MINUTES OF TOWN COUNCIL MEETING HELD ON AUGUST 13, 1996

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A.M. on August 13, 1996. On roll call, the following Elected Officials were in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Personnel Director William Crouse, Town Attorney John Randolph, Finance Director Marie Crozier, Assistant Finance Director Cheryl Somers, Police Chief Joseph Terlizzese, Police Major Frank Croft, Director of Public works Al Dusey, Town Engineer James Bowser, Director of Planning, Building & Zoning Robert Moore, Director of Recreation Russell Bitzer, Purchasing Agent Charles Boggs, and Secretary to the Town Clerk Jacquelyn Reedy.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Father William H. Stokes of Bethesda by the Sea Church. President Smith led the Pledge of Allegiance.

III. COMMENTS OF THE MAYOR

Mayor Ilyinsky commented that the Town should be proud of the Police Department and their effort in the recent murder case which had now been turned over to the County Court System; hopefully the case would be prosecuted to a successful conclusion. He also wished to thank everyone for allowing the attendance of the Town Council at the annual Council of Cities in Boca Raton.

Mr. McDonald commented on the purity of the water supply lines to Ibis Island, and displayed a sample of foreign objects in the water from his property in that location, which apparently was the result of the City of West Palm Beach neglecting to periodically flush the lines to keep the dirt out of backflow devices. Mr. McDonald found the condition deplorable, especially considering the surcharges being paid for water by the Town of Palm Beach.

Mr. McLendon suggested that the City of West Palm Beach Utility Department should be advised of the situation.

Mr. Wyett recommended that the Council consider submitting a formal letter to the City of West Palm Beach regarding the issue.

IV. PRESENTATIONS

A. Presentation by Representative from Government Finance Officers Association of Distinguished Budget Presentation Award for Fiscal Year Beginning October 1, 1995, to Town Elected Officials and Staff

Mr. Timberlake, Director of Financial Services for the City of Boca Raton, representing the Government Finance Officers Association of the United States and Canada, presented the Distinguished Budget Award to the Town of Palm Beach for the budget presentation for the current year of 1996/97. The award represented a significant accomplishment for a government entity, and was the fifth award to the Town of Palm Beach.

V. APPROVAL OF THE AGENDA

The following changes were made to the Regular Agenda:

Item number C.3 Variance No. 27-96, Ilene Dodge, 1230 S. Ocean Blvd. defer to the September 10, 1996 Council meeting.

Mr. Shaw made a motion to defer this Variance 27-96 to the September Town Council Meeting, seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Item number C.8 Special Exception 23-96, James Scoroposki, 120 Clarke Avenue, defer to the September 10, 1996 Council meeting.

Mr. Shaw made a motion to defer Special Exception 23-96 to the September Town Council Meeting; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Item number C.13 Special Exception 28-96, Escada, USA, 230-232 Worth Avenue, request to withdraw approved.

Mr. Wyett made a motion for approval of the withdrawal of Special Exception 28-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Item number C.7 Variance No. 31-96, Mr. and Mrs. James Cleary, 369 S. Lake Drive, defer to September 10, 1996 Council meeting.

Mr. Moore explained that staff was requesting a deferral, since the application was not complete. Mr. Wyett made a motion to defer Variance 31-96 to the September Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Item number C.12 Special Exception number 27-96 with Site Plan Review - Richard Gray, Grays Mobile Station, 340 S. County Road deferred to the September 10, 1996 Council meeting.

Mr. Moore reported that staff was requesting a deferral of this item, since more information was needed. Mr. Wyett made a motion to defer Special Exception 27-96 to the September Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Add item C.10, consideration of Mrs. Crozier's request for reimbursement of legal fees.

Mr. Doney stated that a memorandum had been received from Mrs. Crozier, dated August 9, 1996, regarding legal fees, which had been received after the tentative Town Council Agenda had been released. Mrs. Crozier had requested that the matter be considered today. Mr. McDonald made a motion to add the request to the Agenda as item C.10; seconded by Mr. Shaw. On roll call, the motion carried 4/1, with Mr. Shaw casting a negative vote.

Add item C.11, set a date for an Ordinance, Rules & Standards meeting to discuss adopting a Telecommunications Ordinance.

Mr. Shaw made a motion to add setting a date for an Ordinance, Rules & Standards meeting as item C.11; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Shaw explained that the primary purpose of the meeting would be to discuss establishment of a Telecommunications ordinance.

Add item C.12, discussion of stairs at El Pueblo and La Puerta Way.

Mr. Wyett made a motion that discussion of stairs at El Pueblo and La Puerta Way be added as item C.12; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Shaw suggested that Item D.3, Other be moved forward in the Agenda to be heard immediately after Development Reviews; seconded by Mr. McDonald.

Mr. McLendon commented that he was reluctant to change the sequence of items, since many people may have been planning on the sequence as stated in the Agenda.

Mr. Rampell stated that the current location on the Agenda was fine with him.

Mr. Shaw withdrew his motion. Mr. McDonald withdrew his second. The item would remain as D.3, Other.

Add item C.13, set date and time for Public Works Committee meeting.

Mr. McLendon made a motion to add item C. 13 to set a date and time for a Public Works Committee meeting; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Add item C.14, discussion of condition of Town's water supply.

Mr. Wyett made a motion to add item C.14 as discussion of the condition of the water supply of the Town; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

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

APPROVED AGENDA (ITEM VI & VII)

VI. APPROVAL OF MINUTES OF JULY 9 AND AUGUST 1, 1996

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Rehabilitation Center for Children & Adults, Inc.; No. 126-97
2. Preservation Foundation of Palm Beach, Inc.; No. 192-97
3. Big Band Hall of Fame; No. 234-97
4. Adam Walsh Children's Fund; No. 314-97
5. Epilepsy Association of the Palm Beaches; No. 344-97
6. Jewish Federation of South Palm Beach County; No. 394-97
7. American Red Magen David for Israel; No. 410-97

Other

- Failure to File Prior Results Form Within Prescribed Time - Paid $25 Administrative Processing Fee

8. Children's Home Society; No. 60-97

- Failure to File Prior Results Form Twice Within Prescribed Time

9. American Committee for the Weizmann Institute of Science; No. 151-97

Mr. Wyett made a motion to approve the Approved Agenda (Items VI and VII); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

REGULAR AGENDA

VIII. PUBLIC HEARINGS

A. Confirming De-Designation and Designation of Certain Historic/Specimen Trees at 545 North Lake Trail - Resolution No. 38-96.

Mr. Al Dusey, Director of Public Works, addressed the Town Council, stating that a specimen tree, an Indian Laurel Fig, located at 545 North Lake Trail had been trimmed in violation of the Town ordinance. A horticulturist had looked at the tree and determined that it would never be a specimen tree again and would slowly die. The property included huge numbers of trees and the consultant felt that some were very special and could be designated to replace the one that had been illegally trimmed. Mr. Dusey therefore recommended designation of one Satinleaf tree and one very large green Buttonwood.

Mr. Wyett asked if other trees on the property could be added for designation?

Mr. Dusey replied that there were other trees on the property, however, Mr. Maddock was willing to voluntarily designate the trees mentioned.

Mr. Randolph read Resolution 38-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DE-DESIGNATING THE INDIAN LAUREL FIG, AND DESIGNATION A GREEN BUTTONWOOD AND A SATINLEAF AS SPECIMEN TREES AT A PROPERTY ALREADY DEFINED AS 545 NORTH LAKE TRAIL, LOCATED WITHIN THE TOWN OF PALM BEACH; PROVIDING FOR THE RECORDING OF THE TREES OF SAID DESIGNATIONS AGAINST THE LAND UPON WHICH THE TREE OR TREES ARE LOCATED; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Mr. Wyett made a motion to approve Resolution 38-96; seconded by Mr. McDonald.

Mrs. Smith asked if there were any members of the public that wished to address this issue?

There were none.

On roll call, the motion carried unanimously.

IX. LICENSES AND PERMITS

A. Beverage Licenses

1. Application for a Transfer of a 2COP Alcoholic Beverage License by Mr. Gregory Gavakis for Cafe Cellini (formerly Le Monegasque) at 2505 South Ocean Boulevard.

Mr. Moore explained that this had been a dining room license for many years, and was not a restaurant license; due to the fact that there had been confusion with the previous operator, it had been requested that the current operator attend the Council Meeting in order to be aware of conditions recommended by staff that would be attached to the application. Mr. Moore reviewed the conditions:

"All applicable departments had reviewed the subject license application and Town Council approval is recommended with the condition that no advertising of any kind be permitted including the telephone yellow pages. The neon sign must be changed to a sign that is not neon of the same size."

Mr. Gregory Gavakis stated that he agreed with the conditions attached to the application.

Mr. Wyett suggested that some type of advertising be allowed.

Mr. Moore replied that the Zoning Ordinance allowed for a dining room, but not for a commercial restaurant in that district. The dining room was contained within the walls of a condominium, and the Ordinance prohibited advertising to the outside, or a separate entrance. These restrictions were for the benefit of the residents and bona fide guests.

Mr. Wyett made a motion to approve the application for a transfer of a 2COP Alcoholic Beverage License by Mr. Gregory Gavakis for Cafe Cellini at 2505 South Ocean Boulevard; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

X. OLD BUSINESS

A. Ordinances

1. Ordinance No. 12-96 - Prohibition of Animals from Seaview Park (Deferred from July 9, 1996 Meeting)

Mr. Russell Bitzer, Recreation Director, addressed the Town Council, responding to the suggestion of muzzling dogs at the park while still allowing them in the park. He commented that he did not believe it was practical, since it would be difficult to enforce, and would not be fair to the dogs. He noted that it would be impossible to restrict dogs to a specified area in Seaview Park, and that there was a clear distinction between Seaview Park and the other parks in Town, since it was basically an athletic complex and playground with many young children using the facilities. He urged that the ordinance be passed for the health and safety of children using the facilities.

Mayor Ilyinsky asked how the ordinance would be enforced? He agreed that dogs should be kept out of the park.

Major Frank Croft of the Police Department addressed the Town Council, stating that a violation would involve a notice to appear, similar to a traffic citation, and it would be a payable fine set by the Town Council, and would be treated similarly to beach violations. A written warning would be first issued, with a second violation involving a notice to appear, which would not require a court appearance unless it was contested.

Mr. Shaw expressed concern with Town liability in the event of an incident with animals after such an ordinance was passed?

Mr. Randolph responded that once a regulation determination had been made, the Town would have an obligation to regulate in a non-negligent manner--posted signs, warnings, and the Recreation Director and staff vocalizing the regulation. Someone could allege negligence in enforcement, but could also allege negligence even without an ordinance.

Mrs. Smith asked if there was any difference in Town liability in areas of the Town where there were no such regulations?

Mr. Randolph replied that there could be some liability in that instance also.

Mrs. Smith asked Major Croft if he believed that this type of ordinance might be the first step in banning animals from all Town property in order to avoid such liability?

Major Croft replied that the Police Department would act on behalf of the Town and would gladly enforce any direction of the Town Council. He noted that the Recreation Department would be responsible for reporting any offense to the Police Department.

Mr. Shaw expressed concern with eliminating all animals from the park, and suggested that animals be prohibited only in the enclosed play area. He remarked that he was not comfortable with the idea of eliminating animals from the entire park.

Mr. Bitzer replied that all of the facilities were play areas for children, whether enclosed by a fence or not, and that animals should be prohibited, much the same as on the beach, in view of the high concentration of people in the area.

Ms. Sarah Robinson, 122 Peruvian, addressed the Town Council, stating her concern was the creation of more bureaucracy and more expense.

Mr. Wyett reminded the Town Council that the purpose of the ordinance was not anti-dog, but was for the health and safety of children.

Mr. Shaw suggested that the ordinance be more user friendly and recommended reconsideration.

Mrs. Smith asked Mr. Bitzer if the schools and parents had been warned that animals were not welcome in the park, or had he waited for action from the Town Council?

Mr. Bitzer replied that he would not take any action without Town Council approval, although he did have the authority to establish a park rule, however, he thought that an ordinance would have more of an effect.

