-90. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Var. 39-90

2. Variance No. 39-90 - Eugene Applebaum, 325 Via Linda; to allow construction of a single family dwelling on a lot fronting 71.20'. in lieu of 100' required. R-B District. Mr. Eugene Lawrence, Architect, presented the application. Mr. Moore explained they have no objection as long as the applicant agrees there should be no other variances sought in the construction of this new house. Mr. Ilyinsky moved that Variance No. 35-90 be approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Var. 40-90

3. Variance No. 40-90 - Curtis Kelly, 227 Park Ave.; to allow conversion of required garage parking (per Section 6-21)(f) into a painting studio. R-C District. Tom Stetts representing the applicant addressed the Council, requested the variance indicating the existing structure is in very bad need of repair due to carpenter ants and termites and they were reluctant to do those kind of repairs as this cannot be used as a garage as their cars just will not fit into it and the applicant wishes to make it into a studio. He stated this will match the other side of the property as that was converted to an efficiency apartment some ten years ago and this will allow architectural symmetry and balance, which will enhance the property value. He would be happy to provide a restrictive covenant that if in the event the property is sold, the new owners would have to use it as a painting studio or convert it back into a garage. Mr. Heeke asked if they would be willing to have this restrictive covenant with regards to living accommodations? Mr. Stetts indicated they had designed a kitchen into this area and have removed it to prevent that from happening and it is now a storage area as they were advised that without a kitchen it could not qualify as a living space. Mr. Heeke asked if they would have a deed restriction that this could not be used for additional living space. Ms. Kelly stated she would provide such a deed restriction. Mr. Ilyinsky asked if the cars they have would now have to be parked in the street to which Mr. Stetts responded they currently park their cars on their side of the driveway.

Mr. Moore indicated the staff finds the fact that even with a deed restriction, this owuld require a variance to make a legal transition from a studio to a living unit as it is now and a further variance would be needed for density. He stated another problem they have is the twin apartment on the other side which has been converted as they have no record of it being a living unit as in this high density area which has no parking, staff would have to object to this application as there is no hardship.

Mr. Heeke asked about the hardship. Mr. Stetts stated the only hardship is that potential buyers, when they inspect the property ask if they can do the same thing on this side as was done with the other side and their response has been they simply do not know and that has discouraged buyers; and additionally, they cannot fit their cars into the garage. Mr. Moore indicated the hardship cannot be that they can't sell the property. Mr. Heeke agreed stating the street has been upgraded and they have to protect the other residents. Mr. Stetts stated he doesn't wish to represent it for sale as a living unit but a more facile use of the space would be a painting studio or a den and it should be acceptable to buyers.

Mr. Moore stated that troubles him if they are talking about granting a variance to assist them in selling their property.

Ms. Kelly indicated she doesn't consider it a hardship to have the garage but thinks the hardshp is that she has a small house and there is no other place where she could paint and that is why she would like to have this particular room converted.

Mr. Ilyinsky moved the variance be granted and the hardship exists because the garage is very small and a reasonable size car cannot fit into it and there be no kitchen facilities installed and a deed restriction prohibiting the use of the property for additional living accommodations. Seconded by Mrs. Douthit. Mr. Moore advised they could not use the grant of this variance to come back at a later date and ask for a carport or a garage. On roll call, the motion carried 3-1 with Mr. Heeke voting against the motion.

Var. 41-90

4. Variance No. 41-90 - Arthur Meyer, 1040 N. Lake Way; to allow construction of a second floor above the garage providing a 27' front yard setback, in lieu of 30' required; and providing a 10' side yard setback, in lieu of 15' required. R-B District. Mr. Lindley Hoffman, Architect, addressed the Council requesting the variance to extend the existing second floor over an existing garage which is non-conforming and the reason he would like to extend it over the entire garage is to balance architecturally the facade of the extension with the facade on the other side. He stated this area will be an extension of a roof over the garage and it will not be habitable and will be used for storage.

Mr. Moore indicated staff has no objection but asked Council if they approve this, to condition the approval on the fact they not return for piece-meal variances. Mr. Heeke noted this is a minimum variance. Mr. Ilyinsky moved for approval subject to the condition that they will not return for additional variances. Seconded by Mr. Weinberg. On roll call, the motion carried 3-2 with Mr. Heeke voting against the motion.

Var. 42-90

5. Variance NO. 42-90 - Richard Danton, 342 Cocoanut Row; to allow construction of two swimming pools providing a 5.5 side yard setback in lieu of 10' required and provide a 5' rear yard setback in lieu of 10' required. R-C District. Architect Steve Johnston of SKA Architects addressed the Council on behalf of the owner, requested the variance. Mr. Heeke noted they are reducing the density by three units. Mr. Moore indicated the removal of the density is not a hardship, however the hardship is a small lot and the intensity of use reduction is a favorable factor and staff has no objection but would suggest the pools be fenced and landscaped properly, to which Mr. Johnston agreed. Motion was made for approval by Mr. Ilyinsky providing the condions that there be a six foot wall with landscaping. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Var. 43-90

6. Variance No. 43-90 - Seymour and Rhoda Cole, 233 List Rd.; to allow construction of an addition to a non-conforming residence that has a lot coverage of 33.6% and proposes a 35.2% lot coverage, in lieu of 30% maximum permitted. R-B District. Mr. Heeke indicated he had a conflict on this as his partner represents the Coles and he left the meeting, turning over the gavel to President Pro Tem Ilyinsky. Mr. Moore reminded this will need an unanimous three votes. Mr. Randolph stated that the applicant should be informed that there will need to be a unanimous vote and if she wishes, she can have this deferred to the next Town Council meeting. Mrs. Cole addressed the Council, asking to increase a den to 12 x 12 to permit the family to congregate in this room as when the house was built, 35% was the lot coverage and she needs only 111 square feet additionally, to extend a room six feet to accommodate her family when they come to visit.

Mr. Ilyinsky explained if this sort of thing was allowed for every single house in this Town, before the zoning was tightened up, there would be constant building and there would be no air or sunshine circulating.

Mr. Randolph explained if there was one adverse vote today, she would not be able to come back to the Council with the same application for one year and perhaps she would want to wait so that she can present this to a full Council.

Mr. Moore explained the staff objects to the appliction and finds no hardship and it would be better for her to consider a small reduction in the size of the addition which will confine it to the existing footprint of the house.

