MINUTES OF THE TOWN COUNCIL MEETING HELD ON AUGUST 8, 1995

I. CALL TO ORDER AND ROLL CALL - The meeting was called to order by President Smith at 9:30 a.m. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald, Councilmen Leslie Shaw, Samuel McLendon, and Allen Wyett. Also attending were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager Dave Jakubiak, Town Clerk Mary Pollitt, Director of Public Works Albert Dusey, Town Engineer James Bowser, Purchasing Agent Charles Boggs, III, Personnel Director William Crouse, Police Chief Joseph Terlizzese, Fire Chief Ken Elmore, and Director of Information Systems Spencer Wilson.

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Reverend William Stokes from Bethesda, and the Pledge of Allegiance was led by President Smith.

III. PRESENTATIONS

A. Retirement of Arthur R. Roebuck, III, Fire-Fighter Driver Operator Paramedic, 13 Years and 2 Months - Mayor Ilyinsky presented a plaque to Mr. Roebuck acknowledging his service to the Town.

IV. COMMENTS OF THE MAYOR - Mayor Ilyinsky congratulated Town Manager Doney and his entire staff on their performances during the recent hurricane scare. He requested the Department Heads pass on his congratulations to the employees who worked so hard during that time.

Mayor Ilyinsky described the television coverage of the hurricane as outrageous at times. He said the residents of Palm Beach should call Town Hall if they really want to know what is going on. The Mayor objected to the "goofing off" editorial in the Palm Beach Post regarding the Wednesday after the hurricane passed when many people did not return to work. Mayor Ilyinsky reported that the Town of Palm Beach was functioning 100%, at full capacity, Wednesday morning, and no one in Palm Beach "goofed off". He asked any representatives from the newspapers in attendance to so state

Mrs. Smith and Mr. Shaw commented on the dedication of the employees of the Town.

V. APPROVAL OF AGENDA - The following changes were made to the agenda: Item XIII.C.8., Special Exception 17-95, Peter Beck, The Poinciana Club, Inc. was moved to the end of the agenda (page 7). Item IX.B.1.(b) Consideration of Memorandum of Agreement with Army Corps of Engineers to Transport Sand Dredged from Lake Worth Inlet to Mid-Town Beach Area was moved and changed to item IX.B.1.c.(4) (page 3). Item X.D.5., Intergovernmental Relations Committee--Appointments to the Water Committee (page 5) was added. Item XIII.C.2, Variance Number 28-95, Mr. and Mrs. Lewis Rudin 7 LaCosta Way, was deferred to the September 12, 1995, Town Council meeting (page 6). Item X.D.6., Consideration of 1995 Institute for Elected Municipal Officials, (page 5) was added. Mr. Randolph's report on the Property Rights Law was deferred to the September 12, 1995, Town Council meeting.

The Agenda was approved as amended by a motion from Mr. Shaw, seconded by Mr. McLendon. On roll call the motion carried unanimously.

APPROVED AGENDA (ITEMS VI. THROUGH VII.) -

Mr. Shaw made a motion to approve the Approved Agenda, seconded by Mr. Wyett. On roll call the motion carried unanimously.

VI. APPROVAL OF MINUTES OF JUNE 13 AND 14, 1995, AND JULY 11, 1995

VII. LICENSES AND PERMITS

A. Charitable Solicitation Permits

Regular

1. Palm Beach Community Chest/United Way, Inc.; No. 8-96
2. United Jewish Appeal; No. 49-96
3. Arthritis Foundation; No. 87-96
4. Florida Conservation Association; No. 251-96
5. Alzheimer's Association; No. 256-96
6. Edna Hibel Art Foundation; No. 292-96

7. The Palm Beach County Medical Society Auxiliary Foundation, Inc.; No. 296-96
8. Brandeis University Women's Committee; No. 310-96
9. Epilepsy Association of the Palm Beaches; No. 344-96

REGULAR AGENDA

VIII. COMMITTEE REPORTS

A. Report of the Public Safety Committee Meeting of July 12, 1995 -

REPORT OF THE PUBLIC SAFETY COMMITTEE MEETING HELD ON JULY 12, 1995

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order at 10:35 p.m by Chairman Allen S. Wyett. On roll call, Chairman Wyett and Committee Member Lesly S. Smith were found to be in attendance. Other Elected Officials attending were Councilmen Leslie A. Shaw and Jack McDonald. Others attending the meeting were Town Manager Robert J. Doney; Town Attorney John C. Randolph; Police Chief Joseph L. Terlizzese; Fire-Rescue Chief Vincent K. Elmore; Planning, Zoning & Building Director Robert L. Moore; Police Department Major Michael S. Reiter; Risk Manager Barbara Martinuzzi; Parking Control Manager Henry Marchman; and Town Clerk Mary A. Pollitt.

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

III. CONSIDERATION OF ON-STREET VALET PARKING ISSUES AND POTENTIAL TOWN REGULATIONS: The Committee received a report from Police Chief Terlizzese (as identified in his July 7, 1995, memorandum) regarding the valet parking ordinances from other municipalities on interim valet parking plans and related issues. After hearing the comments of Mr. Doney, Mr. Randolph, Major Reiter, Mr. Marchman, Mr. Moore, Councilman Shaw, Councilman McDonald, IT WAS THE RECOMMENDATION OF THE COMMITTEE TO ADVISE THE COUNCIL THAT AN ORDINANCE BE DRAFTED BY THE TOWN ATTORNEY WITH INPUT FROM CHIEF TERLIZZESE CONTAINING, BUT NOT LIMITED TO, THE FOLLOWING RECOMMENDATIONS FROM CHIEF TERLIZZESE:

1. ANY PERMIT FOR VALET PARKING OPERATIONS MUST BE IN THE BEST INTEREST OF PUBLIC SAFETY. VALET PARKING SHOULD BE PROHIBITED AT ANY ESTABLISHMENT WHERE IT PLACES THE PUBLIC SAFETY AT RISK.

2. VIOLATIONS OF ANY SUCH ORDINANCE SHOULD BE PUNISHABLE BY PROGRESSIVE FINES AND REVOCATION OF THE VALET PARKING PERMIT. SIGNIFICANT PATTERNS OF VIOLATIONS OF TRAFFIC LAWS BY VALET EMPLOYEES SHOULD RESULT IN REVOCATION OF THE VALET PARKING PERMIT.

3. STORAGE OF VALET PARKING VEHICLES SHOULD NOT BE PERMITTED ON PUBLIC STREETS AND RIGHTS OF WAY, OR IN RESIDENTIAL AREAS. ESTABLISHMENTS SHOULD BE REQUIRED TO DEMONSTRATE SUFFICIENT OFF STREET PARKING TO ACCOMMODATE VEHICLES IN ACCORDANCE WITH EXISTING ZONING REQUIREMENTS. A RATIO OF SEATING CAPACITY TO NUMBER OF STORAGE SPACES SHOULD BE ESTABLISHED.

4. THE DISTANCE BETWEEN RAMPING AND STORAGE SPACES SHOULD BE REASONABLE AS DETERMINED BY THE POLICE DEPARTMENT.

5. RAMPING SPACES SHOULD BE DETERMINED BY THE POLICE DEPARTMENT IN THE INTEREST OF PUBLIC SAFETY. IF POSSIBLE, RAMPING AREAS SHOULD BE APPROXIMATELY 40' IN LENGTH OR LONGER. THE NUMBER OF RAMPING SPACES PROVIDED SHOULD NOT BE TIED TO THE SEATING CAPACITY OF THE RESTAURANT BECAUSE RAMPING SPACES SHOULD BE USED ONLY TO ALLOW PERSONS TO ENTER OR EXIT A VEHICLE AND TO TURN IT OVER TO OR RETRIEVE IT FROM VALET EMPLOYEES, NOT FOR STORAGE OF VEHICLES.

6. THE VALET OPERATOR SHOULD BE REQUIRED TO SPECIFY THE ROUTE TO BE TAKEN BETWEEN THE RAMPING SPACES AND STORAGE SPACES AND TO SPECIFY THE EXPECTED NUMBER OF TRIPS FOLLOWING THIS ROUTE EACH DAY. A DRAWING OF THE RAMPING AND STORAGE LOCATIONS, THE ROUTE IN BETWEEN THEM, INCLUDING ALL TRAFFIC CONTROL DEVICES LOCATED ALONG THE ROUTE SHOULD BE SUBMITTED BY THE APPLICANT AS PART OF THE PERMITTING PROCESS.

7. A SUFFICIENT NUMBER OF VALET PARKING EMPLOYEES, AS DETERMINED BY THE POLICE DEPARTMENT, SHOULD BE REQUIRED IN ORDER TO PREVENT THE FILLING OF RAMPING

SPACES AND OVERFLOW INTO INTERSECTIONS AND LANES OF TRAFFIC.

IT IS NOTED THAT IT IS DIFFICULT TO SPECIFY THE NUMBER OF VALET PARKING EMPLOYEES REQUIRED OR THE MINIMUM DISTANCE REQUIRED BETWEEN RAMPING AND STORAGE AREAS, BECAUSE THESE MATTERS ARE A FUNCTION OF A NUMBER OF FACTORS INCLUDING TRAFFIC VOLUME, TRAFFIC PATTERNS, AND EXISTING TRAFFIC CONTROL DEVICES. FOR EXAMPLE, IT WOULD BE NECESSARY TO HAVE MORE VALET PARKING EMPLOYEES THE FURTHER AWAY THAT THE STORAGE AREA IS FROM THE RAMPING AREA BECAUSE MORE TIME IS REQUIRED TO PARK EACH VEHICLE. IT IS SUGGESTED THAT EACH PERMIT SHOULD BE REVIEWED FOR THESE FACTORS ON A CASE BY CASE BASIS BY THE POLICE DEPARTMENT.

8. THE PERMITTING PROCESS SHOULD REQUIRE PROOF OF PROPER LICENSING, INSURANCE, AND THE EXECUTION OF A HOLD HARMLESS AGREEMENT WITH THE TOWN.

9. SPECIFICATIONS FOR THE SIZE, DESIGN AND DISPLAY OF TEMPORARY VALET PARKING SIGNS, TO BE DISPLAYED ONLY WHILE VALET PARKING IS OFFERED, SHOULD BE INCLUDED.

10. RAMPING SPACES AND SIDEWALKS SHOULD NOT BE BLOCKED BY SIGNS, CONES, BARRIERS OR OTHER TRAFFIC CONTROL DEVICES.

11. VALET PARKING EMPLOYEES SHOULD BE REQUIRED TO WEAR NAME TAGS THAT ALSO IDENTIFY THE SPONSORING ESTABLISHMENT.

12. VEHICLES IN POSSESSION OF VALETS SHOULD BE IDENTIFIED BY A TICKET STUB ATTACHED TO THE REAR VIEW MIRROR THAT INCLUDES THE VALET OPERATOR'S AND ESTABLISHMENT'S NAMES.

13. STANDARDS FOR KEY STORAGE AND THE SIZE OF KEY BOARDS SHOULD ALSO BE ESTABLISHED.

After discussing the permit costs, fines, standardized signs, and issues related to the valet parking for stores, restaurants, and special events, THE COMMITTEE RECOMMENDED THE FOLLOWING:

A) A FINE SCHEDULE BE ESTABLISHED FOR VIOLATIONS OF THE PROPOSED VALET PARKING ORDINANCE SIMILAR TO EXISTING FINES IMPOSED BY THE CODE ENFORCEMENT BOARD, (FIRST OFFENSE: $100; SECOND OFFENSE: $250; AND THIRD OFFENSE: $500) AND VALET LICENSE REVOCATIONS OR PERIODS OF LICENSE SUSPENSION (AFTER THE FIRST THREE OFFENSES) BE DETERMINED BY THE CODE ENFORCEMENT BOARD ON AN INDIVIDUAL BASIS AT THE TIME OF THE CODE ENFORCEMENT BOARD HEARING.

B) AN ORDINANCE BE DRAFTED AND SUBMITTED TO THE MAYOR AND TOWN COUNCIL AT ITS SEPTEMBER 12, 1995, COUNCIL MEETING AND THEN SAME BE PROMPTLY TRANSMITTED TO THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR REVIEW AND FORMAL DIRECTION TO THE TOWN BEFORE THE ZONING COMMISSION IS REQUESTED TO FORMALLY CONSIDER AND RECOMMEND ACTIONS TO THE TOWN COUNCIL ON THE THE SHARED PARKING ISSUE. THE ZONING COMMISSION'S MEETING ON THE 1995-96 ZONING STUDY ITEMS IS SCHEDULED FOR MONDAY, NOVEMBER 20, 1995. IT IS ANTICIPATED THAT NO ENFORCEMENT OF ANY VALET PARKING ORDINANCE, IF PASSED, WOULD OCCUR BEFORE FEBRUARY, 1996.

IV. ANY OTHER MATTERS: There were none.

V. ADJOURNMENT: The meeting was adjourned at 12:35 p.m.

PUBLIC SAFETY COMMITTEE

_____
ALLEN S. WYETT,
COMMITTEE CHAIRMAN

LESLY S. SMITH,
COMMITTEE MEMBER

Mr. Wyett read the recommendations made by the Public Safety Committee:

(A) A FINE SCHEDULE BE ESTABLISHED FOR VIOLATIONS OF THE PROPOSED VALET PARKING ORDINANCE SIMILAR TO EXISTING FINES IMPOSED BY THE CODE ENFORCEMENT BOARD, (FIRST OFFENSE: $100; SECOND OFFENSE: $250; AND THIRD OFFENSE: $500) AND VALET LICENSE REVOCATIONS OR PERIODS OF LICENSE SUSPENSION (AFTER THE FIRST THREE OFFENSES) BE DETERMINED BY THE CODE ENFORCEMENT BOARD ON AN INDIVIDUAL BASIS AT THE TIME OF THE CODE ENFORCEMENT BOARD HEARING.

(B) AN ORDINANCE BE DRAFTED AND SUBMITTED TO THE MAYOR AND TOWN COUNCIL AT ITS SEPTEMBER 12, 1995, COUNCIL MEETING AND THEN SAME BE PROMPTLY TRANSMITTED TO THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR REVIEW AND FORMAL DIRECTION TO THE TOWN BEFORE THE ZONING COMMISSION IS REQUESTED TO FORMALLY CONSIDER AND RECOMMEND ACTIONS TO THE TOWN COUNCIL ON THE SHARED PARKING ISSUE. THE ZONING COMMISSION'S MEETING ON THE 1995-96 ZONING STUDY ITEMS IS SCHEDULED FOR MONDAY, NOVEMBER 20, 1995. IT IS ANTICIPATED THAT NO ENFORCEMENT OF ANY VALET PARKING ORDINANCE, IF PASSED, WOULD OCCUR BEFORE FEBRUARY, 1996.

Mr. Shaw made a motion to accept the report of the Public Safety Committee Meeting of July 12, 1995. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Shaw made a motion that the recommendations of the Public Safety Committee be accepted as presented by Mr. Wyett. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

B. Report of the Finance and Taxation Committee Meeting of July 27, 1995 -

REPORT OF THE FINANCE & TAXATION COMMITTEE
MEETING OF JULY 27, 1995

I. CALL TO ORDER AND ROLL CALL: The Finance & Taxation Committee meeting was called to order by Chairman Lesly Smith at 10:00 a.m. On roll call, Mrs. Smith, Chairman, and Mr. Jack McDonald, Committee Member, were found to be in attendance. Other Elected Officials in attendance were Mayor Paul Ilyinsky and Councilman Leslie Shaw. Also attending were Town Manager Robert Doney, Finance Director Marie Crozier, Public Works Director Al Dusey, Town Engineer Jim Bowser, Police Chief Joseph Terlizzese, Major Frank Croft, Information Systems Manager Spencer Wilson, Personnel Director William Crouse, Recreation Director Russell Bitzer, Fire-Rescue Chief Ken Elmore, Assistant to the Town Manager David Jakubiak, Purchasing Agent Charlie Boggs, Risk Manager Barbara Martinuzzi, Chief Building Inspector Harry Ackerman, Administrative Aide Wendy Zamecnik, Account Clerk/Data Processor III Lisa Gorman, and Town Clerk Mary Pollitt.

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

III. F96 PROPOSED BUDGETS

A. Consideration of Various Budget Issues in Furtherance of June 7 and 8, 1995, Finance and Taxation Committee Meetings and Special Town Council Meeting on July 25, 1995, at 10:00 a.m.

Mrs. Smith asked Mr. Crouse to respond to the request from the Committee at the June meeting to identify all personnel related costs, including fringe benefits and social security, for the $141,000 figure salary increase for employees which is the dollar amount of each potential one percent general pay increase.

Mr. Crouse explained the $141,000 figure represents about 99% of the actual costs, and that figure included social security, longevity, and overtime which are the main cost impact items for the year that the raise is given. He said long term disability, life insurance, workers' compensation, and unemployment compensation are the only other issues that will have a cost impact to a dollar increase in base salary. Because the Town is a self insured employer, both workers' compensation and unemployment compensation costs are minimal, and the costs would be such small amounts, they would be difficult to calculate; Mr. Crouse said, historically, the Town has budgeted more than has been spent, and he added, assuming the Town spent every penny, $125 would be the amount attached to the 1% raise figure. He continued the long term disability is impacted because the cost is determined by payroll, and that cost this year is .7%, or $700 for each $100,000. Mr. Crouse reported that the life insurance cost is $372 for $100,000 or .31%. The costs are quite small. He added that a one year lag exists on the retirement costs. Actual expenditures of payroll are always lower than the budgeted amount because of employee turnover; however, if 100% of the anticipated payroll amount was spent (no turnover), the retirement costs would

be approximately 17.8% based on this year's figures.

Mr. Crouse concluded that the $141,000 figure is close to the total cost to be considered for each 1% increase in this budget year.

Mrs. Smith requested Mr. Crouse to reply to all of the questions posed to him at the June meetings. Mrs. Smith asked Mr. Crouse to respond to the Committee's request that before approval was recommended for the employees' newsletter, the figures for the benefit newsletter be presented at this meeting.

Mr. Crouse responded that the benefit communication program is more than a newsletter, and a number of items including the newsletter, a number of meetings, and a personalized report of the benefits the employee actually receives are planned. He said he presented an estimated cost of $7,000 for the personalized employee report at the June meeting. Mr. Crouse reported the information could be prepared at a cost of $4,715, including technical assistance from Gabriel, Roeder & Smith which is needed because of the complications involved in figuring social security and retirement benefits. Mr. Crouse concluded the $4,715 included the entire program--newsletter, individualized reports, and any costs related to employee meetings.

Mrs. Smith noted that Mr. Crouse had provided the figures for the retirement as a percent of salary, insurance as a percent of salary, and all other as a percent of salary.

Mr. Crouse added that the retirement is actuarially determined each and every year, and it does change. He noted that the Town has not had peaks and valleys as some other retirement systems have experienced.

Mr. Crouse reported the numbers for health care are "tricky", and the numbers have to be looked at from the standpoint that there is a total cost of the plan; however, that total cost is reduced for a number of reasons. The total cost for this year is estimated to be have $2,340,528 of gross cost for all medical, and that program includes life insurance, long term disability, dental insurance, and the entire program. Mr. Crouse noted that retirees make up a large portion of the cost for retirement. He said that premium contributions made by retirees and employees for their dependents must be subtracted, and the net cost, after subtracting same, was $1,464,931. The percent of payroll, based on this year's anticipated payroll, is 10.2%.

Mr. McDonald asked how the 10.2% compared to other municipalities?

Mr. Crouse responded that over the last five years the Town has performed much better than the average medical plan in other cities in South Florida, i.e. lower cost to the employer. He cited several reasons including the fact that the Town is self insured; the Town has a strong managed care system; the PPO system has reduced costs; and the Town has implemented cost savings on a yearly basis. Mr. Crouse added the Federal Government has mandated certain other health insurance related programs.

Mr. McDonald asked Mr. Crouse what the percentage of payroll was last year? Mr. Crouse responded the percent of payroll has been very close and during the past three years, there have been no cost increases to this plan, and the reserves have increased.

Mr. McDonald said he was attempting to tie this cost to some tangible benefit such as reduced turnover if the employees are impressed with the benefits they have. Mr. Crouse replied the benefit is a morale factor that the employer is taking good care of them, as employees, and of their future concerns. Mr. Crouse said this was an important reminder to the employees, and it may not be sent out every year, but it should be sent out periodically.

Mr. Charles Hickman, 242 List Road, addressed the Council. He stated he had been in the U.S. Navy for a number of years, and the Navy offered many benefits and no one was ever sure of them. Mr. Hickman said that the Navy had a system where each pay check contained a leave and earnings statement that listed all the accumulated benefits. He continued that a blank space on the pay check contained any notes of interest or changes in benefits that the members of the Navy needed to know. Mr. Hickman reported that the Navy did a survey five years after the start of the program and found out it was probably the most effective means of communication in the Navy, and the check also made its way home to the family who had the opportunity to read the information on the pay check.

Mr. Doney pointed out that the current Town pay check has information concerning the cumulative earned pension, vacation days, and other particular details. He added a space for a message statement is also included as part of the check form. Mr. Doney stated that if a major change occurs, Mr. Crouse conducts review meetings with Department Heads who in turn conduct employee meetings within the departments. Mr. Doney said these informational meetings provide information that, in the long term, benefit the needs of the Elected Officials and the Town staff.

After discussing the costs and the informational advantage of the employee newsletter program and hearing the comments of Mr. Crouse and Mr. Doney, IT WAS THE RECOMMENDATION OF THE COMMITTEE TO APPROVE THE EMPLOYEE NEWSLETTER AT A COST NOT TO EXCEED $4715.

Mrs. Smith requested that Barbara Martinuzzi, Risk Manager, address the recommendation of the Finance & Taxation Committee at the June 7 meeting to study the increase of the retention levels and the reserve levels and present those findings at this meeting.

Barbara Martinuzzi, Risk Manager, addressed the Committee and reported on the proposed increase of retention levels. Mrs. Martinuzzi recommended that the insurance program remain as it exists at this time. She said she negotiated with the excess carriers, and the premium reductions proposed by the carriers is extremely insignificant, less than 10% of the total premium package, in exchange for raising the retention levels dramatically. The workers' compensation and property levels would be doubled. The retention levels for the liability lines would increase from $200,000 to $500,000. Mrs. Martinuzzi said the loss fund, the amount set aside for the payment of claims, would have to be raised from $775,000 to $1,500,000. Mrs. Martinuzzi noted that all those conditions would have to be met in exchange for a $50,000 reduction in premiums.

Mrs. Martinuzzi explained the insurance companies did not want to give premium reductions to the Town based on the Town's loss exposure because Palm Beach is a barrier island, and most of the Town's exposure relates to hurricane and large storm related issues. The Town may have a large catastrophic event that exceeds the retention levels or continue to have claims that fall under the existing retention levels based upon the fact that the numbers of losses are decreasing on a frequency basis. She added that the Town has good loss control and safety programs, and the insurance companies realize they do not benefit from reducing the premiums for the Town. Mrs. Martinuzzi summarized that the insurance companies are saying they will give the Town the retention levels the Town wants, but the companies do not think the premiums will be affected because the losses are either small and fall under the existing retention levels or the losses will be huge, and the retention levels will not matter with multi-million dollar losses. After discussion, no action was taken by the Committee on this item.

Mr. Doney commented that Mrs. Martinuzzi will be providing renewal packages at the September 12, 1995 Town Council meeting that will define all the particular fixed and claim portions of the program for liability and workers' compensation.

Mrs. Smith asked Mrs. Crozier to report on the investigation of seven year financing as requested by the Committee at the June 7 meeting.

