MINUTES OF THE TOWN COUNCIL MEETING HELD ON AUGUST 9, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL - President Wiener called the August 9, 1994 Town Council Meeting to order at 9:30 a.m. on August 9, 1994 in the Town Hall Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Wiener, Councilwomen Smith and Royal and Councilman Shaw. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Chief Terlizzese, Chief Elmore, Mr. Moore, Mr. Dusey, Mr. Bowser, Mr. Elwell, Mr. Jakubiak, Mr. Zimmerman, Mr. Frank, Deputy Clerk Pollitt.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Rabbinical Assistant Brian Glusman from Temple Israel. The Pledge of Allegiance was led by Councilwoman Smith. A moment of silence was observed in memory of President Pro-Tem William Weinberg.

Presentation by Lennart E. Lendahl of a Grant for Dredging project at the Town Docks.

III. PRESENTATION

A. Presentation by Lennart E. Lendahl, Chairman of the Board of Commissioners, Florida Inland Navigation District, of a Grant in the Amount of $165,990.70 for the Dredging Project at the Town Docks - Mr. Doney announced Mr. Lendahl would be arriving later in the meeting and suggested the comments of the mayor be heard.

Comments of the Mayor

IV. COMMENTS OF THE MAYOR - Mayor Ilyinsky said that when anything bad happens in the Town it is far more magnified than in any other place. He added often the commanding officers receive all the credit and the people who do all the work receive less. He stated the Town residents should take enormous comfort in the fact the police department, in two days, handled a very complex situation at Lewis Drug Store where a man was overpowered who was reaching for a gun. He added a BMW was recovered less than 25 minutes after it was stolen.

Mayor Ilyinsky complimented Chief Elmore and his staff on the quick response and efficiency in the way they dealt with the late Bill Weinberg's medical emergency. He commented on the recent tragic shooting death of a motorist at the corner or Palm Beach Lakes Boulevard and Okeechobee Boulevard in West Palm Beach, and added that Palm Beach is one of the safest and best run towns in the world with one of the most effective fire-rescue and police department organizations in the world. He offered his most sincere congratulations to the Police and Fire Rescue Departments and thanks for the privilege of living in the Town of Palm Beach that is taken care of by our Police and Fire-Rescue people.

Approval of the Agenda

V. APPROVAL OF THE AGENDA

Mr. Doney requested that Item IX.B. Consideration of Request for Abandonment of Easements at 450 North County Road - Consideration of Resolution No. 43-94 be heard after Item XV.B.4 since the subdivision request needs to be acted upon on in final form and also the plat consideration of the proposed subdivision before the request for abandonment is heard.

Mr. Doney requested the following item be deferred:

Deferral of Site Plan Review re: Var. 56-93

Item XV.B.1. Site Plan Review in conjunction with Zoning Variance No. 56-93 to authorize substitution of a restaurant on the site of an existing radio station at 3000 South Ocean Boulevard by H. Loy Anderson, applicant. R-D(1) District. Deferred from the July meeting. (Letter dated August 8, 1994, from A. Paul Prosperi requesting additional 30 day postponement until September 13, 1994 Council meeting).

Mr. Doney noted this item had been deferred previously.

Motion made by Mrs. Royal to defer Item XV.B.1 to the September meeting. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Deferral of Spec. Excep. 22-94

Mr. Doney requested deferral of Item XV.B.16 Special Exception No. 22-94 with variance - Escada USA, 214-218 Worth Avenue; to allow applicant to expand to the second floor for a total of 2,591 square feet in lieu of 2,000 maximum allowed. Variance is requested to provide parking off-site in a different zoning district per Section 8.23 to allow the reconfiguration of the existing non-conforming stairway. C-WA District. He stated a letter dated August 8, 1994, from Eugene Lawrence requested deferral until the September 13, 1994 Council meeting.

Motion made by Mrs. Smith to defer Special Exception No. 22-94 with variance for Escada USA until the September 13, 1994 Council meeting. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Motion made by Mrs. Smith to approve the Regular Agenda with the two deferrals and the one change. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Approved Agenda

APPROVED AGENDA (ITEMS VI. THROUGH VIII.)

Approval of Minuates

VI. APPROVAL OF MINUTES OF MAY 10, AND JUNE 14, 1994

Licenses & Permits

VII. LICENSES AND PERMITS

Char. Sol.

A. Charitable Solicitations

1. American Heart Association; No. 6-95
2. American Cancer Society - Palm Beach Benefit; No. 19-95
3. Preservation Foundation of Palm Beach, Inc.; No. 192-95
4. Big Band Hall of Fame; No. 234-95
5. International Game Fish Association, Inc.; No. 235-95
6. Alzheimers' Association; No. 256-95
7. Edna Hibel Art Foundation; No. 292-95

New Business

VIII. NEW BUSINESS

A. Other

1. Consideration of Donation to Install Air Conditioning System in Little Red Schoolhouse at Phipps Ocean Park. Little Red School House

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

Mr. Lennart E. Lendahl, Chairman of the Board of Commissioners, Florida Inland Navigation District, addressed the Council stating he was pleased to bring to a conclusion the waterway assistance program project for the marina. He stated the primary chore of the Florida Inland Navigation District is the care and the maintenance of the Intercoastal waterways in Florida, but they do have a waterway assistance program that works with local jurisdictions to do the kind of projects undertaken with the dredging. He added he considered the project a success and it gives the boaters who use the waterway an opportunity to moor boats at a very nice location. Dredging re: Town Docks

Art Wilde, the Executive Director of the Florida Inland Navigation District, presented the check in the amount of $165,990.70 to Mayor Ilyinsky.

Mayor Ilyinsky thanked Mr. Wilde and Mr. Lendahl on behalf of the General Fund, the Council and the yachtsmen who will use the facility.

REGULAR AGENDA Regular Agenda

IX. PUBLIC HEARINGS

A. Consideration of Request for Abandonment of a Portion of Right-of-Way at 496 North Lake Way - Consideration of Resolution No. 42-94 - Paul Prosperi, attorney, stated the property is located north of the Vicarage, and he presented a map detailing the area requested for the abandonment. He added the existing garage encroaches onto the easement. Mr. Prosperi said a quit claim deed, dated March 30, 1949, executed by Atherton W. and Ruth W. Hobler to the Town, represented on the map, was transferred for minimum consideration which indicates the Town paid nothing for this property. He continued on April 12, 1949, the Town quit claimed back to the Hoblers for a minimal consideration part of the property with the intended purpose of the Town to construct a suitable road on the land, at the Town's expense and without assessment to the abutting property owners. Mr. Prosperi stated the purpose was to connect together the sections of North Lake Way, north and south of Miraflores. He added the access to this property previously was from North County Road when the pieces of property were owned by the Phipps and Howard Major. He continued the property owners quit claimed a path to connect up North Lake Way which did not line up perfectly. Res. 42-94

Mr. Prosperi read a part of the deed that stated the said land shall be used exclusively for a public highway and appertained purposes and if the same should ever be abandoned or discontinued, that the title of the said land shall revert to whomever may own the abutting lands, each to the street. Mr. Prosperi said the current landowner of this property is Jeffrey Raynor as trustee.

Mr. Prosperi stated the reason for the request to abandon is that the property has been hedged in for approximately 12 years; the encroachment has probably existing forever and a driveway crosses it that provides access to the property owner. He said the request includes approximately 842 square feet which is in effect a hiatus between the existing right-of-way, laid out and in use, and the property owner's property line. Mr. Prosperi pointed out that since the Town is not using this property for North Lake Way and it has been hedged in for many years, and probably the reverter clause in the deed applies and the property should revert to the property owner in any event.

Mr. Bowser stated Mr. Prosperi presented the original abandonment request which was subsequently revised since the Town objected to the taking of a piece of property adjacent to the road. Mr. Bowser requested the rights-of-way lines remain coincident, and the Town does not wish to abandon right up to the road, and it is normal that the Town retains a small distance behind the curb, and the map was incorrect as presented as the abandonment included only a portion of the strip that was shown.

Mr. Randolph stated his concern was the legal description that was incorporated within the resolution be based upon the amended abandonment, and secondly, the reverter provision follows the common law and the property would revert to the adjacent property owners. He added the language related to the reverter does not abrogate the common law or what the situation would be in any normal abandonment before the Town Council. He continued if the Town does not have a use for this property, and the Public Works Department indicated there is no such use, indeed, it would be appropriate to abandon subject to there being no adverse comments from the public.

Mr. Bowser replied two comments were received from the public including one from Florida Power and Light.

Mrs. Wiener asked if Florida Power and Light were present and finding they were not, she stated if they were interested in this, they should be at the meeting and the Town should not be taking their part.

Mr. Bowser replied Florida Power and Light did make a written request, and the applicant has agreed to their request.

Mr. Doney reported that the Town's standard operating procedure has been to notify, in writing, the utility companies and ask them to respond in writing and if they wish to appear, they are invited to do so. He added the Town has not requested, historically, unless the Town Council wishes to do so hereafter, the utility company representative be present at the meetings.

Mrs. Wiener replied her concern is with a Town employee representing someone other than the Town in their comments. She added it may have been in writing previously, but she has never heard a presentation where it was verbally done.

Mr. Randolph said the reason it has not come up in the past is because the Public Works Department has always represented the interest of the utilities. He added the Public Works

Department is the recipient or guardian of the utilities in the various rights-of-way, and, in that regard, the utilities have always represented those interests to the Town. He stated, in the past, it has just come up as a matter of course.

Res. 42-94

Mr. Bowser said the abandonment is acceptable to the Town, the applicant and the utilities which included the City of West Palm Beach who have a 2" water main that served their property and it needs to have an easement or they need to pay to have the water meter moved back to the property line, and the applicant has agreed to those conditions.

Mrs. Smith asked Mr. Bowser if he had examined the legal description in Resolution 42-94 to determine its accuracy based on the comments at this meeting? Mr. Bowser replied the revised description had been sent to Town Attorney Randolph.

Mrs. Wiener asked if Mr. Prosperi understood and agreed with Mr. Bowser's representation of the proposed abandonment? Mr. Bowser replied Mr. Prosperi did agree with the legal description and his illustration was in error. Mr. Prosperi stated his method of colorization was at fault.

Mr. Randolph added if the abandonment is passed, he would like to incorporate language indicating it is subject to the granting of the easement back to Florida Power and Light and the City of West Palm Beach. He stated if a motion is made, it can be amended in that fashion, and the request to waive the privilege fee needs to be considered also.

Mrs. Smith asked Mr. Randolph to change the language at the meeting, and the resolution could be passed after it had corrected it.

Mr. Randolph said a paragraph would be inserted just prior to the statement allowing the Town Clerk to advertise and record which would say, "this abandonment is conditioned upon the granting of an easement to Florida Power and Light and to the City of West Palm Beach". He added he did not know the dimensions and he may want to incorporate those.

Mr. Prosperi stated the size of the FP&L easement is for the utilities currently in the ground as they are laid out and used.

Mrs. Wiener asked Mrs. Prosperi if the fee of $27,829 stated in the Resolution is acceptable to him?

Mr. Prosperi replied the applicant would accept the Resolution either way based on the fact the Town has not used this property and possibly the reverter applies, but the applicant will not contest this.

Mrs. Wiener asked Mr. Randolph if it was proper and correct for the Town to accept the $27,829.

Mr. Randolph replied he believed it is proper for the Town to accept the $27,829 and does not believe this abandonment is any different from any other abandonment which under the Common Law would require the property to revert to the adjacent property owner if abandoned. He added Mr. Prosperi had presented some language in an attempt to distinguish this from other abandonments the Town deals with. Mr. Randolph stated this is a standard case.

Mrs. Wiener asked for any public comment concerning the abandonment, and there was none. Mr. Randolph read the resolution:

> THIS IS A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING THAT CERTAIN RIGHT-OF-WAY ABUTTING PROPERTY COMMONLY KNOWN AS 496 NORTH LAKE WAY, PALM BEACH, FLORIDA.

He added the Resolution will be amended with language that will state that this abandonment is subject to a dedication to Florida Power and Light and to the City of West Palm Beach those easements currently laid out and in use.

Motion made by Mrs. Smith to approve Resolution 42-94 for the abandonment incorporating the amendments to the Resolution for the Florida Power and Light easement, the City of West Palm Beach easement and the fee of $27,829. Seconded by Mr. Shaw. The motion carried unanimously on roll call.

Res. 43-94 (deferred until after item XV.B.4)

B. Consideration of Request for Abandonment of Easements at 450 North County Road - Consideration of Resolution No. 43-94.

This request for abandonment was deferred until after item XV.B.4.

Licenses & Permits

X. LICENSES AND PERMITS

Char. Sol.

A. Charitable Solicitation

1. Hospice Guild of Palm Beach; No. 205-95.

Hospice Guild Permit No. 205-95

Evelyn Harrison, Vice-President of Hospice Guild, addressed the Council on behalf of the President, Susan Hartigan, and stated the organization had been 5 or 7 days late filing because the secretary who fills out these forms was on vacation. She added the form was sent out late in June and was caught in the 4th of July holiday mail. She apologized to the Council and added it would never happen again.

Mrs. Smith said the filing was late two times, and asked Mrs. Harrison to explain the previous time.

Mrs. Harrison replied the first late filing occurred in 1984, and the Guild had no secretary at the time. She added the current secretary stated she would never let it happen again.

Mrs. Wiener stated there was no problem with Hospice having an event, but there is a problem with the ordinance when month to month the Council finds itself in this kind of situation. She added people do change jobs, and it makes no difference whether this filing happens 10 days earlier or 10 days later. She stated this ordinance takes up staff time.

Mrs. Smith made a motion to approve the permit for Hospice and suggested this ordinance be sent to the ORS Committee for review. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Old Business

XI. OLD BUSINESS

A. Resolution

Res. 36-94

1. Resolution No. 36-94 - Adoption of Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach - Deferred from July Meeting - Recommend Deferral Per Memorandum Dated August 1, 1994 from Mr. Dusey.

Mr. Dusey reported he is in the process of reviewing the proposed standards with the utility companies and have met with Florida Power and Light and Southern Bell. He added there are several other companies he wishes to meet with, and he requested a deferral until September to allow time for revisions.

Motion made by Mrs. Smith to defer Resolution No. 36-94 until the September meeting. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

B. Other

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

Comcast

a. Consideration of the Town Staff's Cable Rate Comparison Report - Mr. Jakubiak addressed the Council, noting what they are trying to do today is finalize the 393 Form. He advised the Town does not have the burden of providing Comcast's rates, as according to the Legislation, Comcast has that burden of proof. He recalled when the process was initiated, Comcast was to file their 393 form and attach rate cards and offer an explanation of the discrepancies in the rates, however, when the form was filed, it was facially incomplete and there were no explanations of the rate discrepancies. He reported an accountant was hired who reviewed the 393 form and found questions relating to the installation charges, and questioned the accounting methodology.

Mr. Jakubiak commented he tried to get a clarification from the FCC, who stated it was an unusual way of computing the form but gave no advice as to whether or not that was permissible.

He indicated after that the historical rates were questioned and after a preliminary review, it was found that since 1990 some installation rates had increased over 60%, with rates starting at $39.95 and today they are at $67.78. He commented that the installation rates were also questioned in the review of the 393, and he tried to get an explanation of why this happened from Comcast and none was forthcoming and a review of their own was conducted to compare Comcast's rates to their nearest competitor, which was Adelphia Cablevision.

Mr. Jakubiak recalled an analysis was done on the review of the 393 forms from both of those cable companies, and a telephone survey was conducted and a rate card comparison was made. He advised the report indicated that the programs are virtually identical and the channel structure is virtually identical, with only one channel difference between the two. He advised the installation charges of Comcast exceeded Adelphia by 28% to 94%. He looked at the hourly service rate versus the trip charge - Adelphia charges $15 and Comcast charges $25.71 on an hourly basis to make home calls.

Mr. Jakubiak noted they have provided examples and it was found that a Comcast customer would pay from $4.28 to $31 more for installation than Adelphia. He stated it was found a customer of Comcast would pay from $27 to $57 for a standard installation and the equipment rental charges for Comcast were 25% to 175% higher, which would be for the monthly rental of converters and remote controls.

Mr. Jakubiak stated he still has some questions about the re-tiering and the re-structuring of rates and he believed that some restructuring may, in fact, evade rate regulation. He recalled a Comcast customer who has more services and more outlets, more programs, that the gap widens as to what an Adelphia customer would pay and what a Comcast customer would pay. He found the premium services were higher, and they are unregulated, but he believed the outlet charge should be appealed to the FCC. He questioned certain re-tiering, such as the Value Pak and they definitely questioned the Cableguard charge, which is a new 43¢ charge which states if the customer elects to use the service they have this charge in the event the wiring in their home goes out, they would be protected.