After further discussion, Mr. Weinberg moved this matter be deferred. Seconded by Mrs. Douthit. On roll call, the motion carried 3-0 (Mr. Heeke was out of the room).

Var. 44-90

7. Variance No. 44-90 - Lorraine Rattinger, 235 Seminole Avenue; to allow erection of a carport awning providing a six foot side yard setback in lieu of ten feet required. R-C District. Mr. Moore explained this is an application for a carport and they need a variance for a side yard setback as she is four feet short of the ten foot required. He indicated the hardship is that the wall exists and if this was relocated, there would be a maneuvering problem with the driveway. He suggested if this is approved, a condition be placed on the approval, that the structure remain an open carport on all sides. Mr. Weinberg moved for the approval of No. 44-90, having been to the property in question and saw the difficulties involved, with the provision the sides are kept open. Mr. Ilyinsky passed the gavel to Mr. Weinberg to chair the meeting and seconded the motion.

Mr. Moore noted there are three council members voting on this and the vote will have to be unanimous and asked the applicant if she may wish to defer. Mayor Marix suggested they wait until later to consider this as Mr. Heeke will be returning to the meeting. The maker and the seconder withdrew the motion and their second.

Ten minute break was taken.

President Heeke called the meeting back to order.

Mr. Weinberg moved for the approval of Variance No. 44-90. Seconded by Mr. Ilyinsky. On roll call, affirmative votes were cast by the maker and the seconder of the motion. Negative votes were cast by Mrs. Douthit and Mr. Heeke. Mayor Marix broke the tie and voted for the approval. Motion carried 3-2.

Var. 45-90

8. Variance No. 45-90 - Stewart Subotnick, 1 Sloan's Curve Drive; permission to raise the height of existing interior wall along north property line by four feet thereby exceeding the 7' maximum height allowed. PUD-B District. Mr. Pandula addressed the Council for the applicant requesting the variance. Mr. Moore explained the issue at the Townhouse in question had a great deal of discussion when this was originally considered by the Mayor and Town Council during the PUD application with regards to light and noise and it was decided that the walls and landscaping would be adequate at that time and that evidently is not the case as it doesn't take care of the noise and the oncoming headlights of the south bound traffic. He understood that it will not be seen through the massive landscaping which is currently in place and staff has no objection, but asked if this is granted that a condition be placed on this that the Council's designee approve the landscaping in place to assure it is adequate to achieve the sightscreening as this is very visual and it must be totally hidden by landscaping and if the existing hedging is not sufficient, more hedging be added.

Mr. Heeke asked if there could be a precedent set for the properties further to the west. Mr. Moore believed that this could be the case and will be looked at quite drastically by the staff if there would be an application in the future and this granting should not be considered a precedent for granting any further beyond the Townhouse. Mr. Heeke recalled there was another application that came in for this area which was withdrawn.

Mr. Weinberg knew this was probably the most dangerous curve in the Town and there is a lot of noise there with the creeching of brakes and he would move for approval subject to the conditions that Mr. Moore be the designee to approve the sight screening and landscaping. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Spec.Excep. 9-90

9. Special Exception No. 9-9 with Variances - Tollman-Hundley Development Corp., 353 Chilean Ave.; to permit supplemental parking for the Chesterfield Hotel pursuant to Section 6.21 (d) (2) of the Town Zoning Ordinance. Variances requested are to provisions of Section 6.21 (d)(2) in that supplemental parking may be permitted only after required parking has been provided, and a Variance to Section 6.21 (A.1) to allow tandem parking. Attorney Ray Royce on behalf of the Chesterfield Hotel addressed the Council. He stated the Special Exception is to allow a parking area south of the hotel property located on Chilean Ave., with an entrance for the parking lot onto Cocoanut Row.

Mr. Royce advised parking is an allowable use in the RC zone and the variance requested is to allow supplemental parking, or 36 spaces without first providing the required 76 spaces as they wish to move towards conformity and not be required to first provide the required parking.

Mr. Royce gave a history of the hotel indicating it was constructed in 1925 and told of the ownership through the years and now is owned by Tollman-Hundley Development Corp. He stated the property south of the hotel upon which they propose to build the parking facility was used by the hotel many years ago for a garden area and shuffleboard courts and there still are remnants of the courts, however, the property did become separated from the hotel property in the late sixties. He indicated the hotel now only has four parking spaces and parking for their guests is on-street parking.

Attorney Royce knows the Council does not wish to set precedents for parking, but parking is an allowable use in this area, and he does not think they would create any precedent situation.

He exhibited a drawing, noting the existing single family home has been deleted from the application, as it has been determined they can provide the adequate setbacks and they now seek a parking lot approval with the entrance on Cocoanut Row, with a sixteen foot driveway and the second variance was for tandem parking and they will provide 36 parking spaces on the lot with a 25' setback from the property line and from the curb, there woul be 35' and they will erect a six foot wall across the front of the property with landscaping with trees in the front so that from Chilean, it could not be seen. He reported there is an existing six foot wall along the eastern side of the property and on the neighbor's side of that wall, there is extensive shrubbery and on their side of the road, there is a thick collection of Royal Palms, Eureka Palms, Sable Palms which is landscaping already in place and they will preserve that landscaping. He reported on the rear, they will provide extensive buffering as there already is a chain link fence with extensive shrubbery already in place in the rear of the hotel.

Mr. Royce felt the Special Exception meets all the requirements of the Code as they have provided good buffering, good access control and would remove cars from the street which would be in the best interest of the community. He stated the hardship is their difficult situation of 63 rooms, which has been reduced and they have further plans for the reduction in rooms but at 1.1 parking spaces per room, they would have to provide 70 spaces and there is no possible way they can provide that number of parking spaces in this particular area. He asked them to keep in mind this was built in 1925 and the circumstances are such that the hotel has been made non-conforming both as to building and to use by virtue of the passage of zoning codes over the years and with the passage of time, these new standards have made this a difficult situation, however if they wish to preserve this old hotel certain allowances will have to be made, and they view the lack of parking as a hardship. He reported they now use valet parkers with the parking on teh street and this must be an inconvenience for the neighborhood, and due to the time limit restrictions on parking, cars are constantly being shuffled.