Marie Crozier, Finance Director, reported that seven year financing was proposed for the replacement of the radio system for the Police and Fire-Rescue Departments and the mobile data terminal system for the Police vehicles. Mrs. Crozier said it was premature to seek formal proposals from the financial institutions; however, preliminary numbers were projected with an anticipated 6% rate which is probably high and a lower rate than 6% is anticipated at the time of requesting lease/purchase quotations. Using the seven year period and financing at 6%, Mrs. Crozier said payments of approximately $184,000 per year, and interest payments for seven years would total $238,475. Mrs. Crozier concluded that she is hopeful that the rate will be lower when the time comes to purchase the equipment. No action was taken by the Committee on this item.

Mrs. Smith asked Al Dusey, Director of Public Works, to respond to the issues requested by the Committee at the June 8 meeting.

Mr. Dusey replied that Mar-a-Lago was converted from residential to commercial trash pick-up on April 3, 1995.

Mr. Dusey noted that money has been budgeted for the current year and next year for the replacement of the dead trees on Worth Avenue. He reported that when the Public Works Department assumed the responsibility for the trees, the trees were inspected by his department and representatives from the Worth Avenue Association. He noted that the two groups agreed which trees were dying or already dead, and those trees would be replaced by the Worth Avenue Association before the Town assumed the responsibility. Mr. Dusey said the dead trees visible on Worth Avenue are the ones that the Worth Avenue Association agreed to replace. He stated that Joe Ugi contacted the Worth Avenue Association, and they are willing to replace the trees.

Mr. Dusey addressed the issue of charging commercial businesses for yard trash pick-up. He stated this issue will be addressed by the Public Works Committee.

Mrs. Smith asked Mr. Dusey if any additions to the number of lakefront bulkheads are scheduled for repair during 1996? Mrs. Smith cited Mr. Dusey's memorandum that mentioned the lakefront bulkheads which are the Town's responsibility, and are located near the Four Arts, Seaview, Seabreeze, Bradley Park, Atlantic, Dunbar to Wells, Miraflores, Plantation, and Monterey Road. Mrs. Smith asked Mr. Dusey to explain the alley area between Garden and Eden Roads.

Mr. Dusey explained the alley between Garden and Eden Roads extends to the Lake, and the Town owns a seawall at the end on the alley on the Lake. Responding to questions from Mrs. Smith, Mr. Dusey said this same area was considered for a different drainage project last year. Mr. Dusey stated the $82,000 proposed for the repair of the lakefront bulkheads would put them in very good repair; however, if the Committee wished to recommend a higher priority for the funds, deferring this repair work is not critical, since the bulkheads are not in critical condition. Mr. Dusey recommended if the Committee did not wish to proceed with this repair, the funds be allotted for coastal protection. Mrs. Smith noted that the bulkheads were part of the long range capital improvement program. No action was taken by the Committee.

Mr. Doney said that Harry Ackerman and Wendy Zamecnik would address the issues concerning the Planning, Zoning and Building Department matters in the absence of Mr. Moore.

Mrs. Smith noted that the report from the June 8 Committee meeting requested that Mr. Moore investigate fees for

other special services, the feasibility of additional grant monies for the Town, speak to Mr. Brisson to ascertain that he represented the Town's point of view pertaining to zoning issues, and review Mr. Brisson's costs.

Mrs. Zamecnik replied that Mr. Moore had spoken to Mr. Brisson, and that situation was resolved. Mrs. Zamecnik said that $14,000 plus has been added to the grant monies that is anticipated to offset the EAR Evaluation and Appraisal Report cost under the Comprehensive Plan. She added that no additional revenue has been added at this time.

Mrs. Smith said that she understood Mr. Moore had looked into State grants for the beautification for the Historic Town Square. Mr. Moore reported that money would not be available this year.

Mrs. Smith noted that Mr. McDonald had requested that Mr. Moore supply a copy of the State Statute relating to the establishment of occupational license fees. Mrs. Smith advised that it was her understanding Mr. McDonald had this information, and the Town Council heard the second reading of the ordinance at the July 11, 1995 Town Council meeting.

Mr. McDonald replied he did have a response. He noted that Mr. Moore was using the Session Law as authority rather than the Statute. Mr. McDonald suggested that Mr. Moore use the Statute, and that Mr. Moore had done the same. No action was taken.

Mrs. Smith requested Mr. Bitzer provide information regarding the proposed lighting of the two tennis courts as requested by the Committee at the June 8 meeting to determine how many people play late, the number of permit holders added since the existing lights were installed (residents and nonresidents), consideration of raising the daily fees to make the permit alternative more attractive, and review the fee schedule.

Russ Bitzer, Director of Recreation, addressed the Committee. Mr. Bitzer summarized that there was a significant increase in evening tennis players, both permits and evening court fees, between the months of November and March. Approximately 40 residents (adults) utilized the courts in the evenings prior to the lights being installed in FY92. Approximately 174 adults, an increase of more than 300%, used the courts for evening play after the lights were installed.

Mr. Bitzer continued that daily fees collected for evening play increased from $65 to $320 after the lights were installed, and only approximately 25% of those fees were collected from nonresidents. He noted that a significant increase in numbers occurred when the courts were lighted; however, he could not predict what increase, if any, would take place if the other two courts were lighted.

Mr. Bitzer said he had thought the lights would pay for themselves over a five year period, but perhaps that was overly optimistic. However, after considering additional data, he was certain the system would pay for itself over the 20-25 year life of the system.

Mr. Bitzer said he concurred with the Tennis Pro Manager's recommendation that the increase of daily permit fees would have a negative impact since the fees have increased during the past two years. He said the daily fee players are occasional players, and the permit players are the ones who play frequently. Mr. Bitzer said they are at the top of the market for both their daily fees and permits, and if any fees were raised in the future, it should be the permit fees not the daily fees.

Mr. Bitzer, after reviewing the fee schedules, recommended that the tennis private lesson rate be increased from $40 to $44 per hour. He reported that this rate had not increased for quite a few years, and this proposed increase was included in his original presentation. The Seaview Park Commission recommended on May 24, 1995 that the private lesson rate be increased.

Mr. Bitzer cited Exhibit 1, dated June 12,1995, that listed the golf fees, and the Golf Commission recommended the increased fees that were shown on that Exhibit.

Mr. Bitzer concluded that if the tennis courts were lighted, they would be utilized approximately 5 months out of the year; however, he believed the project would pay for itself over the life of the system.

Mr. McDonald said he found out since Mr. Bitzer's original presentation, that the Town prohibits the lighting of tennis courts. He questioned if the Committee should consider any lighting.

Mr. Bitzer recalled that this situation existed when lighting was first installed on the tennis courts. He said some of the lights were grandfathered in because they replaced existing existing lights.

Mr. Doney added that Mr. Randolph had previously provided an opinion regarding the zoning and legal requirements, and the Town Council did approve the lighting of the two additional courts. Mr. Doney suggested consulting with Mr. Randolph again if this matter is considered.

Mr. Bitzer reported that the tennis courts are surrounded by businesses, schools and a parking garage. The closest neighbor is 150-200 feet away, and the new lighting does not cause problems with the neighbors.

Mr. McDonald questioned the method for granting a special exception to a prohibition or waiving a prohibition.

Mr. Bitzer recalled that the Committee decided the budget should stand alone, and any zoning questions would be

addressed separately.

Mr. Shaw said he would rather see the minimal revenues generated from the tennis program put into a cash reserve.

Mrs. Smith commented that she could not recommend the almost $40,000 cost for the lighting of the tennis courts.

Mr. Bitzer suggested that his Department monitor the tennis court fees this year, keep statistics on use, retain the lighting option in the five year plan, and revisit the issue next year.

After discussion of the tennis fees, the lighting of the additional courts, and hearing input from Mrs. Smith, Mr. McDonald, Mr. Shaw, Mr. Doney, and Mr. Bitzer, THE COMMITTEE RECOMMENDED THAT NO LIGHTS FOR THE TENNIS COURTS BE APPROVED FOR THE FY96 PROPOSED BUDGET. THE COMMITTEE ALSO RECOMMENDED THAT THIS PROJECT REMAIN IN THE 5 YEAR CAPITAL IMPROVEMENT PROGRAM, AND THAT THE RECREATION DEPARTMENT MONITOR THE USE OF THE COURTS AND KEEP STATISTICS TO DETERMINE IF THE LIGHTS SHOULD BE RECOMMENDED IN THE FY97 BUDGET.

Mr. Shaw noted that 2,300 people are playing on daily tennis fees, and he proposed that a play card be created for tennis players who will be in Palm Beach for a week or two weeks. These players would purchase a ten or fifteen play card at the existing fee, and the people who did not wish to make a commitment to a random play card schedule would have to pay an increased fee of $8.

Mr. Bitzer said that this plan is similar to the golf course's play ticked. However, with tennis, this plan could cause a loss of permit revenue as the people who purchase permits are often in Palm Beach for only three to five months, and a play ticket may be cheaper for a seasonal resident than an annual permit.

Mrs. Smith suggested the plan should be considered by the Seaview Park Commission, and after the Commission discussed the plan and figures were collected, the plan could be presented to the Finance & Taxation Committee next year.

After discussing the increase in the golf fees as recommended in Exhibit 1 of the Recreation Department's budget presentation and the increase in the private tennis lessons fees, IT WAS THE RECOMMENDATION OF THE COMMITTEE TO APPROVE FEE INCREASES FOR GOLF AND FOR PRIVATE TENNIS LESSONS.

Mrs. Smith requested that Mr. Shaw submit a memorandum with his suggestions for changes in the tennis fee schedule.

Mrs. Smith stated it was the Committee's recommendation that the Town Clerk's office charge $10 for each meeting tape sold to the general public. Mrs. Pollitt reported the $10 charge had been implemented.

Mrs. Smith reported that Ron Smith, the Actuary for the Retirement Board, was present to answer any questions.

Charles Hickman, 242 List Road, stated he attended the meeting because he was interested in the issue of the proposed increase in the retirement benefit calculation percentage for the Police Department, or any department. He said he was concerned that adequate documentation existed for the justification for the increase, as a means of retention of employees, and that documentation existed that compared the Town to other municipalities regarding the appropriate percentage annum credit given to the employees.

Mr. Doney suggested that Mr. Crouse and Mr. Smith address the issue. He noted that the issue was addressed at the June 7, 1995 Finance & Taxation Committee meeting.

Mr. Crouse reported the competitive issue is the primary reason for the recommended increase; however, other issues related to the State laws (Chapters 175 and 185) regarding the monies being contributed to the Town to offset the cost for Police and Fire pension systems.

Mr. Crouse stated the Town has looked at the competitive issue, and of all the sworn police and fire fighters in Palm Beach County, over 85% of those individuals have a pension multiplier that exceeds the 2.5 Town multiplier. Mr. Crouse continued that the competitive issue is the major factor, and when other factors are considered, the Town's competitiveness is below average. Some of those factors are the cost of the system, and the Town's Police and Fire employees contribute approximately 7% whereas the majority of other public safety employees in the County contribute nothing. The State system which has the bulk of the numbers of sworn personnel requires zero contributions. He said the State also has a higher cost of living adjustment. Mr. Crouse stated that when the Town looked at this as a package, the Town did need to make an adjustment if the Town wants to be above the average for competitiveness relative for this particular benefit.

Mr. Crouse reported the Town is having a difficult time attracting qualified, good, top notch police officers for this community. The Town of Palm Beach does have higher standards that most Departments in Palm Beach and Broward Counties. He maintained the Town needs to remain competitive, and this increase makes the Town competitive relative to the retirement system. Mr. Crouse said the Town is looking at the pay system, and the Town does have a turnover issue that is at a point where the Town would like to reduce it.

Ron Smith, Actuary, said that the Town's retirement system will be adequately funded, and he is confident with the

numbers he has put together since he works with a number of retirement systems with similar eligibility and benefit structures. Mr. Smith added the State is the "watch dog" for the funding of retirement plans.

Mr. Hickman asked if Mr. Crouse included the Town's Police and Fire-Rescue employees as compared with the Sheriff's Department and the Highway Patrol?

Mr. Crouse responded they were not really included with the Highway Patrol, but they were included with the Sheriff's Department and other municipal officers in the County. He clarified that when surveys are conducted, the County and other municipalities in Palm Beach and North Broward County are included. He said the approximately 28 other municipalities are included.

Mr. Hickman asked, if the Sheriff's Department were excluded, what percentage of municipalities of comparable size to the Town are paying 2.5% versus 3%?

Mr. Crouse responded that more of them are paying 3% in lieu of 2.5%, but he did not have an exact percentage. He noted that the Town is actually competing with the number of sworn personnel in the area for jobs, and of that number, the majority are in the 3% category.

Mr. Hickman asked if Mr. Crouse had evidence that the 2.5% contribution is either hurting either the attraction or retention? He added that people might look at pay, vacation, or benefits more than the multiplier when they are initially applying for a job, and the multiplier becomes important after a person has had so many years in and is looking forward to retirement as a realistic possibility. He asked for concrete evidence for employees in the 12-15 year range who have said they do not want to stay until they have completed 20 years, because they can go some place else to receive a higher multiplier?

Mr. Crouse replied that the issue came from the individuals who are in the Department. He added after the issue of money, retirement is the issue after they have been employed by the Town for a few years. Mr. Crouse said that the Town's recruiters use the issue to attract candidates from the academy, and the 2.5% contribution has hurt the Town's recruitment from the standpoint of that one issue.

Mr. Hickman noted that employees may choose to stay because of the better morale, safety, better working conditions, high tech equipment, backup, good staffing, and good supervision, but when those issues are lumped together, he asked if evidence exists that employees are leaving because of the retirement contribution?

Mr. Crouse replied that this issue is important enough to the people who work in the Department to challenge the Town on Chapters 175 and 185 of the Florida Statutes. He said the employees take the position that this issue is not necessarily something the Town is doing out of the kindness of their heart but something that, frankly, legally, the Town may have a responsibility to do. Mr. Crouse said that is a gray issue that is completely legal, and the Town does not necessarily agree with that viewpoint, but it is important enough to the people who work in the Police and Fire-Rescue Departments to possibly challenge the Town.

Mr. Hickman said he realized the issue was important.

Mrs. Smith asked Mr. Hickman what point he was attempting to make by asking these questions? Mrs. Smith asked if Mr. Hickman thought it was inappropriate--was it too high or too low?

Mr. Hickman replied he was trying to make sure that the Council was adequately informed as to the justification for this request for an increase, which he initially thought was in excess of what was necessary. He clarified that the increase would not be a necessary element of the compensation package insofar as keeping and retaining the people that the Town needs.

Mrs. Smith asked Mr. Crouse and Mr. Smith to explain the reason that this issue was presented to the Retirement Board.

Mr. Smith explained the issue dates back approximately ten years with respect to the State funding under Chapters 175 and 185, and has been the topic of virtually every other Retirement Board meeting during that period. He recalled that in the fall of 1994, the Retirement Board decided that it was time to deal with the issue. They appointed a committee to study the issue of the benefit levels in addition to the use of the State money. The committee held three all day meetings where the issues were thoroughly discussed and sometimes vehemently discussed. Mr. Smith said, as a result of those meetings, the Retirement Board discussed the findings at two of their meetings. He recalled that the competitiveness issue was one of the major issues and was looked at locally and nationally. Mr. Smith noted that two of the Town's chief competitors are Boca Raton and Fort Lauderdale, and both of those communities have had 3% for some time.

Mr. Smith attested to the fact that retirement issues are prime issues with public safety employees.

Mr. Hickman replied he was sure they were; however, he was not convinced that by not giving this benefit, the Town has demonstrated that the Town has officers who have made the decision to leave the force whom the Town would want to keep.

Mr. Doney, as member of this ad hoc committee of the Retirement Board, and working for the Town during this ten

year period, noted that Chapters 175 and 185 of the Florida Statutes continue to be a point of contention, not only with the Town of Palm Beach, but with other municipalities. He considered the issue to be vitally important because the Fire-Rescue and the Police Departments have representatives on the Retirement Board, and this issue has been very important to them over the years. Mr. Doney said that he believes that the Mayor and Town Council have come up with a fair and reasonable solution to a very difficult issue which is competitive but not overly generous. He stated the Town should have the ability to attract and retain the quality of municipal employees the Town wants.

Mrs. Smith said that Mrs. Crozier had distributed a handout from Gary Nikolits, Palm Beach County Property Appraiser, concerning the "Save Our Homes" amendment in response to Mr. Shaw's question on the homestead exemption issue. Mrs. Crozier reported the handout information answers part of the questions Mr. Shaw had asked. She said one of the questions was, "Of the total parcels in Palm Beach County, how many of those had the benefit of Homestead exemptions?" She pointed out that of the 505,489 parcels in the County, 272,933 receive Homestead exemptions, or 13% of the 1994 taxable value for the County. Mrs. Crozier said the Town of Palm Beach had Homestead exemptions that equalled $88,565,444 or approximately 3,500 homesteaded properties or 2% of the total taxable value of $4,358,175,000.

Mr. Doney reported that the first Public Hearing on the FY96 Proposed Budgets will be held Wednesday, September 6, 1995, at 5:01 PM. He added that the Department Heads will meet with Mrs. Crozier and himself to prepare an updated status report on the budget and any additional, detailed information as necessary. Mr. Doney said he would include in the final package a recommendation for the general pay increase issue after Mr. Crouse conducts further reviews.

Mrs. Smith thanked the Department Heads for their contributions to the budget process. Mr. McDonald complimented the participants for making the budget process smooth.

IV. ANY OTHER MATTERS

Mayor Ilyinsky noted that the Palm Beach Daily News had a headline in the morning paper about the taxes for the Town going down. He thanked Mrs. Smith and Mr. McDonald for doing all the work.

V. ADJOURNMENT

The meeting was adjourned at 11:30 a.m.

FINANCE & TAXATION COMMITTEE

_____
Lesly S. Smith, Chairperson

_____
Jack McDonald, Committee Member

Mr. Wyett made a motion to accept the report of the Finance and Taxation Committee Meeting of July 27,1995. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

Mr. Shaw made a motion to approve the recommendations of the Finance and Taxation Committee. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

IX. OLD BUSINESS

A. Ordinances (Second Reading)

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

Mr. Randolph read Ordinance No. 8-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 19-93, RELATING TO THE VACATION AND ABANDONMENT OF RIGHTS OF WAY AND EASEMENTS WITHIN THE TOWN, SO AS TO INCREASE THE APPLICATION FEE TO COVER ALL COSTS RELATING TO SAME, AND SO AS TO AMEND THE METHOD OF CALCULATING THE PRIVILEGE FEE SO AS TO BASE SAME ON A CURRENT INDEPENDENT APPRAISAL AS OPPOSED TO A VALUE ESTABLISHED BY PALM BEACH COUNTY PROPERTY APPRAISER RECORDS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES

IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Shaw made a motion for approval of Ordinance 8-95. Mr. McDonald seconded the motion for discussion.

Mr. Wyett proposed that the formula used on page 2 be changed to 100% of the total land value, rather than the privilege fee being determined and fixed by computing 80% of the total land value.

Mr. Randolph stated that the Ordinance had been drafted using the 80% formula in the beginning, based on similar ordinances in the County and other municipalities. The feeling behind it was that 80% was a fair figure, in light of the fact that there might be some argument in regard to the value. There had been only two items requested to be addressed by the Town Council: the application fee, and the independent appraisal, with no direction to change the formula used.

Mr. McLendon asked if the total land value was intended to be market value, or assessed value?

Mr. Randolph replied that it was market value.

Mr. Randolph stated that the body of the Ordinance should provide that the appraiser shall be an appraiser approved by the Town, as had been previously agreed.

Mrs. Smith asked Mr. Randolph if the Ordinance would need to be re-written, and go on first reading at the next Town Council Meeting?

Mr. Randolph replied that the first reading could take place at the present meeting, and that the original of the Ordinance had the appropriate language in it, requiring that the appraiser should be selected by the Town and paid for by the applicant, and with the inclusion of the 100% and the additional language the Ordinance was ready for first reading today.

Mr. Randolph then proceeded with the first reading of Ordinance 8-95 with the changes:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 19-93, RELATING TO THE VACATION AND ABANDONMENT OF RIGHTS OF WAYS AND EASEMENTS WITHIN THE TOWN, SO AS TO INCREASE THE APPLICATION FEE TO COVER ALL COSTS RELATING TO SAME, AND SO AS TO AMEND THE METHOD OF CALCULATING THE PRIVILEGE FEE SO AS TO BASE SAME ON ONE HUNDRED PERCENT (100%) OF THE VALUE OF THE PROPERTY ON A CURRENT INDEPENDENT APPRAISAL, AS OPPOSED TO A VALUE ESTABLISHED BY PALM BEACH COUNTY PROPERTY APPRAISER RECORDS, PROVIDING THAT THE APPRAISAL SHALL BE CONDUCTED BY AN APPRAISER SELECTED BY THE TOWN AND PAID FOR BY THE APPLICANT, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Shaw withdrew his motion.

Mr. Wyett made a motion to approve Ordinance 8-95 with the changes as read. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

B. Other

1. Consideration of Beach Erosion Matters

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

Mr. Bob Clinger of Palm Beach Environmental Resources Management addressed the Town Council, stating that deadlines were being met, and the Sand Transfer Plant would probably be operable by the beginning of October. There had been a small problem with getting the engine, and it was now scheduled to be in Palm Beach County on August 28, 1995, and installed within one week after it arrives. Mr. Clinger said that the sub-contractors to the consulting engineers doing the design for the project had done an acceptable job of getting the plans out to the bidders and making the necessary changes, and that he expected doing very well on getting bids on replacement of the pipe. Mr. Clinger noted that a proposal was being requested from the sub-contractor to the consultant for construction supervision, with a minimum of that required.

Mrs. Smith asked Mr. Clinger if he anticipated that the Sand Transfer Plant would be in operation by the end of October/beginning of November?

Mr. Clinger replied affirmatively.

Mrs. Smith thanked Mr. Clinger, and noted that he would be back at the next Town Council Meeting to give a report on progress.

(1) Sealed Bid No. 95-14 - Lake Worth Inlet Sand Transfer Plant Discharge

Pipeline - Resolution No. 31-95 -

Mr. Jim Bowser, Town Engineer, addressed the Town Council, stating that there had been five firms pre-qualified for the project, allowing acceleration of the project. Mr. Bowser said that the recommendation of staff was to chose the cheapest alternative for all of the options, including a buried pipe from the Sand Transfer Plant to the entry point to go underneath the inlet; an alignment that matches the original alignment of the Sand Transfer Plant; an exit point south of the inlet; and a minimum amount of structure on the south side in order to support the pipe. Mr. Bowser stated that he had originally thought one of the proposed structures concerning environmental protection was too expensive, however, by putting it in environmental protection was maintained. In addition, Mr. Bowser stated that there was some concern over one versus two pipes, and that there were two resolutions presented today, allowing Town Council to chose to award one or two pipe options. He continued that the Sand Transfer Plant had historically had two pipes, with one serving as a back-up. If the two pipe option was selected, an additional appropriation of $74,159.78 would be needed.

Mr. McLendon recommended that two lines be approved, and made a motion for same. Seconded by Mr. Shaw for discussion.

Mr. Shaw asked if the additional appropriation would come out of the 94/95 budget, or the 95/96 budget?

Mr. Bowser replied that the $74,159.78 request came from the Undesignated General Fund Budget, which was for the current (94/95) year.

Mr. Doney commented that it should be noted that the Town's Undesignated General Fund balance was a beneficiary of a $75,000.00 settlement with Palm Beach County regarding the lawsuit, so that amount could be applied toward funding this particular project.

Mr. Wyett asked Mr. Bowser what the life expectancy of one pipe was?

Mr. Bowser replied it was estimated to be in the range of ten years per pipe.