Mr. McDonald remarked that there was an ordinance in place dealing with dogs on the beach, and he asked Chief Terlizzese how often they had been called to enforce that ordinance?

Police Chief Terlizzese responded that the Police Department enforced the ordinance on a daily basis on the 13-miles of beach front.

Mr. McDonald asked if the ordinance already in place for the beach area could encompass Seaview Park?

Mr. Randolph replied that it would require an amendment to the ordinance.

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

Mr. Randolph read Ordinance 12-96:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES RELATING TO OFFENSES, MISCELLANEOUS, TO PROVIDE A NEW SECTION 13-45 TO PROHIBIT ANIMALS UPON THE GROUNDS OF SEAVIEW PARK, UNLESS SAID ANIMAL IS PART OF AN APPROVED TOWN RECREATION DEPARTMENT PROGRAM OR EVENT, OR IS APPROVED BY THE RECREATION DIRECTOR; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

Mrs. Smith asked if seeing eye dogs would be allowed in the park?

Mr. Randolph commented that the language "approved by the Recreation Director" would take care of any special circumstances.

B. Other

1. Consideration of Memorandum Dated July 29, 1996, from Councilman McLendon Regarding South Florida Water Management District's Letter Dated July 17, 1996.

Mr. McLendon read his memorandum in response to the South Florida Water Management letter of July 17, 1996 regarding the Town of Palm Beach application for withdrawal of water from the C-51 canal. Mr. McLendon noted that he had prepared a letter to the South Florida Water Management District as follows:

Gentlemen:

We respond to your very negative and disappointing letter of 7-19-96. We request modification of our application in order to bring your attention to the fact that we only wish to substitute or replace existing withdrawal capacity that we receive as part of our participation with the City of West Palm Beach. We are not interested in a commitment to construct an aquifer recharge and recovery system, except as may be needed on a peak period basis. We will continue to evaluate the use of re-use water, but the lack of cooperation from West Palm Beach with regard to determining the value of the distribution system and the price for wholesale water purchase has limited our study ability to evaluate relative costs. We understand that the permit fee is due before you further process our application, but unless you can give us a lot more encouragement than your 7-19-96 letter, we see no justification to spend another $3,400.

Mr. Wyett recommended that South Florida Water Management District be reminded that the application involved a tremendous conservation of water.

Mr. McLendon recommended that the letter be sent under Mr. Bowser's signature.

Mr. Shaw recommended that the letter be sent.

Mr. Wyett suggested that the letter be signed by the Mayor.

Mr. McDonald made a motion that the letter be sent, as drafted by Mr. McLendon including the suggestion of Mr. Wyett, to be signed by the Mayor; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Dusey asked if there was any other action to be taken by staff regarding this matter and the permit process?

Mr. McLendon replied that it was his understanding that the application would not be further considered until the fee of $3,400 was paid. He suggested that Mr. Dusey make an attempt to meet with the South Florida Water Management District for discussion of the matter.

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

Mrs. Marie Crozier, Finance Director, addressed the Town Council, referring to her memorandum of August 7, 1996 regarding the status of unpaid assessments, fees, and fines. The most significant change in the report was the removal of the Joanna Johnson monies, and the $400,000 remaining due to the Town was shown as a receivable on the recap page 4. The Town Council had requested that Solid Waste fees be broken down by quarter, which had been added as an addendum to the report. Mr. Randolph had sent a letter regarding uncollectible assessments, which needed Town Council direction.

Mr. Randolph referred to his letter of August 8, 1996, referencing the July report of the Finance Department relating to assessments.

Mr. McDonald addressed the letter of Mr. Randolph, recommending as a motion the following:

- that the bulkhead assessments be written off
- that the Ocean Dune Assessment be pursued
- that the Bulkhead Assessment 14-76 of Ora L. DeMarco be written off
- that the negotiations and discussions with Title Companies be continued regarding the Sidewalk Assessments
- that no collection be proceeded with regarding the 201 Queens Lane property Code Enforcement Board fine
- that no collection attempt be made on the judgement outstanding against Mr. Winterfield at this time, and that the matter be revisited at a later time;
- regarding the Callahan unpaid assessment, Mr. McDonald pointed out that there was no written agreement and confirmed with Mr. Dusey that there be some procedures in place that would include written agreements for work done by the Town. He recommended that there be no collection action taken on the matter.

Mr. Wyett seconded the motion.

Mrs. Crozier confirmed the matters that would be removed would include the Palm Beach Pier, Worth-Hammon, Guilford Dudley, DeMarco, Komer and Callahan.

Mr. McDonald pointed out that Dudley would not be removed, but negotiations would be conducted.

Mrs. Crozier confirmed that, at the request of the Town Council, this would be the last monthly report that would be submitted, with quarterly reports being submitted in the future.

Mrs. Smith confirmed that was the understanding of the Town Council.

On roll call the motion carried unanimously.

Mr. Shaw questioned the status of the One Bradley Place assessments?

Mrs. Crozier replied that the balance had been paid prior to the preparation of the Status Report--the balance had been paid on August 8, 1996.

3. Consideration of Item 36 of the Nowlen, Holt and Miner, P.A. Report Regarding Alternative Procedures for Parking Meter Collections (Deferred from July 9, 1996 Meeting)

Police Chief Joseph Terlizzese addressed the Town Council, stating that the Police Department had been directed by the Town Council to look into the metered parking as it pertained to the Nowlen, Holt, & Miner report, as well as by the Finance & Taxation Committee to look at alternative areas where meters could be installed. The ensuing report analyzed the existing system of 677 parking meters, excluding those at Kreusler Park which were owned by the County. Staff had broken down the cost per meter for maintenance per year, summarized revenue collected ($202,802), explained electronic meter heads, and addressed "pay and display" and "pay and retain" units. In order to improve the security of the meter collection process, Chief Terlizzese noted that the Police Department believed the mechanical meters needed to be replaced with a more advanced design, eliminating the actual handling of coins collected, and providing a summary of the amount of revenue collected at each meter.

Mrs. Smith asked if there were members of the public who wished to speak to the issue?

Mr. Jesse Newman, President of the Palm Beach Chamber of Commerce, addressed the Town Council, stating that merchants and residents were very fearful of the word "meter", as it indicated a limitation of time for the resident or shop owner to do business in Palm

Beach. He recommended that an open workshop be conducted on the issue, whereby the business community and residents could have input and further explanation.

Mrs. Smith noted that it had been staff recommendation that the issue be discussed at a Finance & Taxation Committee meeting, which would be, in effect, a workshop and include open dialogue. A convenient date to residents and businesses would be designated.

Mr. Ned Barnes, Palm Beach Civic Association, endorsed the comments of Mr. Newman, and expressed that further comments would be made at the Finance & Taxation Meeting.

Mr. Wyett suggested that an open workshop involving the entire Town Council be arranged for discussion of the parking meter issue.

Mr. Shaw recommended that the financial portion of the parking meter situation be resolved at the Finance & Taxation Committee Meeting, with a workshop being conducted if there were changes in parking regulation.

Mr. Wyett made a motion to accept the report of the Police Department; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mayor Ilyinksy expressed concern that discussion of this subject required more people to be in the Town, and that many people would not want not to have an over abundance of parking meters installed.

Mr. Newman agreed with Mayor Ilyinsky, and suggested that samples of alternative parking methods be shown at the public meeting.

Mr. Doney suggested that an item be put on the October Town Council Meeting schedule, so that a date could be selected and made known to the public.

Mrs. Smith suggested that the matter be put on the September Town Council Meeting Agenda.

Mr. Shaw made a motion to add this item to the September Town Council Meeting Agenda, to set a date for a November Finance & Taxation Meeting to discuss the parking meter issue; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

In response to Mr. Wyett's question concerning the additional 1.75 personnel requested in the new budget, Chief Terlizzese reported that those personnel would be working in areas other than meters and had been part of the budget request for '96-'97.

4. Consideration of Personal Communication Services and Cellular Technologies - Antennae and Tower Facility Sites

   a. Letter Dated July 26, 1996, from Town Attorney Regarding Proposed Telecommunications Consultant to Advise on Telecommunications Act of 1996

Mr. Randolph addressed the Town Council, stating that the Town must place itself in a proactive position in regard to telecommunications issues, which was very complex and changing on a daily basis. He indicated that his letter advised that the Town give consideration to hiring a consultant to advise the Town on a day to day basis in regard to telecommunication issues.

Mr. Wyett agreed that outside counsel would be needed, and suggested that the Town Manager be authorized to coordinate with other communities in order to share costs.

Mayor Ilyinsky pointed out that at the recent Florida League of Cities meeting, recommendation had been made that each community have its own ordinance in regard to telecommunications.

Mr. McDonald agreed with the recommendation of Mr. Randolph, and urged action. He made a motion that an immediate search be conducted for a telecommunications consultant to advise the Town; seconded by Mr. Shaw.

Mr. McLendon commented that he would like to hear Mr. Jakubiak's comments.

Mr. David Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that he had prepared a report and an outline with various recommendations as to the course of action that the Town could take at this time. He stated that he concurred with Mr. Randolph in regard to legal counsel, however, he did not necessarily believe that a consultant was needed. He advised that a telecommunications ordinance could be prepared with specific rules and limitations. He noted that a good attorney involved with these issues would be his recommendation, with staff preparing procedures and policies, while the attorney would work with Mr. Randolph to finalize the procedures and policies.

Mrs. Smith pointed out that all members of the Town Council and Town Staff had attended the Florida League of Cities telecommunication workshops, and the message had been to act now.

Mr. William Guttman, Palm Beach resident, addressed the Town Council, stating that he endorsed the hiring of a communications law expert, and that he was prepared to give some recommendations. He stated that he did not think it was a good idea to hire a telecommunications consultant, who may not address the specific needs of the Town.

Mrs. Smith thanked Mr. Guttman and asked that he submit names of lawyers who were specialists in the field.

Attorney Robert Deziel, representing AT & T Wireless, addressed the Town Council, asking for a general time frame as to how the Town Council would proceed.

Mrs. Smith explained that the Town Council would decide when the first meeting would take place to discuss this matter, and that an Ordinance, Rules & Standards Committee meeting would be set. She noted that it had been brought up at the Florida League of Cities conference that all of the telecommunication companies would like to participate in the hearings as telecommunication ordinances were written, and it was agreed by elected officials all over Florida that the input of the companies would be necessary in order to get the correct ordinance.

Mr. Doney suggested that consideration be given to directing Town Staff to take letters of interests and statements of qualifications from the specialized telecommunications legal advisors, and that a cut-off date be set. After review by staff and Town Attorney, recommendations would be made to the Town Council, so that qualifiers could be seen at the September Town Council Meeting.

Mr. Randolph suggested that general direction be received from the Town Council to look for a legal consultant at this time, without a specific procedure being recommended at this time.

Mr. McDonald clarified his motion, wherein he had used the word "consultant" and had meant to use the word "attorney"; Mr. Shaw, the seconder of the motion, agreed with the amendment. On roll call, the motion carried unanimously.

b. National Association of Telecommunication Officers and Advisors (NATOA) 16th Annual Conference, September 7-11, 1996, at the Breakers Hotel.

Mr. Jakubiak stated that he planned on attending the National Association of Telecommunication Officers and Advisors (NATOA) conference, and recommended the attendance of any elected officials or staff members directed to participate.

Mrs. Smith urged that individual Council Members consider picking up part of the costs themselves.

Mr. Wyett suggested that staff attend and return to give a report.

Mr. Jakubiak clarified that this conference would have the FCC representatives present and would be quite specific.

Mrs. Smith noted that members of the Town Council could decide whether or not to attend the conference and authorization could be given at a later time.

XI. NEW BUSINESS

A. Resolutions

1. Resolution No. 39-96 - South Fire-Rescue Station Meeting Room Procedures.

Mr. Randolph read Resolution 39-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, TO AUTHORIZE THE RENTAL OF THE MEETING ROOM IN THE SOUTH FIRE-RESCUE STATION FOR TOWN SERVING MEETINGS.

Assistant Fire-Rescue Chief Rick Neal addressed the Town Council, stating that approval of Resolution 39-96 was being requested in order to give the Fire Department a means of billing for the meeting room that had been established in the new South Fire-Rescue Station. He requested that a change be made in Section 4, as well as on the Application Form, that the security deposit be changed *from* $100 *to* $200, in order to be consistent with the Recreation Department fee.