Spec.Excep. 9-90

Mr. Royce felt the granting of the application would not be injurious to anybody in the neighborhood or to the community as a whole and it would be an asset, as it would help mitigate a situation now existing in terms of traffic and parking and would be in the public interest.

Mr. Royce submitted a petition from the neighbors with 72 names who are in favor of the granting of the application. Mr. Royce submitted two letters of approval from Mr. Boyce, a long time member of the community and whose family owned the hotel and from George Matthews, a former Town Council member.

Maurice Shawsin, operator of the hotel then addressed the Council requested the granting of the application. He reported in order to bring this to the Town Council, they will expend in excess of one and one half million dollars to acquire the property, noting that if this was developed as apartments, there could be approximately 30 people living on the property. He stated they have reduced the density of the hotel and by the end of the year, the density will be down approximately 19% from the time they have acquired the property, and requested favorable consideration.

Mr. Moore understood there was a reduction in units and asked how many they had deleted? Mr. Shawsin responded they have taken away three and have plans for nine more, which will be done prior to the parking lot being installed, if this is approved.

Mayor Marix asked how many cars were now scattered all over the streets? Mr. Shawsin advised this plan will take 35 cars off the street. Mayor Marix asked if that was a large percentage of what is now on the street to which Mr. Shawsin responded affirmatively and this lot will take care of most of the parking. He reported they are evolving a system whereby they will be bussing in employees from a lot in West Palm Beach, so their employees; cars will not be on the island.

Mr. Weinberg asked what will happen to the building which is now on the property? Mr. Shawsin advised in order to get the ingress and egress into the property, they will remove the two story garage which is now there and all that would remain is an existing two story residence. Mr. Weinberg asked if this was going to be used by the hotel? Mr. Shawsin responded it is the Boyce family who resides there now. Mr. Weinberg asked if it would be used for a hotel apartment house to which Mr. Shawsin responded negatively.

Mayor Marix asked where they would park their cars if the garage is removed. Mr. Shawsin responded the Boyce family will not be staying there so there won't be anyone living there.

Mr. Moore advised the garage is in conflict with what has been proposed. Mr. Moore gave the staff comments: Police Department support the vehicle parking lot as this would remove vehicles from the street. Mr. Moore stated Public Works Department reports there is a conflict with the utilities for the two story house, so an easement would have to be granted. Mr. Moore noted the Town Manager has some concerns on the valet parking specifics and the access to parking. He stated the Building Department feels if the application is found to be in proper order, the Building and Zoning staff feels if this is granted, there be valet parking required as a condition because of the tandemn parking condition and the necessity of having this lot operated by the hotel.

Mr. Moore stated he had other concerns and read from his letter dated August 10 to the Mayor and Town Council noting this is similar to the Charley's Crab application, although there are some differences, one being it is in the R-C Multi-Family Zoning Diestrict whereas Charley's Crab was in the R-B Single Family District. Another difference is the proposed reduction in hotel units, as the hotel is asking for accessory use parking with a minimum variance in concert with reducing the existing non-conformity. He stated the existing single-family house should be removed and more of the required parking provided; however, if the house is permitted to remain, there should be deed restrictions put in place which would preclude the house from ever being used in conjunction with a hotel, as the use for the house for hotel purposes would constitute an expansion of the non-conforming use, which is prohibited by the Town's Zoning Ordinance. He stated the staff does feel the on-site parking would dramatically improve the parking and traffic congestion in the area and provide the Town and surrounding neighbors with a direct benefit and recommends approval with those conditions.

Mr. Royce stated the house is not a non-conforming house, but the hotel is what has the non-conformity. Mr. Adrian Winterfileld addressed the Council who disagreed as he felt there was a non-conformity being created as if the house had a garage and the garage is being demolished, the house without the garage does become a non-conformity. Mr. Royce stated the garage is not being used at the current time although there is a garage apartment. Mayor Marix stated they are reducing the density by removing the apartment. Mr. Royce felt that due to the condition of the garage, it would be a benefit to have it demolished as it is not in good shape.

Mr. Moore reported there is ample room on the property to place the garage right off of the engrance to Chesterfield's parking lot, however, it is the staff recommendation that the house be demolished, however, if the Council doesn't see that as a problem, he would recommend as a second alternative that by deed restriction, the use of that house by the hotel would be precluded without question.

Mayor Marix asked what they could do with it? Mr. Moore advised it could be sold or rented, but not as a part of the business of operating the hotel. Mayor Marix thought it would be a shame to sell it, as one day the hotel may decide to remove the house and then they would have the room to put in more parking. Mr. Moore further reported the use of the house would be precluded from being the manager's home or rented in any way or a barracks for the hotel.

Attorney Randolph advised that part of the problem arises from the statement the Mayor made and he could see them using the house to off-set part of the expense and at the point that is done, it would be obvious it is being used in conjunction with the hotel, as it is the hotel that would be running it. Mayor Marix did not view it as a financial thing, as they own other hotels. Mr. Randolph believed a different organization would be formed to own the house, but he has difficulty in seeing how it could be used without being termed an expansion of a hotel use, if it is being advertised by the hotel for rental. Mayor Marix stated it would be held by the holding company. Mr. Randolph felt it was a legitimate consideration by the Council to inquire if the house would be rented out in conjunction with the hotel to defray expenses. Attorney Royce understood the property would be acquired by a different corporation and not by the same entity that actually owns the fee simple to the hotel. He agreed with the Mayor that it would be better that it didn't get sold off so that at some future date, it could be utilized.

Mr. Shawsin assured the Council the ownership will be in a different name but he wished to stress the fact that they do go out of their way to fully understand the Town's positions and are genuine in what they are trying to do. Mrs. Douthit was glad to see them taking some of the parking off the street. Mayor Marix felt it would be a tremendous help for the neighborhood as over the years, she has received many complaints about the parking in this area and since the present owners, those calls have diminshed significantly. Mr. Heeke indicated he will not be voting on this matter as his firm has represented the applicant in the past, and out of an abundance of caution, he will declare a conflict. Mr. Heeke advised the applicant they would have to have three affirmative votes from the Council to approve it.

Spec.Excep.
9-90

Mr. Royce appreciated Mr. Heeke's view on conservatism on these matters, however, he understood Mr. Shawsin asked the firm some years ago for some information which was provided and there was no legal fee paid and no formal attorney/client relationship. Mr. Heeke advised there was an opinion rendered for which the firm would be responsible and he will not be voting on this matter. Mr. Royce felt they wanted to proceed as they had a time problem.