Mr. McLendon stated that having the two pipes there might give an opportunity to increase the momentary capacity at some time, and asked Mr. Bowser if that would be possible?

Mr. Bowser replied that it could be possible.

Mr. Bowser stated that in the bid award, the contractor had scheduled to start September 5, 1995, with all work completed by the middle of October. There was a week's worth of clean-up, and a week's worth of rain delays, so the project schedule was actually shown as two months, but if things went per schedule, operation could be taking place by the middle of October.

Mr. Randolph read Resolution 31-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO COUNTIES CORPORATION FOR THE LAKE WORTH INLET SAND TRANSFER PLANT DISCHARGE PIPING PROJECT.

On roll call the motion to approve Resolution 31-95 carried unanimously.

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

Mr. Albert Dusey, Director of Public Works, addressed the Town Council, stating that the project permitting had been done, allowing the award of a contract for the nourishment project. Mr. Dusey continued that he wanted to discuss the expectations of sand performance, as there had been some concern that the sand would not perform as well as the original sand, and Mr. Dusey stated that staff expected a reasonable performance from the sand. Mr. Dusey pointed out that as waves worked on the dry beach, it would move offshore, and when that happens the community sometimes calls that erosion, but it is not erosion, but what could be expected to happen as part of the project. Mr. Dusey stated that there were a number of projects associated with the beach restoration, and the largest of these were the beach nourishment project and the groin project. Authorization was being asked for to spend up to $6,000,000, with the hopes to stay within that figure. In addition, the funds would be formally allocated, with the $6,000,000 coming from the following sources:

The beach protection reserves:	$1,050,000
The roadway protective reserves:	$2,500,000
Undesignated Fund Balance In the Capital Improvement Program:	$700,000
Transfer from the Self-Insurance	

Fund Reserves: $1,750,000

Mr. Dusey continued that permission was being asked to spend up to $6,000,000 for the projects, and that the monies be allocated from the funds named.

Mr. McLendon stated that he was very pleased and impressed with the efforts of staff to get the permits in place so quickly, and that he was very disappointed in the sand size situation. He said that he assumed that it was difficult to assign responsibility for the mistake, since it happened a few years ago. He asked Mr. Dusey what the cost would be to only protect the seawall?

Mr. Dusey replied that an estimate was approximately $500,000, plus the commitment of $294,000 to move the modules and more to remove the rest of them, with the additional amount of about $250,000 in fees--so the total would be over $1,000,000.

Mrs. Smith stated that the Town had already expressed willingness to tell the private property owners how to go about permitting for groins on private property, improving the beaches for the entire Town.

Mr. Wyett asked Mr. Dusey if it was possible for the Town to act as a coordinator for the private owners who might want to join together in their repairs, so as to reduce the total cost to each of them?

Mr. Dusey replied that it was very possible that the Town Council would want staff to do that.

Mr. Doney questioned the design of the site specific groin, and whether Town Staff would be the contract administrators, with the private property owner using a coastal engineer to do the actual site specific coastal engineering design?

Mr. Dusey replied that was correct.

Mr. McDonald asked Mr. Dusey how many modules would be discarded?

Mr. Dusey replied that 97 were needed for the groin fields, so the number would be 233.

Mr. McDonald asked how long these could be temporarily stored in the disposal site?

Mr. Dusey replied that the County had indicated that once they were placed they did not want them to be retrieved.

Mr. McDonald stated that perhaps the Town Council would want to discuss whether those modules should be contributed to land owners who wanted them.

Mrs. Smith said that as she understood it, the problem was that there was no place to put them, unless the Town Council wanted to authorize putting them on a barge, because the permits for private property owners could take a year or two.

Mayor Ilyinsky asked Mr. Dusey if there was a plan for the number of groins that the Town could absorb?

Mr. Dusey replied that the permitting agencies were very careful about what they would allow.

Mayor Ilyinsky stated that people should not be given the idea that anyone could suddenly put out a groin.

Mr. Dusey replied that the property owner would have to meet all the permitting requirements, which were rather stringent.

Mr. Doney stated that State agencies required overfill of the groins, so as to allow minimal impact to the downdrift beaches to the south, and staff would have to consult with Mr. Randolph and Mrs. Martinuzzi about legal and liability issues.

Mr. Wyett suggested that the Town itself may be interested in retrieving some of the modules for protection of the southern beaches.

Mr. Dusey stated that he did not believe that the PEP Reef modules were the ideal materials for groin field construction. They had worked for the Town, because they were one of two options available to move quickly at mid-Town, and Mr. Dusey said that he believed they will function well there. Mr. Dusey noted that there were other options that were less expensive and permittable that would be more beneficial to pursue, rather than trying to use the modules.

Mr. Wyett made a motion to approve authorization to allocate monies from the reserve funds in an amount of up to $6,000,000. Seconded by Mr. Shaw.

Mr. Adrian Winterfield, 443 Brazilian Avenue, addressed the Town Council, stating that he was concerned with the financial aspect of this project, and how it would appear in the Town Budget. In addition, he suggested investigating the suggestion that money be borrowed from the self insurance reserve, as the Town did not want to find itself in a position of

that reserve being short.

On roll call the motion carried unanimously.

(1) Sealed Bid No. 95-18 - Construction of Mid-Town Beach Nourishment Project - Resolution No. 28-95

Mr. Dusey stated that there had been two bids on the project, and Great Lakes Dredge and Dock Company had the low bid, at $3.23 per yard, and staff recommended an award in the amount of $3,584,000.00.

Mr. Wyett made a motion to approve Resolution 28-95. Seconded by Mr. Shaw.

Mr. Randolph read Resolution 28-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO GREAT LAKES DREDGE AND DOCK COMPANY FOR THE MID-TOWN BEACH NOURISHMENT PROJECT.

On roll call the motion carried unanimously.

(2) Sealed Bid No. 95-17 - Construction of Mid-Town Groin Project - Resolution No. 29-95

Mr. Dusey stated that six or seven bids had been received, with the low bid being $1,325,266.20 from Casper Colosimo and Son, Inc. and recommendation was being made for award to that company.

Mr. Shaw made a motion to approve Resolution 29-95. Seconded by Mr. Wyett.

Mr. Randolph read Resolution 29-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO CASPER COLOSIMO AND SON, INC., FOR THE MID-TOWN BEACH GROIN CONSTRUCTION PROJECT.

On roll call the motion carried unanimously.

(3) Resolution No. 33-95 - Requesting the State of Florida Board of Trustees of the Internal Improvement Trust Fund to Establish an Erosion Control Line for the Mid-Town Beach Restoration Project

Mr. Peter Elwell, Assistant Town Manger, addressed the Town Council, stating that this was merely a formality, and that the State Statutes required that local governing bodies sponsoring the project officially request the State to establish the Erosion Control Line. A Public Hearing had been held, and the process was in motion, and this resolution needed to be transmitted to the State as the official request of the Town Council.

Mr. Wyett made a motion to approve Resolution 33-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Randolph read Resolution 33-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA REQUESTING THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND TO ESTABLISH AN EROSION CONTROL LINE FOR THE MID-TOWN BEACH RESTORATION PROJECT AND TO APPROVE THE PROJECT.

(4) Consideration of Memorandum of Agreement with Army Corps of Engineers to Transport Sand Dredged from Lake Worth Inlet to Mid-Town Beach Area - Resolution No. 30-95

Mr. Dusey addressed the Town Council, stating that the Federal Government had a law stating that the Army Corps of Engineers had to place sand for maintenance dredging projects at any location the municipality chooses, as long as permits

and a disposal area are provided, and the municipality agrees to pay the difference between what the Corps would have to pay to dispose of it at a normal site, and what the municipality would pay to dispose at its own site. This agreement allows the process to be initiated for the Mid-Town Project for future considerations. The actual commitment would have to be made in November, after bid openings. Proceedings would be based on how bids go and how cheaply the sand could be moved. Mr. Dusey stated that authorization was being requested to spend up to $20,000.00 out of the Seawall Reserves to get into this process with the Corps.

Mr. Wyett made a motion to approve Resolution 30-95. Seconded by Mr. Shaw.

Mrs. Smith asked Mr. Dusey how the Corps would get the sand to the location?

Mr. Dusey replied that it would be by harbor dredge, as it was a fairly small quantity.

Mrs. Smith asked how the problem of garbage would be handled?

Mr. Dusey replied that normally there was not a problem with garbage, and that problems had only occurred when the turning basin near the marina had been involved.

Mrs. Smith asked if there would be some form of control of any garbage that may occur?

Mr. Dusey responded that if the back channels were going to be dredged the Town had the option not to take it, doing only what the Town chose to do.

Mr. Doney stated that details could be worked out through a Memorandum of Agreement.

Mr. Randolph clarified that the motion was simply to approve the expenditure of $20,000.00 to move forward with negotiations, as well as approval of Resolution 30-95.

Mr. Randolph noted that he did not approve of the agreement attached, and he wanted to make sure that the agreement portion was not being approved, but simply the expenditure of the money to explore an agreement.

Mr. Dusey replied that Section 3 of the Resolution said that Town Staff is hereby authorized to negotiate and the Town Manager is authorized to sign the Memorandum of Agreement with the expectation that it would be reviewed by Mr. Randolph and staff, and that the attachment was merely a draft.

Mr. Randolph read Resolution 30-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT WITH THE U.S. ARMY CORPS OF ENGINEERS FOR THE DISPOSAL OF MAINTENANCE DREDGING SAND AT VARIOUS LOCATIONS WITHIN THE TOWN OF PALM BEACH.

Mrs. Smith asked Mr. Dusey what the Certification Regarding Lobbying was, and why it was attached to the Draft Agreement?

Mr. Dusey replied that it was a federal requirement and part of the legal process.

Mr. Doney stated that the requirement would not allow the Town to use any of the money that the Town may receive for the project from the federal government for any federal lobbying efforts.

Mr. Randolph clarified that he had understood that Mr. Dusey had made a recommendation to authorize the expenditure of $20,000.00 to negotiate an agreement with the Corps, and he asked Mr. Dusey if it was necessary for the Corps to see a resolution that authorizes the Town to do this? Mr. Randolph pointed out that normally approval of a resolution related to an agreement that had already been approved.

Mr. Dusey replied that the money expenditure had nothing to do with the agreement, but was to get the Town into the process that the Corps was starting in September.

Mr. Randolph stated that a motion to expend the monies and authorize negotiations with the Corp would perhaps be enough to get things going.

Mr. Dusey responded that waiting until September would be too late to get the authorization.

Mr. Randolph said that he was not happy with the wording of the Resolution.

Mr. Peter Elwell, Assistant Town Manager, stated that Mr. Randolph had raised a very good point related to the Resolution itself, and the body of the Resolution should be changed. Mr. Elwell suggested Mr. Randolph and staff discuss amending the language.

After a five minute break, Mr. Elwell advised that staff and Mr. Randolph had discussed Resolution 30-95, and because of issues related to the permit held by the Corps of Engineers, the Resolution was correct. He continued that Public Works was aware of some permitting details that he and Mr. Randolph had not been aware of, and the Resolution was in order.

Mr. Randolph stated that he was satisfied that the Resolution was necessary in order to move forward on the project, and that he was content with the wording of the Resolution.

Mr. Randolph then read Resolution 30-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT WITH THE U.S. ARMY CORPS OF ENGINEERS FOR THE DISPOSAL OF MAINTENANCE DREDGING SAND AT VARIOUS LOCATIONS WITHIN THE TOWN OF PALM BEACH.

Mr. Wyett made a motion to approve Resolution 30-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Shaw expressed some concerns about the expenditure of $20,000.00 at the present time to bring sand to the Mid-Town beach, feeling that it was premature.

Mrs. Smith asked if the $20,000.00 was actually going to be spent now?

Mr. Dusey responded that it could be up to that amount to get into the Corps process for bring the Corps sand down in January. He added that the sand could be used any place the Town had a permit for disposal.

Mrs. Smith asked Mr. Dusey if he would be coming back to the Town Council to advise where the sand would be placed, and if it was placed on the northend beach there would be no cost to the Town?

Mr. Dusey replied that was correct.

Mr. Shaw commented that the sand could be dumped at the northend at no cost, or $2.00 per cubic yard to get the sand brought to the beach in January, and he questioned the practicality of mobilizing twice within a three month period.

Mr. Dusey replied that if the Town waited three years, which would be the next opportunity, that would be too late.

Mr. Dick Breesee of West Palm Beach, addressed the Town Council, stating that the discussion was academic, in that an 800,000 cubic yard hole would be dug in the shore face of the beaches to the north, with 70,000 cubic yards of sand being pumped from the Sand Transfer Plant, which would take 11 1/2 years to pump that much sand. He stated that when the erosion at the northend was taken into account, the Town would be very happy to have the Corps dump the sand where it has been, right over the jetty.

Mr. McLendon made a motion to approve the expenditure of $20,000.00 to negotiate an agreement with the U.S. Army Corps of Engineers. Seconded by Mr. McDonald. On roll call the motion carried 4/1, with Mr. Shaw dissenting.

2. Consideration of Draft Customer Service Standards Ordinance in Conjunction with Ongoing Cable Television Franchise Renewal Negotiations -

Mr. Dave Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that the reason this issue was being brought up again was that at the last Ordinance, Rules & Standards (ORS) Meeting held it had been asked that Comcast do a manual reporting of Town customer complaints. Staff was requesting that this be considered by ORS because there was a Franchise Agreement being worked on, and this issue should be put to rest before the Franchise Agreement was finalized.

Mr. McDonald asked if Comcast had reported back in March of 1995?

Mr. Jakubiak replied that they had been submitting monthly reports, but the problem continued to be that Comcast reported customer problems based on the entire system, without being specific to the Town. Comcast had indicated that a report based on Town customer complaints only would involve costs passed on to the consumer.

Mr. McDonald asked what the purpose of the March 8, 1994 direction to them was asking them to maintain the Town specific reporting system?

Mr. Jakubiak replied that it would be to come back and report to the ORS Committee before an Ordinance was established on whether that reporting system was sufficient enough, and he referred to Ms. Christie of Comcast.

Mr. McDonald replied that he was trying to clarify that ORS had decided in March of 1994 that a Town specific report should be made by Comcast, and he wondered if it had been done?

Mr. Jakubiak said that the reports were being submitted on a monthly basis, and staff was now advising the Town Council in order that a decision on whether an ordinance should be put together, and whether or not that should be an SCC established ordinance, or a more specific ordinance. He added that based on the reporting received, a Town ordinance probably would not be enforceable because the Town could not have any information based on Town customers themselves, but would have to trust everything said by Comcast based on their whole system. Mr. Jakubiak said that the ordinance would involve everything from service outages to telephone problems.

Mr. McDonald asked Mr. Jakubiak if the only thing to be considered by ORS at this time was the Town specific report by Comcast?

Mr. Jakubiak agreed with that, stating that he had an alternative that could be implemented.

Mr. Wyett made a motion to submit the issue to ORS for its August 9, 1995 meeting. Mr. Shaw seconded the motion for discussion.

Ms. Diane Christie of Comcast Cable, addressed the Town Council, stating that they would be glad to attend the ORS Meeting on August 9, 1995, and that she wanted to clarify that Comcast had been manually tracking all of the calls that had come in from Town residents on a monthly basis, and had submitted same to the Town. She noted that in the last thirteen months, 21,455 calls had been received from Town residents, which was about 3.8% of the total calls coming into the system. She added that the Town also gets a report on what type of calls those were.

On roll call the motion to send the matter to ORS carried unanimously.

X. NEW BUSINESS

A. Ordinances (First Reading)

1. Ordinance Amendments to Town Boards and Commissions:

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

Mr. Randolph read Ordinance 9-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 14 OF THE TOWN CODE OF ORDINANCES RELATING TO PARKS AND RECREATION AT ARTICLE 2 GOLF COMMISSION SECTION 14-15 SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL OF MEMBERS, AMENDING PROVISIONS RELATING TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

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

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

Mr. Randolph read Ordinance 10-95:

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

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

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

Mr. Randolph read Ordinance 11-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5 OF THE TOWN CODE OF ORDINANCES RELATING TO BUILDINGS AT ARTICLE 9 ARCHITECTURAL REVIEW AND PROCEDURE SECTION 5-379 SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL, AMENDING SECTION 5-380 RELATING

TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

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

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

Mr. Randolph read Ordinance 12-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 16 OF THE TOWN CODE OF ORDINANCES RELATING TO PLANNING AT ARTICLE 3 LANDMARKS PRESERVATION COMMISSION SECTION 16-35 SO AS TO AMEND THE PROVISIONS RELATING TO ATTENDANCE AND REMOVAL OF MEMBERS AMENDING PROVISIONS RELATING TO ALTERNATE MEMBERS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

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

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

Mr. Randolph read Ordinance 13-95:

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

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

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

Mr. Randolph read Ordinance 14-95:

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

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

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

Mr. Randolph read Ordinance 15-95:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RESCINDING SECTION 14-33 OF CHAPTER 14 OF THE TOWN CODE OF ORDINANCES, ENACTING A NEW SECTION 14-33, PROVIDING FOR THE PROBHIBITION OF SPEARFISHING EQUIPMENT ON CERTAIN DEFINED AREAS OF THE PUBLIC BEACH WITHIN THE TOWN, PROVIDING FURTHER FOR THE REGULATION OF SPEARFISHING EQUIPMENT AT OTHER PUBLIC BEACHES, PROVIDING FOR DEFINITIONS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that this Ordinance did not prohibit or criminalize the possession of spearfishing equipment, but simply provided that spearfishing equipment shall be prohibited at certain beaches that are frequented by the public, and it defined those beaches as being in five specific locations within the Town. Mr. Randolph continued that in addition, the

Ordinance regulated the use of spearfishing equipment at other beaches, where spearfishing equipment shall be carried in a manner so as to keep said equipment from being accidentally or intentionally discharged and shall be carried in a manner so as not to be cocked, loaded, engaged or aimed. Mr. Randolph noted that spearfishing was defined, beaches were defined, and a violation was defined, and that the Ordinance was on consideration for first reading today.

Mr. Wyett asked if specific areas at the ends of streets, such as Queens, which had public access should be identified as public beaches?

Mr. Randolph replied that the purpose of the Ordinance was to keep the spearfishing equipment from being used or carried on those beaches that were commonly guarded and patrolled by the Town, and frequented by the public, and that it would be a policy matter if the Town Council wanted to include the public access areas within the Town. Mr. Randolph said that he thought it would create difficulties from an enforcement standpoint; just because something is noted with public access did not mean that it was an area commonly frequented by visitors.

Mr. Adrian Winterfield, 443 Brazilian, addressed the Town Council, asking if the Ordinance contained a provision prohibiting one to leave spearfishing equipment unattended, and stated that it should contain such a provision.

Mrs. Smith asked if any other member of the public would like to speak to this Ordinance?

Mr. Wyett asked Chief Terlizzese if he concurred with Mr. Randolph's comments?

Police Chief Joseph Terlizzese addressed the Town Council, stating that he did concur with Mr. Randolph's comments, and that if the areas where spearfishing equipment was prohibited became too broad, it may interfere with compliance with court orders.

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

3. Ordinance No. 16-95 - Amendments to Chapter 15, "Pensions and Retirement" -
Mr. Randolph read Ordinance 16-95:

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

Mr. William Crouse, Personnel Director, addressed the Town Council, stating that the amendment came before the Town Council as a recommendation from the Board of Trustees of the Retirement Board, and had a cost to it when brought before the Finance and Tax Committee on June 7, 1995. Mr. Crouse stated that he would be happy to answer any particular questions.

Mr. Wyett asked why the benefit group, lifeguard, was at the highest category, 7.21 in Section 15-33?

Mr. Crouse replied that everything had been actuarially determined, and the reason for the lifeguard category was because they were a smaller group.

Mr. Doney added that they also did not receive 175 and 185, which was another reason for the rate.

Mr. McLendon asked if there was a standard procedure for defining final compensation?

Mr. Crouse replied that was determined as the employee's highest 24 consecutive months. He added that compensation was defined by the Code of Ordinances as base pay, longevity, and overtime.

Mr. Wyett asked if the 24 month determination was a State requirement or Town policy?

Mr. Crouse replied that it had been adopted by the Town many years ago.

Mr. Wyett stated that he had seen other plans in private industry where the two lowest years were excluded to arrive at the average compensation, rather than the two highest years.

Mrs. Smith asked how many other surrounding municipalities followed the same formula for their pensions?

Mr. Crouse responded that he had done studies showing over 85% of sworn personnel have that or a higher benefit.

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

B. Resolutions

1. Resolution No. 26-95 - Increasing Golf Course Winter Rates to Become Effective November 1, 1995 -

Mr. Randolph read Resolution 26-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA INCREASING GOLF COURSE WINTER RATES TO BECOME EFFECTIVE NOVEMBER 1, 1995.

Mr. McDonald made a motion to approve Resolution 26-95. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

2. Resolution No. 27-95 - Increasing Private Tennis Fees at Seaview Park to Become Effective October 1, 1995

Mr. Randolph read Resolution 27-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, INCREASING PRIVATE TENNIS LESSON FEES TO BECOME EFFECTIVE OCTOBER 1, 1995.

Mr. Shaw made a motion to approve Resolution 27-95. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

3. Resolution No. 32-95 - Opposing Proposed Changes to the Tourist Development Tax Which Would Reduce Funding for the County's Beach Improvement Program

Mr. Randolph read Resolution 32-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, OPPOSING CHANGES TO THE TOURIST DEVELOPMENT TAX ALLOCATION, WHICH WOULD RESULT IN A REDUCTION OF FUNDING FOR THE BEACH IMPROVEMENT PROGRAM.

Mr. Wyett made a motion to approve Resolution 32-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mayor Ilyinsky commented that this was a matter of great importance to all coastal communities in Palm Beach County, and to our regional economy. He added that there was a serious effort underway to reduce the amount of funding provided to local beach projects from the Tourist Development Tax, generally known as the "bed tax." The County Ordinance had already been passed on first reading to redistribute the bed tax revenues. This Ordinance would lower beach funding almost 14%, while dramatically increasing the funding of sports events, and creating a special projects fund with little or no definition. Mayor Ilyinsky stated that Council President Smith had attended the County Commission meetings where this Ordinance was presented, and strenuously objected to the proposed changes, as did numerous other public officials and concerned citizens. Unfortunately, the Commission failed to heed these warnings. The Mayor stressed that the Ordinance must be prevented from being adopted on second reading at the County Commission's August 15, 1995 meeting, and urged the Town Council to adopt Resolution 32-95.

Mr. McDonald commented that he approved passing Resolution 32-95, and that a campaign should be mounted on a one-on-one basis. He added that more is needed than merely passing the Resolution.

Mrs. Smith stated that she had already spoken to the County Commissioners, and that it had been objected to many times at the County meeting. She noted that this would be an item in the budget for the Palm Beach County Budget Hearings, which would be held in September, and it was vital that Town representatives appear at these hearings to vigorously protest any cuts in spending for the beaches.

Mr. Doney stated that there was a letter prepared for President Smith to sign that would be faxed to each County

Commissioner today, with a copy of Resolution 32-95, and that personal telephone calls to each County Commissioner would be very worthwhile.

On roll call the motion carried unanimously.

C. Bid Awards

1. Sealed Bid No. 95-10 - Police Cars Mobile Video Systems (Cameras and VCRs)

Police Chief Joseph Terlizzese addressed the Town Council, requesting a video system that would be paid for with monies from the Forfeiture Fund. The system would go into the patrol cars so that crime scenes, investigations, etc., could be filmed and recorded for Court purposes. The system was used throughout the country in many law enforcement agencies.

Mrs. Smith asked if information gathered from this system was admissible in Court?

Chief Terlizzese responded affirmatively.

Mr. Wyett made a motion to approve Sealed Bid 95-10. Seconded by Mr. Shaw.