Mr. Shaw suggested adding language "or part thereof" to the hourly rate schedule.

Mr. Neal explained that parking permits would be issued to the requesting organization at the time the meeting room was scheduled so that they could be passed out to the people attending.

Mrs. Ann Herman, Chairman of the Golf Commission, addressed the Town Council, asking if the Golf Commission would be charged for meetings held at the South Fire-Rescue Station?

She was assured that there would be no charge to the Golf Commission.

Mr. Stanley Silkin, Co-Chairman of the Citizens Association, addressed the Town Council, stating that the organization was very happy to be able to meet in the South Fire-Rescue Station, and requested that one permit be given to cover all of the association meetings.

Mr. Neal stated that he would work with the schedule of the Citizens Association regarding the parking permits.

In response to Mr. McDonald's question regarding the intent of the resolution, Mr. Neal, explained that the intent was to restrict outside groups that may not be conducive to the Town, and was designed to serve residents.

Mr. Doney referred to Procedure 1-96-1, Item 6, wherein it was stated that the facility shall be leased only to non-profit organizations and individuals. Commercial use of the facilities was prohibited.

Mr. McDonald made a motion to approve Resolution 39-96; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

2. Resolution No. 40-96 - Request by Florida Power & Light for an Easement to Construct a Subaqueous Cable Crossing near Sloans Curve.

Mr. James Bowser, Town Engineer, addressed the Town Council, stating that the Town had received a request from Florida Power & Light for an easement under one of the Town-owned spoil islands in order to construct a subaqueous cable. A condition attached to approval would be that there be no disturbance of the surface of the ground.

Mr. Armando Noble of Florida Power & Light, addressed the Town Council, stating that the easement was being requested so that a fourth feeder to provide power to the island could be installed. Presently, the island was served by three feeders, and if one of those was lost, it would be very difficult to maintain service. Adding the fourth feeder would assure maintenance of service. He explained that the easement was very basic, giving FPL the right to go under the island, with no rights to the surface or to excavate or remove vegetation.

Mr. Bowser explained that there may be a necessity to disturb mangroves on the island side opposite Sloane's Curve. Town Code mandated that a management plan must be provided if any mangroves were disturbed. There were three conditions attached to approval of the easement:

1. Florida Power & Light would provide all legal documents, have them executed and recorded at their cost, providing a certified copy to the Town.

2. Florida Power & Light would be prohibited from any activity on the spoil island, including, but not limited to disturbance, trimming, removal of any vegetation or excavation.

3. Florida Power & Light would be responsible to obtain any and all permits related to construction. The granting of the easement would contain no right or guarantee that the Town would grant a permit for the proposed construction. The Code provided for a management plan, which FPL would have to get from the Building Department.

Mr. Bowser stressed that granting the easement would not guarantee Florida Power & Light that they would have a project to build.

Mr. Shaw asked if there was consideration given to compensation for the granting of the easement?

Mr. Bowser replied that there had not been as of yet, and that would be a decision of the Town Council.

Mr. Randolph stated that had not been discussed, and that a franchise existed with Florida Power & Light to provide needed services.

Mr. Noble stated that the work being done was very costly to Florida Power & Light, and it was being done for the island of Palm Beach to maintain the quality of service.

Mr. McLendon made a motion to approve Resolution 40-96, subject to the conditions imposed by Mr. Bowser; seconded by Mr. Wyett.

Mr. Randolph read Resolution 40-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING AN EXCLUSIVE EASEMENT TO FLORIDA POWER & LIGHT ACROSS A PORTION OF GOVERNMENT LOT 6, SECTION 15, TOWNSHIP 44 SOUTH, RANGE 43 EAST.

Mr. Randolph explained that this easement was strictly for the conveyance of electricity and urged that be made very clear.

Mr. Bowser replied that the easement could be amended as such.

Mr. Shaw stated that he would like to see the resolution granted, but with the condition that at such time as there are charges by the Town for the use of Town property, rights-of-way, or easements, that FPL would be subject to those fees.

Mr. Noble stated that he could not make that commitment at this time.

Mr. Bowser stated that could be made a condition, as well as the language suggested by Mr. Randolph regarding strictly for the conveyance of electricity, and if FPL could not agree, they could come back with the request.

The maker and seconder of the motion accepted the amendments. On roll call, the motion carried unanimously.

3. Resolution No. 41-96 - Interlocal Agreement with Palm Beach County for Cost Sharing of Mid-Town Beach Restoration Project.

Mrs. Smith stated that Town Staff should be thanked for obtaining this funding of $683,382 for the Town from the County.

Mr. Bowser commented that the County had agreed to cost-share in the Mid-Town project, and would participate in 12.5% of the eligible project items. Originally, they had not wanted to include the groin field, however, staff was insistent that be included and the County had agreed. Mr. Bowser explained that Resolution 41-96 would authorize the Mayor to sign the agreement, and that there was one minor item that had not yet been resolved with the County on insurance language.

Mr. Randolph read Resolution 41-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE ACCEPTANCE OF A GRANT FROM PALM BEACH COUNTY FOR THE PURPOSE OF FUNDING THE MID-TOWN BEACH RESTORATION PROJECT.

Mr. McLendon made a motion to approve Resolution 41-96; seconded by Mr. Wyett.

In answer to the query of Mr. Wyett, Mr. Doney explained that the money from the County will offset the portion of Town funds for the project in the Capital Improvement Fund.

On roll call, the motion carried unanimously.

4. Resolution No. 42-96 - Grant of $360,000 from Florida Inland Navigation District to Reconstruct and Expand the Australian Dock.

Mr. Bowser explained that the Town had been granted the maximum amount, and the Grant Proposal would be received from the Florida Inland Navigation District soon.

Mr. Randolph read Resolution 42-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE FLORIDA INLAND NAVIGATION DISTRICT (FIND) FOR THE PURPOSE OF REBUILDING AND EXPANDING THE AUSTRALIAN DOCK.

Mr. McLendon made a motion to approve Resolution 42-96; seconded by Mr. Wyett.

Mr. Wyett commented that a new type of surface had been used in rebuilding docks, and that he had heard many complaints about noise and slipperiness, and that consideration should be given to a new type of surface.

Mr. Bowser replied that sound deadening devices were planned within the structure, and sandblasting would make the surface skid-proof.

On roll call, the motion carried unanimously.

B. Sealed Bid

1. Sealed Bid No. 96-12 - Two Diesel Yard Trash Trucks for Public Works Department.

Mr. Al Dusey, Director of Public Works, addressed the Town Council, stating that replacement vehicles were needed for two trucks purchased ten years ago. The two low-bidders had not met specifications, however award was being recommended to Palm Beach Truck & Equipment, Inc. in the amount of $89,355.88

Mr. McLendon made a motion to approve Sealed Bid No. 96-12; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

2. Sealed Bid No. 96-13 - One Diesel Truck with Six Cubic Yard Garbage Packer Body for Public Works Department.

Mr. Dusey explained that this truck would be used in the residential garbage program and would replace similar equipment. The cost of the truck had gone up about $6,000 since earlier in the year when two others had been purchased, but the cost could be covered in the residential sanitation program.

Mr. McLendon made a motion to approve Sealed Bid No. 96-13; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

C. Other

1. Consideration of Appeal by Mr. Ajit Asrani Regarding Solid Waste Billings at the Plaza Inn, 215 Brazilian Avenue (Deferred from July 9, 1996 Meeting)

Mr. Dusey gave background information, stating that some years ago Town Council had approved a proposal to charge property owners for garbage removal based on the Solid Waste Authority classifications and generations. Soon thereafter, the Town Council had approved the Town being the sole provider of garbage service, with the proviso that those businesses that had existing contracts with private services could continue those contracts until they ended. Town records indicated that the Plaza Inn contract would run out in June of 1996, and when service was initiated at the Inn Mr. Asrani indicated that the Town service was not needed, and that he was putting his garbage in Hamburger Heaven's container. Since the Town was servicing Hamburger Heaven, and Mr. Asrani was putting garbage in that container, he alleged that service had also been to him for that period of time. There had been several issues involved that Mr. Asrani wished to discuss, i.e., was it right to charge him for that service in the past, the amount of garbage generated that would be included in future billing, and the penalties that had accrued.

Mr. Ajit Asrani addressed the Town Council, stating that he was the owner of the Plaza Inn at 215 Brazilian Ave., explaining that a private company, based on a three day pick-up, had been servicing the needs of the Plaza Inn since 1990. In 1996, he reported that the Town required a mandatory seven day pick-up, with the Town being the sole provider, causing fees to raise dramatically. He pointed out that the Plaza Inn was a small bed and breakfast hotel, serving only breakfast; therefore, Mr. Asrani believed there was a hardship for the Inn, since there was not a large volume of garbage going out. He suggested that the Inn be rated as a medium or lower end volume producer of garbage instead of a high volume producer, for which the Inn was currently being charged. He appealed for relief from the Town on the garbage pick-up.

Mr. McLendon asked Mr. Dusey how the garbage amounts were determined for each business?

Mr. Dusey replied that it was based on square footage and average generation rates, based on studies done by the Solid Waste Authority of Palm Bounty. The property had 16,525 sq.ft., a medium volume generation, and there was a rate of $.21 per sq. ft. per quarter attached to that based on what it cost the Town to provide the service.

Mr. Shaw asked the amount of the quarterly rate charged to the Plaza Inn?

Mr. Dusey replied $991.59.

Mr. Shaw commented that a bed and breakfast was a different use than a full restaurant.

Mr. Dusey responded that the system was set up based on low, medium and high generation, and there were not sub-elements that specified which restaurants produced less waste than others.

Mr. Asrani explained that the Plaza Inn had been paying Hamburger Heaven for the use of their dumpster, however, he was now being charged for full service, as if there had been a separate dumpster, and that was how the past due billing amount had accrued.

Mr. Dusey quoted medium generate rates of .0039 on a quarterly basis, which would result in a fee of $633.75 to Plaza Inn per quarter.

Mr. McDonald asked Mr. Dusey if the property deserved some kind of relief from what was being imposed?

Mr. Dusey replied that the system was not perfect, as there were unique situations, however, the system was as fair as could be accomplished at this time.

Mr. Asrani expressed that if the rate reduction was the only relief he could get, he would accept it, however, he requested that the Public Works Committee review this matter, since there were only two bed and breakfast establishments in the Town. He emphasized that for six years the Plaza Inn had been serving only breakfast and had been paying the three day pick-up rate, and reminded the Town Council that the Plaza Inn had been the recipient of beautification awards and would never affect the beauty of the Town in a negative way.

Mr. Shaw made a motion to assess bed and breakfast facilities serving *only* breakfast the five-day garbage collection service, based upon the size of the facility and generation of garbage; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to waive any interest or penalties charged for past due amounts, and that the charges from the point of seven day service by the Town be billed and collected; seconded by Mr. Wyett.

Mr. McLendon suggested making the agreed upon rate retroactive.

Mr. Arsani suggested that he pay whatever he was paying the original collection company, $154 per month for a three day pick-up until the Town took over.

Mr. Shaw repeated his motion: the charges as billed stand; any penalties or interest were to be waived, and that effective July 1, 1996, the new rate would be charged.

Mr. Arsani established that he had brought the problem to the attention of Mr. Dusey in April, 1996.

Mr. Shaw clarified his motion again: the old rate would be used through June 30,1996, and the new rate would be used as of July 1, 1996, with no interest or penalties on outstanding amounts.

On roll call, the motion carried unanimously.

2. Consideration of Advanced Funding for Improvements to State Road 704, Royal Palm Way, consideration of Mr. Dusey's memorandum dated July 16, 1996, and his recommendation to a future Council Meeting.

Mr. Dusey stated that the State Department of Transportation offered that the Town could front the money for improvements to Royal Palm Way, and be repaid when, and if, it was funded by the State. He noted that correspondence from the State had indicated that the project would likely be added about six years from now. He recommended that nothing be done regarding advanced funding at this time until all correspondence with the State is completed.