Mr. Ilyinsky felt if Mr. Royce was willing to accept the conditions as set out in Mr. Moore's memorandum, he would move the application for Special Exception No. 9-90 with variances be granted, however, the deed restriction, subject to the Town attorney's approval should be put in place to preclude the house from ever being used in conjunction with the hotel as the use of the house for hotel purposes would without question be an expansion of a non-conforming use which is directly prohibited by Town Zoning Ordinance No. 2-74. Mr. Moore asked if a Unity of Title could be added to the motion adn that the present garage be demolished and a new garage built to replace it, which could be a one car garage.

Attorney Royce stated his concern about the motion, as they took the house out of the application, after consultation with staff so it would no become a bone of contention, so the house is not before the Council today in any sense at all and is not part of the application and he suggested that house could be used like any other house in the area and that would be whatever the oridnance provides which would allow a house to be rented a minimum period of three months or less than three months, three times a year. He felt what was requested would raise new requirements which would not be applciable if one person bought the house. He agreed to put a one car garage there, so it will be a conforming house. Mr. Moore pointed out hte difference here is if a private citizen bought it they should not be using it as an expansion of non-conforming business in a residential zoning district so it is a different issue that is before the Council and the only reason the application if before the Council is that the Town Attorney ruled this was not an expansion of a non-conforming use and the staff supported that legal opinion with the caveat the house be removed which would involve deed restrictions for the house, not the land, for the use of the house in the future which would not preclude them from coming back to use the property in the future if they wished to demolish the house and that it not be under the same ownership.

Attorney Randolph clarified that he did not make the determination that this was not an expansion but felt it was a fact question which needed to be determined by the Town Council and the reason it is before Council is not a legal determination that what they are intending to do is an expansion of the non-conforming use but he ruled that that was a factual determination for Council to make the determination as to whether or not this is a non-conforming use and if they feel it is not, they can act on the application. Mayor Marix viewed this as a reduction of the non-conforming use.

Mr. Winterfield understood that the part of the lot on which the parking lot will be located is where the house is located and if that is the case, he didn't think they could not rule on this without including that portion of the lot. Mr. Royce explained there are eight lots of 25', or a total of 200 front feet on Chilean Avenue and what they did was made a determination there would be certain setbacks for the house and it was decided that the west 95' would remain with the house and they would only need a northern strip where the driveway would enter off Cocoanut Row of approximately 16' and they deleted the northern 16' and the western 95' from the legal description of the eight lots, so essentially they are using the balance which has been duly advertised and they carved out the house itself from the legal description. Mr. Winterfield asked if the applicant already owns the property, there could be no problem, but if not, the owner should be joining in the application at the very least. Mr. Royce advised they are not the owners at the present time, but do have a consent form from the owner which was filed with the application.

Mr. Moore reiterated that if this is approved, prior to the demolition of the existing garage, a permit should be obtained to construct a new garage; however, it is the staff's recommendation that if the house remains, they place the deed restrictions on the house, not the land and that should be part of the approval.

Mr. Shawsin advised they could build apartments on this paroperty and there will still be parking and traffic problems in the neighborhood. He exhibited photographs which showed this land was a part of the hotel for forty years and as far as expansion is concerned, they have reduced their density and continue to do so as they are sensitive to the Town's needs. He reported they will reduce the density but wish to have the house on the property as in the spirit of openness, they are not paying cash for this but are getting financing but if this is riddled with deed restrictions, they won't be able to do so.

Mr. Shawsin felt they had to have the property unencumbered and they do not intend to add hotel rooms. Mayor Marix wondered if there were no deed restrictions and the house is on one piece of land with no deed retrictions and the house is on one piece of land with th deed restrictions, but there was no way the hotel can use it, as it is a single family use and she didn't believe they could use it, even though there was a deed restriction. Mayor Marix stated they could use it and that is part of the problem, as the problem is they would interpret the Ordinance to say they owned a single family residence and they would say they could rent it out as a business concern. Mayor Marix recalled they stated it would be a different name. Mr. Moore responded it cannot be operated through the hotel and that is why he recommended a deed restriction.

Mayor Marix wondered if they could put the hotel on notice by stating they are allowed to have this parking lot as long as they reduce density, so any future owner would be on notice that they could not expand. Mr. Moore asked the Attorney if a deed restriction would do the same thing? Mr. Randolph responded it would not give the protection the Council initially asked for, however, the motion should indicate there will be no further expansion of the hotel and if there is, they would be in violation and perhaps would lose the parking.

Mr. Moore asked if it could be in written agreement form in lieu of the deed restriction? Mr. Randolph agreed stating it should be recorded against the hotel property. Mr. Shawsin asked the attorney to repeat the recommendation. Mr. Randolph noted it is not the recommendation of the staff but an alternative brought up by the Mayor that rather than encumber another property, it should be clear that on the application before the Council, this Special Exception and variance is being granted on the basis that the Council had made a fact determination that this is not an expansion of a non-conforming use but in fact a reduction of a non-conforming use and that it is being granted subject to their being no further expansion in the future of the non-conforming use and if it is, the application can be voided.

Mr. Moore noted this Agreement would have to have the approval of the Town Attorney.

Mr. Ilyinsky amended his motion that the application for Special Exception No. 9-90 with Variances be granted conditioned on the fact that when this was reviewed by the Town Council, they made a fact determination that the granting of this application was not an expansion of a non-conforming use and there would be no further expandion in the future of the non-conforming use and if so, the Special Exception granting would be voided. Mr. Moore asked if the additional conditions be considered which are the requirement there would be valet parking and an easement be granted from the Chesterfield Hotel to the single family residence for the sewer connection. Mr. Heeke asked about the Unity of Title with the parking lot? Mr. Ilyinsly amended his motion again to include as a further condition there be a Unity of Title and the garage replacement be issued a Building Permit prior to the demolition of the existing garage. Motion was seconded by Mr. Weinberg. On roll call, the motion carried unanimosuly with Mr. Heeke abstaining.