Mr. Charlie Boggs, Town Purchasing Agent, addressed the Town Council in response to a question from Mr. McLendon regarding cooperation with the City of Delray Beach regarding this system. He noted that the City of Delray Beach had originally asked to piggy back with the Town and had since opted out of the project.

On roll call the motion carried unanimously.

2. Sealed Bid No. 95-13A - Replacement Diesel Dump Truck -

Mr. Dusey addressed the Town Council, stating that a 1981 Dump Truck was being replaced, with recommendation of an award to Kenworth of South Florida at a cost of $31,440.00, which included an alternator for a lift gate.

Mr. Wyett made a motion to approve Sealed Bid 95-13A. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

D. Other

1. Consideration of Request from Royal Poinciana Theatre for an Additional One (1) Year Extension of Lease Agreement to Continue Wednesday Matinee Program from November 29, 1995, to April 1, 1996

Attorney Phil O'Connell, Jr., representing the Poinciana Playhouse, addressed the Town Council, requesting the twelfth amendment to the Agreement with the Town to continue the Wednesday Matinee performances. He noted that a very successful parking mitigation program had been developed.

Mr. Robert Moore, Director of Building and Zoning, stated that the staff had reviewed the request, and could verify that Mr. O'Connell's clients had indeed followed the Agreement and been good neighbors. Mr. Moore pointed out that a matter that would come up later in the meeting carried an anticipated problem associated with lunch customers at the Poinciana Club. Additionally, Mr. Moore noted that Mr. Spiegel, the owner of the Plaza, had met with staff and would be filing for additional approvals that would mitigate traffic.

Mrs. Smith asked Mr. O'Connell if he had spoken with Mr. Spiegel about valet parking?

Mr. O'Connell stated that nothing final had been decided at this time.

Mr. McDonald made a motion to approve the request from the Royal Poinciana Theatre for an additional one-year extension of their Lease Agreement to continue the Wednesday Matinee Program from November 29, 1995 to April 1, 1996. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

2. Consideration of Request by Mr. Manley H. Thaler for Town to Accept Blossom Way as a Public Street

Mr. Dusey addressed the Town Council, stating that a letter had been received from Mr. Thaler representing the Blossom Estates Homeowners Association, who had ownership of Blossom Way, a private street, as well as drainage facilities draining that subdivision. The request was for the Town to accept the street and the drainage facilities as public

facilities. Mr. Dusey noted Mr. Thaler was not available because of timing, however, Mr. Straub was present to represent the Homeowner's Association.

Mr. Dusey continued that the Public Works Department had inspected the street and drainage facilities and had made certain recommendations regarding making these facilities public, conditioned upon certain improvements made to the street and drainage system.

Mrs. Smith asked Mr. Dusey what benefit it would be to the Town to have Blossom Way as a public street?

Mr. Dusey replied that there would be no direct benefit.

Mrs. Smith asked who would pay for the installation of the new water system if Blossom Way became a public street?

Mr. Dusey responded that he believed the Town would pay for the installation.

Mrs. Smith asked who would take on the fiscal responsibility if the Town decided to go with a non-potable water system and dual piping was installed?

Mr. Dusey responded that he believed the Town would be responsible.

Mrs. Smith observed that the cost could run approximately $100,000.

Mr. Dusey replied that it could run about $50,000 on that street.

Mr. McLendon stated that whether it was public or private the Town would still own the water pipes, and be there as a result of an easement.

Mr. Dusey agreed with that.

Mr. Shaw stated that as he understood it, the question was who was going to pay to put the pipes in, with the obligation of the Town to give access to a dual distribution system at the property line, and the property owner was obligated to pick it up at that point.

Mr. McLendon stated that he did not think that was the way the water system should be handled, as water mains were subject to leakage, without any duty to be repaired if owned by the Homeowners Association, whereas if the Town owned the pipes they would be fixed right away.

Mr. Shaw compared the issue to Sloane's Curve, a private association, picking up the installation near the meter.

Mr. McLendon responded that in this case a meter may be 1,000 feet away.

Mr. Shaw stated that the question was whether or not they were willing to add the installation, at their expense, to the agreement, if the Town Council considered it.

Mr. Glen Straub, of the Blossom Estates Homeowners Association addressed the Town Council, stating that whether the Homeowners Association retained ownership of the road or not, the cost of that expense would be the Town's cost.

Mrs. Smith stated they were not sure about that, and would need an opinion on whether or not the Town would be obligated to spend this money on behalf of the Blossom Estates Homeowners Association.

Mr. Straub said that this was a legal question to which he did not have an answer.

Mr. McLendon asked Mr. Straub how old the piping was that was currently in place?

Mr. Straub said that he believed it was put in approximately 1985.

Mr. Wyett suggested that the Town Council defer action until such time as details could be worked out, and Public Works could give Council an idea of what future costs may be incurred.

Mrs. Smith asked if the members of the Association had paid for the water pipes to be put in?

Mr. Straub stated that he believed that the developer put in the lines to each of the lots originally.

Mr. McLendon questioned if the property owners had paid for it when they bought the lots?

Mr. Straub replied affirmatively.

Mr. McDonald made a motion to defer the request until the applicant could re-schedule the matter. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

3. Consideration of Fire-Rescue Department's Emergency Medical Director's Contract for Fiscal Year 1996

Fire Chief Ken Elmore addressed the Town Council, stating that the Town was obligated by State Statute to retain a medical director to oversee all of the paramedics and EMTs, and this was a routine contractual agreement between the Town and Dr. Randy Wolf.

Mr. Randolph confirmed that he was comfortable with the new draft, excluding the one paragraph addressing indemnification.

Mr. Wyett made a motion to approve the Emergency Medical Director's Contract for FY96. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

4. Consideration of Proposed Application for a State Grant to Help Fund a Study of the Historical Development Patterns in the Town

Mrs. Smith stated that the Council had read the applications for the State grants, and she inquired as to the possibility of Mr. Tim Frank of the Building and Zoning Department preparing the paperwork, rather than paying for the services of Mrs. Jane Day.

Mr. Moore responded that Mrs. Day was coordinating the Grant Application with the State of Florida and it was one of her responsibilities, and because she had been working with the State on prior occasions she had continued to do that.

Mr. Wyett made a motion to approve the application for a State Grant to help fund a study of the historical development patterns in the Town. Seconded by Mr. McDonald.

Mr. Wyett suggested that Mr. Tim Frank address the Town Council as to the concerns regarding preparation of the paperwork in this matter.

Mr. Tim Frank, Planner/Projects Coordinator of the Building and Zoning Department for the Town of Palm Beach, addressed the Town Council, stating that Mrs. Day worked for the Town from time to time, and that his duties included more than Landmark Preservation; that this year major changes to the Zoning Ordinance were being done; in addition the evaluation/appraisal report for the Comprehensive Plan was due this Zoning Season. Mr. Frank noted that Mrs. Day was eminently qualified to do the Grant Application, as well as having all of the contacts with the State, and that had been the most efficient way to handle the project.

Mrs. Smith asked how much Mrs. Day was paid?

Mr. Frank replied that he believed it was $25.00 per hour.

Mrs. Smith asked how many hours would be put in doing this Grant Application?

Mr. Frank replied that it would take approximately ten working hours.

On roll call the motion carried unanimously.

5. Consideration of Appointments to the Intergovernmental Relations Water Committee

Mr. Shaw made a motion to appoint Mr. McLendon and Mr. Wyett to represent the Town of Palm Beach as members of the Intergovernmental Relations Water Committee. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

6. Consideration of Attendance of Elected Municipal Officials at a Seminar to be held September 15 - 17

Mr. McDonald, Mayor Ilyinsky, and President Smith planned on attending the Seminar in Delray Beach.

XI. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR JULY 1995

Mr. Shaw made a motion to approve the Warrant Registers and Funds Expenditures Report for July 1995. Seconded by Mr. Wyett. On roll call the motion carried unanimously.

XII. COMMUNICATIONS FROM CITIZENS

Mr. Adrian Winterfield, 443 Brazilian Avenue, addressed the Town Council, stating that the purpose of his suggestion of a prohibition against leaving spearfishing equipment unattended was the same as the purpose for putting up a four foot fence around swimming pools.

Mr. John Matich, 3475 South Ocean Blvd., and Co-Chairman of the Citizens Association South of Sloane's Curve, addressed the Town Council, stating that he had listened very intently to the information about the proposed groins, and that permits may be granted to private owners to put groins out and he stated that he felt this was a mistake. Mr. Matich continued that the beaches south of Sloane's Curve were eroding every day, and if groins were installed on private beaches it would restrict the amount of sand flowing southward and would further hurt the beaches. Mr. Matich asked that the Town Council give serious consideration to private citizens using groins. Mr. Matich asked the status of the steel forms used to manufacture the modules?

Mr. Doney stated that he would be able to provide that information after he obtained it from Mr. Dusey.

There were no other citizens wishing to speak.

XIII. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of July 26, 1995 - Minutes Available in Town Manager's Office

B51-95 New two story residence for Martin Gruss, 1574 South Ocean Boulevard - Approved.

B52-95 Expansion of existing residence for Mr. and Mrs. Edward Scripps, 947 North Ocean Boulevard - Approved.

B53-95 Demolition of existing residence and construction of new, two story residence for R. H. McCarthy, 520 South Ocean Boulevard - Approved.

B54-95 Construct two story residence for Mr. and Mrs. Mark Katzenberg, Lot 36 on Emerald Lane - Deferred to the August 27, 1995, Architectural Commission meeting.

B55-95 Demolition of existing residence and construction of two story residence for Rocreation Corporation, 1306 North Lake Way - Approved.

B56-95 New storefront for Arts des Provinces de France, 330 Worth Avenue - Approved.

C28-95 Entrance gates for Mr. and Mrs. Lewis Rudin, 7 LaCosta Way - Deferred to the August 27, 1995, Architectural Commission meeting.

C31-95 Wall for James Harpel, 180 Barton Avenue - Deferred to the August 27, 1995, Architectural Commission meeting.

C33-95 Two story addition for Kenneth Newberger, 320 Polmer Park - Deferred to the August 27, 1995, Architectural Commission meeting.

B65-93 Revisions to a previously approved project for Dr. and Mrs. Stone, 230 Clarke Avenue - Approved conditionally.

B15-95 Demolition of existing structure and construction of two story duplex for Janina Radtke, 239 Australian Avenue - Approved.

B33-95 Addition for Gregory Holloway, 209 Wells Road - Deferred to the August 27, 1995, Architectural Commission meeting.

B35-95 Addition for Henry D'Abo, 246 Esplanade Way - Removed from the agenda.

B36-95 Addition for Ms. Sally Ross Soter, 198 Via Marina - Deferred to the August 27, 1995, Architectural Commission meeting.

B43-95 Demolition of existing structure and construction of new residence for Mr. and Mrs. Paul Pellitieri, 180 Atlantic Avenue - Approved demolition. The construction was deferred to the August 27, 1995, Architectural Commission meeting.

B44-95 Addition and remodeling of residence for Palm Beach Development Group Limited III, Inc., 127 Ocean View Road - Deferred to the August 27, 1995, Architectural Commission meeting.

C05-95 Demolition of existing structures and construction of five townhouses - Approved the demolition and deferred the new construction to the August 27, 1995, Architectural Commission meeting.

Mr. Wyett made a motion to approve the Major Matters Previously Considered by the Architectural Commission.

Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mrs. Smith commented that there may be a problem with the computer regarding the letters from ARCOM concerning demolitions as there were errors in them.

Mr. Moore noted the comment.

B. Public Hearings

1. Dune Preservation Permit No. 2-95 - Application for a Class I Dune Preservation Permit of Mr. and Mrs. Frank Wilkens, 1565 North Ocean Way; to allow applicant to remove exotic plant species and install native coastal plant species per plan on file at the Building Department

Mr. George Gann, Town Consultant, advised the Town Council that he had inspected the site, reviewed the plans, and recommended approval with the modifications included in his letter of August 3, 1995.

Mr. Robert Baron, Coastal Management Consulting, representing Mr. and Mrs. Wilkens, addressed the Town Council stating that the revisions asked for by Mr. Gann had been reviewed. Mr. Baron continued that basically this project was a voluntary homeowner funded dune restoration project, where the amount of plant materials and species being added overwhelmingly justified the minimal impact on the seagrape plants.

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

2. Dune Preservation Permit No. 3-95 - Application for a Class I Dune Preservation Permit of Meridian Condominium, 3300 South Ocean Boulevard; to allow applicant to trim seagrapes and revegetate the dune per plan on file at the Building Department

Ms. Deanna Renebaum of Roy Fisher Associates, representing Meridian Condominium, addressed the Town Council, stating that the following modifications had been agreed to: seagrape trimming would be done to 42 inches; weeding where there was infestation of exotics; and revegetation of the dune.

Mr. George Gann, Town Consultant, addressed the Town Council, stating that he had inspected the site and had recommended modifications to the plan, and that this was a typical dune trimming project similar to others that had been reviewed and approved by the Town.

Mr. Wyett made a motion to approve the modified plan on Dune Permit 3-95. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

Mrs. Smith stated that Mrs. Pollitt would be asked at the end of each item whether there had been any communication from any member of the public.

Old Business

1. Variance No. 27-95 - Palm Beach Development, 1530 South Ocean Boulevard; to allow construction of a single family residence on a 15,750 sq.ft. lot measuring 112.5' x 140', in lieu of a minimum 20,000 sq.ft., 125' x 150' lot required. R-A District. (Rehearing Pursuant to Court Mandate; Adler vs. Town) (Deferred from July 11, 1995 Meeting)

All witnesses speaking to Variances and Special Exceptions during the meeting were asked to stand and were sworn in by Mrs. Pollitt.

Mr. Louis Mrachek, Gunster, Yoakley, Valdez-Fauli & Stewart, representing Palm Beach Development Group, Inc., addressed the Town Council, stating that the applicant was the owner of property at 1530 South Ocean Blvd., and that it was highly unfortunate that this item was brought before the Town Council because of a complaint that was made by Mr. Adler about the obstruction of the view from their second story bedroom window by the building of a house at 1530 South Ocean Blvd.

Mr. Mrachek presented background information to the Town Council, beginning with October of 1993 when a Demolition Permit had been applied for. In November of 1993 the applicant had applied for a Variance for a nonconforming lot. In December, 1993 the Town Council approved the Variance with no objections, the Demolition Permit was approved and the old house was demolished as construction began on the new house. In January, Mr. Adler filed a lawsuit in Circuit

Court to stop the construction of the house. In April, 1994 Mr. Adler dropped Palm Beach Development Group as a party, leaving the Town as the only defendant in the lawsuit. Construction of the house then commenced. About a year later, in April, 1995, the Circuit Court issued an opinion referring the matter back to the Town Council to construct a record and to make findings. In June, 1995, a Certificate of Occupancy was granted by the Town for the house that had been built.

Mr. Mrachek then said that he would introduce evidence in this case; marked as Exhibits 2, 3, 4, and 5: a portion of the deposition of Frederick R. Adler, dated March 28, 1994; a Demolition Permit for the property; a certified copy of the Warranty Deed by which Palm Beach Development Group, Inc. took title to the property; a certified copy of the original plat.

Mr. Mrachek called the first witness, Mr. Robert Moore. Mr. Mrachek asked Mr. Moore how the Town had processed the Demolition Permit applied for by Palm Beach Development Group, Inc.

Mr. Moore replied that the permit was processed through the Architectural Commission (ARCOM).

Mr. Mrachek asked if the Town Staff had any input on the Demolition Permit?

Mr. Moore responded negatively, other than to see that the information and history on the property was correct.

Mr. Mrachek asked why ARCOM had reviewed the Demolition Permit?

Mr. Moore responded that ARCOM reviewed the permit in order to review what the proposed use of the property would be after demolition.

Mr. Mrachek asked if anyone considered the landmarking potential of the property during this process?

Mr. Moore responded that ARCOM could refer it to the Landmarks Commission.

Mr. Mrachek asked if the Town had any discretion, beyond the landmarking concern, to deny a Demolition Permit for a non-landmarked property?

Mr. Moore responded that the only concern the Town had beyond the potential landmark status of the property, was the condition of the property after the structure was demolished. If a Building Permit was not issued within 90 days, then a condition was generally placed on the sodding or seeding, and irrigation, within 90 days.

Mr. Mrachek asked if the Town made any distinction between a structure built on a conforming lot as opposed to a nonconforming lot?

Mr. Moore replied negatively.

Mr. Mrachek asked if the original house had been built on a conforming lot?

Mr. Moore replied affirmatively.

Mr. Mrachek asked if Mr. Moore knew when the Zoning Code was changed to make the lot nonconforming?

Mr. Moore replied approximately 1982/83, when the width of the lots was required to be 125 ft., rather than 100 ft.

Mr. Mrachek asked if the area was also increased

Mr. Moore replied that the area was required to be 20,000 sq. ft. in 1970.

Mr. Mrachek asked how many nonconforming lots were in the RA Zoning District?

Mr. Moore responded that he did not know the answer to that, but an estimate would be about 50%.

Mr. Mrachek asked if a Demolition Permit was ultimately granted for 1530 South Ocean Blvd.?

Mr. Moore responded affirmatively.

Mr. Mrachek asked if there had been any illegality in that permit?

Mr. Moore replied that there was none that he was qualified to address.

Mr. Mrachek asked if there had been any consideration of the landmarking of the property?

Mr. Moore replied there was none that he was aware of.

Mr. Mrachek asked if there was any other variance sought for the property?

Mr. Moore replied negatively.

Mr. Mrachek asked, other than the fact that the lot was too small, if the house was perfectly conforming?

Mr. Moore replied affirmatively.

Mr. Mrachek asked if the house was, in fact, more than conforming as part of a requirement that was established by the Town?

Mr. Moore replied that in reviewing the Variance request, one of the staff recommendations was to address the deficiency of the size of the lot by way of construction of a home that would be in the vicinity of the 80% of what the allowable height and lot coverage would have been, and the house that was presented to ARCOM was in that 80%.

Mr. Mrachek asked if the footprint of the home was 80% less than would be otherwise permitted in the R-A Zone?

Mr. Moore replied affirmatively.

Mr. Mrachek asked if the prior structure had any nonconformities other than the fact that the lot was nonconforming?

Mr. Moore replied that the structure was nonconforming as to the street side yard and the front yard in proximity to the road.

Mr. Mrachek asked if any other Town property owners had been granted variances for minimum lot size?

Mr. Moore replied affirmatively.

Mr. Mrachek asked if Mr. Moore knew of any applicant for a variance for a nonconforming lot in the Town's history that had been denied?

Mr. Moore responded negatively.

Mr. Mrachek asked the permitted use for 1530 South Ocean Blvd., as set up by the Town Zoning Code?

Mr. Moore replied as a single family residence, essential service and city owned parks, Town owned parks and recreation areas.

Mr. Mrachek asked for clarification of essential services?

Mr. Moore replied that those were services provided by the Town for utilities.

Mr. Mrachek inquired if the only use that a private owner could make of the property would be as a single family residence?

Mr. Moore replied that was a permitted use, and that there were special exception uses that would require Town Council approval.

Mr. Mrachek asked if that was the only use permitted at the time the Demolition Permit was granted?

Mr. Moore replied affirmatively.

Mr. Mrachek asked if Mr. Adler had sought and obtained three variances from the Town?

Mr. Moore replied that Mr. Adler had applied and received some variances, but he could not recall them on an individual basis.

Mr. Mrachek asked if he recalled if one was for a tennis court, one was to increase the height of a wall, and one for setbacks to provide additions to the home?

Mr. Moore replied affirmatively.

Mr. Mrachek stated that he had no further questions of Mr. Moore.

Attorney Robert Deziel, representing Mr. and Mrs. Frederick Adler, addressed the Town Council, stating that he had one question for Mr. Moore.

Mr. Deziel repeated the question asked of Mr. Moore, regarding his experience with the Town as to whether or not a variance for a lot that was deficient in size had ever been denied, asking Mr. Moore if he had replied "not in my experience."

Mr. Moore replied that was correct for a single family residence, as far as he could recall.

Mr. Deziel pointed out that several months ago, he believed regarding Seminole Avenue property, an applicant had come before the Town Council with a variance for lot size that had been denied.

Mr. Moore said that he could not recall that.

Mr. Deziel asked if the Town's practice in reviewing properties in connection with an area variance had ever been different considering whether or not there was a single family home sitting on the lot at the time the variance was requested? Mr. Deziel gave the following example: if there was a vacant lot existing at the time the Zoning Ordinance was changed would that application be considered differently than if a single family home was already existing on that lot when the variance was requested.

Mr. Moore replied that it had been considered differently within the past year than it had been previously, as a result of some recent litigation.

Mr. Deziel stated those were the only questions he had for Mr. Moore.

Mr Deziel then asked the Town Attorney, John Randolph, if prior to the termination of this hearing the record could be set correctly on his question regarding the Seminole Avenue property?

Mrs. Smith asked Mr. Deziel if he had the answer?

Mr. Deziel replied that he was asking the Town to determine the true answer to the question.

Mr. Randolph stated that he was not sure that could be done, and that Mr. Mrachek and Mr. Deziel were here to present their cases, and the responsibility existed with them.

Mr. Deziel replied that he was merely attempting to have the record properly set.

Mr. Mrachek called Mr. Eugene Fagan as his next witness.

Mr. Eugene Fagan, architect for the house at 1530 South Ocean Blvd. identified himself.

Mr. Mrachek asked Mr. Fagan to set forth his experience as it related to the Town of Palm Beach?

Mr. Fagan replied that he had worked as an architect for several different clients in the Town of Palm Beach for 7 or 8 years, and had completed drawings for about 50 projects, with the bulk of them being residential.

Mr. Mrachek asked if he had been hired by Palm Beach Development Group, Inc., to design the house at 1530 South Ocean Blvd.?

Mr. Fagan responded affirmatively.

Mr. Mrachek asked Mr. Fagan to describe the condition of the existing house that had been on the property?

Mr. Fagan replied that it had been a one story stucco house, painted white, with a flat red concrete tile roof, built many years ago, and it had been in bad disrepair, with the foundation being cracked.

Mr. Mrachek asked the effect of a cracked foundation?

Mr. Fagan replied that the house loses its integrity.

Mr. Mrachek asked how that could be repaired?

Mr. Fagan replied that there was no repair possible.

Mr. Mrachek asked if the house had any pilings underneath it?

Mr. Fagan responded negatively, and that the code for buildings along the Ocean, within 150 ft. of the coastal construction line required pilings to be underneath them.

Mr. Mrachek asked what the cost would have been to put pilings under the building?

Mr. Fagan replied that it was impossible.

Mr. Mrachek asked if it would cost more than 50% of the value of the house to put the pilings in?

Mr. Fagan replied much more than 50%.

Mr. Mrachek asked the implications involved if more than 50% was spent on repairing the house?

Mr. Fagan responded that if 50% or more was spent remodeling a house, the entire building had to be brought up to today's codes.

Mr. Mrachek asked how much that would have cost?

Mr. Fagan replied hundreds of thousands of dollars.

Mr. Mrachek showed Mr. Fagan some pictures of the former house, asking Mr. Fagan to identify them, and giving them to the Town Clerk as Exhibit 6.

Mr. Mrachek asked how the preexisting house related to the neighborhood?

Mr. Fagan replied that the house had no architectural value, and most of the other houses along that road were extremely large, and that house did not have much value.

Mr. Mrachek asked Mr. Fagan to identify some pictures, which were of the new building at 1530 South Ocean Blvd., which he gave to the Town Clerk as Exhibit 7.

Mr. Mrachek asked Mr. Fagan if he had any complaints from anyone concerning the aesthetics of the new structure?

Mr. Fagan replied that he had heard no complaints, but had heard several compliments.