Mr. Wyett made a motion to defer any decision on this matter until all correspondence was completed and Mr. Dusey could come back with a complete report; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Consideration of Application to Palm Beach County for Rezoning of Town-Owned Property on Pike Road in Unincorporated Area of Palm Beach County per Mr. Castro's memorandum dated August 1, 1996.

Mr. Paul Castro, Zoning Administrator, addressed the Town Council, stating that the Town was in the process of re-zoning some property owned by the Town on Pike Road, and the County was requesting two voluntary commitments as a condition of re-zoning. The first commitment requested was that a 30' x 30' easement be granted to the County for a master lift station for the area; the second request was for the dedication of a 25' wide strip of the length of the property for the purposes of pubic right-of-way. Mr. Castro advised that he was seeking direction from the Town Council. Staff recommendation was that the request for the 25' wide strip of land was not a re-zoning issue, and there were adequate public facilities in place for the re-zoning of the property, and Pike Road was operating well below the maximum allowable capacity. Therefore, Mr. Castro concluded that staff did not believe that the Town should voluntarily commit to such a request, however, staff was requesting authorization to request reconsideration by the County at the time of site plan review for any proposed development on the property.

Mrs. Smith asked Mr. Castro if he anticipated going to the Palm Beach County Commission Meeting on Thursday, August 22, 1996, and having the authorization of the Town Council to request reconsideration?

Mr. Castro responded affirmatively.

Mrs. Smith suggested it would be helpful to have the Mayor attend the meeting also.

Mr. Castro agreed, also reporting that the County had made the request for the 25' wide strip of land because it was felt that it was necessary to have an 80' right of way along that portion of Pike Road to provide for a four lane roadway in the future.

In response to Mr. McDonald's inquiry regarding a rational nexus test, Mr. Castro explained that the County believed that the land would be needed in the future as Pike Road developed.

Mr. McDonald made a motion that the Town not voluntarily commit to the requests of the County; seconded by Mr. Wyett.

Mr. McLendon suggested that the Town not agree to commit the land to the County, even if it would mean dropping the re-zoning.

Mr. Robert Moore, Director of Building & Zoning, addressed the Town Council, stating that the land was not being developed at this point, but the Town, and staff concurred, should not consent to the demands of the County, however, staff would like to have some room to move when and if the property was developed.

Mr. Wyett noted that the value of the land would rise if an interchange was built at this juncture, and suggested that the Town could afford to wait to see if the value would increase.

On roll call, the motion carried unanimously.

Mr. Castro commented that he would be back to report to the Town Council after the City Commission meeting.

4. Consideration of Special Operations Vehicle for Fire-Rescue Department - Proposed Lease/Purchase Program per Mrs. Crozier's memorandum dated August 7, 1996.

Mrs. Marie Crozier, Finance Director, addressed the Town Council, stating that four financial institutions were invited to bid on the financing of the Fire-Rescue vehicle, with only one response from First Union National Bank. Mrs. Crozier noted that the previously budgeted $21,935 for the purchase of this vehicle remained unused and recommended that it be used as a down-payment, thereby reducing the overall finance costs by approximately $6,400. She added that the Town auditors concurred with that decision.

Mr. McLendon made a motion to approve the recommendation of Mrs. Crozier; seconded by Mr. Shaw.

Mr. Shaw questioned assuming a 48-month lease without the period coinciding with revenues earned from the ad valorem dollars, paying off the lease in 42 months, rather than 48 months.

Mrs. Crozier responded that in this particular instance there would be a 2% pre-payment penalty. In addition she questioned if an issue would arise if the conditions were changed, since all bidders invited had not received the same opportunity.

Mr. Randolph stated that it could result in the project having to be re-bid.

Mr. Shaw suggested that in the future, all bids be considered to be sure that interest was not being paid on something that could easily have been paid off.

Mr. Wyett asked if it was possible to negotiate the pre-payment penalty with First Union, if the payment was made in 42 months?

Mrs. Crozier replied that First Union had indicated that there was a 2% pre-payment penalty that could not be waived.

Mr. Wyett asked if it was possible to negotiate the pre-payment penalty if the payment was made before 42 months--would they allow six months pre-payment without penalty?

Mrs. Crozier responded that she would gladly inquire, however, she cautioned that all bidders had not been given the same opportunity.

Mrs. Smith pointed out that there were no further negotiations, unless the project was re-bid.

On roll call, the motion carried unanimously.

5. Consideration of Authorizing the Mayor to Execute Mutual Aid Agreement with City of Lake Worth Regarding Fire-Rescue Services per Chief Elmore's memorandum dated July 19, 1996.

Assistant Fire-Rescue Chief Rick Neal, addressed the Town Council, stating that approval was being requested for the Mutual Aid Agreement with the City of Lake Worth, and that historically there had been a good working relationship with the City of Lake Worth.

Mr. McLendon made a motion to approve authorizing the Mayor to execute the Mutual Aid Agreement with the City of Lake Worth regarding Fire-Rescue services; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

6. Consideration of Proposed Increases in Hourly Rates for Special Detail Pay for Police and Fire-Rescue Personnel per Chief Terlizzese's memorandum dated August 5, 1996

Police Chief Terlizzese addressed the Town Council, stating that the increase requested was from \$25 to \$28 per hour, with an additional \$3 on holidays. He mentioned that the rate had not been raised in ten years.

Mr. Wyett suggested that the rate be raised \$5, with the Town increasing its percentage from \$5 to \$7. Mr. Wyett made a motion that the rates be raised to a full \$30, with a \$5 per hour increase to the police officers, and \$7 per hour to the Town; seconded by Mr. McLendon.

Chief Terlizzese stated that he would agree with that suggestion.

On roll call, the motion carried unanimously.

7. Consideration of Proposed Increase of Sealed Bid Limit in Section 2-162 of the Town Code of Ordinances per memorandum of Mr. Boggs dated July 24, 1996. The first reading of an Ordinance on same should be at the September 10, 1996 Council Meeting.

Mr. Charles Boggs, Purchasing Agent for the Town, addressed the Town Council, stating that the sealed bid limit had been \$10,000 for many years, and was tied to the bid limit of the State for Category 2 - Supplies and Equipment. The State had recently raised the limit from \$10,000 to \$15,000 and Mr. Boggs recommended that the Town adjust the sealed bid limit accordingly. In addition, he suggested that the limit for construction be raised to \$25,000.

In response to Mr. McLendon's question, Mr. Boggs explained that construction was currently set at a \$10,000 limit.

Mrs. Smith asked why recommendation was for such an excessive change in the construction limit?

Mr. Boggs responded that \$25,000 was not a lot of money for construction.

Mr. McLendon remarked that it was typical to have a difference in the two categories.

Mr. Shaw asked if the requirement of three written bids would still be required?

Mr. Boggs replied that any purchase over $2,000 required three written bids.

Mr. Wyett made a motion to approve increasing the sealed bid limits for supplies/equipment and construction in Section 2-162 of the Town Code; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

8. Consideration of Establishing a Set Time on Agenda for Communications from Citizens.

Mrs. Smith noted that this was a recommendation of Mr. McDonald, and that she absolutely agreed with it. She suggested that the time for Communications from Citizens be immediately after the Approval of the Agenda in the morning.

Mr. Wyett made a motion to establish the time on the Town Council Meeting Agenda for Communications from Citizens to be immediately after the Approval of the Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

9. Consideration of Recusal Process for Town Council Members.

Mr. McDonald stated that he had discovered in reading the Attorney General opinion regarding voting on the Mar-a-Lago matter that the Town Council did not seem to be following the recusal procedure properly. He specified that he understood that anytime recusal was made, it must be publicly stated to the audience, along with filing a form within 15-days identifying the conflict.

Mr. Randolph commented that Mr. McDonald was correct. He identified Florida Statute 112-31433A, which covered conflicts of interests, stating that a conflict of interest would exist if the matter inures to the special, private gain of the individual, of a principal by whom he is retained, or by a relative. In the event of conflict of interest, the Statute required that the conflict be announced in front of the public assembly before a vote was taken, and that person would then abstain from the vote. A Conflict of Interest form would then be filed with the clerk by that person. Mr. Randolph noted that a member of a municipality may not abstain from an item unless there appears to be, or is a possible conflict of interest under the provisions of Florida State Law. Mr. Randolph emphasized that he had often advised the Council in the past that members are not allowed to abstain from voting on an item under State Law, unless there is a conflict of interest. He advised that oftentimes, people wish to abstain because their vote may involve a friend, or any number of reasons, however, Florida Statute 286.012 existed to make council members accountable for their position on the Council and for their position on votes.

Mr. McDonald asked Mr. Randolph to explain the term "conflict of interest."

Mr. Randolph replied that the Statute referred to it as a matter which would inure to the special, private gain of the individual, a principal by whom that individual is retained, or a subsidiary or a parent organization of a principal by whom that person is retained, or a relative. Mr. Randolph added that there had been discussion about the meaning of "inuring to the special, private gain of an individual," and usually that would mean financial gain.

Mr. McLendon asked if other council members could contest the recusal?

Mr. Randolph responded that it was a personal decision of the individual involved, and that there were many shades of grey in this area. Oftentimes his advise was that if an individual felt that there was a possible conflict it would be better to recuse himself, as there was a penalty under the Statute if voting took place where there was a conflict. There was no penalty, however, for abstaining if there was not indeed a conflict. The decision would rest entirely with the individual, who must analyze his/her own personal situation in regard to conflict of interest.

Mr. McLendon asked if recusing oneself meant leaving the room during all discussion relating to an item?

Mr. Randolph replied that a council member could chose to declare a conflict in front of the public assembly, and then leave the room if desired, but it would make no difference whether the member stayed or left the room--although he/she could take no part in the discussion.

Mr. Wyett asked if a council member could recuse oneself if testimony came forth that caused the member to believe there was a conflict of interest?

Mr. Randolph reminded everyone that the Statute talked about *before* the vote, and if it was discovered that a conflict existed during ensuing conversation, then the member could declare a conflict, abstain from the vote, and sign a Conflict of Interest Form. Mr. Randolph noted that it should be announced before the public assembly that a conflict of interest existed.

In further clarification to Mr. Shaw, Mr. Randolph explained that if a conflict of interest came to one's attention during conversation of an issue, there was no penalty for taking part in the conversation and then declaring a conflict. The law stated, however, that if one abstains, he/she was not supposed to take part in a conversation, and in most instances a person would know merely by the item on the Agenda if there was a conflict of interest--in that case he/she should announce the conflict and identify why there was a conflict when the item comes up on the Agenda.

Mr. Shaw clarified that the course of action was to declare a conflict at the first point that a council member was aware of the conflict.

Mr. Randolph agreed with Mr. Shaw that a council member would declare a conflict at the point prior to discussion of an item.

Mr. McDonald commented that it should be easy to recognize a conflict of interest as there would be a financial benefit involved.

Mr. Randolph remarked that the language "inuring to the special, private gain of an individual" made it difficult to think of circumstances where it would not involve some financial aspect, although there could be some.

Attorney Mark Herron, representing the Palm Beach Civic Association, addressed the Town Council, stating that he was a former member of the Commission on Ethics, and a significant amount of his legal practice involved ethics matters. He presented a check list from the Commission on Ethics setting forth the various items that would lead to a mandatory disqualification from voting. He stated that the Commission on Ethics, as well as the Attorney General, had determined that there were certain circumstances where a pubic official had the option within which to abstain from voting. He pointed out a few special circumstance situations:

CEO 92-27: This involved an automobile dealership that had to keep coming to the City Commission every year to obtain a special zoning variance. The dealership also purchased advertising in a magazine that one of the members of the City Commission had a small ownership in. When a formal opinion was asked from the Ethics Commission, the Commission said that there was no conflict that mandated recusal. The Commission cited public concern that a vote affecting a dealership might have sufficient repercussions or effects that the publication would benefit from the vote. They said it was up to the city official whether or not to vote, but the concern should be kept in mind.

Another example was of a personal relationship between a member of a County Commission and a person who appeared before the Commission, and the Ethics Commission had said that would not prohibit voting on issues, but the member may want to exercise discretion.