Other

C. Other

Specimen Trees

1. Request by Harold G. Maass, Attorney, to Cut Down or Remove Specimen Tree Designations for two Specimen Trees (One Banyan Tree and One Buttonwood Tree) at 446 North Lake Way. Attorney Rob Maass addressed the Council representing Susan Phipps Eigelberger, who requests the two specimen trees be de-designated or in the alternative, the applicant receive permission to remove them. He exhibited an aerial photograph which showed the canopy of the trees. He stated the banyan was designated as a specimen tree in 1974 and at the time of the designation, his father objected to the designation on behalf of the Phipps' family. He stated the buttonwood was designated in 1987 and Mrs. Eigelberger objected to the designation of that tree as well.

Attorney Maass stated the problem is the banyan tree so dominates the property as to make it unarketable. He stated they have a contract pending on the property currently and the buyer will not close as long as that tree remains, as it would be virtually impossible to design a house to make use of the lot. He stated the buttonwood presents a lesser problem from an overall development perspective, but the applicant has required under the contract that the buttonwood tree also be removed as he has designed the residence that the view from the pool would go right through this tree and that is a concern. Mr. Maass felt the banyan tree causes the greater concern. He reiterated there is a contract pending and time is of the essence but he wished them to know this problem will not go away.

Mr. Maass knew that when the Ordinance was adopted, it was contemplated there could be exceptions granted and a review of the minutes show the Town Attorney, Elwyn Middleton, advised there could be grants for relief to this Ordinance. He felt it was never contemplated the Ordinance would stand in the way of development of a piece of property where a tree was situated which made it impractical to develop the property or construct a residence which made adequate use of the land.

Mr. Maass felt the hardship was very unusual and unique as in most cases, the tree made it an impossibility to be develped and they are here today because this is the first time the property has been put on the market and he believed they are entitled to the relief requested on the merits. He felt without question to allow the tree to remain would force dedication of this property as a park as there could be no other reasonable use made of the land, nevertheless, the applicant understnads the Town's concern with maintaining public benefit with the preservation of trees which are of particular interest. He felt they were in an unusual position of having a controlling property nearby which has an identical species of banyan trees and they are able to offer them for designation as alternatives to the banyan tree which is on the lakefront piece of property. He stated two of these trees are at 450 North Lake Way, one being along the southern end of the property along County Road and he exhibited a picture showing a similar root development and it has a large canopy. He stated the other banyan is also along N. County Rd. on the northern end of the property and it also has a special root structure which have grown over the wall which is along the eastern boundary of the property. He stated it also has a large canopy. He indicated the Town's horticultural consultant has looked at both of these trees and found them to be of specimen quality.

He felt it was important to note that these two trees are reversible as they are located along the roadway and are open to public view whereas the existing designated banyan is not visible from Lake Way although is visible from the Bike Trail.

Mr. Maass also pointed out that Mr. Haehle concluded the two trees although not individually equal to the existing designated banyan tree, taken as a whole, approximately do equal the North Lake Way tree. Mr. Maass felt they were effectively offering an even trade.

He requested the Council to act on each tree independently as he felt they presented different issues.

Mr. Moore explained he and Mr. Dusey have written memorandum to the Manager on this subject and the Town has requested two experts to look at the trees and address the Council on these issues.

Mr. Moore explained the proposed site plan is within zoning compliance for the development of the property and after visiting the site, it was determined the location of the designated banyan tree would have to be removed, however, the buttonwood would not interfere with construction. He stated this property will support two single family residences and there is a possibility they can designate the two banyan trees on the main Phipps' property directly across the street, along the wall, one north and one south of the main entrance, which could be visible along N. County Road and from the Bike Path.

Mr. Dusey indicated there is another alternative which has not yet been discussed and that would be to remove the tree. He stated Mr. Hoyt has written a report on this and there is a fair chance of success that the tree could be moved. Mr. Hoyt addressed the Council indicated if the tree is moved, it would be best moved to some place on the site. He stated they have discussed moving it across A-1-A, but there would bea grade change and it would be difficult to move and it would have risks. He reported there are trees similar in size which have been successfully moved and basically with a good amount of heavy equipment and sliding a large metal plate underneath the tree has been done, and this is to avoid damage to the tree itself. He explained the move would take a week to ten days and it would need special irrigation, as it is moved inches at a time and the main problem during a move is toppling over. He felt that species wise, it is a tree that can be moved and could tolerate the move tne probably could survive, but there is some risk of fungus and infection.

Attorney Maass asked what the cost of moving the tree would be to which Mr. Hoyt responded it is based on the equipment that needs to be used and the weather conditions, and it would run approximately between $60,000 and $70,000. Mr. Maass stated it is difficult to imagine where a tree of this size could be relocated on the property and still allow reasonable development.

Mr. Robert Haehle, Horticulturalist, addressed the Council, indicating he has viewed the tree and it is a magnificent tree, but it is located on the center of the lot and would make it difficult to build a house there. He did visit the Phipps Estate property to see if they could discover any other banyans, there are four located along North County Rd., two to the right and left of the entrance to 450 N. county Rd., and two others about sixty feet north and south of the entrance. He stated the trees immediately adjacent to the entrance are nice but do not have the vigor or form the other two do and it is his opinion the two trees away from the entrance would equal in volume and size the tree at 446 N. Lake Way and these trees would be more visible.

Specimen Trees

Mr. Haehle commented on the buttonwood tree which is about 150 to 200 years old and is a magnificent tree and it would be his recommendation this tree remain, however the branches are very low and it has some dead wood, but it could be trimmed which would be to the benefit of the tree and would also enhance the view for the proposed buyer, which he understood was the bone of contention.