Mr. Mrachek asked if there was usually a relationship between the value of the structure put on the property and the value of the land itself

Mr. Fagan replied affirmatively.

Mr. Mrachek asked what a good ratio would be?

Mr. Fagan replied that most often the value of the house in Palm Beach was approximately the same value of the land, however, along the Ocean the house is typically twice as much as the land.

Mr. Mrachek asked Mr. Fagan if the preexisting house had violated any of the Town's ordinances?

Mr. Fagan replied affirmatively, that there was a setback violation.

Mr. Mrachek asked if the house that Mr. Fagan had built violated any provisions of the Code other than those that dealt with lot size?

Mr. Fagan replied negatively, it more than complied with the Code in that the house was made significantly smaller than was allowed under the R-A Code, the roof was lowered, the tie beam was lowered, the size of the footprint was lowered, and the garage doors were rearranged.

Mr. Mrachek asked if a building permit had been obtained?

Mr. Fagan responded affirmatively.

Mr. Mrachek asked if there was any reasonable use that could have been made of the property without demolishing the existing house and building another one?

Mr. Fagan responded that there was not.

Mr. Mrachek asked if it was impossible to use the property as a single family residence if the old building had been retained?

Mr. Fagan responded affirmatively.

Mr. Mrachek had no further questions for Mr. Fagan.

Mr. Deziel then questioned Mr. Fagan.

Mr. Deziel asked Mr. Fagan if he had renovated other ocean front homes in Palm Beach?

Mr. Fagan responded affirmatively.

Mr. Deziel asked if those homes had pilings?

Mr. Fagan responded that not all of them had pilings.

Mr. Deziel asked if Mr. Fagan had installed pilings on those that did not have them.?

Mr. Fagan responded negatively.

Mr. Deziel noted the structural integrity of the concrete issue--and asked if Mr. Fagan was a licensed engineer?

Mr. Fagan responded negatively.

Mr. Deziel asked if Mr. Fagan's seal qualified him to approve plans with respect to the integrity of steel?

Mr. Fagan replied that Mr. Deziel was asking a technical question and he was not a registered engineer.

Mr Deziel asked if being a registered architect allowed Mr. Fagan to sign and seal drawings with respect to the structural integrity of concrete and steel, submit those to the Building Department, and have them approved.

Mr. Fagan responded that in some cases he can, and that when he is the architect of record for a building and there was a problem in the existing building, typically the Building Department would ask for a letter to verify that it was alright.

Mr. Deziel asked Mr. Fagan what his basis was for declaring that the existing home could not be reasonably used as a single family residence?

Mr. Fagan replied that was from a development point of view, with the value of the land versus the value of the building, and also when the house was remodeled the 50% rule would kick in and upgrades would be necessary, greatly increasing the cost.

Mr. Deziel asked Mr. Fagan to clarify his statement.

Mr. Fagan replied that development standpoint meant to upgrade the property.

Mr. Deziel asked if the existing house had been used as a single family residence would that have represented a reasonable use?

Mr. Fagan responded that a family could live there for several years until the problem got worse.

Mr. Deziel asked if anyone was living in the home before the property was sold?

Mr. Fagan responded that he believed someone was there and he did not know how long the property was vacant before the project began.

Mr. Deziel had no further questions.

Mr. Mrachek called Gary Ross as his last witness.

Mr. Gary Ross, President/CEO of Palm Beach Development Group, Inc. identified himself to the Town Council, apologizing for the time and energy being spent on this matter.

Mr. Mrachek asked Mr. Ross if Palm Beach Development Group, Inc. entered into a contract to purchase 1530 South Ocean Blvd., both Lot 1 and Lot 1A in 1993?

Mr. Ross responded affirmatively.

Mr. Mrachek asked who the owner of the property was at that time?

Mr. Ross responded Rene Silvester and her husband Arthur, who passed away prior to the closing.

Mr. Mrachek asked if there was an existing single family structure on Lot 1?

Mr. Ross responded affirmatively, and that the one story house was in bad shape, being built in 1952, with about 3,738 sq. ft. He noted that the new house built was smaller than the original footprint.

Mr. Mrachek asked about the structure of the concrete, steel, and the materials making up the existing house?

Mr. Ross replied that the house had a lot of deferred maintenance as Mrs. Silvester had some financial problems and was unable to keep the house up. He had considered remodeling the house, but the condition of the house made that cost prohibitive.

Mr. Mrachek asked if any reasonable use could be made other than demolishing the house and building a new one?

Mr. Ross replied negatively.

Mr. Mrachek asked if it was impossible to use the house as a single family residence given just the structural condition of the house?

Mr. Ross replied he honestly felt that someone could have moved in and lived in it, but one would not spend that kind of money to live in those conditions.

Mr. Mrachek asked the purchase price of the house?

Mr. Ross replied $950,000, with closing costs and Mr. Mrachek's fees--about $1,117,000.

Mr. Mrachek asked if the house had been assessed at $696,500 for the land and $137,627 for the structure?

Mr. Ross responded affirmatively.

Mr. Mrachek asked if that was a ratio of land to house at about 6/1.

Mr. Ross responded affirmatively.

Mr. Mrachek asked if a Demolition Permit had been applied for on October 1, 1993.

Mr. Ross responded affirmatively.

Mr. Mrachek asked if a contract to purchase the house had been entered into on September 3, 1993.

Mr. Ross responded affirmatively.

Mr. Mrachek asked Mr. Ross if he knew of any efforts to landmark the property?

Mr. Ross responded that there were none.

Mr. Mrachek asked if a variance had been applied for on November 18, 1993?

Mr. Ross responded affirmatively.

Mr. Mrachek asked if the variance was for the square footage and width and depth requirements?

Mr. Ross responded affirmatively.

Mr. Mrachek asked if Palm Beach Development Group had purchased the lot and closed on the transaction on November 22, 1993?

Mr. Ross responded affirmatively.

Mr. Mrachek asked if notifications of the variance application had been sent out by the Town to neighbors?

Mr. Ross responded affirmatively.

Mr. Mrachek asked if Mr. Adler had received such a notice on November 29, 1993?

Mr. Ross responded affirmatively.

Mr. Mrachek asked if Mr. Ross had any contact with Mr. Adler prior to the time the Town approved the application for the variance?

Mr. Ross replied affirmatively.

Mr. Mrachek asked if Mr. Ross personally knew that Mr. Adler was aware of the variance application?

Mr. Ross replied affirmatively, and that several witnesses would testify that Mr. Ross had approached him and told him that he was building a home and offered to show him a set of the drawings, although he declined to see them.

Mr. Mrachek asked if the Adlers knew that Mr. Ross was seeking a variance?

Mr. Ross replied affirmatively.

Mr. Mrachek asked if Mr. Adler had objected to the variance application or come to the hearing for the variance application?

Mr. Ross replied negatively.

Mr. Mrachek asked if the Variance Application had been approved by the Town on December 14, 1993.

Mr. Ross replied affirmatively.

Mr. Mrachek asked Mr. Ross if ARCOM had approved the Demolition Permit on December 15, 1993.

Mr. Ross replied affirmatively.

Mr. Mrachek asked if the Demolition Permit was issued on December 20, 1993?

Mr. Ross replied affirmatively.

Mr. Mrachek asked if Mr. Adler filed a Petition for Writ of Certiorari and a Complaint for Damages, naming Mr. Ross and the Town as defendants on January 7, 1994.

Mr. Ross replied affirmatively--and that had been after he had bulldozed the home.

Mr. Mrachek asked Mr. Ross if Mr. Adler modified his legal papers in April of 1994 to drop Palm Beach Development Group, Inc.

Mr. Ross replied affirmatively.

Mr. Mrachek asked if construction of the house started after Mr. Adler dropped Palm Beach Development Group, Inc.?

Mr. Adler replied affirmatively.

Mr. Mrachek asked the appraised value of the current house?

Mr. Ross replied $3,250,000, and that he currently had the home listed with Martha Gottfried Real Estate for $3,550,000.

Mr. Mrachek asked if the house had 3,365 sq. ft. on the first floor?

Mr. Ross replied affirmatively.

Mr. Mrachek asked if that was less than the footprint of the prior structure

Mr. Ross replied affirmatively.

Mr. Mrachek asked the ratio of the value of the new house to the value of the land?

Mr. Ross replied approximately 2/1.

Mr. Mrachek asked if a Certificate of Occupancy had been granted on June 23, 1995?

Mr. Ross replied affirmatively.

Mr. Mrachek asked if there were any conditions on approval of the variance?

Mr. Ross replied that the approach had been that 80% of what was allowable would be done.

Mr. Mrachek asked if the lot coverage had been reduced?

Mr. Ross replied affirmatively.

Mr. Mrachek asked what the normal relationship was to the value of a structure to the value of the land itself?

Mr. Ross replied approximately 2/1.

Mr. Mrachek asked if the property could have been reasonably used as it existed prior to demolition, given the structural condition of the house and the lack of value of the house itself?

Mr. Ross replied that he would not have wanted to live in the home, nor would anyone paying that kind of money for it.

Mr. Mrachek asked if any variances had been obtained other than the lot size variance?

Mr. Ross replied negatively.

Mr. Mrachek asked if there would have been a hardship if Mr. Ross had not been permitted to build the house?

Mr. Ross replied affirmatively, that he would not have been able to use the property.

Mr. Mrachek asked if there would be a hardship today if the variance was denied and the house already built there could not be used?

Mr. Ross replied affirmatively.

Mr. Mrachek had no further questions.

Mr. Deziel asked Mr. Ross if there would have been a hardship if a new house had not been built, and who would that hardship have affected?

Mr. Ross replied that the hardship was that the house was in a great state of disrepair, and that someone from Code Enforcement could have come out there and made the house unable to be used for occupancy.

Mr. Deziel asked if he did not receive a variance today, what the hardship would be?

Mr. Ross replied that he had built a $3,250,000 house on the property.

Mr. Deziel asked how that would be a hardship if he did not receive a variance?

Mr. Ross asked how he, or anyone, could live in a house if he did not have a variance?

Mr. Deziel asked if Mr. Ross had ever estimated the cost of renovating the existing home?

Mr. Ross replied affirmatively, and that it had been cost prohibitive, and economically unfeasible.

Mr. Deziel asked if the now existing house met today's Code.

Mr. Ross replied affirmatively.

Mr. Deziel asked what the difference was between renovating the preexisting home and having the end product meeting Code requirements, and building a new home that would meet the requirements?

Mr. Ross replied that he was confused with the question.

Mr. Deziel asked what had been the line of thinking when the decision had been made that the preexisting home was too expensive to bring up to Code, but a new home was not too expensive to bring up to Code?

Mr. Ross replied that if more than 50% of the value of the home was spent, then everything would have to be brought up to code, and why would he want to take a home in disrepair and try to meet all codes in a haphazard way in lieu of building a new home?

Mr. Deziel asked if there were any conditions placed on either the Demolition Permit or the Building Permit received from the Town of Palm Beach?

Mr. Ross replied that in good faith reliance he had bulldozed the home after receiving the Demolition Permit and Building Permit. Mr. Ross said that he had spoken to Mr. Adler, who wanted him to limit the house to one story, and Mr. Adler told Mr. Ross that he would sue him if he did not limit it to one story.

Mr. Deziel asked if Mr. Ross had ever entered into or signed an Indemnity Agreement Contract?

Mr. Ross replied affirmatively for the Building Permit, because he had already bulldozed the home and dug a big hole in the ground, and the Town was nervous because of the threat of a lawsuit, and he had agreed to give the Town of Palm Beach an indemnification in exchange for them giving the Building Permit to continue the construction of the home.

Mr. Deziel asked Mr. Ross when he had retained Mr. Fagan to help him with the architectural design of the home he had built?

Mr. Ross replied approximately the time he decided to buy the property.

Mr. Deziel stated that he had no further questions for Mr. Ross.

Mr. Deziel then asked Mr. Fagan if he recalled when he was retained by Mr. Ross?

Mr. Fagan replied that it was in September, just before the ARCOM meeting.

Mr. Deziel asked Mr. Fagan the scope of services for which he was hired?

Mr. Fagan replied that he was hired to design a new house for that particular lot.

Mr. Deziel asked Mr. Fagan if his findings on the structural problems were at his own initiative?

Mr. Fagan replied affirmatively.

Mr. Deziel asked why he was inspecting the preexisting residence, when he had been retained to construct a new home?

Mr. Fagan replied that he wanted to see what was there.

Mr. Deziel asked if Mr. Fagan had put his findings concerning the structural integrity of the house into writing?

Mr. Fagan replied that he jotted them down as notes.

Mr. Deziel asked if Mr. Fagan had them with him today?

Mr. Fagan replied that he had some of them with him today.

Mr. Deziel asked if Mr. Fagan had an engineer look at the structural problems?

Mr. Fagan responded negatively, and that this was a common problem with buildings.

Mr. Deziel had no further questions.

Mr. Mrachek stated that he had prepared reasons for approving Variance 27-95, setting forth the facts heard in evidence today, and suggested that if the Town Council deem it appropriate to grant the Variance that they make these reasons their findings.

Mr. Randolph stated that Mr. Moore had checked on the question that Mr. Deziel had in regard to any other variances being granted for deficient lot width.

Mr. Moore stated that the a variance request had been heard for 261 Seminole Avenue, and the records had been located. The attorney representing the applicant had written a letter dated May 19, 1995, in which he withdrew the request.

Mr. McDonald asked Mr. Ross if he had an appraisal done of the property at the time of purchase?

Mr. Ross stated that he did, and that the appraisal was approximately $1,100,000.

Mr. McDonald asked how much of that was the value of the house?

Mr. Ross stated that he did not recall.

Mr. McDonald stated that testimony had indicated $175,000.

Mr. Ross stated that was the assessed value.

Mr. McDonald asked Mr. Moore if the assessed value or the market value was used in connection with the 50% rule?

Mr. Moore replied market value.

Mr. McDonald then said that the assessed value really did not have any relevance to the 50% rule.

Mr. Ross said that he believed it did, and that was what he based his decision on.

Mr. McDonald asked if it did, in fact, have a relationship to the 50% rule.

Mr. Ross replied that he was of the understanding that the 50% rule applied to the assessed value of the property.

Mr. McDonald asked Mr. Ross if this was the first property in Palm Beach he had ever purchased to redevelop?

Mr. Ross replied affirmatively.

Mr. McDonald asked Mr. Ross if he believed the value of the current house to be approximately $3,250,000?

Mr. Ross agreed.

Mr. McDonald asked what it had cost to build the house?

Mr. Ross replied about $1,000,000.

Mr. McDonald asked Mr. Ross if he felt that the house had appreciated about $700,000 since he finished the construction?

Mr. Ross agreed, based on the appraisal.

Mr. McDonald asked Mr. Ross if he believed the appraisal to be accurate?

Mr. Ross replied affirmatively.

Mr. McDonald asked if the architect had been hired after closing?

Mr. Ross said he did not believe so.

Mr. McDonald asked if the architect had seen the house before Mr. Ross closed the purchase?

Mr. Ross replied affirmatively, stating that he asked Mr. Fagan to assess the home, and that initially he had been hired to do remodeling, but his opinion was that it could not be done based on the 50% rule.

Mr. McDonald asked Mr. Fagan if he understood the 50% rule, understanding that it was not tied to the assessed value?

Mr. Fagan replied that he thought it was market value.

Mr. McDonald asked if he had informed his client of that fact?

Mr. Fagan said that he could not remember as it was a few years ago.

Mr. McDonald said that he was trying to determine where Mr. Ross got the value from, as he had been breaking down the value of the house as compared to the value of the land.

Mr. Mrachek stated that in the testimony, the question asked was regarding assessed value, and that his client had an appraisal which appraised the property at $1.1 million, and he submitted that his client's experience and the assessed value were the best indications of the relationship of the value between the land and the structure.

Mr. McDonald asked Mr. Ross if he had closed on the purchase of the property knowing that he would need variances for the house that he wanted to build?

Mr. Ross replied that he did not recall; that he thought he did not close until the variance was granted.

Mr. McDonald clarified that Mr. Ross did not know if he received the variance before he owned the property or subsequent to owning the property.

Mr. Ross said that could be figured out if it was important.

Mr. Mrachek stated that one variance was granted after the closing on the property.

Mr. McDonald asked Mr. Fagan if his testimony was that the property could not be renovated?

Mr. Fagan replied that he had not said it could not be renovated, but that to bring the building up to Code would cost several hundred thousand dollars.

Mr. McDonald asked what Mr. Fagan was using as the value of the home?

Mr. Fagan replied that he was using $175,000.

Mr. McDonald asked Mr. Fagan if he thought that was the market value of the building at the time, and if he had anything to rely on?

Mr. Fagan replied that he had never seen the tax roll, and he knew the real estate appraisals on the building.

Mr. McDonald stated that there was then never really an appraisal determining the market value of the home, and that he had not heard anyone say that there was an appraisal that indicated the value of the house.

Mr. McDonald asked Mr. Fagan if he felt that the structural quality of the house was prohibitive for renovation in relation to the 50% rule, which was related to market value, but no one seemed to know what the market value was.

Mr. McDonald had no further questions.

Mr. Shaw asked if a second story was permissible on the existing house?

Mr. Moore replied that a second story would have been permissible depending upon the size of it and how it would reflect on the actual condition of the house, however variances would be needed and the cubic content would then become involved. Mr. Moore said that only 50% of the floor area can be affected before triggering another variance request.

Mr. Shaw said that he was trying to determine the net effect of what was there now, and could it have been duplicated on the old building.

Mr. Moore stated that hypothetically the answer was yes.

Mr. Shaw asked if the house could have been brought up to code with the expenditure of the same amount of money that had been spent on the new house?

Mr. Fagan replied that would not have been possible, as according to Code 517, as he understood it, a nonconforming house could not have 50% of the cubic content removed, so therefore only half of the original building could have had a second floor.

Mr. Shaw asked if that second floor would be basically where the second floor is on the building now?

Mr. Fagan replied it could be located where it is today.

Mr. Wyett asked Mr. Ross if his original intent was to build this house for his personal use?

Mr. Ross answered affirmatively.

Mr. Wyett asked Mr. Ross at what point did he make the decision not to use the house for personal use?

Mr. Ross answered when his wife wanted a divorce.

Mr. Wyett asked what the legal basis was for the granting of a variance?

Mr. Mrachek stated that was a loaded question because what was being done today was making an attempt to put everything possible in the record so that an Appellate Court could look at and say that this was a proper finding by the Town Council to support any decision it would make. He added that he had set forth the best reasons that he knew of for approval of the Variance Application, and that it seemed to him that the company did what it was absolutely permitted to do by law--demolished the building, and there was nothing in the Code that would have given the Town the right to say that the building could not be demolished. He explained that by exercising that right he could not believe that the result could be that the land had no value, which is the position Mr. Adler's attorney would like to have people believe. He noted that Mr. Moore had testified that every time someone had asked the Town for a variance on a nonconforming lot it had been granted. In order to put anything liveable on the lot in question, it was totally unreasonable to expect that two million dollars be spent to remodel a house that was structurally unsound. For that reason and the reasons set forth in the application, Mr. Mrachek said that he and his client believed that the Variance should be granted.

Mrs. Smith asked Mr. Mrachek to list the criteria by which he thinks the Town Council should grant this Variance.

Mr. Mrachek stated that the requirements applying to this Variance were as follows:

1. There exists special conditions and circumstances which are peculiar to the land, structure, or building involved, and which are not applicable to other land, structures or buildings in the same Zoning District. When this lot was originally platted, it was a conforming lot. Sometime prior to 1985 the Town Zoning Code changed to make the lot size nonconforming in area, width and depth. Most lots in the Town are conforming to the Zoning Code. Additionally, the house on the lot when the applicant purchased the lot was in such substandard condition that it was virtually impossible for the applicant to use the property as a single family residence, the purpose for which the property is zoned, and no reasonable use could be made of the property.

2. There are special conditions and circumstances that do not result from the actions of the applicant. The applicant had nothing to do with the change of the Town Zoning Code. Without a variance, there can be nothing built on the lot. The lot is located in the R-A Zoning District, in which the only permitted use by the owner could be as a single family residence. There are two other uses permitted: municipal essential services, and parks and recreation, but these uses can only be pursued if the ownership is in the Town or another governmental agency. Granting the variance will not confer upon the applicant any special privilege that is denied by this Ordinance to other land, buildings, or structures in the same Zoning District. There have been other variances granted for nonconforming lots and there is no variance of this type that has been denied. In fact, the variance as approved was conditioned upon the

fact that the footprint of any house to be built on the lot could be no larger than 80% of that otherwise permitted. In other words, the applicant had to give up on 20% of the lot coverage or footprint of the house to be built, in order to obtain the variance. This was the first time that such a condition had been imposed upon a variance of this type. As a result of this condition, with which the applicant agreed and complied, the new house covers 3,365 sq.ft. of the lot, while the prior house covered 3,783 sq. ft. This reduction in lot coverage is about 10%. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same Zoning District under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant. Others in the neighborhood have the right to build structures on their property, whether that property is conforming or nonconforming in size, and it would be an undue hardship to require that this property be kept vacant. On a typical piece of property the improvements are generally valued at about twice the land value. On this piece of property, the prior house was assessed for $137,627, while the land was assessed for $696,500. This house to land ratio was so out of the norm that it would not be reasonable to add on to or improve the house that was already on the property, thus the applicant had no reasonable use of the property without demolition and the construction of a new house. The variance as granted would make possible the reasonable use of the land, building or structure. As discussed before, the Zoning Code was even further tightened in application to the house that was built on this lot, because the lot coverage and height were reduced in accordance with the reduced size of the lot. Therefore, the structure and the property more than conform with all of the requirements of the Code, except for the minimum lot size requirement and dimensions. No other variances were requested by the applicant, and none were granted. The granting of the variance will be in harmony with the general intent and purpose of the Zoning Ordinance, and the variance will not be injurious to the area involved, or otherwise detrimental to the public welfare. The house that has been built is compatible with the neighborhood and is of benefit to it. There is more green space on the lot because the footprint of the house is smaller than the one originally on the property.

Mr. Mrachek stated that the above addressed the requirements of the Zoning Code, and in particular the requirements for the granting of a variance. He noted that he had added two more reasons found in the record for the granting of the variance:

1. Pursuant to a Demolition Permit granted by the Town, a new two story home, appraised at $3.25 million had been built on the property. Every permit and the Certificate of Occupancy obtained by the applicant has been granted in strict accord with the Town's Code and regulations. It would make no sense to attempt to undo all that which had been done. This reason in and of itself, was sufficient to grant the variance.

2, The only objection to this variance has been by Frederick Adler, who himself has sought and obtained from the Town three separate variances from portions of the Town Code affecting his property at 1520 South Ocean Blvd. That property is immediately to the north of the property which is subject to this variance application. Because Mr. Adler is objecting to the issuance of the variance, when for lesser reasons he has received three variances, his conduct is not in good faith, and he has unclean hands to make the objections he has raised.

Mr. Deziel submitted Application for Variance 4-93, Town Council Minutes regarding Variance 4-93 dated December 14, 1993, Application Review Sheet for Variance 64-93, Town of Palm Beach Planning and Zoning Building Department Letter dated December 20,1993 regarding Variance 64-93, and Application for Architectural Commission Review, dated October 1, 1993, and the letter dated August 4, 1995, on the letterhead of Robert E. Deziel, P.A.

Mr. Deziel stated that before giving his presentation he would like to clear up a few misstatements of fact that were made.