Mr. Herron cautioned that the Code of Ethics contained many definitions for the same term, for example, the "relative" spoken about in the voting conflict statute was a very, very narrow definition of relative. The "relative" mentioned in the gift statute was a very, very broad definition of relative.

Mr. Herron stated that another example of a type of circumstance that would not justify recusal was prejudice or bias, or some kind of animus against the individual. He cited Advisory Opinion 79-14: A member of the citizenry and member of a city council in a particular area got into a fist fight and when subsequent matters came in front of that city council, the city council member thought that perhaps he should not vote because of bias against the individual. The Commission required him to vote. He noted that, just as Mr. Randolph had pointed out, some kind of financial impact must trigger the recusal.

Mr. McDonald asked Mr. Herron if there was a difference between elected officials and appointed officials?

Mr. Herron responded that there was a significant difference, and that there was also a significant difference between local officials and state officials. State elected officials must file the form, announce the conflict, and vote, unless they exercise their discretion not to vote. Local elected officials had to announce the conflict, file the form, and not vote. Local appointed officials or state appointed officials had to not participate, abstain from voting, announce the conflict, and file the form. He summarized that there was a class of votes that required mandatory, by-law recusal, and then there was a safe harbor area, where if a voting member, in his/her conscience, believed there was an appearance of a conflict, and it related to those kinds of things that appeared to inure to special, private financial gain, then there was the option of recusal.

Mr. Silken, of the Citizens Association, addressed the Town Council, stating that this matter had come up before his executive board, and most members felt that the elected officials had high integrity, deserved the trust of citizens, and were expected to do what was best for the people in Palm Beach when voting. He stressed that there was a fiduciary responsibility to vote in the interest of citizens, disregarding personal feelings.

Attorney Paul Rampell addressed the Town Council stating that he represented the Mar-a-Lago Club , and that during the past several years, and probably throughout the history of the Town of Palm Beach, members of various private social clubs had been members of the Town Council and had voted on zoning applications involving their clubs. Council Members Paul Ilyinsky, George Matthews, Michelle Clarke Royal, and Lesly Smith all belonged to the Bath & Tennis Club and all had voted on zoning applications filed by the Bath & Tennis Club. He stated that Council Member Nancy Douthit belonged to the Beach Club and voted on zoning applications filed by the Beach Club, and Bernie Heeke was a member of the Sailfish Club and voted on the zoning application by the Sailfish Club--he disclosed that he was a member of the club prior to his vote, but he made the public declaration that he did not have a conflict of interest. Mr. Rampell advised that the issue of possible conflicts of interests was very old and had not been addressed today or in the recent past because of the Bath & Tennis Club, Everglades Club, Sailfish Club, Beach Club, or even the Poinciana Club, but solely because of the Mar-a-Lago Club and Donald Trump. He noted that the Town Attorney had written to the Commission of Ethics of the State of Florida on May 21, 1996 and asked if Council Members belonging to the Mar-a-Lago Club could vote on applications filed by the Mar-a-Lago Club, and had not asked about any other clubs in Town. Mr. Rampell declared that the Town continued a pattern of differential treatment of the Mar-a-Lago Club on this issue. The Commission of Ethics could have been asked for its opinion on the voting of Council Members irrespective of the club to which he or she may have belonged.

Mr. Adrian Winterfield addressed the Town Council, stating that he had difficulty staying in his seat after the last message to the Town Council. He remarked that everything was true, however, one very important fact was omitted--there may be some relevance as to the content of the application, specifically if an application for a zoning authorization is in actuality an attempt to renegotiate an agreement. Mr. Winterfield commented that unfortunately, the Town did not receive the opinion from the Commission. It received the opinion of the

Commission's attorney, who, wishing to comply with the request for a prompt response, took it upon himself to issue the opinion. Had the matter gone to the Commission, perhaps exactly the same opinion would have been issued, or perhaps the Commission would have indicated that this was an attempt to renegotiate and should be handled differently. Mr. Winterfield established that he was merely inviting the attention of Council to that potential difference.

Mayor Ilyinsky read a statement as follows-- *As the Mayor of this community, I believe that the conduct of this governing body is best served by the established rules of law, plus the guidance of the Attorney General of the State Florida and our Town Attorney. Both have confirmed that we cannot remove the rights or privileges of an elected member of this Council by any motion except possibly impeachment, or murder. As most of you know, I have spent over 14 years in service to this Town and find that the inference that any elected member of this Council would forsake his sworn obligation to serve the needs of this community by casting a self-serving ballot as a Councilman, or Council lady is truly mind boggling. Unless someone can convince me otherwise, I firmly believe that our interests are best served by the participation of all members of this entire elected body at all times, if possible. Finally, may I respectfully suggest to all of you who may disagree that you have the considerable power to express your disapproval of any and all actions of this governing body by not returning them to office, and you've shown that power on numerous times. This is a democratic way and the fundamental basis of our system of government, to which we have all sworn allegiance.*

Mayor Ilyinsky stated that he was very comfortable sitting here among these people, and assured Mr. Rampell that they were not going to vote to please him, or vote to please the Mayor, but were going to do the fair and equitable thing. He finalized his statement with "God Bless us all!"

Mr. McDonald recommended that the Town Council follow the State directed procedure, which was to declare a conflict verbally to the public audience, and then file the form within 15 days, prior to any discussion.

10. Consideration of Mrs. Crozier's request for reimbursement of legal fees to be heard at the September 10, 1996 Council Meeting.

Mr. Shaw made a motion to consider the request of Marie Crozier at the September 10, 1996 Town Council Meeting; seconded by Mr. McLendon.

Mr. McDonald commented that staff should get any back up material needed in order to discuss this item at the September meeting.

On roll call, the motion carried unanimously.

11. Set date for Ordinance, Rules & Standards meeting.

Mr. Shaw suggested that local expert advise be looked for regarding the preparation of a telecommunications ordinance, followed by a second opinion from national firms.

Mr. Jakubiak stated that there was already a draft Telecommunications Ordinance, prepared from a consortium of cities in the Chicago area, and he recommended that modifications be made to that ordinance to meet the needs of the Town. He advised that there were certain issues that would need attorney input.

Mr. Randolph stated that he would like to have a specialized attorney on board before discussions ensued regarding the ordinance before it was finalized.

Mr. Jakubiak clarified that he concurred with Mr. Randolph, however, he did not believe that an attorney needed to be retained to draft the ordinance; he agreed with Mr. Randolph that the attorney should be present during discussions were taking place.

Mr. Shaw suggested scheduling a meeting for September 19,1996, as it was hoped that an expert attorney would have been engaged by then. If it was felt that it would not be practical to hold the Ordinance, Rules & Standards meeting at that time, it could be canceled at the September 10 Town Council Meeting.

Mr. Randolph questioned setting, and then possibly canceling a meeting, suggesting that the ORS meeting be set at the September 10 Town Council Meeting.

Mr. Shaw proposed reserving the date of September 19, 1996 at 9:00 A.M. as the ORS meeting date to be confirmed at the Town Council Meeting of September 10, 1996.

Mr. Wyett suggested waiting until November for the ORS meeting.

Mr. Jakubiak stated that there were many related issues regarding the ordinance, including franchising which a telecommunications expert attorney could work on also.

Mr. Randolph clarified that an expert attorney would be pursued in the Washington, D.C. area.

Mr. Jakubiak presented information on the National Association of Telecommunication Officers and Advisors (NATOA)

Conference: if attendance was on two days, the daily rate would qualify, which was $150 for non-members, and $125 for members. Mr. Jakubiak stated that his membership could be upgraded for $75 to make it a city-wide membership, which would qualify for the $125 rate per day.

12. Discussion of stairs at El Pueblo and La Puerta Way.

Mr. Wyett stated that wooden steps would be washed away, and recommended that permanent concrete steps be built after hurricane season.

Mr. Dusey stated that the Public Works was pursuing permitting and design of concrete steps.

Mrs. Smith suggested that the Town Council decide what action would be taken today.

Mr. McLendon asked what legal responsibility the Town would have if the homeowners did the stairs on their own and were reimbursed by the Town?

Mr. Randolph suggested an agreement from the homeowners regarding the integrity of the stairs, because some liability would be assumed by the Town.

Mr. Shaw suggested that the Council go along with the suggestions of Mr. Dusey.

Mr. McLendon asked if retractable steps had been considered?

Mr. Dusey replied that had not been considered as it was not a practical solution.

Mayor Ilyinsky remarked that the area was a public beach, and the Town was very proud of its public easements, and for that reason he would like to see some action taken.

Mr. Dusey explained that the beach had been lost in March and normally recovered fairly well, however, nothing had happened in this particular area. He said that if stairs were put in now was the time as long as expectations were not present for the stairs to be there in January. He indicated that access could be provided with a less expensive stair that would not do as well in a storm for approximately $2,200.

Mr. McLendon suggested that a set of stairs go in as quickly as possible.

Mr. Wyett stated that he would like to see concrete stairs.

Mr. Shaw remarked that Mr. Dusey had recommended the El Pueblo location, and made a motion that the $2,200 steps be installed at one of the three locations as determined by Mr. Dusey; Mrs. Smith passed the gavel and seconded the motion.

Mr. Doney suggested attaching a condition to the motion that the stairs were being done one time only, and if it should wash out the Town did not intend to replace the stairs again.

Mrs. Smith agreed that this was a one time only deal, and if the stairs ever did wash out the recommendation of Mr. Dusey would be awaited regarding when a more permanent set of stairs could go in.

Mr. Shaw agreed to amend the motion accordingly.

Mr. Wyett suggested that ultimately concrete steps be used in all three locations.

On roll call, the motion carried unanimously.

13. Set a date and time for Public Works Committee meeting.

Mr. McLendon stated that the Public Works Committee meeting would be held on Wednesday, September 18, 1996 at 2:00 P.M, to review the status of the trash situation and other items to be considered in the Public Works area.

14. Discussion of condition of Town's water supply.

Mr. McDonald stated that it was deplorable that the City of West Palm Beach was allowing water supply lines to deteriorate to such effect, as they were full of dirt because the backflow valves were not being flushed. He made a motion that a letter be prepared to the City of West Palm Beach, asking them when they plan to take care of the situation; seconded by Mr. McLendon.

Mr. Wyett noted that the letter should be designed to protest health hazards in the Town.

Mr. McLendon agreed to draft a letter for the signature of the Mayor.

On roll call the motion carried unanimously.

XII. APPROVAL OF THE WARRANT LIST AND FUND EXPENDITURES FOR JULY 1996.

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

XIII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mrs. Maureen Woodward, 181 Clarendon Avenue, addressed the Town Council regarding a flooding problem on Clarendon Avenue, as well as a recent letter to her husband from Lesly Smith. She noted that the letter had described the flooding problem as occasional, and said that a project had been tentatively scheduled for the year 2000. Mrs. Woodward questioned whether there had been full information given on the problem, because the flooding was frequent, approximately 200 times per year. The street was completely inaccessible each time there was a high tide during the fall months, occasionally during the winter months, and part of the spring. The interruptions of access were not brief--it took several hours for high tide water to subside, leaving behind damage to the lawn as well as debris from the intracoastal, and even an alligator at one time. Driving through the brackish water had caused destruction of the brakes on three cars and had also affected the mechanics of several cars of friends. On three previous occasions similar letters from the Town had been received offering tentative date for repairs to commence during the 1989 budget and 1992 and 1993 budgets. Now, after three broken promises they were being asked to wait until 2000. Mrs. Woodward pleaded that the repairs be put on the budget for the current year. She noted that she was also the listing agent for the sale of this home, and the home had been leased with option to purchase for eighteen months to a qualified buyer who had decided to pass on the option due to the fact that he saw no improvement in the flooding problem. She added that many realtors would not even show the home because of the severity of the problem. Mrs. Woodward referred to a study showing a solution that would cost the Town a fraction of what the Public Works Department had planned. She had showed the study, with current pictures of the flooding, to a Council Member several months ago, and received advice to speak with Al Dusey at the Public Works Department. She had met with Mr. Dusey last week, and one of the first things he said was that she needed to be speaking to the Town Council. She summarized that after ten years, they are overdue for support, and urged that the Town Council understand the severity of this problem, and commit to budget this repair this year.