He advised the deposit policy on the equipment was questioned as Adelphia does not charge deposits on cable converter boxes, and Comcast charges $20 to $25 for deposits which are not returned until the equipment is returned.

He believed the deposits were not being reimbursed with interest. He advised the rate charges were 233% higher, and there is a $10 late charge on a monthly bill and Adelphia's charge is $3.00. He advised the reason they questioned these, is because they collect $120,000 in franchise fee revenue and also have found that similar communities collect in the area of $45,000.

Mrs. Wiener noticed every figure on the August 4th report has been changed concerning the variance rate as of yesterday and asked for an explanation. Mr. Jakubiak responded Exhibit E was changed as it was found they double counted the Value Pak, which is a confusing charge, and they deducted 50¢ out, but essentially it doesn't affect the installation charge as that relates to a monthly service charge. Mrs. Wiener asked if these figures were now correct to which Mr. Jakubiak responded he was comfortable with the report. Mrs. Wiener asked if he was comfortable with the report on the 4th and what suddenly made him uncomfortable as she was concerned with a change in the numbers the day before the Council meeting. Mr. Doney advised he asked Mr. Jakubiak to do that as the best way to facially illustrate the change and it was a correction and an error, was to show it on its face and fax it yesterday to Comcast. Mrs. Wiener asked if it was right now to which Mr. Doney responded to the best of his knowledge it is correct with this change, unless Comcast has something to say, and he asked them all to remember that the burden on this does rest with

Comcast. Mrs. Wiener agreed but felt that didn't excuse errors on our part and she was concerned that this error has now been rectified as she doesn't want to talk about it if the figures are not correct.

Comcast

Mr. Randolph advised the Council to analyze the report and they needed to hear from Comcast as to their response as this is the time when the Council may either approve or reject the 393 Form. He reported if the Council does choose to reject the 393, then there will be an appeal process to FCC and there could be potential litigation relating to it.

Mr. Leonard Rozek, Area Vice-President for Comcast Cable, addressed the Council, addressed the comparison report which was prepared by Mr. Jakubiak, noting he has had it for two days and he can't go into every item, but would like to touch the high points. He noted in Item 6, there is a broad comment made that Adelphia was more cost effective provider than Comcast and he strongly disagrees. He advised Comcast provides 16 channels for $8.57, whereby Adelphia provides 14 channels for $10.00, so they are $1.43 less and provide two more channels.

He advised on the total basic, Comcast provides 45 channels for $22.46, which rate was reduced July 15th to $21.85, so they are $1.60 less than Adelphia.

He thought it was interesting to note that Adelphia has not changed their basic rate during this regulation time and have taken the stance that he feels goes contrary to the regulations and their basic rate was $23.45 a year and a half ago and that is what it is today. Mr. Rozek advised Comcast has complied with both deadlines for the regulation and implemented the regulations to the best of their ability.

Mr. Rozek explained on the installation rates, they are FCC formulas and they calculated those formulas and provided the Town's staff and their audit firm with those formulas and feel they are correct and consistent with the FCC regulations. He doesn't know why Adelphia's rates are lower but Comcast does regularly discount the installation rate and the average installation rate in Palm Beach, since regulation became effective 9-1-93 was $20.40 and that is the average.

Mr. Rozek recalled Mr. Jakubiak made the statement that Comcast's rates have gone up historically from 1990 to 1993 and that was caused simply by the fact that in the past there were lower discounted rates on their rate cards to encourage sales and with FCC regulations, they had to assign actual cost to each service offered, meaning where they may have subsidized installation rates in the past, they now had to assign their true and actual costs to those installation rates which caused them to do whereas in the past they did subsidize them.

Mr. Rozek referred to equipment cost for converters, which are formula costs, so Comcast puts their numbers into the FCC formula and the reason that Comcast's converters are higher than Adelphia's is because Comcast's system is newer, and the equipment is newer and the FCC formula does take into account depreciation, so if Adelphia has older equipment, they would have less of a cost base to allocate those over and come up with their rates.

Mr. Rozek noted there should be another change in those numbers for addressable converters as customers do not need addressable converters unless they have a pay service. He stated they do not charge that cost to their basic customers.

He advised Comcast has built a completely new television service in Palm Beach County and Adelphia is operating a system which they purchased seven or eight years ago and have not upgraded substantially. He noted Comcast's system has the ability to add twenty more channels, so significant investments in the community have been made, whereas Adelphia has bought and operated a system without many changes.

Mr. Rozek believed the Town of Palm Beach has received more franchise fees than a Town of a similar size as the reality of that is the Town has a higher income and the customers in Palm Beach tend to subscribe to a higher level of service than their average customer, which generates more revenue and therefore more franchise fees.

Mr. Rozek recalled in Martin County, Adelphia was underpaying their franchise fees. He felt the bottom line is in terms of how it is affecting Comcast's revenue in the Town, and since the new rates have been implemented, they have had 20% of their revenue reduced in the Town of Palm Beach since the regulations have gone into effect. He reported in terms of regulated revenue, that would be basic service, equipment, additional outlets, Comcast have seen their revenue decrease 28% from July, 1993 to July 1994. He believes regulation has worked although they don't fully agree with many of the regulations, but have fully complied with them.

Mrs. Wiener asked if Mr. Rozek has discussed the matters he has brought before the Council with the staff to which Mr. Rozek responded they have talked of many things on an ongoing basis for the past six months and much of it, he felt has been ignored and he was looking forward to the opportunity of talking directly to Council, as they have had a great degree of frustration and although they have tried to answer the questions posed by staff, and have provided massive amounts of information, Mr. Jakubiak disagrees with that information and he hasn't had any success in trying to communicate through staff.

Mr. Doney wished it to be understood that their responsibility lies with advising the Town Council to protect the customers within the Town of Palm Beach based upon what are reasonable rates and also the whole concept of the consumer protection. He felt Comcast is in it to make a profit, which he states with all due respect, however, the unfortunate aspect is when all of the rates are aligned and they are put in a different category, it is tremendously difficult to make a direct comparison and he thought Mr. Jakubiak has done a good job of trying to sort out, in terms of offering to the Town Council and to the Town Attorney and himself something that can be compared in laymen's terms, and unfortunately what has happened is the timing of this coming to the Town Council today, it is the time for the Town Council to make a decision and the burden rests with Comcast and he believes there are several items which Mr. Rozek spoke of that staff does not agree with and Mr. Doney believed it would be in the Town's best interest to have the FCC make the determination on the rates and offer the Comcast customers in the Town the best service with the best rate.

He advised there was a meeting of Mr. Randolph, Mr. Jakubiak and Mr. Rozek and Mrs. Christie and they have met with the auditors involved and even the auditors disagree on the matter of the presentation of the rates and he felt they have done the best they could do in order to present accurately and in laymen's terms where they believe Comcast could be more competitive in their rates, and at this point, he did not believe they were, based on the tables offered.

Mrs. Royal asked what is the next step, do they ask the FCC to intercede on the Town's behalf or does Comcast go to the FCC and ask them to intercede on their behalf? Mr. Randolph responded the Town makes the determination as to whether or not it would be approved and the next step is to make the determination as to whether or not the Town issues an Order of Refund, as they don't have any information relating to the specifics and in the event the Town Council did not approve the 393 form today, they could direct staff to analyze this and consideration would be given as to whether should be an Order of Refund, and that Order would either by accepted or rejected by Comcast, as he understood it. Mrs. Royal stated if this is turned down, the Town can issue an Order of Refund which essentially tells Comcast they owe everyone who is a subscriber in the Town a certain amount. Comcast

Mrs. Smith felt that generally when there is a disagreement between two parties, one should make a compromise and asked Mr. Rozek if he has come with some sort of a compromise before they go into litigation. Mr. Rozek responded he was talking initially about the comparison report as now they are talking about the FCC 393 Form. He advised the 393 Form deals with three elements:

1. Basic service
2. Equipment Costs
3. Installation costs

and they have followed all those formulae and the Town has had them audited and he believed the only question found in the way the formulas were calculated had to do with the installation costs. Mrs. Smith noted they are talking about the figures for the Installation and wondered if Mr. Rozek had any figures to give the Council which would be locked in for the residents of the Town, as they have been escalating.

Mr. Rozek responded it is his feeling that they have followed the formulae and they feel it has been done correctly, and the Town has audited those formulae and to the best of his knowledge, the only question they found in the way the formulas are calculated and the information that was provided was to do with the way deferred taxes were handled, which impacted the installation rates by 44¢. He thought if the changes were made in the deferred taxes which would lower installation rates, it would raise the basic rate by 40¢ a month.

He advised they are locked in to following the formula and that has dropped their basic rate and their additional outlet rates and equipment rates, but it has increased some of the installation rates.

Mrs. Smith recalled Mr. Rozek stated earlier that the original rates were lower to make it more attractive to new customers and she understood that, but in the case of the Town of Palm Beach residents, there are many customers who purchase HBO, Showtime and others and the rates did escalate more for these people as they had a larger service. Mr. Rozek explained that was not really the case, as their revenues have decreased by twenty per cent, and a lot of customers experienced a decrease in their rates. Mrs. Smith believed that was because the cable rates were too high and that is why the rates came down.

Mr. Shaw understood there were approximately 9000 subscribers in the Town of Palm Beach, and he was confused about the statement that Mr. Rozek made about reducing the installation fee that the accounting process would offset that towards the basic rate, however, according to one of Comcast's exhibits, it looks like there are three thousand installations per year of various types and he wondered how they could do 3000 installations a year and had 9000 subscribers a month, he didn't see how reducing 40¢ of the 3000 would add 40¢ on the 9000. Mr. Rozek explained this is following the FCC formulas, as when an element is changed from one side of the equation to the other, it has an impact on it. He reported the regulations are over 500 pages and one has to read them to believe them. He stated it is a judgment call as to where these fees should be allocated and the company chose to allocate them in that format nationwide and they have been approved in that format so it lowers the basic rate and not the installation rate.

Mr. Shaw asked how many subscribers have the addressable converters versus how many need them to which Mr. Rozek responded he doesn't have an answer to that. Mr. Shaw felt it was a relevant question as if the marketing program of Comcast is to sell a converter to someone who has a cable ready set and doesn't need a converter, then to sell an addressable converter to someone who has no intention of subscribing for Pay for View and only wants HBO, doesn't make any sense and he wondered if the subscribers realized they do not need a box when they have a cable ready set. Mr. Rozek responded they do not try to position addressable converter boxes in the homes which do not need them.

Mr. Shaw wondered if Adelphia discounted installation fees also? Mr. Rozek felt they were getting into another area on the 393 Form and has nothing to do with the comparison report.

Mrs. Wiener believed the Town wanted to see some kind of a rate reduction and asked Mr. Rozek if there was any kind of a rate reduction which would be proposed by Comcast, recalling a new system had been put in by Comcast, so they have to be fair and equitable, and the problem is when a group like the Town tries to regulate an industry which may be above the Town's serious ability to do so, she thought that they needed to find some sort of a situation where they both would be happy and not go down the road where this appears month after month, and has all kind of legal implications, which she really didn't want to pursue. She thought they all would like to get some kind of a break.

Mr. Rozek indicated they have tried to follow the FCC regulations and that is what he is trying to do. Mrs. Wiener asked if they insist on a certain rate or could they go below it? Mr. Rozek felt Comcast was already doing that with the promotional rates. Mrs. Wiener asked if there was something that Comcast wished to offer the Town and extend a hand of good will? Mr. Rozek responded he would like to do that, however, he had to go back and look at it. He felt it wasn't necessarily a hand of good will as much as trying to be consistent as they do have 18 communities they deal with in Palm Beach County, and they have to keep their rates consistent. Mrs. Wiener felt all of the other communities would also like to see a good hand of good will. Mr. Rozek reported that Comcast has followed the regulations and the Town has seen a twenty per cent decrease in costs and 28% on the regulated side.

Mrs. Wiener believed each of the Council members can judge for themselves whether or not there has been such a reduction, and she did not believe she had. Mr. Rozek recalled that question was raised and he has looked at her billing and in August of 1993, which was before the regulations, she paid $123.35 and in August of 1994, she was billed $94.77 which is a twenty three per cent reduction for the fixed costs.

Comcast

Mrs. Smith felt the Town of Palm Beach were big customers for Comcast and she asked what Comcast would bring to the Town Council which would help them approve the agreement. Mr. Rozek responded the rates have already been reduced on basic rates, equipment rates, and that is why the revenue has gone down and he considered that a pretty significant hand shake.

Mrs. Smith believed Comcast was a wealthy company. Mr. Rozek felt it has been said that the people are also wealthy and if they lost twenty per cent, that hurts and it has hurt Comcast as well, as this is a significant decrease in the total revenue. Mrs. Smith felt that Comcast had the cable system in Palm Beach and has a monopoly in the Town at the moment, and she knows they have spent monies to update that equipment but their prices are higher than Adelphia on the installation. She asked if there was anything that Mr. Rozek could offer the Town or could they come back next month and offer something so a resolution of this problem can be reached. Mrs. Smith understood what she was saying and unfortunately, he felt in looking at Adelphia they will see they have not reduced their basic rates, and may have reduced their installation rates, but installation rates for cable companies do average two and a half to five per cent of the total revenue. He stated Adelphia make their money on their basic rates.

Mrs. Wiener asked if there was a time constraint here with a deadline that had to be met for FCC to which Mr. Jakubiak responded the next review of the Form 1200 is due this month and he thought this needed to be resolved. Mr. Randolph asked if it was required to be resolved under the legislation? Mr. Jakubiak responded an accounting order has been issued and the Town does have the opportunity to request further information and make a final decision on this and it probably could be deferred one month. Mrs. Wiener understood the Town Council could recommend to Comcast to go back and sharpen their pencils and come back to the Town Council next month and see if something can be done for the Town before we get into a situation which will not be agreeable to anybody.

Mrs. Royal recalled Mr. Rozek stating he couldn't treat the Town any differently than the other municipalities to which she did not agree, as they have a relationship within each franchise and she thought they could offer a lower installation charge in the Town to which Mr. Rozek responded they can only offer a lower installation fee within the service area and not within a franchise of the individual communities. He felt the only discrepancy they have is on the treatment of deferred taxes which impacts the installation rate by 44¢. Mr. Jakubiak did not agree with that statement, as he has tried to clarify where the revenue is being generated in the Town and Comcast would not provide that information as they felt it was not applicable to the 393 form.

Mr. Jakubiak advised another issue is there are rates within the study which can be appealed to the FCC which are not in the regulated tier. He recalled another city in Florida has rejected the Comcast's rates and there are 8 states which are involved in Federal litigation with Comcast concerning these same issues.

Mr. Rozek responded that information that Mr. Jakubiak is talking about on historical pricing was asking for installation revenue information from 1990 to the present time, and the way the FCC Form 393 is calculated is from information September 1, 1993 forward. He noted historical pricing of installation has nothing to do with the FCC Form 393. He stated he will respond but he wants the Council to know it doesn't relate to the Form 393.

Mr. Randolph indicated Mr. Jakubiak has reviewed these regulations day after day and is more versed on this than Mr. Randolph, but it was his thinking and they had to act on this today to meet a deadline, but it sounds like there is some time.

Mrs. Wiener asked Mr. Jakubiak what was his understanding of the Form 393 to which he responded the FCC has stated the franchising authority may request whatever information is necessary to make a determination on the rates and the reason the historical information was requested was because the accounting review indicated that the installation rates are excessive, and that is why he asked for an explanation dating back to 1990 since they want to know why the rates have increased from 25 to over 60 per cent in three years and he has not received that explanation from Comcast, so he had to make the assumption that their rates were excessive.

Mrs. Smith moved that this matter be deferred until the next meeting of the Council, and wished to state that she is happy with the Comcast service except when the cable goes out and she can't get them on the phone. She felt positive a solution could be reached without going to the courts or appeal to the FCC and wished to give them a chance to come back next month. She reminded all the Town staff works for Palm Beach and its citizens and perhaps if the information is forthcoming, there may be a solution reached.

Seconded by Mr. Shaw who asked if in preparation of the information which will be brought next month and because of their statement that the geographic rates must be identical, but since Palm Beach is one of the better customers as far as taking more services is concerned, he wondered if they could not offer to all of their subscribers a pay pack which would allow the Town to take more services with substantial savings and that could be offered throughout the area.

On roll call, the motion carried unanimously.

Mrs. Wiener stated the other items with regards to this subject will also be put over to next month.

b. Consideration of Comcast's Response to Pending Cable Rate Issues.

c. Consideration of Adoption of Disapproval of F.C.C. Form 393 to Establish Cable Rates.

d. Consideration of Accounting Services for Future Cable Rate Reviews, Including FCC Form 1200.