Mr. Deziel pointed out that there were two discussions going on today regarding two separate 50% tests. Mr. Deziel said that he had written and published an article regarding the Town of Palm Beach 50% Test on the building requirements in conjunction with Mr. Moore's Building Department. Mr. Deziel continued that rule said that any home that has improvements placed in that home that exceed the greater of 50% of the assessed value, plus 20%, or the fair market value of that property, improvements installed in that home, and all existing improvements, must meet the Town of Palm Beach Building Code. Mr. Deziel submitted that very often homes come into this Town requesting a Building Permit that meet those criteria. He wanted to make sure that it was clear that it was not peculiar or unique for someone to meet the 50% test.

Mr. Mrachek interrupted the proceedings objecting that he had never heard a lawyer testify to facts and make argument as part of his presentation.

Mr. Deziel noted that there were some comments with respect to Town of Palm Beach Zoning Code Section 5.17, which had been coauthored by Mr. Moore and himself. That provision said that if you demolish 50% of a structure in anticipation of adding improvements, then another variance would be needed. Mr. Deziel said that a second story could have been placed on top of the existing one story, meeting the requirements of the setback with absolutely no variances, had there been no demolition in anticipation of that second story addition. Mr. Deziel stated that he did not think Mr. Fagan had accurately responded to the question and he wanted to make sure everyone was clear on the issue.

Mr. Deziel noted that the record was becoming pointed toward a question of fact: What was the condition of the home at the time the variance was requested? It would be very difficult at this time to talk about the condition of a home that had since been demolished, and the record was being set with no engineering studies, no written architectural studies, no inspection from the Building Department or other independent authorities--merely statements by the applicant and his architect. Mr. Deziel stated that when he had asked the architect about the structural integrity deficiencies to the concrete

and steel his response had been that it was so common such that it exists almost everywhere. Mr. Deziel emphasized that a home built in 1940 was a quite recent home to be built in the Town. He estimated that a vast majority of them were built in, or before that era.

Mr. Deziel stated that the purpose of the letter presented to the Town Council earlier was to object on behalf of Mr. and Mrs. Adler. The Adlers reside at 1520 South Ocean Blvd., which runs from ocean to lake, immediately north of the applicant's property. In order to set out an appropriate and substantive objection it was necessary to provide:

1. The background of the variance request.

2. An analysis and explanation of why the written Application for Variance does not meet the requirements of Section 10.13 of the Town of Palm Beach Zoning Code.

3. A summary of why the Application should, as a matter of law, be denied.

Mr. Deziel continued that nearly two years ago, Gary Ross approached the Adlers and told them of a home he planned to build on the property, which he said would be modest in size and for his family's personal use. Based on the statements of Mr. Ross, Mr. Adler did not appear at the Town Council Hearing, and therefore did not object to the Variance that was granted that November. At the following ARCOM Hearing that was held in November, 1993, the Adlers' architect saw the applicant's plans of the proposed residence and reported to the Adlers that the residence appeared to be large and very much out of scale for the size of the lot, and altogether disproportionately imposing. The Adlers then obtained a copy of the drawings that were presented to ARCOM and saw that what they had been told by Mr. Ross was not what was actually planned to be built. The Adlers further discovered that the house was a spec house and not one for the Ross family at all. Once this was discovered, the Adlers contacted Mr. Deziel and asked that the situation be investigated. Mr. Deziel proceeded to meet with the applicant, his attorney, and his architect in an attempt to gain an understanding of why the house as presented for the Variance differed from what was initially presented to the Adlers and why the Variance was requested and granted, since it was the Adlers' opinion that the circumstances did not meet the criteria required under the Zoning Code for the variance approval. Mr. Adler also personally asked Mr. Ross to change the plans and to build a house more appropriate to the lot. Notwithstanding all of these efforts, the Adlers were not successful and Mr. Ross informed Mr. Adler that the plans would not be changed. Given these factors, the prior approval involved misrepresentation to the Adlers, an improper variance approval process, and the fact that no satisfactory arrangement could be reached with the applicant, the Adlers judicially appealed the Variance approval. This Variance approval, incidentally, was granted by a Town Council acting with the participation of a member who was a director and shareholder of a bank which received a substantial fee for arranging the financing for the acquisition of the property and the construction of the applicant's structure. A Court of the State had since determined that the previous variance process was not properly followed, and for this reason the Variance was scheduled for this rehearing.

Mr. Deziel then addressed the applicant's application specifically. He noted that paragraph A proposed that the area and size nonconforming characteristics of the property are peculiar to the lot and not generally applicable to other land structures and other buildings in the same Zoning District. He declared that this was not correct, as there were eight lots in the same subdivision, as well as many others in the area and Zoning District, that are similarly deficient in area and size. Mr. Deziel stated that he also believed that Mr. Moore had indicated that possibly 50% of the lots do not meet the Zoning criteria.

Mr. Deziel explained that paragraph B proposed that the nonconforming characteristics existed at the time of the applicant's purchase of the property, and because of this the special conditions necessary to justify a variance approval were not the result of applicant's actions. This was not correct, as Florida Case Law clearly provides that a purchaser's knowledge of the size and shape of the property, and the applicable Zoning Restrictions constitutes a self-created hardship. In that connection, Mr. Deziel stated that he thought it was extremely important and applicable as to whether the Variance approval was a condition to the applicant's contract to buy the property.

Mr. Deziel continued that Paragraph C proposed that the applicant should receive a variance because other properties in Town had been granted variances as a result of a nonconforming lot size, and that the variance approval would not confer a special privilege upon the applicant; that it is denied by the Ordinance to other lands, buildings, or structures in the same Zoning District. Mr. Deziel referred to the minutes of December 14, 1993, and the Town Council at that time reflected on the fact that it was very rare to review a variance request for the construction of a new home on a lot in which an existing home was in place as opposed to a variance request for a nonconforming lot with no structures in place. Mr. Deziel again referred to the Seminole Avenue property that had come before the Town Council.

Mr. Deziel continued that Paragraph D proposed that generally the owner of platted property in Palm Beach may build a single family home thereon, and that this was correct only if the property was conforming, or if it was a vacant lot at the time the Zoning Code was adopted and a subsequent variance was obtained. Mr. Deziel noted that under the Zoning Code an owner was prohibited from demolishing a structure on a nonconforming lot and then building a home thereon. When an owner has a structure, conforming or not, on a nonconforming lot the owner can only modify the existing residence in conformity with the provisions of Section 5.17 of the Zoning Code. Mr. Deziel stated that he believed these provisions would have allowed the applicant to build a home very much similar in size to the one he has today--the difference would have been the setbacks and the mass of the structure. Mr. Deziel added that Section 5.17 was intended for the exact circumstances that existed at the applicant's property when the original variance was requested. Furthermore, the applicant alleged to have hardship, and Mr. Deziel stated that there was unequivocally and absolutely no hardship in this situation, as such term was

defined by the Town of Palm Beach Zoning Code or the Fourth District Court of Appeals that had developed the applicable case law.

Mr. Deziel continued that Paragraph E proposed that the applicant request the minimum variance that would make possible the reasonable use of the land, building, or structure. Mr. Deziel stated that the minimum variance would have been no variance at all, whereby the applicant would have added a second story, pursuant to Section 5.17 to a majority of the then existing one story structure. With this the applicant would have been allowed an approximately 6,000 sq. ft. home. He explained that one only need look at the applicant's new structure to realize that it is beyond the proper scale, and that no variance or a substantially lesser variance would have been more appropriate.

Mr. Deziel continued that Paragraph G proposed that the newly constructed single family residence would not be injurious to the area involved, or otherwise detrimental to the public welfare, and he declared that this was not true. Mr. Deziel commented that the residence constructed was so large and so out of scale to the lot that it was clearly injurious to the Adler property. Furthermore, in Paragraph G, Mr. Deziel stated that the applicant proposed that the variance would be "wholly consistent with the Zoning Ordinance and the home is a worthwhile addition to the neighborhood." Mr. Deziel stated that this was also incorrect, as the majority of the homes in the subdivision were modest one story structures, and no home on the entire street is near the size of the applicant's structure. Mr. Deziel said that it was noteworthy that the applicant's legal counsel was well aware of all of the above described deficiencies in the application, as evidenced by his letter, and legal research, submitted to the Town Council less than six months ago when he successfully opposed a similar variance request.

Mr. Deziel continued that the balance of his letter dealt with the Florida Case Law, which he proposed supports the proposition that the applicant did not meet the requirements of the Town Zoning Code or Florida Case Law interpretation of that Zoning Code. Mr. Deziel stated that his letter was submitted for the record in consideration of this matter.

Mr. Deziel asked Mr. Moore if the Town had any knowledge of the condition of the property before it was demolished?

Mr. Moore replied negatively.

Mr. Deziel then asked Mr. Moore if the Town had employees who looked for situations like that, i.e., violations of the Code that violate health and safety of a structure or the occupants of that structure.

Mr. Moore replied that there was no simple answer to that question. He stated that regarding visual code violations regarding the health, welfare, and safety, the Town did have employees that would react to that type of scenario. As to whether the Town could do an analysis of the structural condition of the steel and concrete in that location, Mr. Moore said that an outside engineer would be relied upon.

Mr. Deziel stated that the issue before the Town Council today as being proposed by the applicant, was the question of fact as to the condition of the property and what he could have done with that property, and in the last six months Mr. Deziel said that the Town Council had heard two cases where there was a request for a variance for the demolition of an existing home on a nonconforming lot with respect to the dimensions or the square feet. Mr. Deziel said that his recollection was that the Town Council asked for evidence in both of these cases as to the condition of the property so it could make a decision as to whether there was an alternative reasonable use of the property. Mr. Deziel remarked that there should be something offered by the applicant other than statements by an architect as to the condition of the property, when he was hired to build a new home.

Mrs. Smith stated that she did not believe there was any criteria in the demolition process for an engineering report on the structure or steel beams.

Mr. Deziel said that he would like to limit his conversation to only nonconforming lots. In addition, he would like to question the testimony of the applicant and his professionals as to the condition of the property.

Mrs. Smith stated that the Town Council sits in response to the residents of the Town asking for demolition of a house not up to the standards of Palm Beach. She added that the house in question was not up to the standards of South Ocean Blvd. She noted that the new house appeared to be the same scale as the Adlers' house, and that ARCOM had reduced the size of the house and found it to be compatible with the area. Mrs. Smith asked why the Adlers had dropped Mr. Ross as a defendant in the lawsuit?

Mr. Deziel stated that it was his understanding that it was a procedural requirement, and that when one desires to appeal a variance approval, the proper party would be the Town of Palm Beach.

Town Attorney Randolph stated that he did not recall that reason being given, and that the appropriate party to sue in an action like this, and to receive relief could be the Town, but that does not preclude suing another individual.

Mr. Mrachek then cross-examined Mr. Deziel, asking him if he had done an appraisal to come up with the conclusion that the house built next to Mr. Adler's house reduced the value of his property?

Mr. Deziel answered negatively.

Mr. Mrachek asked Mr. Deziel about his statement in Paragraph 4 that said there was something in the Zoning Code that absolutely prohibited the Town from giving a Demolition Permit in the circumstances of this case, as Section 5.17 of the Town Zoning Code, and that he swore to that in testimony today.

Mr. Deziel replied to the best of his knowledge that was the case.

Mr. Mrachek said that he would go two sentences up in Mr. Deziel's letter, wherein it said: "However, under the Zoning Code, an owner is prohibited from demolishing a structure on a nonconforming lot and then building a home thereon," and if that was his word?

Mr. Deziel replied affirmatively, and that was his opinion combining the Zoning Code with Florida Case Law in that one would be creating a self-created hardship.

Mr. Mrachek asked where the Zoning Code said that?

Mr. Deziel replied it was Article 4, the Schedule of Land Use Regulations where dimensional criteria to construct a residence was given. Mr. Deziel continued that it was the intention that the Zoning Code prohibited one from demolishing a home on a nonconforming lot and building a structure on it.

Attorney Edna Caruso objected to this method of cross-examination, stating that it was harassment. What was going on would not be allowed in a Court of Law and certainly should not be allowed. She stated that she was forced to intervene as she had been watching something that was not very attractive and that it should be stopped. She objected that this was harassment of the witness--Mr. Deziel had been sworn in as a witness in regard to things he would testify to as a witness, but many of the things in his report are his opinions, just as Mr. Mrachek read his lengthy report into the record, containing his opinions. She added that to imply that Mr. Deziel was misleading this body was harassment.

Mr. Randolph stated that this was not a Court of Law, and there was no intention of this Council to allow anyone to be harassed. He explained that what was being attempted was to have competent, substantial evidence in order to have a decision be made, and that there was case law which said that argument of attorneys was not competent, substantial evidence. Mr. Randolph said that there was a difficulty in an attorney making an argument, but also stating that he wants to be put under oath to state facts, and it was important to know what was argument and what was fact in order for a decision to be made.

Mr. Deziel stated that he had nothing more to add to his presentation today on behalf of Mr. and Mrs. Adler, and that his letter spoke for itself.

Mr. Mrachek stated that he thought the variance should be granted.

Mr. Moore clarified that the variance request at 261 Seminole referred to by Mr. Deziel had been withdrawn, and that a critical issue was involved in whether Section 5.17 prevented a property owner from demolishing his/her residence, and that Section 5.17 was in the Ordinance to allow for additions to nonconforming structures, and there was no prohibition of demolition of nonconforming structures in the Town of Palm Beach.

Mr. Shaw made a motion to approve Variance 27-95 on the basis that the lot had been turned into a nonconforming lot as a result of Zoning; and that there is a hardship on the land in that existing Zoning requirements pertaining to upgrading of the property were such that it would exceed various rules and regulations; that the net effect of what was done to the property reduced the density; and that the structure that had been built had brought a nonconforming building into conformance. Mrs. Smith passed the gavel to second the motion for discussion.

Mr. Wyett stated that for purposes of judicial review he believed it would be advisable for Mr. Randolph to draft the proper language.

Mr. Shaw stated that he would take any additions or corrections as requested by Mr. Randolph.

Mr. Randolph stated that the only thing he wanted to be sure of was that in the event a motion to approve was made, that all of the findings required by Section 10.13 be identified, as that indicated in order to grant a variance the Town Council must and shall find that all of the criteria have been met.

Mr. Shaw stated that he would add the memorandum from Mr. Mrachek "Reasons for Approving Variance Application," A-F to his motion.

On roll call the motion carried 4/1 with Mr. McDonald dissenting.

2. Variance No. 28-95 - Mr. & Mrs. Lewis Rudin, 7 La Costa Way; to allow installation of two driveway gates in the front yard, setback 6' from the pavement, in lieu of 15' required per Section 5.36(b) of the Town Code. R-B District. (Deferred from July 11, 1995 Meeting) - Letter Dated July 31, 1995, from Robert E. Deziel Requesting Deferral to September 11, 1995 Meeting

This project was deferred to the September 11, 1995, Town Council meeting.

3. Amended Variance No. 32-95 - Mrs. Sally Ross Soter, 198 Via Marina; to allow the calculation of building height to be referenced to natural grade immediately adjacent to the existing structure in lieu of being referenced from the crown of road elevation, a difference of 6.5 feet, average. To allow a variance from the definition of basement, thereby not counting the basement as a story. R-B District. (Deferred from July 11, 1995) -

Architect Gene Pandula, representing Mr. and Mrs. Soter, addressed the Town Council, stating that he had two variance requests to present: one had to do with the point of measurement of building height, and the second had to do with the definition of a basement as a floor in the R-B District. He continued that the residence had been built in 1937 and had remained essentially unchanged since that time. The unique characteristic of the site was the elevation of the land. Mr. Pandula explained the situation via exhibits of the property. Under the R-B Zoning Code a 22 ft. high building was allowed with 8 ft. of roof, and the property in question had 21 ft. height, and 6 ft. of roof, so measured from a normal parcel of ground on the site, the building would be less high than was allowed.

Mr. Pandula proposed that his client's special requirements could be solved by adding 848 sq. ft. of second floor space, which he located on the exhibit. The problem was that there was a garage that was considered third floor space, and they were requesting that the Town Council consider granting an exception to the building height in the R-B District from 30 ft. to 35 ft. Mr. Pandula stated that his presentation today would show that by not counting the basement as a story, the 848 sq. ft. addition would take up less space than if the automobile garage was abandoned and relocated.

Mr. Moore stated that several years ago there had been a heated debate about the RB Zoning District, concerning properties with topography that changed drastically from high point to low point that had basements. It had been decided to remove the benefit of a basement garage as far as not being counted as a story. Mr. Moore explained that staff had no objection as to the point of measurement because of the unusual drop of the land, however, the concept of the third level needed further consideration, and staff saw no hardship in the expansion of the third story.

Mrs. Smith stated that she thought the variances should be considered separately, with the first variance being to allow the calculation of building height to be referenced to natural grade immediately adjacent to the existing structure in lieu of being referenced from the crown of road elevation.

Mr. Wyett made a motion to approve the first variance, based upon the findings that all of the criteria of Section 10.13 of the Code had been met. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

Regarding the second variance, to allow that an existing basement in the R-B Zoning District not be interpreted as a story, Mrs. Smith asked Mr. Pandula what the hardship was regarding this?

Mr. Pandula stated that the hardship was with the land, and that because there was a basement level the entire structure was called a third story. There was not a single location proposed where there would be a three story wall, as the garage was completely below grade and the mass of the house continued to step from one to two stories.

Mrs. Smith stated that there was an impression of three stories.

Mr. Shaw made a motion to approve the second part of Variance 32-95 on the basis that the subject property does not show a three story section on the elevation, and there is not a third story visible at any point.

Mr. Randolph asked if the motion included a finding that the application met all of the criteria set forth in Section 10.13 of the Zoning Code?

Mr. Shaw replied that all of the criteria, A-G, had been addressed, and with the size and location of the house, the variance should be granted. Seconded by Mr. Wyett.
On roll call the motion carried 4/1 with Mrs. Smith dissenting.

<u>New Business</u>

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

Attorney Greg Kino, with the law firm of Boose, Casey & Ciklin, representing Mr. Jeffrey J. Collins, addressed the Town Council, stating that the property in question currently supported a deteriorating quadriplex and was built in approximately 1950. It was functionally obsolete, as two of the units were strictly efficiencies of less than 350 sq. ft. each. The other two units were two one bedroom apartments. The building did not meet current structural, plumbing, or electrical codes, and there was no architectural significance. There were eight required parking spaces, with six of those on the street.

The elevation was 2 ft. below FEMA standards. Due to these conditions, there had been no economic return on this property for several years, and it was unreasonable to renovate. A two family dwelling was being proposed as a replacement, reducing the density by two units, eliminating the need for the six on-street parking requirements, the architectural design would be compatible with the area, and the design would also be compatible with the two one family dwellings left on the street that were built in 1920 and 1940. The proposed design would keep in scale with the neighborhood. Mr. Kino continued that the property was zoned R-C, which was a medium density residential district, and the lot was 50' x 125', and there was a unique situation in that there was no use of the property that would not require any variances, except for the existing quadriplex. The variance standards had been addressed in an eight-page detailed analysis as part of the application. The legal standard was that it must be shown by competent, substantial evidence that no reasonable use could be made of the property without these variances. Because of the R-C Zoning, there were a limited number of uses for the property; single family, two family homes, townhouses, and multi-family. Reasonably, only three of those were possible; the existing quadriplex, a single family, and the two family that is being proposed.

Mr. Kino continued that the existing quadriplex was in deteriorating condition, functionally obsolete, with the on-street parking situation leading to the economic viability of it. Mr. Kino exhibited pictures of the property, along with a letter from Mr. Jonathan Commander, the property owner.

Mr. Kino read from the written opinion of expert appraiser, Doug Lawson, concerning the condition of the property. Mr. Lawson had concluded that the property had no historical or architectural significance, was in below average condition, had poor curb appeal, the living units were smaller than typical and functionally obsolete, it did not meet the test of economic feasibility, and has been available for sale for an extended marketing period-- therefore the existing quadriplex was not a reasonable use. Mr. Kino stated that a single family use was not reasonable as a result of the multi-family nature of the area, and that there were only two remaining single family houses on the block, one being built in the 1920s and the other in the '40s. Mr. Kino referred back to the letter from Doug Lawson, who concluded that the majority of the uses in the immediate area were two family residential, four family residential, or larger multi-family complexes; there had been no single family homes built in the 400 block of Chilean in over 45 years, and it was not prudent to construct a single family residence given the surrounding uses.

Mr. Kino added that he wanted to include as part of the record a letter from Carol Hoff, a realtor from The Prudential Florida Realty, who stated that the location was certainly an in-house location, current buyer demands in the area were such that they were looking for alternatives to condominiums, however, on the other hand, buyers of single family homes tend to want to be in the same environment with other single family homes and do not desire to build or buy in a mixed use atmosphere. It was Ms. Hoff's professional opinion based on the multi-family nature of the area and market demands that a two family dwelling would be a reasonable use of 410 Chilean Avenue.

Mr. Kino continued that the two family residence would be consistent with the multi-family in the area, while still remaining compatible with the single family in design and scale. In order to incorporate the proper design features, the 10 ft. side yard setback variance was needed. The architect, Glenn Harris, had performed a compatibility and massing study as part of the application, along with an adjacent property usage plan. Mr. Harris evaluated the area's existing setbacks and uses in order to determine what would be appropriate in scale and design. He concluded that without the 10 ft. setback variance they would be precluded from incorporating the proper design features, and based on his observations the two family structure would be consistent with existing setbacks, compatible with scale and mass of existing structure, would not be detrimental to the surrounding neighborhood, and would enhance the overall appearance of the area.

Mr. Kino stated that several letters of support from neighbors had been submitted supporting the proposal. He concluded that approval was respectfully requested to remove two units from the street, eliminate six on-street parking spaces, replace with a structure that would meet current building codes, and would be a feature on that block. Mr. Kino added that no demolition of the property would take place until the appeal time frame had run.

Mr. Moore stated that the application for redevelopment was compatible with the Comprehensive Plan, however, the structure that was proposed was not reducing the mass and did require two side yard variances, and beyond that the variance for an additional unit was being requested. It was not the minimal type of request for additional units or density based upon a minor deficiency in the amount of square footage, and for that reason the staff did not find a hardship with this application, and staff felt that the only redevelopment use for this lot would be for single family, unless it was put together, parceled, and then redeveloped.

Mrs. Smith asked Mr. Kino if the owners had any other parcels of land on the street under contract, and did they anticipate purchasing any such land?

Mr. Kino replied negatively.

Mrs. Smith asked Mr. Kino why the existing building could not be renovated to create a two unit home?

Mr. Glen Harris, the architect for the project, addressed the Town Council, stating that they had looked at the existing structure, and structurally speaking the roof was in disrepair, the interior would have to be completely renovated, and the structure would have to be either raised, or the elevation of the floor raised two and one-half feet to comply with FEMA requirements. After taking everything into consideration, it was felt that it would be more economically reasonable to construct a new structure.

Mrs. Smith asked Mr. Harris to explain how they were dealing with the fact that a reasonable use already existed for the property?

Mr. Harris replied that they were dealing with the 50% rule, the assessed value of the property was $53,000 for the structure, so even if that was doubled as a market value the amount of money spent remodeling would far exceed 50%. Mr. Harris stated that there was a question of money, but when remodeling to meet current code requirements there would come a time when one had to take a look at what was actually being saved, and in some regards there would be more labor cost involved in trying to save what was there than starting out with a brand new structure.

Mr. McLendon commented that he had not understood the status of the existing units?

Mr. Kino replied that they were fully rented, but the owners had not made any money in the last three years. The two efficiencies were less than 350 sq. ft. each, and the other two units were one bedroom units of approximately 500-600 sq. ft.

Mr. Wyett asked if the economic hardship was self-imposed by the lack of repair?

Mr. Kino replied that when he referred to economical viablity he was using 1% as opposed to perhaps a 5% return. During the last three years the owners had not made any money.