Mr. McLendon stated that he had looked at the Clarendon property, and noticed that the first floor elevation was below street level. He questioned if there was any permanent solution other than to raise the house.

Mrs. Woodward replied that the house itself did not have a flooding problem, and that the report showed how to alleviate the flooding problem in the Town-owned street.

Mrs. Smith recalled that several years ago the Woodwards had been asked to get signatures of other residents on the street regarding raising the street.

Mr. Robert Moore, Director of Building & Zoning, confirmed that Mr. Woodward had been asked to obtain the subdivision acceptance of 50% to raise the street on a 50/50 type basis, and there had been a great deal of difficulty in getting the residents to participate in the cost sharing process. Subsequent to that the property at 910 South Ocean Blvd. was subdivided, and in that subdivision agreement the future developers of that land had obligated themselves to participate in the cost sharing program.

Mrs. Woodward remarked that there was more than 50% control between those eleven lots and their one. She emphasized that they had been promised on three separate occasions that the Town did have a plan to solve the flooding problem, however, the latest letter indicated tentative relief in 2000.

Mr. McLendon commented that he was not convinced that it was a Town problem.

Mrs. Woodward indicated that the house did not have a problem; it was the Town-owned street that floods in front of the house that caused the problem.

Mr. Moore expressed that part of the problem was that water came up over the tidal basin where the boat dock was situated. Several plans had been developed to raise those walls and create a pump station to pump the water back.

Mr. McLendon stated that he would not be opposed to moving any plans of the Town forward to an earlier date.

Mr. McDonald suggested that the report of Mrs. Woodward be accepted, and this item be put on the Agenda next month so that Mr. Dusey could answer some of the questions.

Mr. McLendon made a motion that this item be put on the Agenda for the September Town Council Meeting; seconded by Mr. Shaw. On roll call, the motion carried 4/0, as Mrs. Smith was out of the room.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of July 24, 1996 - Minutes Available in Town Managers Office.

The major matters were:

B38-96 Application by Northwood University, 167 Dolphin Road, for new two story single family residence - approved.

B49-96 Application by Burt Handelsman, 228 Worth Avenue, for facade renovation and new interiors - approved.

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

B55-96 Application by Addison Development, 215 Via Tortuga, for new one story residence - approved.

B56-96 Application by Mr. Bertram French, 150 Dunbar Road, for demolition of a single family residence - approved.

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

B58-96 Application by William D. Elias, 230/232 Brazilian Ave., for new two-story villas - approved.

B59-96 Application by Palm V. Associates, 230/232 Worth Avenue, for new store front - deferred.

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

B61-96 Application by Mr. Arij Gasiunasen, 415 Hibiscus Ave., for facade renovation - approved.

Mr. Wyett made a motion to approve the Major Matters; seconded by Mr. Shaw.

Mr. Shaw questioned if the Building Department had a process whereby the number of deferrals could be limited by an applicant before it was re-processed? He noted that it appeared that items were sometimes deferred because the applicant did not show up, or applicants continued to ask for deferrals after the item had been noticed, and suggested that there should be some compensation back to the Town so that the Building Department did not have to go through the process of advertising and preparing the matter.

Mr. Moore responded that this matter would be investigated, and would be brought to the attention of the Architectural Commission.

On roll call, the motion carried 4/0, as Mrs. Smith was out of the room.

B. Time Extensions - None

C. Variances, Special Exceptions, and Site Plan Reviews

Old Business

1. Revised Variance No. 12-96 - Nancy DeMoss, 185 Woodbridge Road; to allow installation of gates setback 6'8" from the street in lieu of 18' required; to allow said gates at a height of 14'2" in lieu of 8' maximum; and Site Plan approval of a house on a lot with 30' street frontage in lieu of 125' as required. R-A District (Deferred from May 14 and June 11, 1996 Meetings)

Attorney Frank Lynch clarified that Site Plan approval had been taken care of already. Mr. Moore confirmed that.

Mr. Randolph reminded the Town Council that all witnesses to these items must be sworn in, as well as the declaration of ex-parte communication by Council members.

Mr. McDonald asked if anyone testifying would stand up to be sworn in by Mr. Randolph.

Mr. Randolph swore in all witnesses.

Mr. McDonald asked if there had been any ex-parte communication?

None was declared at this time.

Attorney Lynch, on behalf of Mrs. DeMoss, addressed the Town Council, stating that Mr. Wyett had expressed some concern regarding the location of the gates so near the closest driveway at 161 Woodbridge Road. Mr. Lynch confirmed that he had submitted a letter from that property owner (Mrs. Wood) that there was no problem with the variance requests of Mrs. DeMoss. Mr. Lynch explained that Mr. Wyett had raised the issue of nearness of the gates to Mrs. Woods' driveway. He advised that he had sat in his car in the driveway of Mrs. Woods and photographed the interaction of the gates with automobile traffic, and if the gates were set further back into the property they would be less visible when backing out of the driveway of Mrs. Woods. He presented photographs of the property to demonstrate

Woods. He presented photographs of the property to demonstrate the safety and security issues.

Mr. McLendon asked when the pillars were constructed?

Mr. Lynch replied that the gate posts probably went back to the 1940's or perhaps earlier.

Mr. McLendon asked the circumstances by which the westerly end of Woodbridge was acquired by the property owner?

Mr. Lynch responded that he believed it was acquired prior to the 1950's.

Mr. Wyett declared ex-parte communication with Mr. Lynch on this matter, stating that the lack of objection from Mrs. Woods removed a lot of his objection of the gates.

Mr. Moore stated that staff comments were the same as the prior Town Council Meeting, and if approved, a Removal Agreement would need to be signed for the gate walls which were constructed over the drainage easement. The Building Department had no hardship, other than existing gate posts, and the Comprehensive Plan should provide right of way for turn around at the end of the street for safety access purposes. The Town Manager had asked for further information on the hardship.

Mrs. Smith asked how many instances there had been of orders given for gate posts to be removed that had existed for 40-50 years?

Mr. Moore replied that to his knowledge, those posts had been permitted to stay.

Mrs. Smith asked if this was being heard because of the intent to put in gates, because at one point there was some type of gate or chain there.

Mr. Moore responded that the records had been researched, and there had been no record of gates existing on the property--there may have been a chain, but there was no record of gates or hinges on the one gate post that was still standing.

Mr. Shaw asked the completion date of the project?

Mr. Lynch replied approximately November, 1996.

Mr. Shaw remarked that he had presented a study item for zoning regarding gates at the end of cul-de-sacs and dead end streets, therefore, he asked that Mr. Lynch defer this item until that zoning issue was addressed, because there may be no reason to request a variance at that time.

Mr. Lynch responded that there were several things needed to finish this house, including landscaping, and that location of the gates did have an impact on completion, and that he would like to proceed at this time.

Mr. Shaw explained that the issue was if a set of gates could be put on existing posts that may be conforming, versus no real hardship and ample space to go forward and put up a second set of posts that would meet zoning requirements. He suggested that perhaps the gates could be moved back.

Mr. Jeff Smith, Architect, addressed the Town Council, stating that Mrs. DeMoss needed to have the house finished by the end of the year, and they were already behind schedule. He urged a ruling on the current request.

In response to the question of Mr. McLendon, Mr. Moore explained that there were other gates exceeding requirements, however, the test that was usually used was the height of gates or walls in the immediate vicinity.

Mr. McLendon asked how high the walls going north and south from the posts were?

Mr. Smith responded 14 feet.

Mrs. Smith asked the height of the existing wall?

Mr. Smith replied 12 feet, 5 inches.

Mrs. Smith noted that if it was taken down, they would have to be pushed back and built to 8 feet.

Mr. Moore clarified that the walls would go to 6 feet, and 8 feet for the column.

Mr. Smith explained that he did not want to replace walls, but just wanted to replace the existing fence with an existing, same height fence, and a gate that peaks at 14 feet, 2 inches.

Mr. Wyett suggested that the peak be taken away.

Mayor Ilyinsky cautioned that the Town Council was getting into the design business.

Mr. Lynch said that there were at least two issues that were hardships; one was the existence of the property at the end of a dead end street with no cul-de-sac and no other outlet; the other was a safety issue which related to the neighbor--if the gates were moved further back they would become less visible when backing out of Mrs. Woods' driveway; in addition vehicles could leave the property at greater speeds if given a greater distance to travel as the Woods' driveway was approached. He noted that most traffic on the street would be going to Mrs. Woods' home or to the DeMoss home.

Mr. Wyett pointed out that this would have to go to ARCOM for approval of the gates, and made a motion to approve the variance, with no specific reference made to the height of the gates, and allow it to be an ARCOM matter; seconded by Mr. McLendon.

Mr. Moore asked if the motion also addressed the concerns of the Town Engineer regarding a Removal Agreement?

Mr. Wyett and Mr. McLendon both agreed that the Town Engineer's requests would be included.

Attorney Paul Rampell, on behalf of the Mar-a-Lago Club and Donald Trump, expressed the Club's objection to the variance application, stating that it seemed to him that Mrs. Woods' consent was immaterial to the applicant's burden of proving a hardship, and that a hardship had not been proven. Mr. Rampell stated that it was his opinion that approval of this application would set a precedent in which all homes in Palm Beach at dead ends would be able to construct gates without regard to set-back ordinances. He noted that the applicant demolished the prior house, except for the gates, and had ample opportunity to integrate gates conforming to the Town code He noted that Woodbridge Road was a dead end street, and turn around problems on the DeMoss property would be a self-imposed hardship, and there was no turn around difficulty at the end of the street presently.

Mrs. Smith asked Mr. Lynch if the driveway would be redesigned if the variance was not approved?

Mr. Lynch replied negatively.

Mrs. Smith asked if the gate posts would stay where they are, with no gate, if the variance was not approved?

Mr. Lynch responded affirmatively.

Mr. Wyett clarified that the hardship was the pre-existing pillars that were currently in place.

Mayor Ilyinsky asked Mr. Lynch to repeat the hardship.

Mr. Lynch repeated that one hardship was the existence at the end of a dead end street without a cul-de-sac or turn around, and the second hardship was a safety consideration with regard to the property immediately to the east on the north side of the street, given the fact that setting the gates back further would result in less visibility of them when backing out of the Woods driveway.

Mr. Moore suggested that Mr. Lynch address any gates that might be in the area that would be at the same height above what was permitted. In addition, the Town's position in the past had been favorable towards cul-de-sac or dead end streets, with low volume traffic, and existing gates exceeding the permitted height.

Mr. Lynch said that there was one gate along Woodbridge Road that was the same height. In addition, he knew that the gate at Mar-a-Lago was in excess of what code allowed also.

On roll call, the motion failed 2/3, with Mr. McLendon and Mr. Wyett voting for approval, and Mr. Shaw casting a negative vote, Mr. McDonald casting a negative vote, stating that he saw no hardship in this instance, and Mrs. Smith casting a negative vote, stating that she did not see a hardship.

New Business

2. Site Plan Review No. 2-96 - Jan Kemper, 500 Arabian Road; to allow construction of a single family dwelling on a platted lot providing a 100' width in lieu of 125' currently required. R-A District.

Ms. Laurie Symons, of Symons Building, general contractor hired to construct the new home for Mrs. Kemper at 500 Arabian Road, addressed the Town Council, requesting Site Plan approval. She noted that the property had originally been platted as a conforming lot, and later on the restrictions had been changed to require lots to be 125' wide.

Mrs. Smith asked if there had been any ex-parte communication?

None was declared.

Mr. Moore gave staff comments as follows: The only objection that staff had regarding the Site Plan Review was the location of the dock.

Mrs. Smith asked Mr. Moore if this property had been platted as a buildable lot?

Mr. Moore responded affirmatively, adding that the zoning had rendered it as undersized and non-conforming.

Mr. McLendon asked what alternatives there were for the location of the dock?

Mr. Moore replied that the dock would be permitted if it was parallel to the seawall and attached to the seawall, but not extended out.

Ms. Symons said that there would be no problem conforming to that.

Mr. Wyett made a motion to approve Site Plan Review 2-96; seconded by Mr. McLendon.

Mr. Shaw suggested that the motion include the fact that no future variances would be sought.

Mr. Wyett agreed with that.