2. Consideration of Status Report on Beach Cleaning Test Program.

Beach Cleaning Test Program

Mr. Dusey reported since the second week in June, the Public Works Department has been cleaning the wrack line as directed by the Town Council. He stated an all terrain vehicle has been purchased to travel up and down the beach to aid in the picking up of debris. He added lumber and other driftwood is cut up and placed in the rear bed of the ATV. Mr. Dusey stated the program is working well as of this date.

Mrs. Smith asked if the person on the ATV notices or comments on the debris on private beaches?

Mr. Dusey replied he does not as he has been instructed not to worry about that part of the beach; however, if any item is close to the wrack line, the operator will pick it up.

Mrs. Smith asked if the operator would report to the Public Works Department any situations on the private beaches requiring clean up since an ordinance exists for clean up of private beaches also?

Mr. Dusey replied the operator does not report since it was his understanding the issue of the private beach clean up was to be handled on a complaint basis, not on an observation basis. He added the one garbage can has been left at Palmo Way and other garbage cans have been ordered and should arrive in the next 2-3 weeks.

Mrs. Royal asked if the beach cleaning will cost more during the winter months when it will take 5 days to clean the beach?

Mr. Dusey replied it would not since his department budgeted for a single person, full time and a part time person from another bureau is also used on an experimental basis.

Mrs. Wiener complimented Mr. Dusey on the good job being done on the beaches.

XII. NEW BUSINESS

New Business:

A. Resolution

1. Resolution No. 41-94 - Supporting the Continuation of Congestion Mitigation and Air Quality Funding by the United States Environmental Protection Agency for Air Quality Maintenance Areas - Mr. Randolph read the resolution:

Res. 41-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, SUPPORTING THE CONTINUATION OF CONGESTION MITIGATION AND AIR QUALITY (CMAQ) FUNDING FOR AIR QUALITY MAINTENANCE AREAS: AND FOR OTHER PURPOSES.

Motion made by Mrs. Smith to approve Resolution No. 41-94. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously for approval.

B. Other

1. Consideration of Proposed Physical Modifications by the Florida Department of Transportation to Royal Park Bridge and Bridge Tender's Structure.

Proposed Physical Modifications by the FDOT to Royal Park Bridge & Tender Structure

Jim Wolfe, P.E., Director of Production for the Florida Department of Transportation, introduced Jeff Koons, Chairman of the Municipal Planning Organization.

Mr. Wolfe stated he wished to consult with the Town Council on the issue of the appearance of the Royal Park Bridge and solicit the comments of the Council on the proposed aesthetic enhancements to the bridge. He further stated if the Council did not think some of the changes would be appropriate, the Department of Transportation would modify or delete these proposals and would not go forward with those particular proposals.

Mr. Wolfe reported the Department has current contracts for the rehabilitation of Southern Boulevard Bridge and Flagler Memorial Bridge, north and south of the Royal Park Bridge. He added these contracts would have traffic impact during the fall months, but these work periods will be staggered so the three bridges will not be closed at the same time.

Mrs. Wiener suggested Mr. Wolfe consider the high volume of traffic during the Thanksgiving period and schedule around that time for closures.

Mr. Wolfe said the Department has two contracts for bridge rehabilitation and a limited time period, and the season cannot be impacted with any traffic closures. He reported the Flagler Memorial Bridge will require up to thirty days complete closure between September 1 and November 12, and Southern Boulevard will require up to seventy days complete closure between the period of April 30 and October 31. He added all of the work will be completed by mid December.

Mr. Wolfe reported the contracts have been let for electro/mechanical updates and repairing, but the first phase of the contracts involves ordering the specially fabricated parts needed for the repairs and the actual construction dates are scheduled within the time periods previously mentioned.

Responding to questions from Mrs. Royal, Mr. Wolfe stated the Department of Transportation has the contractual ability to shut down the project November 12 and open the lanes to traffic on the bridges and said the bridges will be operable. Mr. Wolfe further stated the average elements of work that required bridge closures within their jurisdiction have been on time, and these allotted times will, in all probability, not be utilized to the fullest.

Mr. Wolfe stated the Department decided not to close down half of the Flagler Bridge at any given time to allow traffic to continue on a limited basis. He stated the plan is to allow complete closure and complete the entire job in a timely manner. He added these bridge closures are informational and the real purpose of his appearance before the Town Council is to present the almost completed plans and information concerning the proposed project for the Royal Park Bridge, not on the same schedule as the other two bridges but planned for approximately one year later. He stated the $2.5 million proposed electro/mechanical rehabilitation project has the opportunity to have additional funds spent to improve the appearance of the bridge.

Proposed modifications by the FDOT to Royal Park Bridge & bridge tender structure

Mr. Wolfe stated the original south side part of the span was constructed in 1927 at half the current width, and in 1959, the north side of the bridge was widened. He reported that the original portion was actually paved, concrete arches while the arches on the north side of the bridge are beamed construction, but these two types of construction are not apparent viewing the bridge from a distance.

Mr. Wolfe presented a list of proposed items for improvement to the bridge including:

1. Coating the bridge with a concrete paint providing a textured, colored surface - picking up colors, i.e. beige, used in Palm Beach. Two toned arches, using a slightly darker color around the bands, with a different color for the bridge could be used.

2. Replace the existing modern cobra-head roadway lighting on the bridge structure with decorative lighting poles and fixtures incorporating the original design of the fixtures from the 1920's.

3. Remodeling the bridge tender control house, based on a plan previously proposed by the Town for use at the Flagler Memorial Bridge.

Mr. Wolfe referred to the removal of the historical designation by the State Historical Society from the bridge to allow the proposed improvements as the State Historical Society does not recognize the local designation of the bridge.

Mrs. Wiener questioned the point of any local designation if it is not recognized by the State.

Mrs. Jane Volk, Chairman of the Landmarks Preservation Commission, addressed the Council and expressed her astonishment concerning the "removal" of any designation by the State. Mrs. Volk stated the Town's Landmarks Preservation Ordinance has stood up well since its 1979 inception and was mandated by the State. She added the arbitrary dismissal of the landmark designation by the State is unacceptable.

Jeff Koons spoke to the Council and stated the Town's Landmark designation stays in place, but the Transportation Department was prohibited from doing the bridge tender's box with the historical designation because of the State. He added the issue was with the bridge tender's box not the bridge itself.

Mrs. Wiener asked Mr. Koons what would have prevented the Transportation Department from using the normal method of doing this procedure which would mean meeting with the Landmarks Preservation Commission and, together, the decision as to how this project would look would have been made?

Mr. Wolfe responded the designation tied the DOT hands, and they were not able to proceed. He stated it is up to the Town to decide which of the elements in the presented plan will actually be implemented, and the Department of Transportation will abide by the wishes of the Town.

Mrs. Wiener responded it is not the plan but the way it was approached that is the problem. She added the Town has a Landmark Commission which deals with these issues and provides recommendations to the Council and provides a natural course for these matters to be handled.

Mrs. Smith said she assumed the Department of Transportation would have given the Town of Palm Beach the courtesy of notifying them of the plan before the historical designation was removed. She complimented the Department of the plan for the Bridge tender's box, but the announcement that the bridge has been "undesignated" has come as a shock to all the Council members, and this creates difficulty when it has been handled in this manner.

Mr. Wolfe replied he expected there was some kind of notification to the Town.

Mr. Doney responded he was not aware of written communication to the Town, but the whole issue of de-designation rests only with the State Historic Preservation Office. He continued the Town Council's designation of the three bridges Royal Park, Flagler Memorial and Southern Boulevard bridges stands and the full authority remains, and the problem the FDOT had with the State has since been overcome and that will allow the FDOT in the future to address the Bridge tender's house.

Mrs. Wiener stated nothing has happened at the Town's level that has changed the status of the landmarking, and the Town will proceed as they normally would.

Mr. Wolfe explained further that the State designation stopped the DOT from making any changes in the appearance of the bridge even if the Town desired them, and that constraint no longer exists.

Mrs. Smith again expressed concern the State could take the action of "de-designation" without any notification to the Town.

Mr. Wolfe explained the bridge tender's house was commissioned by the Town from Digby-Bridges a couple of years ago for the Flagler Memorial Bridge. He proposed to take the appearance of this design and incorporate it in the Royal Park Bridge plan for the tender's box. He visually pointed out the barrel tile roof, the earth tones and the relationship of the style of this bridge tender's house to other structures in the Town of Palm Beach. He stated this design is planned to be incorporated in the plans for the future rehabilitation of the north bridge, a year from now, and these plans will be given to the contractor to negotiate a supplement to the contract for that project. He added the negotiations for this contract have not been completed as of this date, and a separate contractor may be involved; however, this proposed appearance would ultimately be adopted for the north bridge.

Mr. Wolfe explained the Ohio company who made the original 1927 light poles and lanterns is still in existence and can reproduce the originals on a twenty foot aluminum pole in place of metal poles to alleviate maintenance problems. He added the lighting of the arches will not be included in the package by DOT but should be evaluated at this point, and a test in approximately three weeks to light one of the arches in different ways will be part of this study.

Mrs. Wiener replied she would like the aesthetics of these changes discussed with the Landmarks Preservation Commission, and unless the requirement for the money for the proposed lighting of the bridges is made in the form of a state mandate and included with the proposal, it will not be acceptable.

Mr. Wolfe responded the DOT never binds the local governments with lighting agreements and clarified the DOT will maintain the lighting on the bridge itself, but the illumination for the arches would not be maintained by the State thus making the lighting of the arches unlikely.

Proposed modifications by FDOT to Royal Park Bridge & bridge tender structure

Mr. Wolfe noted the light poles on Royal Palm Way should be moved back a couple of feet and noted the lighting system off the bridge should be pursued as a separate project, perhaps as a request for enhancement dollars, and not be included with this bridge contract; therefore no changes would be proposed for the street lighting at this time.

Mrs. Royal asked if the question concerning the removal of the landmarked designation of the bridge could be addressed, perhaps by Mrs. Volk, and answered at a later meeting.

Mr. Randolph responded the Staff will have to investigate this matter and return with an answer at a later date.

Mr. Koons added as chairman of the MPO, his group oversees all the State - Federal transportation dollars, and this project is a one in a twenty-five year project to maintain the physical structure of the bridges. Mr. Koons stated he was aware of the Town's intent to replace the bridge tender's box and the lighting, and this was an opportunity to tie this program into the Town's wishes for aesthetic improvements to the structure.

Mr. Doney added the next meeting for the Landmarks Commission is Wednesday, August 17, 1994.

Motion made by Mrs. Smith to support Mr. Wolfe's proposal and gave the Town's blessing to go ahead with the work and submit the contracts to the contractors for the re-building of the bridges and submit the proposal to the Landmarks Commission for their input on an aesthetics basis only. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. Consideration of Appeal of Public Works Director's Decision Regarding Solid Waste Bill by Mr. Richard Britt, General Manager, L'Ermitage, 200 Bradley Place - Manuel Farach, attorney representing L'Ermitage Condominium Association, stated the units at L'Ermitage were turned over to the owners in approximately February of 1987 and until this time the commercial waste disposal fees continue to be billed to the association although residential disposal fees were also being billed. He asked for a refund of the fees paid by the Condominium Association totaling $21,812.64. He stated Mr. Britt, the General Manager, was unaware of the situation until he was notified earlier this year by the Town.

Appeal of Solid Waste Bill by L'Ermitage Condominium

Mr. Farach continued the normal routine would have been for the developer of L'Ermitage to notify the Town when the project was completed; however, in this case two developers were involved and the process was not handled as it should have been.

Mr. Dusey reported, after discussion with Mr. Randolph, he was uncomfortable with an entire or partial refund without Town Council approval. He added the Public Works Department expected the L'Ermitage people to notify the Town at the inception of the condominium phase.

Mr. Dusey, replying to a question from Mr. Randolph, stated the Department does project these funds into the budget on a year to year basis and relies on these monies.

Mrs. Smith recalled another condominium in the south end had a similar situation a couple of years ago and remembered notification also had not been provided when the status was changed.

Mr. Dusey reported several condominiums were found to be in a similar situation, and the Public Works Department had stopped billing when these discrepancies were discovered. He added no one is billed in lieu of the associations since the condominium units are considered residential.

Mr. Randolph reported the last time this issue was addressed, the statute of limitations was considered, and the refund was issued on that basis. He further stated the Town Council determined the actual portion of the money that was refunded. Mr. Randolph said he discussed this potential refund with the L'Ermitage attorney who presented case law stating this was a windfall for the Town, and the Town is not entitled to the money. Mr. Randolph added he does not entirely agree with that and thought the property owner bears some of the responsibility. He continued that this money is budgeted on a year to year basis with the anticipated fees, and a problem is created for the Town when someone comes back after the fact and states the Town is not entitled to the monies. Legally, he stated there is a basis for charging and keeping the funds, and the matter is a policy decision at this point.

Mrs. Wiener commented she had a problem with an error that it took the applicant almost seven years to correct and the question of bad management may be part of the problem. She further stated some accommodation should be given but she was opposed to a seven year accommodation.

Mr. Farach reported L'Ermitage actually did not find the error but were notified by the lack of billing by the Town and stressed the situation of having two developers for the original project and the developers lack of follow through on notification to the Town at the appropriate time.

Mrs. Wiener noted the Town had notified the Condominium Association of the situation and had the Town wished to continue with a windfall situation, the Town would have continued the billing practice but instead acted in good faith. She questioned the propriety of the applicant saying, thank you for letting us know and then asking for the money back.

Mr. Farach replied although the extra monies were collected, no extra services were provided and approximately $20,000, extra revenue to the Town, was collected by the Town, and this was the basis for the proposed reimbursement. He added there may be two parties equally at fault or equally at blame, and he does not believe the Association should be held responsible.

Mrs. Smith requested a settlement amount or a compromise figure that the Association would accept in lieu of the $21,812.64 mentioned.

Mr. Farach responded Mr. Britt, representing the Association, would return to the Association and present the 75% proposal figure to them.

Mrs. Royal commented she would not vote for approval of any amount to be refunded, since the Association had paid bills for such an extended period of time without question and did not think the Association had the right to seek relief from the Town for any amount.

Motion made by Mrs. Smith to have the Town reimburse L'Ermitage $10,000 in good faith for the mistake made. The motion died for lack of a second.

Richard Britt stated he was aware of no established procedure to notify the Town of the status of the condominiums, and this situation exists for other condominiums in the Town, and he requests L'Ermitage be treated in a like manner as previous condominiums.

Mr. Dusey stated the previous refund consisted of returning the monies collected for the past four years and splitting the difference of any amount prior to that.

Mrs. Wiener stated a precedent will be set with this appeal since other condominiums may have this same problem, and these will make a serious impact on the Town budget.

Motion made by Mrs. Royal to deny the request from L'Ermitage for reimbursement for any amount. Seconded by Mrs. Smith. On a roll call vote, the motion failed to carry 3-2 with three negative votes cast by Mr. Shaw, Mrs. Wiener and Mayor Ilyinsky.

Mrs. Wiener recommended that the amount be annualized and used the examples of the last two or three years instead of an actual dollar amount therefore establishing a basis for the refund.

Motion made by Mrs. Smith to refund the amount paid in one year by L'Ermitage which sets a precedent for other condominiums. Seconded by Mr. Shaw. On a roll call vote, the motion carried 3/1 with Mrs. Royal casting a negative vote.

Medical Director's Contract for FY95

3. Consideration of Request for Authorization for Town Manager to Execute Medical Director's Contract for FY95 -Mr. Doney stated he concurred with Chief Elmore's memorandum of July 20, 1994 that Dr. McCurdy has performed exceptionally well and renewal of his contract is recommended.

Motion made by Mrs. Smith for renewal of the medical director's contract for FY95. Motion was seconded by Mrs. Royal. On a roll call, the motion carried unanimously.

Agreement between AT&T and Town - Ord. 9-94

4. Consideration of Proposed Agreement Between AT&T Corporation and Town of Palm Beach Pursuant to Ordinance No. 9-94 - Mr. Randolph stated the agreement follows in detail the ordinance previously approved by the Town Council requiring a subsequent agreement be reached and after review by Mr. George Hanna, a change on page two was made to read:

WHEREAS the interests of AT&T Communications of the Southern States, Inc. under the ordinance has been transferred to and resides with AT&T CORPORATION, ITS PARENT.

After making those two changes, Mr. Randolph recommended it be accepted.

Motion made by Mr. Shaw to approve the Telecommunications Lease Agreement as presented with the changes to page two, second paragraph. Motion seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Approval of Warrant Registers

XIII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR JULY 1994 - Motion made by Mrs. Smith to approve the warrant registers and funds expenditures report for July, 1994. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Communications from Citizens

check for beach restoration

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE - Gerald Goldsmith on behalf of Mr. Abe Gosman presented a check for $50,000, the first contribution for the beach restoration project, to Mayor Ilyinsky.

Mrs. Wiener expressed gratitude on behalf of the Town to Mr. Gosman for his bequest.