Mr. Harris stated that in order to upgrade what was presently there, problems would surface concerning FEMA standards, etc.

Mr. Wyett stated that his concern was that a very large variance was being asked for, which was contrary to the intent of the Zoning regulations, and he asked if they had tried to buy adjacent land, or at least a portion of the adjacent land?

Mr. Jeffrey Collins, the petitioner, said that he had spoken with the owner of the lot in question, who bought the lot as access to the apartment he owns, and had no intention of selling it.

Mrs. Smith asked if there was a possibility of the owner of the lot selling a piece of land?

Mr. Collins replied that the owner had not indicated he would be willing to sell it.

Mr. McDonald asked if he knew the market value of the property?

Mr. Collins estimated that the land was probably valued at $250-$300,000.

Mr. McDonald asked why the property was deteriorating?

Mr. Collins said that he had spoken to the Trustee, and they had bought the property 10 years ago thinking of it as investment property, and had not received any real returns on it, and had not poured money into it to try and keep it.

Mr. McDonald commented that the owner was responsible for the deterioration, so that would not be a reason for granting the variance.

Mr. Collins said that he was the contract purchaser of the property, and had not closed on the property yet, and he was buying the property for $300,000.

Mr. Harris asked Mr. McDonald if he was asking the value of the building itself?

Mr. McDonald replied affirmatively, and that he wanted to know what the market value of the improvement was?

Mr. Doug Lawson, the appraiser, stated that the improvements would preliminarily contribute $20-$60,000.

Mr. McDonald asked the rental value of the apartments right now?

Mr. Collins replied the one bedrooms rented for $550 and the efficiencies rented for $425 per month.

Mr. McDonald asked Mr. Lawson the net operating income?

Mr. Lawson replied approximately $10-18,000 per year.

Mr. McDonald asked the multiplier in Palm Beach?

Mr. Lawson replied that it was in the area of 8-9%.

Mr. Shaw asked the market value of the proposed two family home?

Mr. Lawson replied that they did not have a final number on that.

Mr. Harris said that in order to make the project economically feasible, the money to remodel would be considerably more than the 50% value.

Mrs. Smith stated that at the time the property was re-zoned, it had been felt that the smaller 50 ft. lots would be joined together, creating one 100 ft. lot that would be conforming, creating more open space.

Mr. Shaw made a motion to defer Variance 35-95 to the September Town Council meeting. Seconded by Mr. Wyett.

Mr. Randolph stated that it may be relevant to consider whether a deferral is of any advantage to the contract purchaser, and that the petitioner might be in a position of needing a decision one way or the other on this matter.

Mr. Collins stated that he would need two out of the three variances for a single family anyway, and he did not know if he could extend the contract.

Mr. Wyett asked Mr. Moore if there was any concern about the reduction of affordable housing in the Town, relative to this problem?

Mr. Moore replied that one goal of the Town was to assure affordable housing, and that currently there was a surplus.

Mr. Wyett commented that he was urging further amalgamation of property.

On roll call the motion carried unanimously.

5. Variance No. 36-95 - Belle K. Ribicoff, Tower Suite West, Tower Vallencay, 2155 Ibis Isle Road; to allow installation of a balcony awning, contrary to Section 5.32(c) of the Town Zoning Code. R-C District

Mr. Joe Mattei, American Awning Company, representing Mrs. Ribicoff, addressed the Town Council, stating that an awning on the south balcony was being proposed. The proposed awning did not wrap around on the building, and was only on the south side basically to stop the sun from shining inside the room.

Mr. Moore said that although this is technically a balcony, in reality it is a patio. He stated the staff had no objection to the project.

Motion made by Mr. Wyett to approve the project. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously

6. Special Exception No. 15-95 - Ellis B. Dean, the Brazilian Court Hotel, 301 Australian Avenue; to allow church services in an R-C Zoning District. R-C District

Ellis Dean, Palm Lake Baptist Association, requested permission to hold bible study classes and church services on Sunday mornings at the Brazilian Court Hotel. Mr. Dean said a conference room would be leased from the hotel for that purpose. He continued the purpose for the services was to offer the residents of Palm Beach quality bible study and church services at a convenient location. Mr. Dean said the hotel provides adequate parking and he anticipated twenty people would initially attend the services building up to fifty people during the first year. Mr. Dean stated the services would be conducted in the Peruvian Room and can accommodate 105 people. He continued that the hotel has offered the use of its parking lot, located to the east of the hotel, and the use of its valet parking service.

Mr. Moore said the Brazilian Court Hotel is a nonconforming use in the R-C zoning district; however, churches and/or church services are special exception uses in any zoning district in Town. Mr. Moore said the hotel does not have adequate parking for its own use, but by using valet parking, a few spaces may be open for parking during that time period.

Mr. Moore mentioned the Brazilian Court offers a brunch during the same time period that the church services would be conducted.

Mr. Moore also asked that the town-serving issue be addressed by the applicant.

Mrs. Smith reminded Mr. Dean that he would have to provide town-serving information to the Town before he would have approval to hold church services.

Mr. Dean replied that he would be willing to provide the town-serving information.

Mrs. Smith asked that valet parking be conducted in the parking lot to the east of the hotel and that be made a part of the approval.

Responding to questions from Mr. Wyett, Mr. Dean stated the church did not have a congregation presently but anticipated the members would live in Palm Beach.

Mr. Moore noted that the only provision affecting the size of the congregation would be the allowable limit for the room as determined by the Fire Code and Building Code.

Mr. Moore asked Mr. Dean if he could confirm at this point in time that at least 50% of his congregational members were town residents, town employees, or hotel guests. Mr. Dean replied he could not at this time.

Mr. Moore explained to Mr. Dean that this provision to prove that this church will be town-serving must be satisfied before Mr. Dean could be qualified to be approved for this special exception.

Mrs. Smith added that if the maximum number of people allowed to occupy the room is 105, then 53 of those people must be town residents, town employees or hotel guests.

Mr. Moore asked who the ordained minister would be for the church?

Dr. David Draper, Assistant Professor of Religion and Philosophy at Palm Beach Atlantic College, identified himself as the minister for the church. Mr. Moore asked Dr. Draper if he understood the congregation could not be started until at least 50% of the people were town residents, town employees, or hotel guests. Dr. Draper said he did understand that.

Mr. Shaw mentioned that the church would have to resubmit on a yearly basis the proof that the congregation was over 50% town-serving. Mr. Shaw said he had a basic concern with the parking issue because the Brazilian Court Hotel is deficient in parking spaces. He added the valet parking is not the answer.

Mr. Dean replied the Brazilian Court Hotel indicated to him that there would not be a problem with parking during the hours the congregation would meet on Sunday morning.

Mr. Shaw reported that the hotel offers an excellent Sunday brunch during the winter months that draws a large crowd, and parking is a problem at that time.

Mr. Randolph said that recent case law has made a determination that competent, substantial evidence must be presented to allow approvals under the criteria that are set forth in the Code. He said that Mr. Moore had mentioned the town-serving criteria; however, Section 6.40 relating to Special Exception uses has criteria (A through R) and much of it deals with traffic, and the use will be in conformity with the neighborhood, and no substantial injury will be caused, etc. Mr. Randolph stated he was not sure the Council had heard testimony regarding the items in the Code that would be competent and substantial evidence that would allow approval of the request.

Mr. Randolph cautioned the Council against approving something that may be town-serving in the future. He recalled that other applicants who have appeared before the Town Council have produced affidavits indicating they are town-serving. He said this applicant has not provided information that stated the group can be town-serving.

Mrs. Smith asked Mr. Dean if he would like to return to the Town Council at the September meeting?

Mr. Dean responded affirmatively.

Motion made by Mr. Shaw to defer Special Exception 15-95 to the September 12, 1995, Town Council meeting. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mrs. Smith noted that Mr. Dean will have the opportunity at the September meeting to address the criteria of the Special Exception and the town-serving issue.

7. Special Exception No. 16-95 - Jo's Restaurant, 375 South County Road; to allow expansion of an approved special exception use from 4,300 sq.ft. to 4,900 sq.ft., and further, to allow applicant to relocate 16 seats to an outdoor location (fountain area) pursuant to 6.61 of the Zoning Code. C-TS District

Mrs. Smith asked anyone giving testimony concerning this issue be sworn in by the Town Clerk. Mrs. Pollitt administered the oath.

Peter Broberg, Attorney representing Jo's Restaurant, reported that Jo Larkey, the owner of the restaurant, Richard Klein, the owner's son and chef for the restaurant, Burton Handelsman, owner of the building, a hood awning expert, and a bartender were in the audience to answer any questions that might arise.

Mr. Broberg explained the request was for two items, and the first was the expansion into 600 square feet of area along South County Road that was recently vacated by the Great Stuff Memorabilia Shop. He stated the intent is to spread out the current 150 seats--not to expand the number of seats. Mr. Broberg noted that additional parking spaces would not be required because no seats are being added, and the public health would not be affected because the restaurant will be operated in the same manner as it is currently. Mr. Broberg stated that the request would not cause any substantial injury to the property values of any of the neighboring properties, it is compatible with the Comprehensive Plan, and it is town-serving which is substantiated on a yearly basis.

Mr. Broberg said the second part of the request refers to Section 6.61 of the Zoning Ordinance which allows for outdoor seats to be placed adjacent to a restaurant as long as they are confined to the building that the restaurant occupies. Mr. Broberg presented a site plan showing the location of the proposed outdoor seats around the fountain area which is in the middle of the building. He suggested gating could be provided if this were approved. Mr. Broberg said that the applicant would accept a lesser number of outdoor seats than sixteen, but would like to be able to provide outdoor seating around the fountain on a nice evening. Mr. Broberg continued that the meals would be prepared inside, and no music would be playing outside.

Mr. Broberg summarized that the restaurant is town-serving and has operated in the Town for twelve years. He noted that no detriment to the public health would be caused, and other restaurants have outdoor seating. He cited Renato's and Bice restaurants. Mr. Broberg said that the request would not cause substantial noise, glare, and impact upon neighboring properties.

Mr. Broberg explained Jo's Restaurant operated in the Church Mouse building located across the street from the present building for twelve years, and during that time, the condominium located next to that building, to the west, never filed one complaint with the Code Enforcement Board or the Building Department.

Mr. Broberg reported that a noise and an odor complaint have been filed, predominantly during the first week of Jo's operation, at the present location. Mr. Broberg said no pending violations existed, and every violation that did exist has been corrected. He presented photographs that showed the existence of lattice work around the first dumpster; however, Jo's purchased a second dumpster that was placed outside of the restaurant's kitchen door and surrounded it with lattice work. Mr. Broberg presented a photograph showing a fence, built by Jo's, which attempted to site screen the restaurant from the Everglades Condominium building to the northeast.

Mr. Broberg disagreed with Mr. Caplan's letter to the Town that stated the garbage was not being properly disposed of because no violations exist. Mr. Broberg continued that the letter objected to offensive odors and excessive noise from the kitchen, and those were not true for the same reason. Mr. Broberg said that regarding the issue of the restaurant employees parking on the street, Jo's would attempt to work that out.

Mr. Broberg said no factual evidence exists to support Mr. Caplan's claim that the expansion of the 600 square feet would increase the garbage and use of the dumpster. Mr. Broberg said he would yield at this point to others who wished to speak but would like the opportunity to respond to any complaints later.

Mr. Moore reported the staff's comments that included the Fire Department's statement that the applicant must comply with life safety code 101; the Architectural and Landmark commented that the development scheme and the private via may be an undesirable use; the Building Department had no objection to the expansion of the 600 square feet but the town-serving issue must be addressed and the outside dining may be a potential noise problem. He reported that Mr. Doney commented the potential noise and odor issues should be addressed by the applicant.

Mr. Moore noted that the original approval for this location was granted in May, 1994, and had several conditions. Mr. Moore suggested the original conditions of approval should be addressed. He read the following conditions of approval from the May 10, 1994, Town Council meeting:

1. Demonstrate to Town Police Department satisfaction that midday and evening customer parking accommodations will not cause traffic congestion in immediate area.

2. Provide a nuisance free method of storage, handling and disposal of solid waste material.

3. Valet parking may be provided for evening (dinner) customers only. Valet parking during luncheon hours is not permitted.

4. Kitchen exhaust system shall be equipped with filters, commonly referred to as "scrubbers", to remove all obnoxious fumes and odors.

5. The total restaurant parking requirement, determined by the final plan, in excess of 22 spaces must be provided by applicant in an off-site location.

6. Applicant must provide verification of Town-serving status on an annual basis and concurrent with Occupational License renewal. Additionally, applicant must provide to the Town a copy of the parking lease for the off-site spaces.

7. To compensate for the building square footage added as a result of enclosing the courtyard, an equivalent amount of square footage shall be removed from the existing mezzanine within the proposed restaurant space.

Mr. Moore said most of the complaints were received during the initial time frame when the restaurant was opened. He reported his department received garbage complaints, complaints related to bottles, garbage odor, overflowing of dumpsters in the first dumpster location, some renewed noise and garbage odor complaints from the new dumpster location. He said his department has had extensive discussions with the air conditioning and filter people who are maintaining the exhaust systems. Mr. Moore said the original purveyor was terminated and a new company has replaced him; although complaints from residents of the Everglades Plaza Condominium have been made since the new person was hired.

Mr. Moore reported he had a conversation with some of the residents regarding the mail delivery of the notice concerning the 1994 Town Council meeting. Mr. Moore checked with the Post Office who said the mail was delivered although it could have had an incorrect number on the letter. The letter was not returned to the Building Department.

Mr. Moore said the outside or patio area was part of the original Town Council approval, and the Council spent a long time dealing with the issue of the three buildings that surround the area. He noted that an arch was negotiated, at that time, to provide a feeling of separation, and the proposal this time is to install gates that will block off the area that has been open to the public. Mr. Moore said the Building Department does not support the outside dining with the seven story building next door to the site. Mr. Moore added the Building Department does support the expansion into the 600 square feet with the proviso that the restaurant be held accountable for the problems that have existed and are again current.

Mrs. Smith asked for comments from the public.

Louis Caplan, Attorney representing the Everglades Plaza Condominium Association, addressed the Town Council and stated he represented twenty-three condominium unit owners. He stated the Association did not receive notice of the May, 1994, Town Council meeting, and the Association would have turned out in force to oppose any restaurant at that time.

Mr. Caplan explained the Everglades Plaza Condominium is located immediately adjacent to Jo's Restaurant. He stated on behalf of the Condominium Association opposition to Special Exception Number 16-95.

Mr. Caplan reported that since Jo's Restaurant opened a few months ago, the owners of the twenty-three units in Everglades Plaza have suffered through Jo's inability to effectively control the odors emanating from the restaurant, and this is the result of the failure to install adequate filters. He continued that once the filters were installed, they were not adequately maintained, and odor problems have resulted from drainage backup problems as well. He said these problems have been brought to the Town's attention and to Jo's Restaurant attention. Mr. Caplan stated these problems have not been resolved because the odors still permeate the area, and as recently as Wednesday, July 19, the Town was put on notice that odors were again emanating from Jo's Restaurant. He understood the Town inspector did not have to enter the property as the odors were noticeable from outside.

Mr. Caplan said the noise from the kitchen has not been controlled, and sometimes the door is open and sometimes it is closed. He continued that the Town was also notified of this problem, and the dumpsters are not properly maintained and garbage is not properly disposed of inside and outside of the dumpster area. Mr. Caplan also noted the dumpster gates are not always closed and health concerns have been created.

Mr. Caplan concluded that the employees of the restaurant park on Chilean Avenue in areas that are regulated for one hour parking, and these employees remain in the spaces throughout their entire shifts. Mr. Caplan maintained that limited parking is available for other town residents and for the guests of residents of the Everglades Plaza. He said the Association Board has received several complaints that the employees of the restaurant are changing into and out of their uniforms in front of the residents' homes. Mr. Caplan questioned if Jo's cannot effectively maintain the existing facility--controlling the noise, the smell, the disposal of the garbage, their employees' actions--then the problems would multiply if the special exception is approved. Mr. Caplan said that Jo's Restaurant would have everyone believe that some of the kinks have to be ironed out and any new establishment will suffer through some rough times and some growing pains. He said the problem at Jo's Restaurant seems to be a total disregard for the neighbors' concerns.

Mr. Caplan reported the west side terraces cannot be used because of the noise and odors coming from Jo's. He said this drastically affects the value of the units. Mr. Caplan stated that outside dining would increase the noise and the odors coming from Jo's regardless if seats were added or not to the 150 approved seats. He said the purpose of outside dining would be to increase their customer base which would mean increased smells, noise, etc.

Mr. Caplan said the purpose of the Palm Beach Zoning Ordinance is to protect, promote, and to improve the public health, safety, morals, and general welfare of the people. He said the Zoning Ordinance states in part that special exception uses shall be permitted only upon authorization by the Town Council, provided that such usage shall be found by the Town Council to comply with the following requirements:

> That the use is so designed, located, and purposed to be operated that the public health, safety, welfare, and morals will be protected.
>
> That the use will not cause substantial injury to the value of the property in the neighborhood in the area where it is to be located.
>
> That the use not result in a substantial, economic, noise, glare, or odor impact upon adjoining properties and properties generally in the district.

Mr. Caplan said for the reasons previously stated in his letter, as well as his discussion at this meeting, the proposed special exception to increase the size of Jo's Restaurant and to allow for outdoor seating violates the stated three requirements necessary for approval. He said the use does not serve to protect the public's health, safety, and welfare. The use will cause substantial injury to the value of the property in the neighborhood because it will not allow for full use of an individual's unit. The use will result in a substantial economic, noise, glare, and odor impact upon adjoining properties, and based upon these concerns as well as the concerns to be expressed by the Association's Board of Directors and residents of Everglades Plaza,

Mr. Caplan stated his opposition to Special Exception 16-95 and requested that it not be approved by the Town Council.

Mr. Caplan submitted a copy of a letter from Mrs. William (Kay) Crawford. Mrs. Smith replied the Town Council had received a copy of that letter.

Mr. Robert DeCasere, president of Everglades Plaza Condominium addressed the Town Council, objecting to Special Exception 16-95, stating that both Mr. Moore and Mr. Caplan had given many of the reasons that he had planned on mentioning. He wanted to add one point regarding property values--a new unit owner had spent about $50,000 remodeling an apartment, and the first time they tried to use their balcony they could not sit there. Mr. DeCasere commented that a unit would not be salable on one of Jo's bad days, with the odors, and shattering glass. Mr. DeCasere stated that the problems with Jo's had been going on for weeks, and he distributed photos of the dumpster area at Jo's. Mr. DeCasere stated that he had not received a notice for May, 1994 for Jo's opening. He said that they understood that 264 Grill had made the same request for outdoor dining and had been turned down. He said that there are now two restaurants in that same building with take out food, Scotty's and Sandwiches by the Sea, and that the area is well covered with restaurants. He urged rejection of Special Exception 16-95.

Mr. Pat Farbro, 170 Chilean Ave., addressed the Town Council, stating that he had never thought his property value would be damaged by a restaurant. He had sent a letter to the Town Council stating his concerns, and he agreed with the comments of Mr. Caplan and Mr. DeCasere concerning the odors, noise, and disregard for the people of Everglades Plaza.

Mr. Burton Handelsman, 250 Worth Ave., and owner of 375 South County Road, addressed the Town Council, stating that he had heard a complaint about drainage, and he wanted the Town Council to know that he had developed sixty or seventy-five restaurants and never in his life had he put fourteen floor drains into a restaurant, as are in Jo's. He added that there were many dumpsters in Palm Beach, and the dumpsters at Jo's are kept scrupulously clean. He asked how any resident could distinguish between the odor coming from a particular restaurant, and that Jo's had done an excellent job in an effort to be a good neighbor. He commented that in regard to outdoor dining, the fountain area is not visible and is completely shielded. He stated that Jo's should not be inhibited from making a more comfortable restaurant.

Mr. Broberg stated that he would like to bring attention to the fact that he had suggested to Mr. Caplan that this issue be deferred for a month in an effort to discuss the matter and resolve some differences. Mr. Caplan had thought it a good idea, but his clients did not.

Mr. Caplan stated that he was not sure what could be worked out, and that in his discussion with Mr. Broberg, a proposal had been made for a meeting, but there was no middle ground for discussion.

Mr. Broberg stated that when the restaurant initially began, they changed their hood filters on a monthly basis, and when this was found not to be acceptable, they changed the filters every two weeks. Mr. Broberg remarked that the purpose was that Jo's Restaurant wanted to coexist, and that every time there had been a problem it had been fixed. With regard to garbage not being bagged, Mr. Broberg commented that Brian House and Rick Klein went into the dumpster lately and found some of the refuse in there was from Pastry Heaven, so it would now have to be locked. With regard to employees parking on the street, Mr. Broberg stated that if that was a problem it would be addressed. Mr. Broberg noted that the increase in size was not an expansion of the restaurant. He pointed out that Jo's had been in another nearby location in Palm Beach for twelve years, in a much smaller restaurant, and never once did the condominium next to them complain. Mr. Broberg stated that he did not think there was a factual basis for the statements concerning diminishing property values. As far as Mr. Moore's concern of Town-serving, Mr. Broberg stated that the restaurant would comply with that on an annual basis.

Mr. Moore stated that his remarks had been directed to his presentation today, and in order to qualify for the Special Exception regarding the seating as well as the 600 ft. the Town-serving status must be addressed today, not at the end of the year.

Mr. Broberg stated that the restaurant studies he had presented in the past showed that almost 75% of patronage comes from within a five mile radius of a restaurant, so the majority of the clientele would be coming from Palm Beach, and that by the very nature of Jo's being in Town for twelve years, a Town-serving status was exhibited.

Mr. Moore asked Mr. Broberg if he had any surveys from the current location stating that 51% of business customers were Town persons?

Ms. Jo Larkey, owner of Jo's Restaurant, addressed the Town Council, stating that there was a way of proving that they were Town serving.

Mrs. Smith stated that one year ago Mr. Broberg did stipulate that over 68% of the clientele of the restaurant was Town-serving, and asked if he had proof at that time?

Mr. Broberg answered affirmatively.

Ms. Larkey stated that it was now better than 68%.

Mrs. Smith asked Mr. Moore if that had been part of the record?

Mr. Moore replied that all he wanted to hear was that the percentage of Town-serving patrons would be addressed, and that was up to the Town Council as to whether that was sufficient.

Mrs. Smith asked Ms. Larkey if she was prepared to make the statement today that the restaurant was 68% Town-serving.

Ms. Larkey replied affirmatively.

Mr. Shaw asked if the figures for Town-serving must be presented in writing on an annual basis?

Mr. Moore answered affirmatively.

Mr. Shaw asked if an audited statement or a legal document stating the figures for Town-serving should be presented?

Mr. Broberg replied that would be done at the end of the year.

Mr. Randolph stated that in regard to applications coming before the Town Council, some sort of evidence of Town-serving had been required in the past, but that the Town Council could be satisfied on the basis of a statement according to the Ordinance.

Mr. Broberg stated that an affidavit would be provided prior to the occupation of the additional space.

Mrs. Smith stated that would probably be a condition of approval if the Town Council decided to accept the application.

Mr. Shaw stated that he would like to look strictly at the expansion, and that he had been over at the property on Saturday and wanted everyone to know that he did go through the premises, met with Mr. Klein, and discussed some of the issues regarding the application. Mr. Shaw added that it was his understanding from Mr. Dusey that it was almost an agreement between the Town and the restaurant that the dumpster gates were not being closed in the morning because it allowed the restaurant to properly disinfect and clean them. Mr. Shaw asked why the underground parking in the building could not be used?

Mr. Broberg reiterated that if employees were parking outside of the area they would be told to park properly.