On roll call, the motion carried unanimously.

3. Variance No. 27-96 - Ilene Dodge, 1230 South Ocean Blvd.; to allow construction of garage addition providing a 20' street side yard setback in lieu of 35' required. R-AA District - Request for Deferral to September 10, 1996 Meeting per letter dated August 6, 1996, from Mr. Robert E. Deziel. DEFERRED.

4. Variance No. 28-96 - Sydell Miller, 1415 South Ocean Blvd.; to allow construction of a single family residence at a finished floor elevation of 24.3' in lieu of 21' maximum allowed by approval of Variance No. 9-95. R-AA District.

In response to Mrs. Smith's request for ex-parte communication, Mr. Shaw and Mr. Wyett declared communication with Mr. Broberg. Mr. McDonald, Mr. McLendon, President Smith, and Mayor Ilyinsky declared none.

Attorney Peter Broberg, on behalf of Sydell Miller, addressed the Town Council, stating that the request was to amend a variance that had been granted a few months ago. He gave a history of the property purchased by Mrs. Miller, who re-sold the property at which time a variance request was asked for point of measurement of 23 feet. The Council had been concerned with keeping the height of the building in scale with surrounding buildings, and granted a 20 foot point of measurement variance, with an overall height of 52.4 feet and a finished floor of 21 feet. After the variance was granted, Mr. Broberg had met with the Building Department to request a finished floor of 24.3 feet, which he asserted had been approved by Mr. Moore. Upon Arcom review there had been some question on the finished floor, and now Mr. Broberg was back before the Council maintaining that they had acted in reliance, and were now asking for the Council to approve a finished floor of 24.3. He noted that there was concern from the neighbor to the north, represented by Attorney Ron Kolins.

Mr. Moore stated that the height approval could not be obtained by simply coming in and sitting down to discuss it, but that all codes had to be complied with, including a review of the minutes of the meeting wherein it was indicated what the first floor level should be. Mr. Moore explained that at a subsequent meeting with Mr. Kolins, representing the neighbor to the north, a satisfactory conclusion could not be worked out, therefore the matter was now coming back before the Town Council. He noted that the staff position was that there was no objection to the overall height.

Attorney Ron Kolins, representing the Picowers, addressed the Town Council, stating that he failed to see how this variance could be legally granted, as the applicant had not been granted this same request a few months ago. In addition, he noted that there was a provision in the Town code that said if a variance application was denied, re-application could not take place for one year, and this request was a re-application for substantially the same thing that had been denied two months ago.

Mr. Moore stated that, indeed, if an application was denied than an applicant would be precluded from filing the *same* application again for one year, however, it would be permitted to come back before the Town Council if there was any deviation from the original application. Mr. Moore recalled that this application had been granted with conditions, and was not denied, and deferred to Mr. Randolph as to the legality of it returning before the Town Council.

Mr. Kolins interjected that if a variance is not granted as sought, then it amounted to a denial. Therefore, he asserted that they should not be able to reapply for substantially the same thing as they originally had asked for until they had waited a year.

Mr. Broberg replied that they had applied for a point of measurement variance, and that was all. He noted that the point of measurement variance was granted, although it was not what was asked for and had conditions attached.

Through discussion it was discovered that the Variance had been approved in March of 1995, so indeed, one year had passed. A misprint (June 11,1996, Variance 23-96) was identified in the application submitted by Mr. Broberg.

Mr. Kolins agreed that if the material submitted was indeed incorrect as a result of a misprint, then the issue of the year deadline would go away. However, he addressed the next question, which was that the application was still entitled "application for variance," and to do that certain standards of the Town Code must be satisfied. He submitted that the material submitted was inadequate and did not address the standards of the Code.

Mr. Moore stated that the application was properly before the Town Council--the Agenda and all of the advertising did identify this as Variance 9-95. In view of the opinion of Mr. Kolins, Mr. Moore submitted that the Town Council was the policy maker and must consider the evidence and decide whether the variance should be approved or denied.

Mr. Kolins expressed concern that his clients had a legitimate concern about the second floor elevation of the proposed house.

After further discussion, Mr. Wyett made a motion to approve the request as submitted, with the hardship being the lay of the land; seconded by Mr. McLendon. On roll call, the motion failed 2/3, with Mr. Wyett and Mr. McLendon voting approval, and Mr. McDonald, Mr. Shaw, and Mrs. Smith casting negative votes.

5. Variance No. 29-96 - Carol Kamenstein, 830 South Ocean Blvd.; to allow restoration of a nonconforming building (gazebo) that is located 25' from the street side yard in lieu of 35' required in addition to contributing to an excess in lot coverage over the 25% maximum currently allowed. R-A District.

Attorney Peter Broberg addressed the Town Council, correcting the record to properly name the gazebo, as it was being removed, and the proper terminology would be an existing one story storage area that had been with the property since it was created. It was being requested to restore the building, as it was nonconforming and Town Code required that it come before the Town Council to request a variance.

Mr. Moore stated that Mr. Broberg had accurately described the application and the Building Department had no objection.

Mrs. Smith asked if there had been any ex-parte communication?

There had been none.

Mr. Shaw made a motion to approve Variance 29-96, with the condition that the storage building be renovated and the octagon structure (gazebo) in the front be removed; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

6. Variance No. 30-96 - Harrison & Barbara Robertson, 134 Seagate Road; to allow construction of second story addition at 9.8' from the rear property line in lieu of 10' required and at 14.05' from the side yard property line in lieu of 15'. R-B District.

Attorney Peter Broberg, on behalf of Mr. and Mrs. Robertson, addressed the Town Council, stating that the requested second story was on the existing house, with nonconforming rear and side yard property lines, that had been constructed before the zoning code had changed.

Mrs. Smith asked if there had been any ex-parte communication?

There had been none.

Mr. Moore stated that staff had reviewed Variance 30-96, and had no objection. He noted that there was a letter from a neighbor, however, the home was encroaching no further than the present first floor. He explained that the hardship was first floor construction that was receiving a second floor.

Mr. Shaw made a motion that the hardship was in the fact that zoning had changed since original construction, and the addition was being built on top of the existing footprint, and the Variance request was minimal; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

7. Variance No. 31-96 - Mr. & Mrs. James Cleary, 369 South Lake Drive; to allow construction of a pergola on the terrace in variance
to Section 5.32© of the Town Zoning Code. R-D(2) District.
DEFERRED.

8. Special Exception No. 23-96 - James Scoroposki, 120 Clarke Avenue; to allow remodeling which would relocate a kitchen within a nonconforming guest house per Section 5.51(b)(5) of the Town Zoning Code. R-B District - Request for Deferral to September 10, 1996 Meeting per letter dated August 5, 1996, from Mr. James Scoroposki. DEFERRED.

9. Special Exception No. 24-96 - Testas Inc., Via Testa and Testas Restaurant, 219 Royal Poinciana Way; to allow open air dining within a portion of Via Testa, by removing 12 tables (48 seats) from the Garden Room and placing them in Via Testa per Section 6.61 of the Town Zoning Code. C-TS District.

Mr. Moore asked that Mr. Lynch address the very late arrival of a document regarding where the seats were coming from?

Mrs. Smith asked if there had been any ex-parte communication?

Mr. Wyett declared ex-parte communication with Mr. Lynch.

Attorney Frank Lynch, on behalf of Testas, Inc., apologized for the late amendment submitted. He noted that when the application had been filed originally, it was being sought to remove all 12 tables from the Garden Room, and subsequently it had been decided to remove some from the Garden Room and some from other locations in the restaurant. He explained that the basis for the application was the desire of customers to dine outside when the porch has been filled.

Mr. Moore reported that the Town-serving issue had been identified by the Town Manager and the Building Department; the Fire Department had asked that life safety codes be complied with in the spacing of the tables in Via Testa; other than that the application was in order.

Mr. Shaw asked how the use of the outdoor area would be controlled?

Mr. Lynch replied that hostesses, waiters and waitresses would be going through the area and the tables could be removed if the demand was not there. The existing benches would be removed.
He assured Mr. Shaw that adequate access would be provided, as the access door to the eye glass would not be blocked, which was the only access that could be impaired.

Mr. Wyett made a motion to approve Special Exception 24-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

10. Special Exception No. 25-96 - Maurizio Ciminella, 350 South County Road; to allow a restaurant to occupy 4,300 sq.ft., exceeding the 2,000 sq.ft. limit, thus requiring Town-serving status, pursuant to Section 6.40(1) of the Town Zoning Code. C-TS District.

Mr. Maurizio Ciminella, the owner of Amici Restaurant, addressed the Town Council, stating that because of the popular request of residents, he was requesting space at 350 South County Road in order to open a seafood restaurant. He confirmed that it would prove to be Town-serving.

Mrs. Smith asked for any ex-parte communication?

There had been none.

Mr. Moore stated that the applicant was requesting to take over a permitted special exception that had been granted previously, and the change of occupancy required that the new tenant come to the Town Council and demonstrate Town-serving only.

Mr. Ciminella replied that Amici had proven Town-serving and this restaurant would as well. A CPA would be hired to check the reservation book and credit cards, and 50% would be Town residents.

Mrs. Smith noted that when Jo's expansion had been approved they had been asked to come back in six months with the Town-serving form.

Mr. Wyett made a motion to approve Special Exception 25-96, with the condition that the Town-serving status be proven within six months of the time of opening; seconded by Mr. Shaw.

Mr. Shaw expressed concern about parking, and asked Mr. Ciminella if he would agree to have the valet in the parking lot and not in the street, as there as a fire station directly across the street and no congestion should be created.

Mr. Moore remarked that this matter was for Town-serving only.

Mrs. Smith replied that Mr. Shaw made the parking concern a recommendation, and not a condition of the Special Exception.

Attorney James Brindell responded that the point was understood.

On roll call, the motion carried unanimously.

11. Special Exception No. 26-96 - Royal Palm Travel, 223 Sunset Avenue, Suites 100 & 120; to allow a travel agency to expand to 3,007 sq.ft., thereby exceeding the 2,000 max. allowed, thus requiring Town-serving status, pursuant to Section 6.40(1); and to locate the expansion on a first floor providing no entrance onto a sidewalk. C-TS District.

Mr. Randolph swore in the witnesses.

Mr. Shaw commented that under Florida Statute 112-3143, as an employee of Royal Palm Travel, and under the guidelines of a gain to a business associate, he would recuse himself on this item.

Ms. Susan Lehrman Blank, President and sole owner of Royal Palm Travel, and a Town resident, addressed the Town Council, stating that more residents were requiring travel services, and she was requesting expansion of the current offices to 3,007 sq.ft. She confirmed that the agency was a Town-serving business and met all criteria for a Special Exception.

Mrs. Smith asked if there had been any ex-parte communication?

There had been none.

Mr. Moore stated that the applicant had addressed the Town-serving aspect with a letter from a CPA, indicating that more than 50% of their clients were Town persons.

Mr. Wyett made a motion to approve Special Exception 26-96; seconded by Mr. McLendon.

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

12. Special Exception No. 27-96 with Site Plan Review - Richard Gray, Grays Mobil Station, 340 South County Road; to allow a building addition increasing total sq.ft. to 2,600; the special exception use (service station) would continue at approximately 1,300 sq.ft., and the retail/convenience store portion would be expanded to approximately 1,300 sq.ft. C-TS District. DEFERRED.

13. Special Exception No. 28-96 with Variance - Escada (USA), Inc. 230-232 Worth Avenue; to allow Escada of 214-218 Worth Avenue to relocate to another retail area at 230-232 Worth Avenue, which is approximately 5,245 sq.ft. C-WA District - Request for Withdrawal per letter dated August 12, 1996, from Mr. James McC. Wearn. WITHDRAWN.

14. Special Exception No. 29-96 with Site Plan Review - St. Edwards Church, 165 North County Road; to allow construction of a 720 sq.ft. accessory storage building thereby expanding the special exception use. To allow restriping of the parking lot to add one (1) additional handicap parking space. C-TS and R-C Districts.

Mr. Martin Cerese of Cerese Construction Company, representing St. Edwards Church, addressed the Town Council, stating that all comments from the Zoning Department had been taken of.