Mayor Marix stated her concern that if the tree was moved, it may not live and then the Town wouldn't have any specimen trees, to which Mrs. Douthit agreed. Mayor Marix felt they are losing so many of the beautiful assets as people develop their properties and asked Mr. Eigelberger if they had any plans to sell other portions of the estate and asked if there was any way they could help the Town preserve that particular setting of the wall and the heritage with the lovely trees. Mr. Eigelberger indicated he has discussed this with his wife and there is a problem with the entrance as it is now as the gate is only large enough for one car and any further development, it would be a Town requirement that a Fire Truck would have to be allowed to get into the Estate and most of the requirements to develop would be PUD requirements. Mayor Marix suggested if it is developed, they could enter the property from Kawama and this wouldn't have to be the main entrance and she is horrified that this is not protected in any way nor are none of the trees along there. Mr. Eigelberger stated it is not just the wall or the two trees they are talking about, but in any development there would have to be a certain amount of green space as the ambiance of driving in there has great value. Mr. Eigelberger stated it is hard to put a letter value on something that they don't know what will happen in the future as eelivery trucks cannot use that entrance, but if something could be worked out with regards to the walls and the trees, they would be happy to do it. He stated he would be happy to give them the sections of the wall where the trees are located. He stated the south end of the property has been developed and those lots come off of Kawama Lane, so the wall and the south banyan should be okay, but he would have to defer to the attorney. Attorney Maass felt the Council should not view this as the only opportunity to examine the wall and the green space issue as there will come a time when the property is developed when there will be various developmental approvals which the purchaser would have to obtain. He stated the only specimen trees along this stretch are the two banyans as the banyans by the gate are not specimen quality, and although he recognizes the Mayor's concerns, he doesn't believe that is a matter which should be considered at this time. Mayor Marix did not agree as so many of the things that have happened in the Town have sadly happened because it wasn't recognized on a timely basis and the opportunity of doing something escaped. Mr. Maass understood her concern but felt the risk of the Town not having an opportunity to address these issues later is remote. Mr. Heeke did not agree as they have entered into a contract and the problem on the trees wasn't addressed before they entered into it.

Mr. Eigelberger advised before he entered into the contract, he had been in touch with the Building Department and had a letter from them that they could cut down any tree on that lot. Mayor Marix believed there was an address problem. Mr. Maass agreed a mistake was made based on the property address, but it is wrong of them to state that this wasn't considered before the contract was signed. Mr. Moore indicated they have many returned pieces of mail from the property owner. Mr. Maass did not think this was the time to discuss that matter but he wanted them to know this issue was discussed before the contract was entered into, and it is something that has to be addressed, but he would like to leave it at that.

Mr. Haehle felt this was a precedent setting matter and he wondered if a certain amount of land could be allotted to them because of these trees' unusual habit of growth, which could be a horticultural safe area or something of that nature, so they can remain an asset.

Mrs. Beth Summers speaking for the Garden Club addressed the Council and objected. She has spent a lot of time on ordinances trying to protect the historic and specimen trees and believes they are rushing this issue as there should be no problem in moving the house around on this lot as this has yet to go to the Architectural Commission. Mr. Moore stated he has looked at the sigint of this house and it is within the rules and regulations of the Zoning Ordinance. Mrs. Summers did not believe they needed to install a tennis court and the tree can stay where the tennis court is proposed to be placed. She recalled this ordinance has been challenged before and that was the Mysore Fig at the Royal Poinciana Shopping area, so the Ordinance can hold up. She thought an alternative may be to move the tree and in that way, there may be a chance that the tree could be saved. She believed in the Ordinance which states the Town Forester, the Garden Club and the Town Manager are to be notified of anything that is going to be done to the trees and she had not received any notice on this matter so procedure was not followed properly. She hoped they would take into consideration that this particular tree is one of the best specimen in the Town and hoped they would not grant the request to have it removed.

Mr. Maass pointed out the Garden Club is named in the Ordinance when a tree is being designated but the Town Council makes the decisions on the removal of a tree. He felt as far as precedent is concerned, one of the principal advantages of the proposal today is it doesn't set any negative precedent, although they are dealing with a de-designation or the removal of an existing designated tree, but as a condition they are willing to accept the designation of two trees which are identical species and in the opinion of the Town's horticultural consultant, are specimen trees. He understood there is value to the tree which has been designated and he doesn't mean to deny that it provides benefit to the public, but at the same time its very presence on the property prevents the property from being sold and rendered the property unmarketable and a property owner does have the right to make reasonable use of his land and is offering the public equal compensation with the offer of the two trees to be designated.

Mayor Marix stated her worry that if the tree is allowed to be moved, it may die and then the Town would have nothing. Mr. Maass felt that in addition to the possibility of losing the trees, there are other risks associated with moving the tree, such as toppling or bad weather which raised difficult issues.

Mr. Lesley Smith asked if they were now discussing the banyan tree and the buttonwood tree? Attorney Maass agreed the buttonwood doesn't present the same difficulties as the Banyan tree, but he was hoping the prospective purchaser may acknowledge that he will take the property without removing the cottonwood, but he has not acknowledged that, therefore this issue has to be put to the Council.

Mrs. Douthit felt if the buttonwood was trimmed, he would have plenty of view and it would be her recommendation the buttonwood should remain. Mr. Moore stated the proposed development and the structures will not interfere with the buttonwood tree and that tree is not being recommended for de-designation or removal and what was recommended it be trimmed but staff does not support the elimination of the buttonwood tree. Attorney Maass indicated the buyer has told them he would not accept the presence of the buttonwood, so they have to ask the Council to treat this as a separate issue.

Mr. Heeke felt if one was granted and one denied, they still might be in court over the issue and he thought if they were going to be in court, they should be there over both these issues. Mr. Maass felt in all practicality, he is hopeful to be able to convince the buyer that since the tree can be trimmed to give a view, they may be able to convince the prospective buyer to accept the buttonwood. He knows they cannot sell this property to anyone so long as the banyan remains. Mr. Heeke asked if he would abandon any rights he might have to the Council with respect to the buttonwood tree if the designation was changed to the other banyan trees along North County Road. Mr. Maass stated he was concerned that if they gave up rights with regard to the buttonwood, that it may affect their position as they are different issues in terms of whether or not this property would be acceptable to the prospective buyer if the buttonwood is there versus the banyan being there. He felt there were differences also in their ability to protect their interest in the contract, as the practicality of the situation that the buttonwood will remain an issue, as the central problem is the banyan and although they are not certain, they are confident that they can work with the buyer in such a way that the contract will be able to be closed, if they get the requested relief with regard to the banyan.

Specimen Trees

Mr. Heeke stated his point is either he has or doesn't have a sale and he may be forced into litigation on the buttonwood tree alone and this may not be his choice. Mr. Maass agreed but felt they would be in a different position if the Council simply votes it down as opposed to their voluntarily withdrawing the buttonwood or throwing it into the package. He felt the marketability of this lot was much more dependent on the banyan being removed, than it was on the buttonwood.