Phipps Subdivision

Helen Cluett, 217 Emerald Lane, addressed the Council concerning the Phipps Subdivision to be heard later in the meeting as she was unable to stay for the remainder of the meeting. Mrs. Cluett asked for as few changes as possible in the present appearance of the property and expressed her concerns about the possibility of excess traffic on North Lake Way and encouraged the use of North County Road as the main access to the subdivision since North Lake Way is presently too busy. She stated she would like to see the retention of the existing main house located on ten of the proposed lots in the subdivision, and most importantly, maintain the beauty of a large, private estate.

Poinciana Club

George Dempsey, owner of Dempsey's Restaurant in the Royal Poinciana Plaza, addressed the Council concerning the increase of membership and activity at the Poinciana Club as it affects the parking in the Plaza area. Mr. Dempsey also questioned the owner of the liquor license which he understands is still in the name of the late Mr. Holder.

Mrs. Wiener replied the use of the Poinciana Club was presented, not as an expansion of use or anything of that nature, but an extension out toward the lake.

Mrs. Smith remembered Mr. James McC. Wearn had stipulated that no lunches would be served and the question was raised whether this was a club or if it were grandfathered in, and Mr. Wearn stated he would send the documents to the Town showing it was chartered as a club.

Mr. Moore responded he would have to check to see if these documents have been received.

Mrs. Smith recommended this subject be included as an agenda item for the September Town Council meeting.

Edward Fleming, owner of Edward's Hair Salon, addressed the Council citing a recent situation when an affair was going on at the theater, and an emergency vehicle could not enter the area due to the traffic and number of cars parked in the area. Mr. Fleming reported he had notified the landlord of the situation, and the Poinciana Club notified him that their valet parking attendant would take care of his customers during any periods of conflict with their events.

Mrs. Wiener stated the issue will be an agenda item at the September Town Council meeting, and the situation will be thoroughly discussed.

FDOT issue re: Royal Park Bridge & Preservation Commission

Polly Earl addressed the Town Council concerning the Florida Department of Transportation issue and the designation procedures mentioned by Jim Wolfe. Mrs. Earl recalled the history of the 1989 Landmark designation which created bridge districts that protected the foot of the bridge. At that time, Mrs. Earl continued, the Town was urged to seek a National Register listing for the bridges themselves, and at that time DOT, due to a lack of money, ceased any effort to demolish the bridges and replace them with high rise bridge structures. Mrs. Earl would like to renew the suggestion to the Council and the Landmarks Preservation Commission to seek National Register listing. She stated the National Register would give automatic protection to the bridges, and no one could propose any changes without notification to the Town in the future. She added the term State Designation does not exist, and the State recognizes only local designation and national register listing; however, they do have a watch file.

Mrs. Wiener adjourned the meeting at 12:30 p.m. for a luncheon break and announced the meeting would reconvene at 2:00 p.m.

The meeting was reconvened by President Wiener at 2:00 p.m.

XV. DEVELOPMENT REVIEWS

Development Reviews

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of July 27, 1994 - Motion was made by Mrs. Smith, seconded by Mr. Shaw to approve the major matters considered by ARCOM on July 27, 1994. On roll call, the motion carried unanimously.

Major Matters

The major matters were:

B10-94 - Second story addition for Mrs. Peter Schuster, 1720 South Ocean Boulevard - Deferred.

B64-94 - Revisions to alterations for Mrs. Gay Cinque, #9 Golfview - Deferred.

B15-94 - Remodel facade for Cook International, 350 Royal Palm Way - Approved.

B24-94 - Materials and samples for construction of two, two-family dwellings for Barry Boyce, Trustee, 353 Chilean Avenue - Deferred.

B60-94 - Landscape plan for Dr. Michael and Mrs. Virginia Longo, 1090 North Ocean Boulevard - Deferred.

B30-94 - New residence for Michael Burrows, 1340 South Ocean Boulevard - Deferred.

B42-94 - New residence for Mr. and Mrs. John Schuler, 200 Jungle Road - Deferred.

B47-94 - Addition for Dr. and Mrs. Kaye, 302 Eden Road - Removed from the agenda.

B49-94 - Demolition/Construct new residence/Landscape plan for Mr. and Mrs. James Petricig, 236 La Puerta Way - Approved conditionally.

B50-94 - Landscape Modifications for The Goodman Company at the Esplanade, 150 Worth Avenue - Approved conditionally.

B51-94 - Addition/remodeling for David Gilmour, 5 Golfview Road - Approved.

B52-94 - Addition for Paul Maddock, 215 Jamaica Lane - Deferred.

B53-94 - Gates for Jeffrey Epstein, 358 El Brillo Way - Approved.

B41-94 - New residence for Antos Glogowski, 205 Indian Road - Approved.

B. Variances, Special Exceptions and Site Plan Reviews

Old Business

Old Business:

Var. 56-93 - Site Plan Review

1. Site Plan Review in conjunction with Zoning Variance No. 56-93 to authorize substitution of a restaurant on the site of an existing radio station at 3000 South Ocean Boulevard by H. Loy Anderson, applicant. R-D(1) District. Deferred from July meeting. (Letter dated August 8, 1994, from A. Paul Prosperi requesting additional 30-day postponement until September 13, 1994 Council meeting.) - This matter was deferred until the September meeting earlier in the meeting.

Var. 25-94

2. Variance No. 25-94 - Cathleen McFarlane, 456 and part of 458 Worth Avenue; applicant proposes to purchase a portion of 458 Worth Avenue creating a west side yard setback of 0 in lieu of 15' required. To allow the cubicle content to be 5.28 in lieu of 4.25 required, and to allow 8' high property line wall to match existing in lieu of 7' allowed. R-B District. Deferred from July meeting - Gus Broberg, representing Cathleen McFarlane, addressed the Council and reviewed the purchase agreement of the Whitmore property at 458 Worth Avenue entered into with Mr. Stephen Myers of 460 Worth Avenue. Mr. Broberg reported Mr. Myers elected to step down when additional continuances were not obtained from the trustees of the Whitmore Estate, and Mrs. McFarlane took over his position and was the contract purchaser in the entire. Mr. Broberg reported, at the July Landmarks Preservation Commission meeting, permission was given for the demolition of the western part of the Whitmore property. Mr.

Broberg requested confirmation of the demolition project and also discussion of the required variances.

Var. 25-94 Mr. Jeffrey Smith, Architect for both Mrs. McFarlane and Mr. Myers, and Mr. Broberg distributed handouts showing:

1. Property owned by Mr. and Mrs. McFarlane heretofore.

2. Property purchased by Mrs. McFarlane recently.

3. Property owned by Mr. Myers.

Mr. Smith requested approval of a side yard setback of 0 in lieu of the required 15' and noted currently Mrs. McFarlane has a 0 side yard setback but would like to move the lot line further west, in the middle of the Whitmore Estate, creating another 0 set back line and demolish everything to the west of that new property line. He pointed out that the current cubical content of Mrs. McFarlane's residence is 5.28 and by adding the additional property, the cubical content would be diminished to 4.25. Mr. Smith continued that the McFarlane residence does not meet the zoning requirements for lot coverage currently, but with the addition of part of the Whitmore Estate, the lot coverage will meet the zoning requirements.

Mr. Smith requested approval of an 8' foot property wall, to match the existing 8' walls on the estate, to be erected on the proposed new lot line.

Mr. Moore suggested the Council hear the opinions of the Landmarks experts before the individual variances were discussed.

Dr. Sandra Norman from Research Atlantica reported that she and Dr. Donald Curl agree the Whitmore residence was not designed by Addison Mizner but was built in the late 1940's and added onto by Marion Sims Wyeth. Dr. Norman added, after entering the Whitmore residence, major problems including the flooring, the walls, wiring and detailing, were found and Mrs. Jane Day, also from Research Atlantica, and Dr. Norman supported Mrs. McFarlane's demolition request.

Mr. Moore stated that before any decision is made on Variance numbers 25-94 and 26-94, the issue of hardship should be addressed. He continued the request for a 0 lot line is unusual in that new property is being purchased and in lieu of retiring the existing 0 lot line, a new request for a 0 lot line was made. He also questioned the numbers Mr. Smith gave for the cubical content and indicated the cubical content will actually be greater than the 4.25 allowed by the zoning code.

Mr. Smith responded the hardship is partly due to the fact the five irregular shaped properties along Worth Avenue that were the original Warburton Estate do not fit into any rational zoning framework. Mr. Smith also corrected his cubical content numbers by stating the current cubical of 6.17 will be reduced by adding the additional property to 5.28.

Mr. Smith added the construction on the Myer's property will meet the requirements for zoning set backs which means a 15' side yard set back will be used, greater than any of the other properties there now.

Mr. Moore stated that each time these five irregularly shaped lots have been before the Council for variances in past years, the lots have indeed been part of the hardship. Mr. Moore continued the Staff is having a difficult time identifying the hardship with the creation of a new irregular shaped lot line with a 0 set back line to accommodate a new structure that will comply, and the Staff does not see this as a hardship.

Mrs. Smith stated she cannot understand why this property, landmarked in 1990 after review by Staff and the Landmarks Commission, has been deemed un-landmarkable. She noted in the designation report of four years ago, the Whitmore property had unusual windows, a wonderful arch and many outstanding features. Mrs. Smith requested an explanation of why the property was worthy of designation four years ago and not now. Mrs. Smith asked Mr. Frank if there was insufficient background work done on the designation report four years ago?

Mr. Frank replied the Landmark Commission addressed the entire Warburton Estate as a whole, but the Commission did recognize certain elements of the estate were added after Mr. Warburton was mayor of Palm Beach and after he developed the site. He added the information submitted by Dr. Norman indicated some of the elements of the estate were not built when Mr. Warburton was mayor, but four years ago, the Commission thought these elements were part of the original estate. At the time, Mr. Frank reported the Landmark Commission did have sufficient background material to warrant landmarking the entire estate.

Mrs. Smith expressed the opinion that stricter criteria and standards must be given to the Landmarked houses, and believed the original designation of the Whitmore portion of the Warburton Estate was a mistake four years ago. She pointed out that 460 Worth Avenue was not landmarked at the time the rest of the properties were landmarked.

Mr. Frank replied the original intention was to landmark all of the properties and during the process, 460 Worth Avenue was removed due to permit procedures, and at the time of the actual landmarking, no structures were left at 460.

Mrs. Smith stated she would rather see good examples of superb architecture rather than running around landmarking everything because certain quotas have to be met, and there is no quota set by the Town.

Jane Volk, Chairman of the Landmarks Commission, explained the criteria for landmarking the Warburton property which could have qualified to be included in an historic district. Mrs. Volk explained Mrs. McFarlane's present residence was the primary part of the property to be landmarked and the Whitmore property was included to maintain the low level, the low roofs, the gardens and the entire historical character of the site. Mrs. Volk agreed the Whitmore part was built later than the McFarlane parcel.

Mrs. Royal cited Dr. Curl's remarks from the 1990 Landmarks meeting which stated the condition of the property may be poor but the property can still meet the criteria of architects, historic boards, associations and people known in the Town and mentioned Howard Major and Lester Geisler, the architect of Hialeah Race Course, as the architects for the property. She further noted Mrs. McFarlane and Mr. Smith spoke at that meeting saying the condition and appearance of Mrs. Whitmore's property were not appropriate for landmarking.

Mrs. Volk reported the entire property was landmarked after hearing the recommendations of Mrs. McFarlane and Mr. Smith, but added times change and Mrs. McFarlane, a preservationist, is willing to save the best of the property and keep the roof lines and the gardens intact. Var. 25-94

Mrs. Smith stated the Landmark Ordinance should go back to ORS for complete clarification and specificity.

Mrs. Wiener commented that all the Town's commissions recommend to the Town Council, a public hearing is held and a decision is made to either agree or disagree with those recommendations. Mrs. Wiener recommended a study item be added for the zoning season to look at the issue of de-landmarking a property by a recommendation from the Landmarks Commission to the Town Council in lieu of a certificate of appropriateness.

Motion made by Mrs. Smith to add a study item to the next zoning season to review and clarify the Landmarks Preservation Commission procedure of de-landmarking a property by a Certificate of Appropriateness. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Polly Earl addressed the Council and asked for clarification of the part of the ordinance that require questions of demolition to be considered between November and April.

Mr. Moore responded he would check the ordinance but pointed out the distinction between partial demolition with a Certificate of Appropriateness and the issuance of a demolition permit with de-landmarking.

Mrs. Wiener reminded Mr. Moore that all Town commissions are advisory to the Council, and the final decision should be made by the Council. She cited an editorial that had appeared recently in the Shiny Sheet expressing concern over a demolition that chastised the Council when that issue had never appeared before the Council.

Mr. Moore asked if zoning in progress should be established for the study item issue concerning the de-landmarking/demolition procedure?

Motion made by Mr. Shaw to establish zoning in progress on the matter of the final jurisdiction over demolition and the de-landmarking process. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Polly Earl stated demolition for landmarked properties should be handled, according to the ordinance, based on economic hardship and/or demolition by neglect. She continued the Preservation Foundation would support the ORS looking into this matter and urged the Council to grant permission to demolish landmarked structures only in those cases that demonstrate a powerful need for relief, noting the tax incentives and the flood level issues that aid landmarked property owners today.

Mrs. Royal suggested a provision that would not allow properties to fall into the state of neglect leading to demolition and the possible Town inspections of these properties.

Mrs. Wiener questioned the Town's position in entering private homes to do these types of inspections versus the historic tree inspections currently conducted by Joe Ugi on Town properties.

Dr. Norman addressed the Council clarifying her position on inspection of properties for the landmarking designation process at 458 Worth Avenue and stated she did not mean to imply the property was being neglected by the present owner.

Mrs. Wiener suggested looking at the requested variances for 456-458-460 Worth Avenue one by one and the first one was the issue of creating a west side yard set back of 0 in lieu of the 15' required.

Mr. Moore repeated the Staff did not see the hardship in recreating a current 0 set back line, adding property and recreating that 0 set back line further to the west.

Mr. Smith reported the object of the McFarlane/Myers variance proposals was to create one conforming property and one non-conforming property in lieu of three non-conforming properties with 0 set back lines.

Mrs. Smith stated the Council was not looking at the architectural proposal for the properties but just looking at lines on a piece of paper. She understood Mr. Myers plans to demolish the part of the Whitmore Estate that is on his property, and Mrs. McFarlane plans to remodel the half of the Whitmore house for staff quarters on her property.

Mr. Smith reported the agreement between Mrs. McFarlane and Mr. Myers has taken months to accomplish, and the disputed arch will be on Mr. Myers half of the property.

Mr. Broberg suggested the request be deferred until the September meeting to allow the participants time to resolve the issues raised at this meeting.

Motion made by Mrs. Smith to defer the request for Variance 25-94. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

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

Mrs. Wiener suggested Variance requests for the properties on Worth Avenue should be heard as a whole, as one has bearing on the other.

Mr. Shaw asked for clarification of the correct number of degrees in the angle of vision as noted, either 100 or 122 degrees.

Mr. Moore responded the request has been advertised at 122 degrees, the greater of the two numbers, and staff will work with Mr. Smith to determine the correct numbers.

Motion made by Mrs. Smith to defer the request for Variance 26-94, and the figures can be worked out with staff before the September meeting. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Phipps Estate Subdivision

4. Consideration of Proposed Phipps Estate Subdivision - Request for Approval of Plat and Replat, Agreement to Construct Improvements in Subdivision, and Related Matters - Deferred from July meeting - Attorney Paul Prosperi addressed the Council on behalf of Mr. Dan Swanson of Addison Development Group. Mr. Prosperi stated the applicant proposed to subdivide the property known as 450 North County Road into 33 lots at a density that is 38% of the maximum allowed density with lot sizes that are 2.2 times the minimum lot size.

The Clerk gave the oath to those who will testify for the Phipps Estate Subdivision.

Mr. Prosperi addressed the issue of a gated community, and reported the idea of a manned guard house had been eliminated, and no one will be stopped from entering the community. He stated two parks containing 16,000 square feet on North County Road will be donated to the Town and the applicant has agreed to a landscape conservation easement that would extend 15 feet back from North County Road and 15 back from Kawama Lane.

Mr. Prosperi stated the subject of heavy traffic on North Lake Way would be controlled by installing two gates on North Lake Way that would restrict entry but would be exited on demand by pressure sensitive pads.

He continued with changes made since the project was presented and further stated the applicant will retain the services of a wildlife relocation service. Mr. Prosperi noted the size of the archway at the North County Road entrance has been reduced, and the design of the hedge along Kawama Lane has been varied along with the donation of the 15 foot easement. He added the impact of the construction on the site has been addressed by doing the work in phases.