Mrs. Smith asked if there had been any ex-parte communication?

Mrs. Smith acknowledged that she had spoken with Father Frank.

Mr. Moore stated that the Town Engineer had requested that the south side parking spaces be addressed by the architect to create the proper aisle width, and confirmed that would be acceptable with Mr. Cerese. Other than that, Mr. Moore suggested that Mr. Cerese mention that the church was Town-serving.

Mr. McLendon made a motion to approve Special Exception 29-96, with the condition that the south side parking spaces be addressed by the architect to create the proper aisle width; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

15. Flood Insurance Variance No. 1-96 - Turner Land Co., Inc., 411 Seabreeze Avenue; to allow the construction of substantial improvements (more than 50% of the value) to a two-story residence with a 7.2' finished floor elevation in lieu of 7.5' required. R-B District.

Attorney Robert Deziel, representing Turner Land Co., addressed the Town Council, stating that the property was located at 411 Seabreeze and had originally been built in the 1920's. Substantial improvements were proposed, without any enlargement to the existing footprint. Mr. Deziel noted that the variance was for the Building Code, as distinguished from the Zoning Code, in order to allow the improvements. The application contained two requests--one for the portico and one for the substantial improvements, and Mr. Deziel stated that he would withdraw the request for the portico at this time.

Mrs. Smith asked if there had been any ex-parte communication?

There had been none.

Mr. Moore commented that there were no staff objections, however, a standard Hold Harmless Agreement would be needed, should there be any flooding that may occur.

Mr. Shaw complimented Mr. Deziel on the complete application that acknowledged the extent of the work being done. Mr. Shaw indicated that Mr. Moore would be requesting the disclosure of the 50% rule on all future applications.

Mr. McDonald made a motion to approve Flood Insurance Variance 1-96; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

D. Other

1. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction Work, by Kim Anderson of Gunster, Yoakley, Valdes-Fauli & Stewart, P.A., for the Brazilian Court located at 301 Australian Avenue.

Attorney James Brindell addressed the Town Council, stating that the property was in the process of being renovated and extended construction hours were being requested. He established that the demolition was finished, and two loggias needed to be constructed as well as two elevator shaft areas. That type of work would be done during the hours currently authorized by Town Code. The request for extended construction hours was for the quieter work inside the building areas, so that all of the work could be completed by December of 1996.

Mr. Moore stated that there was a need to proceed with construction, as the intent was to keep the hotel open. He noted that Public Works had indicated that the request not include the right-of-way, with the exception of permitted construction parking--no deliveries should occur, or removal of construction debris, or operation of construction equipment should occur outside the normal construction hours. The Building Department suggested that the request be modified to be Monday through Saturday from 8 A.M. to 8 P.M.; Sundays from 9:00 A.M. - 5:00 P.M., with no work on Thanksgiving Day, no work on Christmas Day, no extended work hours on Rosh Hashanah or Yom Kippur.

Mrs. Smith questioned if permission was generally given to work on Sundays, as she was concerned with the residential area.

Mr. Moore replied that precedence had been set.

Mr. Brindell remarked that a lot of the work would be finish work that no one would even know was going on, and it would be nice to have the ability to use that day to get the work finished.

Mr. Moore interjected that the work could be restricted to finish work, with no use of heavy equipment.

Mr. Brindell replied that there was no intention of using equipment that would produce sound outside the walls of the building on the extended hour days.

Mrs. Smith confirmed that there would be no deliveries on Sunday.

Mr. Brindell responded that construction supplies would not be delivered, but it would be appreciated if inside work could be done. He remarked that there was a commitment to keep the property operating while construction was taking place.

Mr. McLendon made a motion to approve the extension of work hours for Brazilian Court, including Mr. Moore's suggestions; seconded by Mr. McDonald with the understanding that Veteran's Day be included in the holidays.

Mr. Shaw asked if the hours of 12:00 - 5:00 P.M. on Sundays would be acceptable?

Mr. Brindell did not find that acceptable.

On roll call, the motion carried unanimously.

2. Consideration of Additional Study Items for 1996-97 Zoning Season.

Mr. Moore stated that on August 2, 1996, a memorandum had been sent from the Building Department concerning the upcoming Zoning Season, wherein it was indicated that the Town Attorney would advise which study items would be affected by the Burt Harris Property Owner's Act, so that time and funds would not be unnecessarily spent.

Mr. Moore referred to the 15 study items which had been authorized by the Town Council. There were 5 additional items suggested by staff, and Mr. Moore was requesting that the Council confirm that they be included. They were as follows:

1. Amend Section 10.41(d) to specifically provide a provision that would allow the Town Council to defer an application to November if it were determined by the Council to be a substantially significant request (quality of life and/or the preservation of the character of the Town.)

2. Consideration of a provision that would allow by right rather than by Special Exception, brokerage firms and trusts in the C-OPI zoning district.

3. Clarify building width and length for beach houses in the Beach Area zoning district.

4. Amend definition of Personal Service Establishments to exclude "travel agent" and place in the office category.

5. Study the fees associated with Variances, Special Exceptions, Site Plan Review and Comprehensive Plan Amendments and Rezonings.

Mr. Moore indicated that staff was offering no recommendations on these suggested items, however, were asking for permission to add those to the study items as part of the 96/97 Zoning Season.

Mr. Randolph explained that the Town Council would need to make a determination as to whether items should be removed from the list if they are affected by the Burt Harris Property Rights Act. He indicated that he would identify those zoning items which may be affected, explain the extent to which they were affected, as well as the accompanying implications. He advised that he would give the information to staff, who would in turn present it to the Town Council.

Mr. Wyett referred to Item 13, suggesting that the Zoning Commission ban satellite dishes from front yards.

Mr. Moore explained that presently satellite dishes were not permitted in the front yard.

Regarding the added items suggested by staff, Mr. McDonald objected to Item 1, however, the others were acceptable to him.

Mr. Moore replied that the intention of this item was to allow the Council to hear the application initially, but to enable the Council to defer the action to a later date.

Mr. McDonald noted that the Council was year-round and heard things as they came before it.

Mrs. Smith said that she would be interested in hearing a legal opinion on this matter.

Mr. Shaw made a motion to delete Item 1 as suggested by staff; seconded by Mr. McDonald.

Mrs. Polly Earl, speaking for the Preservation Foundation, addressed the Town Council, stating that there were many people who felt that important things were considered when they did not have an opportunity to be in Town, even though the Town operates year-round. She noted that there were many people who were in Town 8-10 months of the year, and they may appreciate having the Town study the question.

Mr. Wyett remarked that this item would give the Town Council the power to defer if it was thought that an item should be deferred.

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

It was determined that items 2, 3, 4, & 5 would be approved.

Mr. Moore then referred to a letter dated July 18, 1996 from Attorney James B. Bertles, suggesting that three different zoning items be studied:

1. Home offices
2. Bulk Size of Homes
3. Outdoor Seating

Mr. Moore explained that home offices were permitted for private use, and not for commercial purposes, and had been permitted ever since the Town was founded. He commented that an attempt to regulate home offices would result in a regulation nightmare that would be impossible to keep up with. He added that staff did not recommend adding this item to the zoning study.

Mr. Shaw made a motion that home offices not be added to the zoning study; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Moore suggested that Mr. Bertle's suggested item 2 be reviewed by Mr. Randolph as to how this may be affected by the Burt Harris Act, and recommended that this not be added to the zoning study.

Mr. Randolph stated that he would report back to the Town Council in September as to the affect that the Burt Harris Property Rights Act may have.

Mr. Moore commented that the proposal to study outdoor seating be added to the study items. He explained that this proposal suggested creating additional seating without having to have it first located inside.

Mr. Wyett suggested that any additional seats put out be open to the public and not be reserved for a restaurant, indicating that this would restrict requests for additional tables.

Mrs. Smith suggested that it be added to the study list.

Mr. Wyett made a motion to add the study of outdoor seating to the zoning study items; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Moore then addressed a Request for Zoning Ordinance Modification filed by Marvin M. Rosenberg, D.D.S., asking for consideration of rezoning of properties along the north end of Town from Wells Road North on the ocean and lake to an R-BB district. He explained that the intent of the proposal was to provide for an intermediate district between R-A and R-B to allow bigger homes to be built along the ocean than permitted under the R-B district. He pointed out that this had been studied before, however, Dr. Rosenberg did want to make the request. Mr. Moore said that the staff was not in favor of creating a new zoning district that would be more liberal than the existing R-B, but less restrictive than the R-A along the ocean, and suggested that this item not be added to the study items.

Mr. Shaw made a motion that this item not be included in the zoning study items; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Moore then addressed a Request for Zoning Ordinance Modification filed by Robert Deziel, dealing with the aspects of gates on cul-de-sacs and dead end streets. He advised that staff did believe this item was a valid study item.

Mr. Shaw referred to his memorandum of June 8, asking for a study item addressing gates, which addressed looking at the whole Town regarding gates, not merely a cul-de-sac issue.

Mr. Shaw made a motion to incorporate his memorandum and the zoning modification request in order to include a zoning study item regarding gates; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Consideration of Setting Date and Time for a Special Town Council Meeting to Consider Special Exception No. 18-96 - Mar-a-Lago Club, 1100 South Ocean Boulevard.

Attorney Paul Rampell, representing the Mar-a-Lago Club, advised that he had written a letter dated May 15, 1996 to Paul Castro, the Zoning Administrator, seeking a postponement of the May 29, 1996 hearing "for one month, or the next succeeding regular Town Council Meeting," pursuant to Sections 10.40 and 10.41 of the Code of Ordinances. He submitted copies of his letters to Mr. Castro, Mr. Randolph, and/or the Mayor and Town Council members dated May 15, 29, and 31, 1996; July 9, 18 and 23, 1996; and August 9, 1996. He stated that on behalf of the Mar-a-Lago Club and Donald J. Trump, their availability to present their application had been made clear on a prompt and reasonable basis on any of 33 days during a three month period. These dates included June 11, 19, 21, 27; July 11, 12, 15, 16, 17, 22-31; August 2-23, 1996. In addition, he now added September 10, 12, 16, and 20, 1996, with a continued objection to September or October or subsequent dates, although both he and Mr. Trump indicated a clear calendar on October 4, 1996. Again, Mr. Rampell requested that the Mar-a-Lago Club Special Exception Application be heard as soon as possible.

Mr. Randolph asked if October 11, 1996 was not acceptable, which had been indicated was available, even though there was objection?

Mr. Rampell replied that was no longer available to Mr. Trump.

Mr. Randolph asked how much time was needed to advertise to property owners and newspapers?

Mr. Moore responded that normal processing required 30 days, but there was a 21 calendar day absolute minimum.

The date for a Special Town Council Meeting was suggested for September 16, 1996 at 9:30 A.M. to consider Special Exception 18-96 - Mar-a-Lago Club.

Mrs. Polly Earl, speaking for the Preservation Foundation, addressed the Town Council, stating that there were a number of people aware that dates in October had been discussed for scheduling this matter. She remarked that the Preservation Foundation commended the Town Council for suggesting the October dates when there would be more residents of the Town available. She suggested that consideration be given to the October dates.

Attorney Mike Timerra, representing Mrs. DeMoss, addressed the Town Council, concurring with setting the meeting in October

Mr. Randolph noted that the meeting had not been set in October, although dates in October had been offered to the applicant, who had indicated that was too far off and would request an earlier date. He stated that there should be no claims of prejudice as a result of believing that the meeting was going to be set in October.

Mr. Rampell stated that they would rather be heard earlier than later.

Mr. Wyett stated that many residents may have had the impression that this matter would be heard in October.

Mr. Rampell replied they preferred to be heard as soon as possible.

Mr. Shaw made a motion to set a Special Town Council Meeting to consider Special Exception 18-96 - Mar-a-Lago Club for September 16, 1996 at 9:30 A.M. in the Town Council Chambers; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

XV. ANY OTHER MATTERS:

Mr. Randolph referred to Resolution 40-96, stating that several conditions had been added as approval, and stated that a cover letter would make those conditions clear to the applicant.

XVI. ADJOURNMENT:

The meeting was adjourned at 8:25 P.M.

Mary A. Pollitt
Town Clerk