Mr. Maass felt it may be at the point to consider whether the Town is asking for more in return from the applicant than is justified under the circumstances and from the very beginning, they have tried to come up with a proposal which they felt met the Town's concerns in a responsible manner and they would like to see the Town accept that with the good faith they have shown. Mayor Marix stated no one is questioning the good taste of the Phipps or the Eigelbergers but when you look at the buyer who wants to buy the property and the first thing he wants to do is cut down a specimen tree because it is in the way and then cut down the buttonwood because he wants a view and these opinions are very different from what she considered appropriate and if they were going to stay with this forever and that property would never be sold, and the Council stayed on forever and if those things did not change, there would be no worry but things do change and that is what she is concerned about; as it is not to get more than a pound of flesh out of them.

Mr. Maas stated the two banyans are the only two specimen trees along North County and the others just provide green space but they are not specimen trees. He noted when it becomes time to develop that property, there would have to be site plan approvals and to restore the non-specimen ficus will not be a difficult requirement to impose. Mr. Heeke stated when he drives between Wells and Miraflores, it is still one of the most significant drives anywhere and it isn't just one or two trees but the overall appearance and that is what they are talking about and he believes this is a legitimate concern. Mr. Maass agreed but felt if the Council wants to, they can impose conditions on developmental approvals down the road to require anyone who came along and foolishly eliminated some of the trees which produce the background of the green wall, they could be replaced and the Council's real goal here should be to protect that which is noteworthy and deserving of preservation and if this wall is lost in other ways, it can be restored and that risk is not the same risk. Mayor Marix suggested perhaps the wall should be landmarked. Mr. Moore stated there is that possibility for landmarking, however he does have concerns which have been explained to Mr. Maass regarding the area the Mayor is talking about, but he would like to ensure that if there were two specimens there, it would provide some deterrent from the current owners of subsequent owners for consideration deliberate elimination of that green strip and suggested that perhaps in view of the fact we are getting two trees there and in view of the area surrounding the main entrance having two other trees even though Mr. Haehle feels they are not great specimens, it is an attractive feature of the green walled area and perhaps they would acquiesce to have those two around the main entrance also be designated rather than landmarking the wall and in that way, they won't have to move the tree and incur that expense. Mrs. Douthit noted from the correspondence from Mr. Haehle these trees have a mosaic virus. Mr. Maass felt there was no basis for designating those two trees as they are, on the basis of the Ordinance, not specimen trees and they may be lost, due to the virus.

Mr. Eigelberger advised the prospective buyer is scheduled to go before ARCOM this week, so he has invested a lot of money. Mr. Moore advised there are no variances required on this proposal. Mayor Marix asked if they offered the two trees for designation as specimen trees and if it were requested in the future that the wall be landmarked, would Mr. Eigelberger object? Mr. Eigelberger stated he could not respond as there are other parties involved but he would do as he always has done in the past, promote anything that has to do with landmarking, but he cannot assure them as he doesn't control the land. Mr. Maass felt there were many other issues, as if this is developed, there needs to be a couple of other entrances and they can't consent to the landmarking, but if that issue arose, there would be a more appropriate forum to discuss this.

Mr. Weinberg asked what the cost would be to remove the tree and cart it away? Mr. Haehle responded it would be in the neighborhood of $10,000.

Attorney Randolph stated he had a fear of trading a designation for a designation because in the future, the Town may be faced with the same problem and asked if the applicant would consider putting a deed restriction on the property so that any prospective purchaser would be precluded from removing the trees? Mr. Maass said if this could not be accomplished by having the deed restriction in the form of recorded notice that these two trees have been designated under and are subject to the requirements of the Historic and Specimen Tree Ordinance? Mr. Heeke and Mrs. Douthit did not think that was quite the same thing. Mr. Randolph agreed that the Council is looking for the trees to be maintained on the property and they don't to see anyone come in the future and remove them as specimen trees. Mr. Maass asked what was the difference between the deed restriction and the public notice that the tree is subject to the Town Ordinance? Mr. Randolph stated just the fact that someone comes in the future who states he didn't believe the Ordinance was constitutional and he would want to remove the trees and he viewed the Deed Restriction as giving more protection to the Town to see that the trees remain. Mr. Moore recalled in Mr. Haehle's report, he states when the trees reach their full maturity, they would be an even swap, and this would ensure that they would be allowed to reach their full maturity.

Mrs. Lesley Smith addressed the Council noting the Ordinance was adopted in 1973 just for this reason, to protect the trees and green canopy of this Town and a one hundred year old tree may be their oldest tree and a lot of people in Palm Beach hoped that this particular lot would stay the way is was because the trees were specimen and should not be touched. She felt there would be an outcry when the tree comes down as when the trees are covered by the Ordinance, it is expected that they will stay and the Council should back up the Ordinance which protects the trees. She thought if they granted approval, they should not de-designate the trees but merely give them permission to take them down as it will set a terrible precedent.

Mr. Randolph proposed that wording be in the deed restriction would acknowledge the fact that these trees along County Road shall remain on the property and shall continue to be maintained and it would not preclude trimming approved by the Town Council.

Mrs. Douthit moved that the buttonwood tree be preserved and not be de-designated as requested and it be continued in its present location; that the Town Council permits the designated banyan tree to be removed; and accept the two banyan trees on North County Road with deed restrictions that the trees would remain on the property as specimen trees. Seconded by Mr. Weinberg. On roll call, the motion carried 3-1 with Mr. Ilyinsky voting against the motion.

Deadline for Zoning Study Items

2. Reminder of September 1, 1990 Deadline for Submittal of 1990-91 Zoning Study Items. Mr. Heeke indicated he has been troubled about the number of requests there has been for Beach Houses as that means less and less view of the ocean and would like to see a moratorium on them and have the Zoning Commission study beach houses. Mayor Marix suggested they also study what is being built as many of them are not as beach houses used to be as they are air conditioned and probably have kitchens and perhaps what needs to be studied is the type of beach house which should be allowed in the future. Mr. Moore stated that item has been added to the list so it could be Zoning in

in Progress and this can be studied. Mrs. Douthit moved that Zoning in Progress be approved for the beach houses. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Winterfield addressed the Council noting the Code states the deadline should be October 1st. Mr. Moore agreed this was a voluntary deadline they had set upon staff for submittal of the study items.