Mr. Prosperi identified site plans showing examples of what the zoning ordinance would allow on the site and compared these imaginary subdivisions to the proposed plan. He continued with an aerial photograph of the subdivisions north and south of the Phipps property showing the densities of two comparable areas which were greater than the proposed subdivision. He identified Blenheim Subdivision, a present platted, legal subdivision that is part of the Phipps property, which has 10 legal lots and a potential of 20 driveway cuts and 20 garage doors opening onto Kawama Lane and noted this would be abandoned with the proposed subdivision.

Mr. Prosperi presented a plat showing 9 lots along Kawama Lane, and the extra 100 feet, previously included in a tenth lot, has been distributed among the 9 lots. He added the 15 feet easement along Kawama Lane will be deeded to the Town with the proviso the exact location of that line and the fence will be determined after consultation with Staff to allow for the existing large trees and tree trunks along that line.

Mr. Prosperi stated the code allows 84 lots but the applicant plans to have 32 lots, and he pointed out the subdivision's advantages over the zoning requirements which include: a density of 1.5 residences per acre in lieu of the allowed 4; the 23,170 square foot average lot size in lieu of the minimum 10,000 square feet allowed; an average of 119 feet in lieu of the 100 allowed minimum; an average of 195 feet in width in lieu of the minimum 100 feet allowable and 10% of the site will be donated to green space.

He added the first phase would include 15 lots, 7 lots in phase 2 and phase 2 would not be developed until 9 lots in phase 1 were sold or developed.

Mr. Prosperi requested to support the reduced densities, the applicant wants the following items to be approved to enable him to proceed with the project:

1. Front archway, set back 57' from the street, overall height is 26', the inside width is 34', overall width is 68'

2. Two buildings on North County Road, 700 square feet and 500 square feet, set back from the street 114', landscaping would be planted between the archway and the buildings.

3. Three gates on North Lake Way, one gate for the existing main house as long as it exists, two additional exit gates for the subdivision streets that would or would not be available for entrance by the residents and all entry to the subdivision would be from North County Road.

Mr. Prosperi pointed out no one had indicated that North County Road could not bear this traffic nor have they identified North Lake Way as a better artery to serve the project. He stated the intent is to discourage but permit access to the property from North Lake Way and encourage traffic on North County Road, the artery that is most able to bear the increase. He added these are the two controversial, critical, recurring issues that the applicant has made some concessions on but is not willing to make the kind of concessions made for other aspects of the subdivision. Mr. Prosperi asked the Council to vote on the issue, one way or the other, including these two issues.

Mr. Moore noted the applicant has met all the Town's codes with the exception of the following issues:

1. The gates on North Lake Way.
2. The archway.

3. The accessory structures and the land occupied underneath the accessory structures.

Phipps Estate Subdivision

Mr. Moore stated he had not ascertained the correctness of the comparisons presented by Mr. Prosperi of the densities of the subdivisions directly to the north and south of the proposed Phipps Estate. He reported Mr. Randolph has worked out details with Mr. Prosperi regarding the issues as instructed by Council at the last meeting. He added Police Chief Terlizzese had written a memorandum regarding the entrance of police vehicles from North Lake Way and Mr. Bowser had some questions concerning the 29 issues the two attorneys have been discussing.

Mr. Randolph stated his concern was to have a method in the event the Council moves forward with an approval process to make sure that items discussed have been incorporated into the action. He suggested the Council go through that list and any other conditions the Council may wish to incorporate as a result of discussion at this meeting.

Chief Terlizzese stated the Police Department had a problem with the gates on North Lake Way creating an undue burden on the officers and other Town employees to have codes to enter and exit these gates. He also mentioned the problem with maintenance of the devices used to decipher the codes and problems with potential emergency calls to the area. He suggested either no gates or manually operated gates in the event of mechanical breakdowns. He added the Police Department could live with the two entrances with the main one being off North County Road since North County Road is better suited to handle additional traffic.

Referring to the list of 29 items, Mr. Bowser reported the developer would have to build an entirely new sanitary pumping station since the existing pumping station on the site is for storm water, and the engineer is designing a new sanitary pumping station. He questioned the maintenance of the storm drainage system, item 21, and suggested a rewording of that item to state that it is clearly the responsibility of the property owners' association to maintain the storm drainage system but the Town is willing to contract its maintenance.

Under item 21, Mrs. Smith asked Mr. Bowser who determines the fee the association would pay to reimburse the Town and who would be obligated to pay this prior to the formation of the property owners' association?

Mr. Bowser responded the owner of the property would have an agreement with the Town, and Public Works would review what maintenance activities would be necessary. He continued if an agreement could not be worked out with the Town, the previously addressed wording would allow them to contract someone else outside to do this.

Mr. Bowser noted that 12' of the proposed subdivision would be withdrawn from the plat on the northeasterly side and be sold. Mr. Bowser questioned the legality of that procedure.

Mr. Randolph replied this 12' strip would not be platted.

Mr. Bowser replied he understood this would be deleted before the planning process was begun. He added Public Works disagreed with the developer on the closing of North County Road and North Lake Way to make tie-ins during the season, and utility work should be done outside of season.

Mr. Prosperi, responding to Staff comments, offered to work out any method of coding, selected by the Police and Fire Departments, for the proposed gates and pointed out the one unrestricted entry from North County Road. He added the developer understands the need to add the sanitary pumping station to the project, and he would like the Town to maintain the storm, street drainage system and in the event no property owners' association existed, the developer would enter into an agreement with the owners of the lots, and they would have to bear the allocated share of this expense or the lot could be liened, and Mr. Prosperi offered to work out the details with Mr. Randolph.

Mr. Prosperi explained an anomaly exists on the north lot line and the owners of the Miraflores lots would like to purchase a 12' strip and the developer has agreed to this and omit the strip from the plat.

Mr. Prosperi added, referring to the question of tie-ins during the season, if this approval process is drawn out the tie-ins will be delayed.

Mr. Randolph addressed his letter of August 1, 1994 to Mr. Moore, under item 2 on page 2 referring to the request for an agreement between the Town and the developer that no zoning changes will occur in the next ten years and asked if Mr. Prosperi would concur with his reply that it may not be appropriate in this instance to enter into such an agreement.

Mr. Prosperi replied, under State Statutes, the developer has the right under the phasing of that subdivision that legal lots have been established and these lots will remain legal for a period of time.

Mr. Randolph replied lots are grandfathered in when they are subdivided, and the Council does grant variances later if there are problems. He advised this guarantee could be given for a reasonable length of time and could be done in the form of a developer's agreement.

Mrs. Wiener asked for comments from the public.

Jonathan Cameron-Hayes, 220 Indian Road, commented on the increased amount of traffic on the north end of the island, not being caused by the residents but is caused by tourists slowing up to view properties. He complimented the developer on the density and landscaping, and since the development of this property is inevitable, he approves of this project.

Leonard Davis, 120 Casa Bendita, spoke on behalf of several residents and stated no one he has spoken to is in favor of a gated community in Palm Beach. Mr. Davis questioned the purpose of the gates and suggested removing the gates and the arch. He offered the traffic flow concept of right turns, not left turns as proposed in the plan, and gave the example of a potential of 250 cars making left turns off North County Road into the subdivision. He added the sensible solution would be to turn right off North Lake Way and leave the community with a right turn onto North County Road. Mr. Davis expressed the opinion if the residents could choose between 50 some odd homes or having a gated community, they would choose the individual streets. He reiterated his objection to the gates on North Lake Way and the arch on North County Road as not appropriate for Palm Beach.

Mr. Bridges, architect, represented a property owner at 476 North Lake Way, complimented the developer on an excellent plan and urged approval of the project.

Phipps Estate Subdivision

Betty Marcus, representing a neighbor, addressed the Commission referring back to the June meeting when the statement was made everyone would like the proposed subdivision since no one was present to object to it. Ms. Marcus stated the neighbors were notified only through the Shiny Sheet and were unaware of the proposal. She spoke in support of retaining Blenheim subdivision and Kawama Lane providing traffic relief for the remainder of the proposed subdivision thus alleviating traffic on North Lake Way.

Mayor Ilyinsky replied two of the residents who live on Kawama Lane had notified him they were not in favor of using Kawama Lane as part of the answer to increased traffic.

Abe Gosman, 513 North County Road, spoke in favor of retaining specifically marked trees along the North County Road area of the proposed subdivision.

President Wiener adjourned the meeting for a 10 minute break and reconvened the meeting at 4:02 p.m.

Mrs. Wiener, receiving no requests for additional comments from the public, stated the Council would go into executive session.

Mr. Shaw stated he thought the main issues have been worked out and only minor issues remain to be worked out and added the larger lots are an improvement and a definite improvement to the Kawama Lane area. He questioned if the two gates on North Lake Way would have entry remotes or would they be for exiting purposes only?

Mr. Prosperi replied the applicant would be willing to have the North Lake Way gates not admit anyone or only admit the people who have the code or an entry remote, but everyone would be able to exit. He further stated the applicant did not wish to eliminate the gates.

Mr. Shaw raised the question of creating a right turn lane at the North Lake Way north entrance in the area of a sight triangle and the possible creation of a similar lane at the south entrance off North Lake Way thus eliminating a back-up of traffic. He also questioned the feasibility of joining the two buildings to the arch on North County Road. Mr. Shaw brought up the subject of the responsibilities of a homeowners' association as compared to the developer and raised the question of possible future problems with an association.

Mr. Prosperi explained the association's responsibilities are maintenance functions, and they simply band together to keep up the common elements which for this project is approximately 2 acres under the current proposed plan.

Mr. Shaw expressed his concern about the 2 acre park area becoming a public nuisance with parked cars and picnics, and this may not be a benefit to the Town in the long run.

Mr. Prosperi stated a homeowners' association is really a matter of contract, and the other owners would be able to enforce the provisions by liening properties. He added Mr. Randolph will have language in the agreement protecting the Town and this subdivision does not set a precedent for associations, and homeowners associations do function in other areas of the Town.

Mrs. Wiener advised Mr. Prosperi and Mr. Swanson that one member of the Council may suggest one architectural change, and this does not mean there is Council agreement on that issue. She continued the question raised by Mr. Shaw concerning the joining of the two buildings on North County Road to the arch needed a response but does not indicate Council agreement on the issue.

Mrs. Royal addressed the issue of the dual piping to supply gray water for the subdivision agreed to by Mr. Prosperi at a previous Town Council meeting, and this was not mentioned in the letter from Mr. Randolph to Mr. Moore dated August 1, 1994.

Mrs. Wiener clarified that one member of the Council requesting a provision does not mean that provision will become part of the agreement voted on by the entire Council. Mrs. Wiener continued it does not matter that the applicant agreed to that provision since it was not voted on to become part of the approved list for the subdivision.

Mr. Prosperi replied he and Mr. Swanson have no objections to adding the dual piping; the pipes would not tie into anything but if the Public Works Department could work this out, they would agree to install the piping. He added the irrigation for the subdivision will be handled by wells, and the piping for irrigation will be handled separately.

Motion made by Mrs. Royal to install two sets of pipes at the time the pipes are laid. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Royal requested clarification of item 3 on page 3 of the List of Supplementary Items concerning the sentence stating "this lien will not apply to lots not sold by current owners" and questioned this issue as it applies to resales.

Mr. Prosperi replied this refers to the current estate property on the ten lots that will not be part of the homeowners' association. He added the denominator is 22, not 32, but if these ten lots are sold they, then, become part of the homeowners' association. Mr. Prosperi indicated item 11 contains language relating to the same situation.

Mrs. Royal referred to item 19 and noted the 15' on North County Road is a landscape easement, but the 15', not 10', along Kawama Lane will be deeded to the Town. Mrs. Royal asked if the berm along Kawama Lane will remain?

Mr. Prosperi replied the berm will be on the 15' deeded to the Town and will remain if the Town so decides.

Mayor Ilyinsky asked why gates are necessary on North Lake Way?

Mr. Prosperi replied the project started out as a gated community with a guard house and an attendant but when this was not acceptable, the applicant wanted to add some value to support 32 lots in place of a larger number and part of this value is the heavy landscaping, the maintenance of the trees and a restricted traffic flow. He continued the traffic flow could be controlled with no gates at all with a 15' - 20' wide landscape buffer with the streets dead ending at cul du sacs and have all the traffic come from North County Road. Mr. Prosperi added the applicant would give up the gates for the cul du sacs, as they want to restrict the traffic flow. He cited the examples of the residents on Casa Bendita, Chateaux, El Mirasol and Canterbury having a sense of security from entering and leaving the same way. He stated Mr. Swanson is not willing to go forward from a business point of view without the concessions asked for from the Town Council.

Phipps Estate Subdivision

Mayor Ilyinsky stated he is going to dig his heels on the subject of a gated community, and he does not want to see a gated community in this Town. He questioned the use of the two buildings by the arch on North County Road and specifically asked if they are to be used as gate houses under the guise of another name?

Mr. Prosperi replied no one will ever be stopped from entering the community, and no one will be stopped from exiting on North Lake Way. He stated you can drive in and drive out without being detained, and this is not a gated community like Breaker's Row or Sloan's Curve nor like a lot of private houses in the Town with security gates where cars are stopping, specifically on North Lake Way, sometimes in traffic lanes, to turn off North Lake Way.

Mayor Ilyinsky elaborated on Mr. Leonard Davis's statement, made earlier in the meeting, concerning the fact that Palm Beach is a right turn town and suggested having Public Works look at the possibility of coming up with a traffic pattern that could answer the question of increased volume of traffic on North County Road during the time an event may be taking place at a residence in the area.

Mrs. Smith asked Mr. Prosperi to identify the temporary construction entrance off North County Road at the north end of the property, the main North County Road entrance and the two streets with two gates exiting onto North Lake Way. She requested an explanation of using the same name for the two streets and asked if street signs would be installed on North Lake Way or would the street signs say Phipps Estate?

Mr. Prosperi replied the signs will say Via Los Breezes and would be handled in the same manner as Crescent Way which has two entrances.

Mrs. Smith added the confusion lies with having one street name, and this gives the feeling that this is a totally encapsulated community with one street running around the interior and one entrance from North County Road. Mrs. Smith questioned promoting the security issue with the community since the individual residences within the community will be free to install their own gates.

Mr. Swanson responded in Boca Raton some of the residences he built within a community had gates and some did not.

Mrs. Smith reiterated that individual owners will put their own gates on their own properties thus eliminating the need for a gate on North County Road and two gates on North Lake Way.

Mr. Prosperi replied that the street inside the subdivision will have two separate names and will be private streets. He also agreed Palm Beach Public Works trucks will be entering the property to provide garbage service.

Mrs. Smith mentioned the park, to be donated to the Town by Susan Phipps Eigelberger, that will be accessible by the public inside the subdivision as well as from the Bike Trail, all the elements of the project being done for the benefit of the Town are public and this eliminates the idea of a secure fortress and the need for gates.

After a discussion concerning the differences between a gated community and gates on individual residences, Mr. Prosperi questioned the philosophical objection between having exit gates open on demand and no North County Road gate at the arch compared to many gates in an R-B zone that back up traffic in the street.

Mrs. Smith replied the objection is the impression this multi-family development gives which is a gated community. She asked Mr. Prosperi if Mr. Swanson would agree to have pressure pads on the gates off of North Lake Way that would open on demand both ways so if the gates opened both ways with pressure pads, this would not give the appearance of a gated community.

Mrs. Smith requested clarification of the landscape easement on North County Road asking if it would be measured from the wall or the street?

Mr. Prosperi replied the easement would be measured from the property line.

Mrs. Smith recalled at last month's meeting the 15' buffer was to be from the inside of the wall because this area would include the existing vegetation and give the appearance currently enjoyed by the residents.

Mr. Prosperi replied Mr. Swanson would agree to the 15' from the wall which would be 19' from the property line for the landscape easement which is approximately 33' from the street.

Mrs. Smith recalled item 7 concerning the issue of no changes in zoning for ten years really is not an issue because if this Council grants approval of this subdivision, future councils would not change the zoning as legal questions would be raised if that happened.

Mrs. Smith stated item 9 that says the applicant can use, alter and connect, including providing a parking area, the existing buildings on the property without ARCOM review for the building and development offices is an exception to the rules that all residents in the Town must adhere to. She continued the garage building can be seen from the street and any alterations or connections should be reviewed by the Architectural Commission although the building may eventually be demolished.

Mr. Prosperi replied the plan was to use these buildings for a construction office, and they would be torn down in a finite period of time. He added the buildings would be a better solution than moving one or two trailers onto the site for the same period of time. He offered to sight screen these buildings from the street and proposed to do this fairly soon if Council approvals were given for the project.

Mr. Prosperi stated the landscaping outside the fence on North Lake Way will be cleaned up; however, the outside of the wall on North County Road will be left as it is. He continued a plan for the large Banyan and ficus trees along Kawama Lane that have not been designated will be worked out with staff, and it is possible that these trees and others will remain or be relocated. He added, with the 15' strip along Kawama Lane, some of the trees along there will have root systems on both sides and this issue could be worked out with the Town staff.