Comprehensive Plan Implementation

3. Comprehensive Plan Implementation - Establish Date for Special Town Council Workshop Meeting to Promote Water Conservation Education (Suggest Nov. 13, 1990 at 8 AM). Mrs. Douthit suggested this be a special meeting as she felt the public would be interested and 8 AM may be too early. Mr. Moore stated this is in concert with the water conservation efforts as stated in the Comprehensive Plan and the South Florida Water Management District would be assisting them and it is an obligation we have made to the State of Florida and has nothing to do with the desalinization. Mayor Marix agreed that this involves the public and is too early at 8 AM. Mr. Heeke felt they have been having many special meetings and this pulls staff away from their duties and this is something that has been forced upon us by the Comprehensive Plan, however, he felt conservation was important and perhaps they could adjourn the Council meeting at a certain time, if the other members of the Council and the Mayor felt the eight o'clock hour was too early.

Mr. Moore recalled there will be several landmark cases to be considered at the November meeting. Mr. Heeke suggested they wait until September to set this meeting.

XIII. COMMUNICATION FROM CITIZENS:

Communication from citizens

A. Mr. Adrian Winterfield addressed the Council indicating he has many questions on the Ku Klux Klan matter, and recalled the Council ratified payment of $47,000 to the Town Attorney for his fees, of which approximately $9,000 related to this matter and invited their attention to the fact that this amount does not cover any items after the first of July and any time spent since that time will add to this fee. He recalled at the time this matter was originated, the Police Chief expressed his opinion and forgot he didn't have the luxury as a Police Chief to indulge himself in personal opinions and didn't know why the question was never brought before the Council, however knows why the Klan didn't bring it to Council as they wouldn't have been paid and secondly, there was the danger that Council may have granted the authorization for them to have the parade and it is obvious the main purpose in the application was to get publicity. He disagreed with the Town Attorney's opinion that there was a danger that the court would have imposed an enhanced attorney's fee, as before that can be done, the court must find that the time spent was necessary as well as other criteria and he did not believe that the attorneys for Ford would have prevailed.

Any Other Matters

XIV. ANY OTHER MATTERS:

Budget Hearings

A. BUDGET HEARINGS: Mr. Doney stated he will submit the dates for the upcoming County and School Board budget hearings to the Mayor and Council.

Recycled Paper

B. RECYCLED PAPER: Mr. Doney stated he plans to approve the limited use of recycled paper products. Mayor Marix noted it is very expensive. Mr. Heeke asked why they would want to utilize it at all? Mr. Doney stated some of the paper items are less in cost and this formally shows the Town supports the use of recycled paper. Mr. Heeke didn't believe they should be using it if it costs more. Mr. Doney stated the paper towels are available at a lesser cost.

C. DR. BARTON MOORE: Mayor Marix felt that Dr. Moore's contacts appear to be extremely helpful on the purchasing of plants and flowers. Mr. Heeke suggested perhaps he can be used on a case-by-case basis.

Mr. Joseph Ugi of the Public Works Department addressed the Council indicating he thought too it should be approached on a case by case basis as he is needed. Mayor Marix believed the work Dr. Moore did on the trees on County Road was extraordinary and she would like him to continue to give this kind of good advice. Mr. Heeke agreed and thought he should be kept as a resource.

Adjournment

XV. ADJOURNMENT. Meeting was adjourned at 9:35 PM.

Grace T. Peters
Town Clerk

Town Council Minutes of Sept. 5, 1990 on page 3035

TC Minutes of 9-11-90

TOWN COUNCIL MINUTES OF MEETING HELD ON SEPTEMBER 11, 1990

Roll Call

I. CALL TO ORDER AND ROLL CALL: President Heeke called the meeting to order at 9:30 AM on Sept. 11, 1990 in the Town Hall Council Chambers. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilwomen Douthit and Wiener. (Absent: Councilman Weinberg).

Approval of Minutes

III. APPROVAL OF MINUTES OF JUNE 11, AUGUST 14, AND SEPTEMBER 5, 1990. Motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky to approve the minutes with corrections.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was give by Mrs. Peters. Pledge of Allegiance was recited.

Approval of Agenda

IV. APPROVAL OF AGENDA. Agenda was approved on motion of Mrs. Wiener, seconded by Mr. Douthit with addition of I. Old Business, C - Other - Item 2 - Discussion on the Town attorney's letter on the matter of the Solid Waste Authority; XII B (1) Spec. Exception 6-90 has been withdrawn and B-2, Variance 46-90 - has been withdrawn and B-7 Var. No. 51-90 is removed from the agenda as it has been determined a variance is not needed and will be discussed under XII. C. 4. Motion carried unanimously for approval of the agenda with the amendments, on roll call.

V. ORGANIZATIONAL ITEMS:

Appointment of Town Manager

A. Appointment of Town Manager - Pursuant to Section 4.01 of Town Charter and Ordinance No. 13-90. Motion was made by Mrs. Douthit to reappoint Mr. Robert J. Doney as the Town Manager. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously. President Heeke asked the Mayor and each Council member to make an appointment with Mr. Doney for evaluation purposes and discussion will be had on his raise for the ensuing twelve month period.

Appointment of Administrative Officials

B. Appointment of Administrative Officials - Pursuant to Ordinance No. 13-90. Motion was made by Mrs. Douthit, seconded by Mrs. Wiener to appoint the Adminstrative Officials as recommended by the Town Manager. On roll call, the motion carried unanimously. The officials appointed were:

Grace T. Peters, Town Clerk
Michael T. McPhail, Finance Director and Treasurer
Robert L. Moore, Building Official

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

LAST NAME—FIRST NAME—MIDDLE NAME
HEEKE BERNARD A

MAILING ADDRESS
124 Seabreeze Avenue

CITY
PALM BEACH

COUNTY
PALM BEACH

DATE ON WHICH VOTE OCCURRED
August 14, 1990

NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Town Council

THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
[✓ CITY] ☐ COUNTY ☐ OTHER LOCAL AGENCY

NAME OF POLITICAL SUBDIVISION:
Town Council

MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

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

In either case, you should disclose the conflict:

> PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*
>
> WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

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

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

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

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

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

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, BERNARD A. HEEKE, hereby disclose that on August 14, 1990:

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

____ inured to my special private gain; or

____ inured to the special gain of Hans G. Ravea, by whom I am retained.

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

Mr. Ravett has received legal services from one of my partners in ~~our~~ law firm.

Aug 14, 1990
Date Filed

Bernard A Heeke
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRE
DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING
IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION I
SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.