Phipps Estate Subdivision

Mr. Prosperi concurred the owners who will have beneficial interest in the property after it is sold will be Mr. and Mrs. Eigelberger and Mr. Swanson, and Mr. Swanson will be financially responsible for the property under the $756,000 bond stipulated by the Building Department.

Mr. Moore stated Mr. Eigelberger has requested the Florida Fish and Fresh Water Commission come to the property after he has had the opportunity to fence off the property he and Mrs. Susan Phipps Eigelberger own.

President Wiener asked Mr. Prosperi to state the uses of the two buildings on North County Road by the arch.

Mr. Prosperi replied the buildings will be used by the Property Owners' Association for an office used by a property manager and the rest of the space will be used for storage such as lawn equipment.

Mrs. Wiener expressed her concern for the implication of security for the subdivision that does not exist, and the only real security in the Town is the Police Department. She continued the moveable gates that people can drive through or an archway that will keep people out brings up the issue of what people know or may not know about security. She stated the arch attempts to give the subdivision a feeling of exclusivity, and the number of gates in the Town indicates many of the residents have a great concern about security, and it would be bothersome, after many of these residences were built in this subdivision, to drive down the street and see a great number of tall, security gates on the individual properties. She indicated the arch is a cosmetic feature and has no bearing to the issue of security.

Mrs. Wiener stated the Council tried to look at this subdivision from the point of view of the entire community, what is right and what is legally correct. She continued some people will walk away angry but, later, things settle in with time and the most horrendous issues that the Town could come to an end over somehow only improve the Town.

Mr. Shaw asked Mr. Prosperi to respond to the questions raised during the discussion concerning the buildings and the arch on North County Road and the possibility of the turning lanes.

Mr. Prosperi responded there is no room to put in a turning lane on North Lake Way, and trees intervene between the arch and the proposed two buildings so they cannot be joined together.

Mr. Shaw replied, although he thought there is sufficient room for turning lanes on both North Lake Way and North County Road, the Mayor's suggestion of dual pressure pads for the gates on North Lake Way may be the solution to the problem. He added if the turning lanes can be added after consultation with the engineering group and the Town staff, that would be a plus but the pressure pads are acceptable.

Mr. Shaw stated he would make a motion but wanted to know how detailed the motion should be.

Mr. Randolph stated the Council would not be able to incorporate everything into the motion that was discussed at this meeting. He suggested a motion could be made subject to the staff and Mr. Prosperi putting together an agreement and a plat that would be presented to the Council for approval.

Mrs. Wiener replied the motion should not be difficult, and there is no reason for the project to continue another month, and certain items received and reviewed at this meeting should be included.

Motion made by Mr. Shaw to approve the Phipps Estate Subdivision with the understanding it will be replotted at 32 lots; there is 15' deeded to the Town on Kawama Lane; there are dual entry and exit pressure pads at both North Lake Way gates; there will be no gates on County Road; there is a 15' easement on North Lake Way and a 15' easement inside of the existing wall on North County Road; to specify no changes in the next 5 years to the existing R-B zoning requirements and Comprehensive Plan as in effect as of this date. Motion seconded by Mrs. Royal. On roll call, the motion carried 3 to 1 with Mrs. Smith casting a negative vote.

Mr. Randolph responded to questions from the Council concerning List of Supplemental Items, item 7, and stated a future council could change the zoning requirements, and stated Mr. Prosperi's request for a guarantee of a specified length of time to ensure no zoning changes of this Council's approval was acceptable.

Mr. Randolph asked if the motion contemplated that the agreement will be prepared, incorporating the various points discussed at this meeting?

Mrs. Wiener replied it would.

Mr. Shaw stated his motion did not stipulate the Council would see this agreement after it has been drawn up.

Mr. Moore stated the normal process for an approval of a subdivision is a series of agreements, and requested the staff put together what would be considered a final agreement with Mr. Prosperi, and if there are issues that are at issue, such as the statement to include all the agreements made prior to this point, it would be returned to the Council.

Mrs. Wiener replied all the participants were sworn in before they gave testimony, and their statements are therefore binding.

Mrs. Smith raised the issue of the historic specimen trees that were not part of the motion nor were they discussed. Mrs. Smith strongly objected to the Council not seeing the final agreement.

Mrs. Wiener replied the issue of the trees was addressed at prior meetings, and those discussions are part of the record of those proceedings.

The Council adjourned for a break at 5:10 p.m. and reconvened at 5:30 p.m.

IX.B. Consideration of Request for Abandonment of Easements at 450 North County Road - Consideration of Resolution 43-94 - Mr. Randolph read Resolution 43-94: Res. 43-94

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING ALL EASEMENTS, ROADWAYS AND DEDICATIONS RECORDED OR UNRECORDED LOCATED ON PROPERTY COMMONLY KNOWN AS 450 NORTH COUNTY ROAD, PALM BEACH, FLORIDA AND DEDICATING NEW EASEMENTS ON PROPERTY COMMONLY KNOWN AS 450 NORTH COUNTY ROAD, PALM BEACH, FLORIDA.

Mr. Randolph stated the purpose of the resolution is to abandon those previously platted easements, roadways and dedications and substitute them by way of the filing of the new plat for new rights-of-way and easements.

Motion made by Mrs. Smith to approve Resolution 43-94. Seconded by Mr. Shaw.

Mr. Bowser requested an amendment be added to the motion stating the 12' strip that will be taken out of the plat includes a 2' utility easement that should remain in the 12' strip and specified the following: exclude from the resolution the abandonment of the 2' utility easement in deed book 877, page 398.

Mr. Bowser stated the purpose was to abandon everything that was on the plat and the new plat will be super-imposed upon the property and everything discussed at this meeting will have to be put on the plan.

The motion carried unanimously on roll call.

5. Consideration of Request for a One-Year Time Extension - Variance No. 38-93 - Stanley Knowlton, 255 Seaspray Avenue; to allow construction of a pergola setback 2' from the east property line in lieu of 10' and 6' from the front property line in lieu of 30'. R-B District - Deferred from July meeting - Var. 38-93 one-year extension

Mr. Leslie Shaw stated he has a conflict of interest with Variance 38-93 since, as a neighbor, he sent a letter of objection to the Town Council when the variance was granted before being elected to Town Council and does not think it is appropriate to comment on this request. A conflict of interest form is on file in the Town Clerk's office.

Phil Maddux, Sanchez and Maddux Landscape Architects, addressed the Council and requested a one year extension of time for the construction of a pergola and since other phases of the construction at the property site have been slowed a request for an extension is necessary.

Motion made by Mrs. Smith to approve a one year extension of Variance 38-93. Seconded by Mrs. Royal. On roll call, the motion carried unanimously. Mr. Shaw declared a conflict and did not vote.

New Business New Business:

6. Variance No. 34-94 - Jani Whitney, 127 Ocean View Road; to allow construction of a new residence on a 17,047 square foot lot in lieu of 20,000 minimum square foot required, providing a 97' frontage in lieu of 125' minimum required and a lot depth of 120' in lieu of 150' required. R-A District - Eugene Fagan, Architect, addressed the Council stating the condition of the residence is very poor and the roof has holes in it and the leaking water has almost completely destroyed the interior. Mr. Fagan requests a variance to allow a new residence to be constructed on the site since existing houses are to the east and the south; therefore no property can be purchased to increase the lot size to the minimum allowable in the R-A zoning District. Mr. Fagan added no property is available to be added to the depth of the lot either, but the proposed plans for new construction on the site will meet all the existing zoning requirements for that district, and no additional variances will be sought. Var. 34-94

Mrs. Royal asked Mr. Randolph if a variance were not granted in this case, would the Council be taking away the right of the property owner to use the land?

Mr. Randolph replied a determination would have to be made to see if anything else could reasonably be done with the property, and it could be a taking if no other reasonable use was established for the property and a variance was not granted.

Mr. Moore added if the property was a vacant piece of property, routinely a variance would be granted providing the new structure would meet all the current zoning requirements; however, the house on this property is in deplorable condition and has been cited by the Town for repair or demolition. He noted one letter has been received from Robert Deziel, the attorney for Mr. and Mrs. Fred Adler, 1520 South Ocean Boulevard, and read the letter objecting to a granting of the variance request until such time the new plans can be presented with the variance request as it is impossible to evaluate the impact of the variance without knowing the plans for the new residence.

Robert Deziel addressed the Council and stated Mr. Adler would like to have the opportunity to evaluate the impact of the mass of a new residence on Mr. Adler's property since the R-A zoning requirements will be imposed on a structure on an R-B sized lot. Mr. Deziel requested Mr. Adler would like to see how the lot size and the new residence will fit together.

Mrs. Wiener responded the statements he made should be made at the time the project is presented to the Architectural Commission and the Council is interested in the fact that no variance requests of any kind will be made for this piece of property.

Mr. Deziel responded that the Architectural Commission's hands are tied after the variance is granted; the plans are presented as meeting all the zoning requirements with the granted variance and unless the building plans are presented at the time the request for variance is submitted the entire project cannot be evaluated equitably.

Mrs. Wiener replied if someone does not request any variances to build on a property, the property owner has a right to build.

Mr. Deziel stated this situation is unique in that an existing residence on the property could be modified to conform to all the existing zoning requirements and no variances would be required. He continued his client has no problem with the request for three variances; however, he would like to know how the applicant proposes to use these three variances.

Mr. Moore stated the request for demolition was not presented to the Town Council but is a prerogative of the Architectural Commission. He added the property is in the R-A zoning district and deferred to Mr. Randolph the question concerning the legality of applying a different set of zoning standards to the property.

Mr. Randolph replied the Town Council can apply any reasonable condition they wish when granting a variance.

Mrs. Smith asked if the existing residence is below the 7.5 foot required flood elevation and learning that it was, she added the ordinance states only 50% of the valuation of the residence can be used to improve the property and given the deplorable condition of the residence that amount of money would be insufficient to bring it up to code requirements. She added this house should have been demolished years ago.

Motion made by Mrs. Smith to approve Variance 34-94 and left it to the discretion of the Architectural Commission as to the massing and the size in relationship to the surrounding homes. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

The Town Clerk swore in everyone who spoke on any of the remaining variances.

Var. 35-94

7. Variance No. 35-94 - Richard Danton, 146 Sunset Avenue; to allow parking in the front setback (3 spaces requested) prohibited by Section 6.21(f) of the Town Zoning Ordinance. R-C District - Richard Danton presented photographs of the existing property showing the entire yard being used as a parking lot. He explained the existing 7 units are being reduced to 5, and he requested to provide some off-street parking in the front yard set back. He added two of these spaces will be sight screened, not visible from the street, and the green space has been increased from 8% to 30%.

Mr. Moore stated Staff has no objections to the request since the variance will allow the increase of the green space, and the request is to park in the set back area.

Mr. Danton, responding to questions from Mrs. Smith, stated the existing three spaces in front of the back building will be relocated to the front and that area will become a garden area. He added these five units will be condominiums.

Motion made by Mrs. Smith to approve variance 35-94.

Mayor Ilyinsky pointed out members of the audience present would like to speak to the issue.

Motion withdrawn by Mrs. Smith.

Gay Cinque, property owner of 160-164-168 Sunset Avenue, described the appearance of the 100 block Sunset Avenue and stated the granting of this variance will set a bad precedent for the street by granting parking in the front yard set back area thus making the street less attractive.

George Schwinn, representing the Leverett House, objected to the parking change because the driveway to the 30 underground parking spaces is located directly next to the subject property and photographs showed the two way traffic from Leverett House adjacent to the proposed driveway for one of the parking spaces in the set back.

Jay Dinger, the Leverett House property manager, objected to the parking on the basis of safety issues, the backing of the cars out of the 146 Sunset, and the pebble covering that would be used to cover the existing parking lot would cause a safety problem for pedestrians and bicyclists.

Mr. Schwinn continued the removal of the green space in the front of the building is objectionable, although the green space is being increased overall, and this sets a precedent. He stated the bushes and the hedges that presently cover the existing building and some of these would be removed. He cited the code which states the Council can make modifications, if required concerning parking spaces, and the operative word is "required" since the parking lot exists and can be used without any changes and that would not require the removal of existing palm trees in the side walk area. He asked that the design be re-thought to use some of the existing parking spaces because of safety and aesthetic issues.

Mr. Moore noted that the 100 block of Sunset Avenue is not a highly trafficked street and is a two way street. He added parking is required on the site and 146 Sunset is currently deficient in that requirement, and this is a request to rearrange that parking and the bonus to the Town is the increase of green space. Mr. Moore suggested the use of paver stones with grass planted in them to further give the effect of additional green space. He clarified that one car would back out onto the street, not three cars, and this is a good plan. He stated staff has no objections.

Mr. Danton agreed that pavers with grass could be used.

Mr. Schwinn disagreed with Mr. Moore and stated all five cars would have to back out onto the street.

Mr. Dinger stated the appearance from the street will be a reduction in green space although it is actually being increased. He pointed out all five cars will be visible from the street with the removal of some of the existing hedging. He stated the improvements to the property are beneficial to the area, but requested solutions to the parking problem that would be more functional and better in appearance.

Mr. Danton disagreed with Mr. Dinger about the hedging that will be removed, described the hedging that will be retained, and noted the open drive areas will have arched ficus hedges. He added the rear of the cars will be noticeable from the street but this is the best plan to satisfy the needs of the owners.

Mr. Louis Grossman, Leverett House resident and member of the Board of Directors, stated the only objection is the single driveway space adjacent to the Leverett House and presented an alternate plan showing the elimination of the space next to the Leverett House.

Mr. Danton noted that with the proposed plan, only one car has to back out into the street and the other four cars can turn around and come out forward.

Mr. Grossman asked if a compromise could be reached on the green space, parking the cars in tandem as they were previously?

Mrs. Wiener replied the staff has worked with Mr. Danton to work out the best possible plan, reducing seven spaces to five, and it is an improvement to the property.

Mr. Shaw stated he would like to see a deferral of this project to allow design of a plan with three diagonals in the front, against the west property line.

Mr. David Zimmerman responded that previously all seven cars were required to back out the entire length of the parking area. He added if three parking spaces were incorporated along the west property line, Mr. Danton's plan would be destroyed in his opinion, and if that building were being built today, 11 parking spaces would be required. He further stated no parking signs are on the south side of the street with permit parking signs on the north side of the street.

Mrs. Cinque stated she has 16 units and only 5 permitted parking spaces exist on the street.

Motion made by Mrs. Smith to defer variance 35-94 with the suggestion the participants work out the details and with the stipulation Mr. Danton will be putting in five parking spaces and cars will be backing out into the street. Mrs. Smith asked the participants to return with a solution next month. Motion seconded by Mr. Shaw. On roll call, the motion carried 3-1 with Mrs. Wiener casting a negative vote.

8. Variance No. 36-94 - Oleda Casscells; 756 North Lake Way; to allow construction of a second floor to the pool cabana at a 40'6" height above the crown of the road in lieu of 26' maximum allowed, providing a 10' side yard setback in lieu of 15' required, and an 8' rear yard setback in lieu of 10' required. R-B District - Noe Guerra, architect, stated the variance request has been modified deleting the request for a rear yard set back based on a recent survey showing the rear property line that includes the requested two feet and reducing the height request from 40'6" to 37'2", thus placing the proposed high point of the structure 1'10" below the structure in front of it. Mr. Guerra stated the side yard set back is required since an existing tree in the side yard has a one foot diameter trunk and is an important sight screening segment for surrounding properties. Var. 36-94

Mr. Moore reported the variance is necessary due to the slope of the land in that location and since the second story is being constructed on an existing building and staff has no objection to the variance request as modified.

Mr. Guerra stated the existing first floor of the cabana is partially enclosed at the present time and the first floor could not be expanded or enclosed to meet Mrs. Casscells' needs.

Mrs. Royal requested identification, using presented photographs, of the cabana.

Mr. Guerra stated the existing cabana contains 425 square feet, and the new construction would add 525 square feet.

Peter Broberg, attorney for Dr. George Kantor, owner of the property at 765 Hi-Mount Road under construction, objected to the granting of the variance for the following reasons:

1. The structure is not a pool cabana, as represented, but is a pool cabana/garage and showed a photograph of the building.

2. The abandoned garage is five feet from Dr. Kantor's property line and the existing building is still in violation of set back requirements.

3. The large tree on the north side of the building, as shown in a photograph, where a ten foot set back is proposed, is actually growing into the carport, and this tree which would have to be removed for the proposed construction is part of the canopy requirement by deed restriction of the Architectural Commission as part of Dr. Kantor's approval to build a new residence at his Hi-Mount Road address.

Mr. Broberg added a photograph of the front of the cabana shows the building is lattice work with a mansard roof and is actually a carport.

Mr. Moore stated he had not previously seen the photographs Mr. Broberg presented and asked the architect to address the issue of the representation between the photographs and the submitted architectural plans and recommended deferring the project or reconsider the application.

Mr. Guerra replied the purpose of this project is to improve a building that needs to be rehabilitated and was an existing garage but has been used as a building accessory to the pool with a shower.

Mr. Moore stated the issue is the re-building of the first story of a non-conforming structure in addition to the proposed second story, and this application assumes the existing structure is a legitimate first story and the photographs indicate it is not. Mr. Moore added, assuming the accuracy of the photographs, this application has been misrepresented and staff would request this item be denied, deferred or withdrawn and brought back at some later date with the true facts and the true representation.

Mr. Guerra asked that the variance request 36-94 be withdrawn without prejudice for re-submittal.

Var. 37-94

9. Variance No. 37-94 - David Jones, 215 Seminole Avenue; to allow construction of a swimming pool with a west side yard setback of 7' in lieu of 10' required. R-C District - Sidney Kovner, Atlas Swimming Pools, representing David Jones, explained the variance was necessary because the proposed pool would only be 7 feet wide if the variance was not granted.

Mr. Moore responded the submitted site plan indicated another area of the property that is 25 feet wide could be used for the pool, and the hardship issue needed to be addressed. He suggested moving the pool further to the east and redesign the configuration of the pool to fit into this space. He stated the recommendation of the staff is to prove the hardship to the satisfaction of the Council.

Motion made by Mrs. Smith to deny variance 37-94. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Var. 38-94

10. Variance No. 38-94 - Villa Plati Homeowners' Association 300 block of Everglades and Atlantic Avenues; to allow installation of gates at each of 10 townhouse units' driveways at a front yard setback of 5' in lieu of 15' required. R-D(1) District - George Foreman, Villa Plati Homeowners' Association, reported two of the gate installations have been completed at Villa Plati, but he requested approval to install similar gates for the other 10 townhouses in the complex since the variance approval has expired that was granted in June, 1993.

Mr. Moore reported that the original 1993 variance approval was conditioned upon the fact that the gates remain open except during flood conditions, and Villa Plati agreed to that condition.

Maurice Shawzin, 236 Bradley Place, also representing Mrs. Domenicia, 300 Atlantic Avenue, raised objections to the proposed granting of the variance for the gates. He stated the project was not completed because the system of the gates will not work and control the flood waters. He stated he had correspondence with engineers and others who indicate it is not a valid solution to the problem. Mr. Shawzin proposed a delay of 120 days to the granting of the variance to allow time for two additional engineering reports.

Mr. Moore replied the question of the gates working or not working is not a function of the variance request, and the issue appears to be a tenant and/or board of directors problem with engineering input and not a Town Council issue. Mr. Moore recommended the extension of the request, and then the Homeowners' Association may or may not take advantage of the extension.

Motion made by Mrs. Royal to re-approve variance 38-94 with the condition the gates remain open except during flooding periods. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Var. 39-94

11. Variance No. 39-94 - Louis D. Root, 61 Middle Road; to allow construction of an addition to a nonconforming garage which would be setback 10' from the north side property line in lieu of 15' required. R-A District. Gary Lickle, attorney representing Louis D. Root, explained the one story garage addition is in line with the existing garage, and if the variance was not granted, the garage could not be used as a two car, side by side garage.

Mr. Moore stated the staff had no objections, and concurred the house is a landmarked structure.

Motion made by Mrs. Smith to approve variance 39-94. Seconded by Mr. Shaw.

Mrs. Royal asked Mr. Moore to explain the reason for the hardship for this project? Mr. Moore replied these types of requests that have additions that line up with existing construction have received Town Council approvals in the past, and the Town recognized in the past when zoning regulations were established that many of the existing residences were non-conforming. He repeated the yardstick used to measure the hardship requests has been the fact that the additions do line up with existing construction.

On roll call, the motion carried unanimously.

Var. 40-94

12. Variance No. 40-94 - Robert Jenney, 220 Via Bellaria; to allow expansion of the front yard motor court providing a 25% landscape area in lieu of 45% as required. R-A District - Patrick Segraves, architect, presented an aerial photograph showing the position of the residence which does not meet the required front yard set back, and he proposed to add 18" square pavers with zoysia grass between them in lieu of the existing asphalt drive. He stated the proposal adds 600 square feet to the driveway area to allow for staff parking on the side. He noted the houses on either side are similar and have consistent driveway entrances to the proposed plan.

Mr. Moore stated the staff does not see the need for the hardship, although the pavers with the zoysia grass in between may be a mitigating circumstance if the Council wishes to consider that, but the proposal does not meet the code.

Mr. Segraves replied the reason for widening the driveway area is to allow two cars to pass each other which is not presently possible and the addition of the area to the front.

Mr. Shaw suggested an "x" grid paver could be used where grass is planted every two inches and the area appears to be all green.

Mr. Segraves continued the driveway is presently being installed, and if the variance is not granted, the staff parking will be removed. He added the hedge and walls in front of the house are remaining.

Motion made by Mrs. Smith to deny variance 40-94. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

The Council adjourned for a 15 minute break at 6:45 p.m and reconvened at 7:00 p.m.

13. Variance No. 41-94 - Curt & Jerre Gowdy, 343 El Bravo Way; to allow construction of a storage shed at a 5' east side yard setback in lieu of 15' required. R-A District - Gustav Broberg, attorney for Mr. and Mrs. Curt Gowdy, stated at the time the home was purchased, a storage shed existed on the east side of the 7.5 high wall, 12 feet from the property line. He added the original termite ridden shed was demolished, but the foundation still exists and the Gowdys would like to construct a new 20'x5' shed on the foundation. He stated the Landmarks Commission has seen the plans for the shed to store the removable storm shutters and gave their approval. Var. 41-94

Mr. Moore stated this is viewed as a replacement shed by the staff, and the staff has no objections.

Motion made by Mrs. Royal to approve variance 41-94. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

14. Special Exception No. 20-94 With Variance - Bankers Trust Co. of Florida, 350 Royal Palm Way; to allow applicant to occupy 14,395 square feet on three floors of the 350 Royal Palm Way Building. A Variance is requested from the parking requirement of 14 spaces. C-OPI District - Jim Brindell, attorney, reported two modifications to the variance reducing the square footage to 11,515 square feet which reduces the parking requirement request to 12 spaces and two floors, not 2.5 floors, that will be occupied. He stated Mr. Floyd L. Wideman, Bankers Trust, has provided the town-serving affidavit to the Town staff. Mr. Brindell added Bankers Trust has a lease calling for 30 parking spaces and they have 24 employees and expect only five to six walk in customers per day since there is no walk in banking at this location. Spec. Excep. 20-94 with variance

Mr. Moore concurred the applicant has provided the proper documentation stating that at least 51% of its customers are Town residents, either full time or seasonal, and requested Mr. Brindell address the parking issue as there is some parking on the property presently.

Mr. Brindell stated the first level under the building is parking and some parking exists in the rear; however, the lease guarantees 30 spaces for Bankers Trust.

Mrs. Smith asked Mr. Moore if there is a precedent for granting this special exception since Council has granted requests from other financial institutions that have no drive in facilities?

Mr. Moore replied that statement is correct, and these requests have been approved when full service banking is not involved.

Motion made by Mrs. Smith to approve Special Exception 20-94 with variance. Seconded by Mr. Shaw.

Mrs. Royal asked Mr. Brindell exactly which floors will be occupied by Bankers Trust?

Mr. Brindell replied since parking is located on the ground floor, the actual floors occupied are the two floors above the parking.

On roll call, the motion carried unanimously.

15. Special Exception No. 21-94 - Cucina, Inc., 257 Royal Poinciana Way; to allow applicant to establish a 78 seat restaurant in a 2,500 square foot space thereby exceeding the 2,000 square foot limitation. Parking would be provided with off-site within 500' pursuant to Section 6.21(D)(1) of the Town Zoning Code. C-TS District - David Shaw, attorney, addressed the Commission stating the applicant had submitted the town serving affidavit to the staff. He added no variance is necessary for parking which is available in existing lots behind the restaurant. Spec. Excep. 21-94

Dana Dribben, the owner of Cucina, Inc., addressed the Council stating he currently owns Cucina-Trattoria in West Palm Beach, and many of his current customers are from Palm Beach, and this restaurant will service that clientele.

Mr. Moore asked Mr. Dribben if the parking will be behind the existing former dance studio?

Mr. Dribben affirmed the parking will be in that location, within 500 feet of the restaurant, and the parking lease will run concurrently with the lease for the restaurant.

Mr. Moore read the Town serving agreement into the record stating at least 60% of the restaurant's regular clients at the West Palm Beach location, 2419 South Dixie Highway, are Town residents, and the applicant does not intend to serve a significant number of non-Town residents from the Palm Beach location and expects the 60% number to increase significantly when the Palm Beach location is open.

Mrs. Royal asked Mr. Dribben to identify the means used to ascertain the 60% figure?

Mr. Dribben replied he maintained a data base, containing over 700 names of Palm Beach residents who have given Mr. Dribben their names and addresses. He added his total data base contains 1400 names but this number does not include the guests from the Breakers and the Ocean Grand who frequently visit the restaurant.

Mr. Moore stated the decision for determining the method to establish the Town serving requirement is up to the Council, but Mr. Dribben has attested to the 60% figure, and he has provided information concerning the compilation of that information.

Mr. Dribben stated the owner of the parking lot is also the owner of the building occupied by the restaurant; therefore, those leases can run together.

Motion made by Mrs. Smith to approve Special Exception 21-94. Seconded by Mrs. Royal.

Responding to Mr. Shaw's question concerning access from the parking lot into the restaurant, Mr. Dribben stated an alley and easement run along the west side of the building to the parking. Mr. Dribben added the restaurant does not advertise and most of his patrons know parking will be available in back of the restaurant, but on the weekends valet parking will be available.

On roll call, the motion carried unanimously.

Spec. Excep. 22-94

16. Special Exception No. 22-94 With Variance - Escada USA, 214-218 Worth Avenue; to allow applicant to expand to the second floor for a total of 2,591 square feet in lieu of 2,000 maximum allowed. Variance is requested to provide parking off-site in a different zoning district per Section 6.21(D)(3)(d), and a variance from Section 8.23 to allow the reconfiguration of the existing non-conforming stairway. C-WA District. (Letter dated August 8, 1994, from Eugene Lawrence requesting deferral until September 13, 1994 Council meeting.) - This item was deferred earlier in the meeting.

Spec. Excep. 23-94

17. Special Exception No. 23-94 - Casablanca Restaurant, 101 N. County Road; to allow applicant to expand the restaurant occupancy from 2,000 square feet to 3,774 square feet, thereby exceeding the 2,000 square foot limit. C-TS District - Eugene Lawrence, architect, stated the restaurant opened in 1992 and has been very successful, and Mr. and Mrs. Stoupas have a contract to purchase the building, and they want to add the additional 1,774 feet in the building to their existing restaurant.

Mr. Moore stated the restaurant was asked to start at the required 2,000 square feet, did successfully build the business and provided parking to support the patrons. He added the required Town serving documents have been provided by the applicants, and staff has no objections.

Mrs. Wiener commented that this restaurant is a classic example of what the Town Council would like to have; the operators staying within the Town limits and after they have proven the Town serving portion, requesting the additional space.

Motion made by Mrs. Smith to approve Special Exception 23-94. Seconded by Mr. Shaw. On roll call, motion carried unanimously.

Spec. Excep. 24-94

18. Special Exception No. 24-94 - Dean Witter Reynolds, Inc., Plaza Center, 251 Royal Palm Way; to allow a financial institution to occupy 12,600 square feet on two floors at the Plaza Center in the C-OPI District. A parking variance is requested providing 50 spaces in lieu of 63 required. C-OPI District - David Shaw, attorney, representing Dean Witter Reynolds, stated approximately 10,000 square feet of this space was occupied by Paine Webber who have relocated. He added Paine Webber was entitled to use 44 parking places with the 10,000 square feet. He continued that Dean Witter is establishing this office to serve its Palm Beach customers and will continue to operate its West Palm Beach and North Palm Beach offices to serve its off island customers. He said the applicant has filed the necessary Town serving documents indicating the current customer list is comprised of more than 50% of Town residents and this list is expected to increase with the opening of the new office. He added the office will have a maximum of 45 employees including all brokers who are not always in the office, and it is anticipated that 4 - 5 customers will be visiting the office at any one time.

Mr. Moore stated the staff has no objections to the request for the variance.

Motion made by Mr. Shaw to approve Special Exception 24-94 with the variance for Dean Witter Reynolds to occupy space at 251 Royal Palm Way. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Spec. Excep. 25-94

19. Special Exception No. 25-94 - Bistro Chez Jean Pierre, 132 North County Road; to modify Special Exception No. 18-93 to permit occupancy of adjacent 2,200 square feet of first floor space rather than 2,200 square feet of second floor space. C-TS District - John Pierre Leverrier, owner of Bistro Chez Jean Pierre, addressed the Council and explained the next door space became available since the granting of the Special Exception 18-93, and he wishes to occupy the first floor, 2,200 square feet, in lieu of the previously approved second floor.

Mr. Moore stated the staff has no objection to the swapping of the two spaces; however, the applicant needs to provide an annual Townserving statement.

Motion made by Mr. Shaw to approve Special Exception 25-94 for the additional space for Jean Pierre to take over the adjacent space to the restaurant. Seconded by Mrs. Royal. On roll call, motion carried unanimously.

20. Special Exception No. 26-94 - Prego Partnership, 288 S. County Road; to allow the restaurant to expand from 3,265 square feet to 4,454 square feet further exceeding the 2,000 square foot limit. Said expansion would require 6 additional parking spaces, which the applicant will provide off-site pursuant to Section 6.21(D)(1) of the Town Zoning Code - Paul Prosperi, attorney represented Prego Partnership and Howard Gittis, the principal, explained the request had two parts, additional space and off-site parking spaces. He stated the parking spaces would be provided behind the building and accessed from an alley, paralleling South County Road, and these parking spaces are not part of the legal parcel of the building, but the spaces were acquired recently. He added the second part of the request deals with the expansion by 1,100 square feet to the existing 3,265 square feet and presented a colored map of the existing, proposed restaurant seating expansion and the space occupied by offices and kitchens. He stated the actual expansion of seating will be 31 additional seats. Spec. Excep. 26-94

Mr. Prosperi stated the two reasons the approval of the special exception should be granted are the moving of the main entrance door 30 to 35 feet south on South County Road thus relieving the congestion of the valet parking at the corner. He added a new entrance will be created with 30% of the proposed space occupied by a 10 seat bar that will act as a waiting or holding area; 40% of the proposed space will be occupied by restrooms, as mandated to ADA; and 21 new seats will be added to the restaurant.

Mr. Prosperi said that the property owner, Mr. Campinello, spent 3 years interviewing prospective operators for the restaurant before deciding on Mr. Gittis, a Town resident, who is familiar with the Town serving requirements. He offered to certify the Town serving requirement in any increment stipulated by the Town, perhaps on a 6 month basis.

Mr. Moore requested that Mr. Prosperi expand on the Town serving requirement since this is a new operation and added the safety element of changing the main entrance to the restaurant from the corner is an improvement agreed to by the Police Department and other departments. He added that the former restaurant did exist for years in the same configuration without the additional space.

Mr. Prosperi requested the Town serving requirement could be contingent to the agreement on a 6 month basis. He pointed out the last two restaurant uses of this space have been failures, and five or six years ago, the last successful operation was run by Mr. Dempsey. He added if the American Disabilities Act, requiring the expanded restrooms and the safety issues are considered, these uses would occupy over 2/3 of the space into which the restaurant would like to expand.

Mrs. Wiener stated that, normally, the Town Council would not allow the existing 3,265 square feet, but that just happens to be there, and that point is arguable. She continued that a new restaurant coming in at 4,454 square feet, allowing for the ADA act which they all have to meet, presents a problem without some method of putting into place the Town serving requirement.

Mr. Prosperi replied that 30 days prior to this meeting, the Town Council heard a similar situation with Treetops that had a new owner with no track record who was allowed an expansion. He recalled that one of the reasons for the approval was the moving of the entrance from Australian Avenue that was partly residential to South County Road. Mr. Prosperi compared the public safety issue of moving the entrance at 288 South County Road to the Treetops approval. He added the second reason for the Treetops approval was the indication of a location that was a troubled location, and the last two endeavors at 288 South County Road have ended in failure. He pointed out that 288 South County Road is a more conspicuous location that the Treetops one and it has remained empty for a long period of time.

Mr. Randolph stated under item L, list of Special Exceptions, one of the criteria is that an applicant show they are Town serving which does not mean they show they are Town serving in the future, and they have to demonstrate that they are Town serving and that they are going to be Town serving. He added, in the past, the Council has accepted several different types of proof for that issue including market surveys. He said the Council should receive some sort of assurance that this is going to be Town serving by the very nature of the customer that it serves and the very nature of the advertising.

Mr. Prosperi stated the applicant would agree to a ban of any advertising except in the Shiny Sheet, Palm Beach Illustrated or island publications. He added the 21 seat addition is a proposed neighborhood table where no reservations are required to give a sense of community or neighborhood atmosphere.

Mrs. Wiener asked Mr. Moore if the survey of restaurants is true and has been acceptable to the Council in the past, do all restaurants have to comply with this, and is this the correct procedure?

Mr. Moore responded item L is left to the determination of the Council members to decide if the information presented by the applicants satisfies the Town serving requirement. He continued one of the lawyers who has represented other restaurants in the past uses the theory that there is no place to go to the east or to the south or to the north; therefore it is town serving.

Mrs. Smith stated she could accept a new restaurant at that location if they did not start out in such a large way, and suggested starting out in the original restaurant and expanded after a period of time.

Mr. Prosperi reiterated the actual area occupied by seating is under 2,000 square feet, probably in the range of 1600 to 1700 square feet; approximately 400 square feet is the restroom area and over 2,000 square feet is the kitchen and office area. Mr. Prosperi identified the office area in the rear as only accessible through the kitchen area.

Mr. Moore said the American Disability Act requirement affects all of the restaurants in Town and has nothing to do with the 2,000 square feet requirement.

Mrs. Wiener stated, if the ADA requires additional footage over and above what was previously required, the Town should relate that to the zoning requirements.

Mr. Moore responded the ADA requirement would only be related to new construction of restaurants and new facilities, and the size required by the State of Florida Handicapped Code and ADA is identical.

Spec. Excep. 26-94

Mr. Prosperi replied in cases where complaints were filed, the consequences are expensive.

Mrs. Smith asked Mr. Randolph how the Council could stipulate the restaurant prove itself Town serving as part of the motion for approval?

Mr. Randolph replied that Mr. Prosperi suggested the approval be contingent upon them proving they are Town serving, and in the event the restaurant would not be Town serving the approval would expire in a certain amount of time. Mr. Prosperi agreed to that stipulation. Mr. Randolph added, as part of the motion, a requirement for an affidavit or representation in writing that the nature of this will indeed be Town serving with some justification for that.

Mrs. Wiener related this situation to other applications for new restaurants that have been presented to the Council in the past and Council has turned down requests for additional space over 2,000 square feet resulting in court actions. She requested that Mr. Randolph identify the differences between those cases and this one.

Mr. Randolph replied each case is unique and should be judged on its own merits, and the Council has to make the final determination to see if the proof presented is substantial. He added if the proof is not substantial, the Council should not approve the application.

Mr. Prosperi stated the owner is not a full time restaurateur; he is well known to the Town and his primary motivation in opening this restaurant is to be Town serving and to serve his friends, family, residents and guests. He added the space, 1189 square feet, would be relinquished at the end of 6 months or a 1 year period, if that is agreeable to the Town, if the applicant cannot prove the customers during that time were Town serving. He further stated the establishment will not advertise so that the customers who did not see it or hear of it by word of mouth would not frequent the restaurant. Mr. Prosperi said as a further incentive, the entrance will be relocated away from the intersection and provide additional parking. He concluded with the statement that the space that has been empty for a long period of time would have a use with a financially responsible Town resident.

Mr. Prosperi, responding to a question from Mrs. Royal, stated Todd Slotkin is a lawyer in Mr. Gittis' office who has the power to sign the application for him.

Mr. Shaw pointed out in the event the Town serving portion of the agreement was not substantiated after a period of time, the bathrooms would be lost.

Mr. Prosperi said he understood that, and the bathrooms would have to be relocated after that.

Mr. Shaw suggested a swap of 1189 square feet by abandoning the upper left hand portion of the site plan and using the area behind the bathrooms as office space then return to the Council after a period of time with a request to expand into their own property.

Mr. Prosperi replied Mr. Gittis would be delighted with that proposal; however, the landlord, Mr. Campinello, would not be delighted as the lease has to be for the entire space. Mr. Prosperi suggested the office would not be used for a period of time.

Mr. Shaw suggested splitting up the property as two separate leases and close it off, not use it and the Council would be assured the space is 3,265 square feet with bathrooms that will not have to be rebuilt.

Mr. Prosperi stated the bathrooms would have to built, and due to the negotiated lease arrangement, the back part could be sealed off and not utilized for a period of time, and that would be agreeable to Mr. Gittis.

Gene Lawrence identified, on the site plan, the area that would be utilized and the area that would be sealed off for a certain time period.

Mr. Shaw explained his proposal was to move the office to the area of the blue slashes on the site plan and use that for temporary offices, build the bathrooms, move the front door, build the bar and return to the Council after 6 months, prove the establishment is Town serving, re-open the area where the office is shown in blue on the plan and install tables in that area.

Motion made by Mr. Shaw to approve Special Exception 26-94 with the stipulations the offices are moved to the area of the blue slashes on the site plan, build the bathrooms as shown, move the front door, build the bar, return to the Council after 6 months, prove the establishment is Town serving, re-open the area where the temporary offices were located, install tables in that area, with the representations made by Mr. Prosperi, with the understanding the site plan will be scaled off as shown at the meeting to include more or less 3,265 square feet. Seconded by Mrs. Smith. On roll call, the motion carried 3 - 1 with Mrs. Royal casting a negative vote.

Spec. Excep. 20-92

21. Special Exception No. 20-92 Modification - Temple Emanu-el of Palm Beach, 220 and 222 Seminole Avenue; to allow an additional 1,903 square feet beyond original approval and to allow internal reconfiguration of rooms. R-C District - Paul Rampell, attorney, addressed the Council and explained Temple Emanu-el received a Special Exception 20-92 approval on August 11, 1992 which enabled the Temple to construct a 4,000 square foot addition. He requested the approval of this Special Exception that will add 1,903 square feet to that addition. Mr. Rampell stated the prior approval to build this addition will expire in two or three days and a $1,000,000 pledge depends on receiving the approval to build this addition.

Mr. Rampell stated that the Temple analyzed the design of this addition and decided it would be better to move the present sanctuary which runs north and south along Country Road to a portion of the existing building and the approved addition which runs east and west along Seminole Avenue.

He added to achieve this goal, the elongation of the approved addition is necessary; however, no internal approvals are changed in that the number of class rooms and seats remain the same. He continued the new configuration will compel the Temple to comply with all applicable building codes including parking spaces, lot coverage and set backs, although the size of the Temple will be slightly increased. He added to meet the lot coverage limitations, the Temple acquired a 4 bedroom apartment complex at 211 Oleander, contiguous to the Temple's land. Mr. Rampell stated the excessive density on Oleander will be reduced as well as the traffic from the 5 to 6 people who lived at that address, and the Temple's open space will be increased once that building is demolished.

Mr. Rampell explained three site plans - A1, A1-A and A1-B - and plan A1 is the preferred site plan by the Temple.

Mr. Lawrence pointed out the Temple grew in three stages; 11,600 square feet were added, but although the Temple was functional, it did not make an ecclesiastical statement. Mr. Lawrence stated a problem arose when the staff advised R-C and C-TS cannot be mixed but the Temple had to comply in each zone. He continued, to allow for this the sanctuary was reduced by 924 square feet; however, the 4,095 square feet of property on Oleander was added with 2,416 square feet of that being added to the allowable Temple site.

Mr. Moore summarized the comments by stating the original Temple was built in the C-TS zoning district which had different requirements that R-C which is residential and when the first addition was put on the Temple, it was built in R-C and complied with the zoning rules for that district. He continued the decision by the Town at that time was that each portion of the building would comply in the zoning district in which it is located, and therefore when the next addition was presented it complied to the R-C district. In an effort to have a surplus of property, the Temple now has a piece of property directly to the west under contract. He concluded this presentation is for a 1,900 square feet modification to the approved addition last presented by Mr. Koehler with enough land to support that request. He added the staff has no objections since it meets all Town regulations with the acquisition of this property.

Mr. Moore said he did not recommend changing the Town's previous position of requiring each section to conform in each zoning district.

Mr. Lawrence stated changes have been made in the second floor since Mr. Koehler presented his design; also the sanctuary now makes a statement.

Motion made by Mrs. Royal to approve Special Exception 20-92. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

22. Flood Insurance Variance No. 3-94 - Gay Ann Cinque, 3 Golfview Road; to allow applicant to make permitted renovations and/or improvements to existing residence which has its lowest floor elevation of 7.0' instead of 7.5' required by Town Ordinance. R-A District - Gay Cinque, owner, stated she purchased this residence about a year ago and proceeded to do the renovations in two stages because of a lease agreement prior to the purchase of the residence. She stated the roof was not leaking when the first stage was begun; however, the contractor found the first floor roof leaked and additional monies will have to be used to correct the situation. She added most of the house has an elevation of 8.5 feet but 400 of the 3,000 square feet in the back, a play area off the swimming pool, is 7.0 feet. Var. 3-94

Mr. Moore explained the Town has the flexibility of granting the variance of 7.0 feet required by FEMA since the Town's required first floor elevation is 7.5 feet; therefore the Town may grant variances for that 1/2 foot. He stated the staff has no objections.

Mrs. Smith said she assumed Mrs. Cinque lived at 160 Sunset when she spoke concerning Variance number 35-94. Mrs. Cinque replied the Sunset property was purchased as an investment, but had lived at the Sunset address for a short period last year.

Mrs. Royal asked if Mrs. Cinque's property was on the north or south side of Golfview. Mrs. Cinque responded she is located on the north side.

Motion made by Mr. Shaw to accept Flood Insurance Variance number 3-94. Motion seconded by Mrs. Royal. The motion carried unanimously.

C. Other

1. Consideration of Request for Waiver to Section 12-51, "Hours for Construction Work", of Town Code by Gregory H. Lewis, for Work at First National Bank in Palm Beach, 255 South County Road - Howard Lewis, architect, stated the bank is being renovated, and the lobby area is very difficult to work on during the day for safety reasons. He said the bank has requested this work be done in the evening. He added all work will be done inside; no residential area is near and does not foresee a hardship for anyone in the area. Request for Waiver to Sect. 12-51 for work at First Nati' Bank in Palm Beach

Mr. Moore asked Mr. Lewis to state the requested hours?

Mr. Lewis stated he would like to work until 11:00 p.m., starting after the bank closes, at 3:00 or 4:00 p.m., although the current allowed time is from 8:00 a.m. until 6:00 p.m.

Mr. Moore replied residential areas are located to the north and this request is unusual in that most business establishments are able to live with interior remodeling work during the business hours.

Mr. Lewis answered Mrs. Royal's questions concerning the Landmarked building. and said all the approvals and permits have been issued and this is a request to extend the time to accomplish the work in. He added the major job in the lobby is the re-doing of the ceiling in pecky cypress, and these ceilings are over the teller lines and therefore not a safe condition. Mr. Lewis stated if they are any complaints, the work would be stopped in the evening.

Mrs. Royal asked if Mr. Lewis' workers could park their cars in the area of the parking lot without using the northeast part of the lot, the area that abuts the residents on Seaview?

Mr. Lewis replied he would agree to that.

Mr. Moore replied that buffer would provide protection to the Seaview residents, but he did not think Mr. Lewis had addressed the hardship issue, other than it is a convenience for the business.

Mrs. Wiener stated she thought Mr. Lewis had proved the case for a hardship and agreed a ceiling could not safely be installed with tellers and the public walking underneath it.

Mr. Moore added the staff thought sections of the bank could be cordoned off and one section at a time could be installed.

Mr. Shaw asked if the teller section to the north of the lobby in a newer addition could be used during the renovation?

Mr. Lewis responded that teller section was closed off some years ago.

Mr. Shaw said the bank has ample resources, other locations, within the Town including an on-site drive-in facility and questioned the need for the extra hours when customers could use other facilities or at least cordon off parts of the bank during construction.

Mr. Lewis stated he would like to work on Sundays if possible but will follow the Council's wishes. He added the First National Bank is the private bank of First Union and therefore offers different services to the customers. He said the request for 3 1/2 months of extended hours is necessary because other work needs to be done at the bank, although the ceiling is the greatest concern.

Mr. Shaw stated he has no problem with a 3 week period until 11:00 p.m. to finish the ceiling work.

Mrs. Wiener suggested an alternate plan of perhaps 4 weeks until 9:00 or 9:30 p.m., and Mr. Shaw agreed to that.

Motion made by Mr. Shaw to approve the request for Waiver to Section 12-51 for a period of 4 weeks with hours to be from the approved starting time until 9:00 p.m., including Saturdays and without Sundays. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Consideration of Request for Waiver to Sect. 12-51 for work at Casa Apava

2. Consideration of Request for Waiver to Section 12-51, "Hours for Construction Work", of Town Code by Ronald K. Kolins, for Work at Casa Apava, 1300 South Ocean Boulevard Ron Kolins addressed the Council and said Casa Apava is undergoing an extensive renovation and his client wishes to finish the construction prior to the beginning of the season. He asked for a waiver to extend the work hours from 7:00 a.m. until 8:00 p.m. and he anticipates the job will be completed by the end of November or the beginning of December. He added east of the project is the ocean, to the north is the Kramer residence which is under construction, to the west is property owned by Mr. Kolins' client and the only impacted party is to the south, Malcolm Healey who is out of the country. Mr. Kolins stated he is confident Mr. Healey has no objection, but if he does have an objection and notifies the Town by any means, the work would stop at 1300 South Ocean Boulevard immediately.

Mrs. Wiener replied she has no problems with the stated hours now but in late November there is a problem, and she would prefer to grant extra hours up front. She gave the example of rather than working until 8:00 p.m. sometime into December, she would prefer granting a 9:00 p.m. time until some time in November.

Mr. Kolins requested the hours be from 7:00 a.m. until 9:00 p.m. until November 15th, and if further time is required, Mr. Kolins will return to the Council.

Mr. Moore stated the construction project does have a resident inspector on site and requested that no heavy equipment, including saws, jack-hammering, be used between the hours of 6:00 p.m. and 9:00 p.m.

Mr. Kolins replied he did not know the needs of the contractors to determine if that request could be lived with; however, he did not think any of the neighbors would be affected by the noise from the site and, as the work progresses, most of the work will be interior. He asked that restriction not be included since it is not necessary in the logical construction order of things.

Mr. Moore stated there are no restrictions concerning the movement of construction equipment on and off the island during the extended work hours. He added he understood Mr. Kolins' request that the requirement for heavy equipment noise be excluded from the approval; however, he reminded Mr. Kolins the noise ordinance of the Town would still have to be adhered to. He noted that Mr. Healey's property is approximately 30 feet away from Casa Apava.

Mrs. Royal stated she would like to add the restriction that during the Turtle Nesting Season there will be no outside lights to the east.

Mrs. Smith concurred with that restriction, and stated masses of dead turtles are on the beach and in the swimming pool at the Healey residence where beach lights are on.

Mr. Kolins replied his client would agree to shine the lights the other way, to the west, but Mrs. Smith replied no beach lights should be visible.

Motion made by Mrs. Smith to waive the hours for construction from 7:00 a.m to 9:00 p.m. including Saturdays, excluding Sundays and holidays, no equipment or noise will be allowed or the job will be closed down and the beach lights are to be turned down until November 1, the end of the Turtle Nesting Season and the waiver will extend until November 15, 1994. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mr. Shaw asked Mr. Moore if an inspection problem had been created with First National Bank since they will be working during hours when inspections are not made?

Mr. Moore replied this situation is different from the Casa Apava construction, and the work will be done in the evenings at First National and inspections will be called in for the next day.

3. Reminder of September 16, 1994 Deadline for Submittal of 1994-1995 Zoning Study Items

Mrs. Wiener said one additional study item had been added to list at this meeting

XVI. ANY OTHER MATTERS

Any Other Matters

Mrs. Royal said she would like to express the appreciation of the Town Council to Stewart Shulman for his contribution of paint for re-painting the golf course pro shop.

XVII. ADJOURNMENT - The meeting was adjourned at 8:30 p.m.

Adjournment

Grace T. Peters
Town Clerk

Mary A. Pollitt
Deputy Town Clerk

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

LAST NAME—FIRST NAME—MIDDLE NAME Shaw Leslie Allen	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Council Member, Town of Palm Beach
MAILING ADDRESS 318 Seaspray Ave	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: CITY Palm Beach COUNTY Palm Beach OTHER LOCAL AGENCY
CITY Palm Beach COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED August 9, 1994	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

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

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

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

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

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

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

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

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

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Leslie A Shaw, hereby disclose that on 8/9/94, 19___:

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

___ inured to my special private gain; or

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

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

I Filed a letter of objection For the original Variance + am still a neighbor of owner @ 255 Seaspray Av.

Aug 9, 1994

Date Filed

[signature]

Signature

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