Mr. Shaw stated that his concerns were with sound problems, not so much with the 16 potential seats outside, but the fact that many doors would be opened, not just in the 600 sq. ft., but also on the other Avenue. He had asked Mr. Klein about bottles and was told that bottles were not dumped outside during the evening hours.

Mr. Richard Klein, chef of Jo's Restaurant, addressed the Town Council, stating that there had been a complaint about noise from bottles crashing in the evening, so the bottles are now emptied into the bins during the day.

Mr. Shaw asked if there was sufficient space to contain all of the garbage on location after 6 P.M.?

Mr. Klein replied there was not a problem with the evening service garbage.

Mr. Shaw stated that the photographs passed around had shown a lot of garbage in the dumpster on the street, versus the dumpster located in the rear.

Mr. Klein replied that it was hard for him to control the dumpster on the street.

Mr. Shaw asked if Jo's put anything in the dumpster on the street?

Mr. Klein responded that he did not use the north dumpster at all since the second one had been put in, and it was used by tenants in the building, Pastry Heaven, and anyone who may be driving by.

Mr. Shaw asked about the possibility of a compacter being used, and if it would be beneficial to neighbors complaining about noise?

Mr. Klein replied that there was a 7-day garbage pick-up, so there was not a back-up of garbage.

Mr. Shaw asked if all grease traps, and solid waste sanitary conditions were state-of-the-art?

Mr. Klein responded affirmatively, and that they had all been approved and passed by the Building Department.

Mr. Moore asked Mr. Broberg if the vent systems and the filters systems were state-of-the-art, with nothing else on the market?

Mr. Broberg replied that he was not an expert in the field, but he was sure that an awful lot of money could probably buy something else.

Mr. Moore replied that was correct, and that a truly state-of-the-art item was very expensive.

Mr. Broberg stated that he remembered reading about something that cost $20-30,000, that was huge, and was placed on the roof.

Mr. Moore replied that he and Mr. Broberg had discussed that matter in the past, and if the system of cleaning the filters was not satisfactory then the more expensive set-up would have to be installed.

Mr. Broberg stated that he recalled the discussion as everything possible would be done to reduce odors.

Mr. Moore stated that he wanted to make it clear that the applicant was trying to address the problem without the installation of that very costly piece of equipment, and perhaps cleaning the filters every week would stop the complaints, and the smells would have to be traced as far as where they were coming from.

Mrs. Smith asked Mr. Moore how he proposed to do that?

Mr. Moore replied that he did not have a solution to that problem, other than going to the roof and sniffing.

Mr. Wyett stated that Jo's Restaurant was an asset to the Town, but was suffering from the adjustment of going from a very small restaurant to a larger one. He remarked that there had to be some control as a result of the needs of the residents of the community. He noted that if cleaning the filters every week to solve the odor problem worked, that was wonderful, however, if it did not, then assurances would have to be given that the more expensive state-of-the-art equipment would be put in. Mr. Wyett stated that management techniques needed improvement regarding employees. Mr. Wyett stated that he would like to make a motion to approve the 600 ft. addition, however, no certificate of occupancy would be granted until all conditions had been met. Seconded by Mr. Shaw.

Mr. McLendon asked how many seats were in the restaurant currently?

Mr. Klein responded 150 seats.

Mr. McDonald asked for clarification of Mr. Wyett's motion.

Mr. Wyett stated that his motion was for approval, with the Certificate of Occupancy to be withheld until the proper department of the Town had certified that the restaurant had come into compliance and satisfied the neighbors' needs for peace and quite and full enjoyment of their property.

Mr. McDonald asked how that would be determined?

Mr. Wyett replied that a lot of it would be procedural.

Mr. McDonald asked how it would be verified?

Mr. Wyett replied that the Certificate of Occupancy would be temporary, and the lack of complaints during the next six months would be a verification.

Mr. McDonald asked if the approval would then be for six months?

Mr. Wyett responded that he was open to any suggestion that allows the Council and the Town officials to monitor this and make sure that residents were not being disturbed.

Mr. McDonald stated that he still was not sure what the motion was attempting.

Mr. McLendon stated that he felt the lack of complaints should be verified by the Building Department.

Mr. McDonald asked Mr. Wyett if he wanted to approve it for six months, with the applicant coming back to prove that they had satisfied the neighbors' complaints?

Mr. Wyett stated that it would give neighbors a period of time if they had complaints.

Mrs. Smith asked Mr. Caplan what specific conditions would he like to see created by the Town Council to make the restaurant compatible with the condominium building?

Mr. Caplan stated that he had come prepared to tell the Town Council why they objected to approval of the expansion, and although he would have to discuss conditions with the Board of Directors and residents, conditions would include a guarantee of no odors emanating from the building.

Mrs. Smith asked how the granting of the additional 600 ft. of inside, enclosed space created more odors?

Mr. Caplan replied that the smells would continue, and he was not sure that every one of those seats was full, and

that the reason for the expansion was to create a more comfortable restaurant to increase use.

Mr. McDonald asked Mr. Caplan to address how the smells could be quantified?

Mrs. Smith asked Mr. Caplan to tell the Town Council how the neighbors who had viable complaints could be protected?

Mr. Caplan stated that complaints would have to be followed up and the operation of the restaurant policed; the state-of-the-art mechanism to eliminate odors would be a good step; the time elements regarding garbage should be addressed. He said that some of those ideas would start things in the right direction.

Mrs. Smith said that she was sure that if the condominium residents and Jo's Restaurant get together, many of the problems could be solved, because Jo's had attempted to comply with complaints.

Mr. Caplan stated that his clients felt that Jo's Restaurant had not shown that they were willing to do the things that they claim they were going to do when they opened the restaurant, and to increase the size was objectionable because they had not shown they could take care of the existing facility.

Mr. Broberg stated that the size of the restaurant operation was not being increased, but a little more elbow room was being created. The major concern he had with the motion made by Mr. Wyett, was that the neighbors could act out of spite and he did not think that odors could be monitored so specifically. There was an exhaust system in the restaurant that was better than any other restaurant in the Town, and to make it mandatory to put a very expensive unit on the roof was not fair.

Mr. McLendon asked how many ventilation systems there were in the restaurant?

Mr. Moore asked how many exhaust fans there were?

Mr. Klein replied that there was one major, huge exhaust fan.

Mr. Moore stated that the restaurant had been a Special Exception, passed with Variances and conditions, so there were conditions that had to be lived up to on the initial Special Exception with Variances.

Mr. McLendon asked if it was possible that the deflectors in the ventilation system were perhaps directed in an easterly direction, rather than a westerly direction?

Mr. Klein stated that it was round, and it would depend on which direction the wind was blowing as to which direction the odors would travel.

Mrs. Smith stated that she was not sure that Everglades Plaza wanted to see a giant unit put on the roof of the building they would be looking at blowing fumes at them, so the more sophisticated exhaust system may not be acceptable.

Mr. Wyett stated that the first suggestion was to go to a weekly changing of the filters, and if that did not work then the problem would have to be solved. Mr. Wyett stated that very few restaurants had a condominium directly behind them, and the one case regarding the 264 Restaurant request for outside use was denied.

Ms. Jo Larkey, owner of Jo's Restaurant, addressed the Town Council, stating that the residents of the condominium should not be telling them what should be done, but that it should be the Town making the recommendations to be complied with.

Mrs. Smith stated that it would be the Town that made the recommendations. She noted that one of the problems she had with the expansion was with the gate to the street, as well as the five sets of French doors opening out to the patio, which she felt would create noise. She asked if Mr. Wyett would like to include in his motion the stipulation that the doors remain closed.

Mr. Wyett agreed with that, and that he would modify his motion to approve the expansion of 600 sq. ft., with the condition that the applicant come back in six months certifying that they had met all requirements of the Town, as well as no closing of the gates or opened doors. He asked what was done about music?

Ms. Larkey responded that there was only Muzak there now.

Mr. Wyett added that another condition would be no live music.

Ms. Larkey asked if she could have a piano player?

Mr. Wyett replied he was referring to a band.

Mrs. Smith clarified that she had intended no gates at all off of South County Road, and she asked Mr. Wyett to clarify that in his motion.

Mr. Wyett clarified that there would be no gates at all, and that if French doors were built they would have to be sealed.

Mr. Shaw asked for clarification on the doors, and was the intent to have no doors on Peruvian?

Mrs. Smith said that she was saying no doors in the new space to be created on the northwest side opening onto the patio that would affect the residents to the west.

Mr. Randolph clarified that the Certificate of Occupancy was no longer tied to the approval, but that the Special Exception would be granted for a period of six months only, at the end of which time the applicant would come back and prove that all conditions had been met.

Mrs. Smith asked for clarification of the six month period?

Mr. Moore replied that the Certificate of Occupancy would take about three months.

Mr. Randolph replied that it must be very clear that the applicant understood that the granting of this Special Exception granted nothing beyond a six month period of time, because a problem may occur as far as entering into a lease, new construction, and the incurring of financial obligations by the applicant.

Mr. Wyett stated that six months would be the end of February, and that the addition had nothing to do with noise, odor, parking, etc.

Mr. McDonald stated that if there was a problem with the neighbors it must be addressed, and it was not fair to the applicant to put money into the space and then lose it in six months.

Mr. McLendon stated that the applicant should be given a choice of either correcting the problems and coming back, or take the gamble of not being able to use the restaurant.

Mrs. Smith asked what the conditions were that had been put on the motion to approve the expansion of the 600 sq. feet?

Mrs. Pollitt stated the conditions were as follows:

A temporary Special Exception would be granted for six months. The garbage issue would be settled. The five sets of French doors would be kept closed. There would be no doors in the new area. They would return in six months with evidence of Town-serving, in February or March of 1996. There would be no gates at all. There would be no live music, with the exception of a piano. The scrubber filters would be changed once a week in an attempt to deal with the odor problem.

Mr. Moore clarified that a Town-serving status for the present time must be submitted next month.

Mr. Broberg asked Mr. Moore if they chose to withdraw their request today would their restraints be only what the current Special Exception said and what the Code Enforcement Board recommended?

Mr. Moore replied that they were obligated to the conditions of Special Exception 14-94, and any additional problems that may occur.

Mr. Broberg said that he had spoken with Mr. Brian House this afternoon and he had reported nothing pending.

Mr. Moore replied that he would have to check on the status of a memorandum to Mr. Walton from his administrative aide.

Mr. Broberg said that a heavy burden was being placed on the applicant for 600 sq. ft., and that they would be operating just as they were.

Mrs. Smith stated that the complaints of residents must be addressed, and an equitable solution must be found.

Mr. Moore commented that he believed that the complaints registered did have validity, and the owner of the restaurant had been very cooperative, however, the problem had been follow-up. He stated that he believed they could address the problems with follow-up of enforcement of provisions. Mr. Moore stated that the initial conditions placed on the Special Exception had been met periodically and sporadically.

Mr. Wyett asked Mr. Moore what action the Town would have to encourage compliance of conditions?

Mr. Moore replied that a case could be filed with the Code Enforcement Board for violation of conditions of a Special Exception. The problem with that was once they would come into compliance, then there would be no case in front of the Code Enforcement Board. In the case of repeated violations, he added that there may be some further recourse regarding the actual Occupational License.

Mr. Wyett expressed concern that the applicant understand the condition of the granting of the expansion of 600 sq. ft., and that they warrant to the Town Council that they will abide by the decision of the Town Council if they are found in violation.

Mrs. Smith asked Mr. Broberg if his clients were able to set up a procedure to monitor the problems that had been discussed?

Mr. Broberg replied affirmatively. He added that compliance of the trash was not a problem. The only problem he identified was the six-month stipulation.

Mr. Moore strongly suggested that the six-month period be from the date of the Certificate of Occupancy for that additional 600 sq. ft.

Ms. Larkey accepted that stipulation.

On roll call the motion carried unanimously.

Mrs. Smith then repeated the second part of the Special Exception request, which was to permit outdoor seating in the fountain area of the building housing Jo's Restaurant, pursuant to 6.61 of the Zoning Ordinance.

Mr. McDonald made a motion to deny this request. Seconded by Mr. Wyett.

Mr. Broberg stated that his clients would like to withdraw that portion of their request at this time.

Mr. Moore stated that if withdrawal was permitted, there would be no time frame before the applicant could re-apply for the request; otherwise they would be precluded for one year.

Mrs. Smith stated that the withdrawal was in order.

Mr. McDonald then withdrew his motion.

Mr. Shaw made a motion to allow the applicant to withdraw that portion of their request dealing with the outdoor seating. Seconded by Mr. McLendon.

Ms. Larkey stated that in the evening when the restaurant is cleaned, the kitchen door must be opened to hose out and to clean, and she inquired as to how this problem could be addressed.

Mrs. Smith asked if there could be some sort of hood or cover over the door, with a buffer on top of the wall so that the noise would be reflected to the west?

Mrs. Smith commented that she did not understand why the door had to be opened to wash the floor, and that she thought a solution could be reached.

On roll call the motion carried unanimously.

8. Special Exception No. 18-95 with Variance - 125 Worth Avenue Ltd. Partnership, 125 Worth Avenue; to allow a financial institution to occupy 2,982 sq.ft. thereby exceeding the 2,000 sq.ft. maximum allowed, and to allow a variance of 5 additionally required off-street parking spaces. C-WA District -

Ms. Kim Anderson, a land planner with the law firm of Gunster, Yoakley, et al, representing Bradford Greer, addressed the Town Council, stating that the utilization of approximately 2,900 sq. ft. was being requested at 125 Worth Avenue for the use of a trust company. She noted that the criteria for Special Exceptions and Variances had been addressed in the application, and expansion was included in an affidavit to be put into the record.

Mrs. Smith asked Ms. Anderson to read some of the criteria for the record.

Ms. Anderson stated that she would address the hardship issue. The 125 Worth Avenue building was constructed prior to the present Town parking requirements, and the building met the Code at the time of its construction. Until the 1980s financial institutions were permitted uses within the district. The building complex was constructed with a reasonable investment-backed expectation that financial institutions were allowable uses. There had been financial institutions there in the past, and the proposal was to do that once again.

Mr. Moore stated that this was a new business and the Town-serving aspect must be addressed. The request was for beyond 2,000 sq. ft., and was for a second floor. Mr. Moore noted that Mr. Greer had a good record on following through with agreements with the Town in several other ventures. He added that he understood that there would be a certain number of assigned parking spaces.

Ms. Anderson stated that there were 6, with 36 unassigned spaces.

Mr. Moore continued that the Town-serving issue must be addressed.

Mr. Bradford Greer addressed the Town Council, stating that the issue of Town-serving was important, and was really the reason the trust company was being created. He stated that the office would be staffed with Town residents, as well as directors and investors living in the Town. Services would be marketed exclusively for the island of Palm Beach, with full expectation of 75% Town residents using the services of the institution.

Mr. Moore asked if Mr. Greer would give a copy of the application he filed with the Secretary of State to the Town?

Mr. Greer said that he would gladly furnish a copy of the application as soon as it was finished and filed.

Mr. Moore asked Mr. Greer if he understood that if he was found to be non Town-serving after one year he would have to vacate the additional 900 sq. ft. that was over and above the permitted 2,000 sq.ft.?

Mr. Greer answered affirmatively.

Mrs. Smith asked Mr. Greer the size of his staff?

Mr. Greer responded five.

Mrs. Smith asked Mr. Greer how members there were on the Board?

Mr. Greer responded there would be five members on the Board initially.

Mr. Wyett made a motion for approval. Seconded by Mr. McDonald.

Mr. Shaw asked if 2,000 sq. ft. would be acceptable?

Mr. Greer replied that the reason for requesting 2,900 sq. ft. was to create an office for each professional, an adequate reception area for upscale clientele, a small lounge for the staff, a mail/fax/copy/storage room, a large board room, and a small conference room.

On roll call the motion carried unanimously.

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

Attorney James Wearn, representing the Poinciana Club, Inc., addressed the Town Council, stating that this Special Exception had been submitted pursuant to a hand-delivered cover letter of June 30, 1995, together with the appropriate applications concerning the beverage and occupational licenses, for the continuation of the Club Town Licenses 17290 and 17300. He added that the Agenda description did not clearly describe the limited subject and limited nature of this application. The application was an application for a corporate ownership change, Section 6.40L, Special Exception. This was an application dealing only with one of the eighteen criteria usually applied to a Special Exception Application under Zoning Ordinance Section 6.40, not involving any of the other seventeen criteria. The application only involved the criteria whereby the applicant submits evidence that not less than 50% of the customers of the proposed use will be Town persons.

Mr. Wearn continued that the Poinciana Club had been founded well over 20 years ago, and had been at the same location continuously. Approximately one year ago, under the control of Peter Beck, renovation plans were finalized, which were submitted to the Town, along with the annual Town-serving certification. Since then, the renovation had been progressing, with expectation of completion in a few months.

Mr. Wearn stated that the Club was appearing to certify and submit evidence that not less than 50% of its customers were Town-serving. Mr. Wearn introduced Mrs. Ann Downey, the Club's interior designer.

Mrs. Downey addressed the Town Council, stating that the kitchen and service facilities had been too small in the Club, and had been redesigned to meet the needs of the Club members, and that this was a Club of the '90s, first by being an open membership. The Club was Town-serving, and was a private club. The Club would be informal and tropical, and family oriented. It would be opened year round, with a calendar of events. She added that the Club had been so well-received by everyone that people cannot wait to use it.

Mr. Wearn stated that there were seventeen other Special Exception criteria that did not apply in this case, and that any application of them as a criteria for this limited subject Special Exception would be misplaced and would appear to substantially adversely affect the Club, and would appear to unfairly benefit public restaurants established after the Club. Mr. Wearn stated that the other criteria for general Special Exceptions do not apply, and he proceeded to discuss the inapplicable special criteria, including traffic and parking, fire access, hours of operation, and membership number. Mr.

Wearn began a review of all of the Special Exceptions that had been granted in 1995, and presented them to Mrs. Pollitt for filing. He stated that the essence of the point was that all of them involving Standard L, involved a question merely of certification of the percent Town-serving.

Mr. Wearn then quoted from the limited subject Special Exception application: "The Town of Palm Beach has required new occupational licensure on this corporation ownership change such that footnote three for the district under the Schedule of Use Regulations of the Zoning Ordinance is applicable, thereby triggering the necessity for the usual Town-serving proof or condition of Town Council approval prior to reinstatement and issuance of the Poinciana Club Occupational License." He continued that not less than 50% of the customers of the use were Town persons, and evidence of same would be submitted to fulfill Section 6.40L. Therefore, consistent with the last submission of the Club and other submissions to fulfill the Special Exception criteria L, Mr. Wearn reported that the Club was hereby submitting such evidence in the form of a certification from a certified public accountant. Mr. Wearn presented that to the Town Clerk for filing, together with the last filing for issuance of the construction permits to the Poinciana Club for the renovations.

Mr. Moore stated that Mr. Wearn had correctly identified footnote 3 in the Ordinance, which referred to the change of ownership for any business that had been granted a Special Exception subsequent to the 1980 provision that went into the Zoning Ordinance. He continued that in this particular case the Special Exception granted had been May 10, 1994, and now the issue was for a change of ownership. Mr. Moore stated that Town Staff had reviewed the application and had concerns about more traffic being generated by the Club, as well as the emergency egress, traffic concerns on Coconut Row by ARCOM, and the Town Manager's office as well had raised issues. Mr. Moore continued that the evidence Mr. Wearn is required to produce for the Town Council is supposed to be satisfactory to the Town Council that the Club is Town-serving.

Mrs. Smith asked Mr. Wearn if he had remarked that it was not the intent to serve lunch on a daily basis when he had come before the Town Council in 1994?

Mr. Wearn responded that he had not said that.

Mrs. Smith said that was what was in the minutes. She continued that she knew there was a concern of the Town Council regarding lunch on the Wednesday Matinee Days at the Playhouse.

Mr. Wearn responded that he would like to stand on the application that was made for the Special Exception for outdoor seating and also the extract of the minutes of that meeting, which he placed on record. He stated that he believed the proper characterization of his discussion of the intensity of use of the Club could be found in those minutes. He commented that he considered the question of luncheons not appropriate for the question of the change of ownership, however, he advised that Mr. Beck intended to continue the voluntary policy not to have luncheon at the Poinciana Club on the days when there was a matinee.

Mr. Wyett asked if the 330 seats included the bar area, the card room area, and TV areas?

Mr. Moore replied that it was 330 seats total, meaning bar, restaurant, or any type of seating.

Mr. Wyett expressed his concern with the matinee, as well as the traffic that would be created at lunch time. He asked if the Club would agree either to limit the number of seats on Monday through Friday, or to assure the Town Council that there would be no private functions at lunchtime Monday through Friday prior to 6 P.M.

Mr. Wearn replied that the subject of parking and traffic, and therefore a restriction on luncheons was considered by the applicant inappropriate for this application, which was very limited. Mr. Wearn stated that he did not have any authority, and could not consider the request.

Mr. Randolph stated that Mr. Moore had covered the history, and indeed the present application did relate to 6.40L, and the Town Council being satisfied that with the change of ownership the operation continued to be Town-serving. He added that the issue had been raised as to other considerations under 6.40, and that it was correct in regard to the present application, and that the only reason that the other issues came into play was because there was a Special Exception granted approximately a year ago, where apparently representations were made as to how the Club was going to be operated, and that was how those points would come into play, based upon the previous application and whether or not the Club was indeed living up to those conditions that were imposed previously. He noted that as to the present application the concern was with 6.40L.

Mrs. Smith stated that when people have questions and concerns, as residents do, it would be good to give them a degree of comfort that the Club would be as wonderful as everyone believes, and that it would not create a problem, and she asked Mr. Wearn if he had anything to say to assure the public.

Mr. Wearn stated that it was rather obvious that for the Club to remain Town-serving, it was going to have to be Town-serving and a neighbor to other neighbors in the Town for it to continue to be successful. He explained that the requirements of supply and demand and success in meeting the demand for Town-serving were very important to the success of the Club.

Attorney Robert Deziel, representing a few tenants in the Royal Poinciana Plaza, addressed the Town Council, stating that his comments were limited to one area, and before he could address them he had some questions for Mr. Moore.

Mr. Deziel asked Mr. Moore if he knew the intent behind the drafting of Schedule B, sub-paragraph 3? He added that he believed at the last Town Council hearing, and at the present meeting there had been a misinterpretation of this provision, and he would like to bring in Mr. Wearn's representations at that prior Town Council meeting. He explained that Mr. Wearn had said that he would like to rely upon the application, however, Mr. Deziel said that application had been amended by some verbal comments.

Mr. Randolph stated that the reason for the provision was because the granting of a Special Exception took into account all of the provisions of 6.40. It had been determined that if all of those things were important to the Town Council at the time of granting a Special Exception, then if the ownership changes they ought to have an opportunity to revisit the matter to make a determination as to whether the change in ownership may cause the property to no longer be Town-serving. Mr. Randolph used the example of an exclusive shoe store on Worth Avenue that had been Town-serving according to evidence, and another owner took over, selling a different brand of shoes. It had been determined that the Town Council should have the ability to revisit the issue in order to make a determination as to whether the change of ownership would cause the property no longer to be Town serving.

Mr. Deziel stated that close review of Sub-paragraph 3 was necessary. Mr. Deziel stated that this change in ownership took place long ago. He stated that he believed the intent of the provision was that the Town Council wanted to know if a given space over 2,000 sq. ft., after 1980, could accommodate a previous use, when considering all of the 6.40L elements. He stated that he did not believe the present application had received the proper review.

Mr. Deziel stated that according to the words of Mr. Wearn in the minutes, he advised that there was no change in the social or dining area as it was being relocated; there was no change in the seating or parking, nor any intensity of use. Mr. Deziel stated that the intensity of the use would skyrocket. He stated that he did not see anywhere in the minutes where the impact of Mr. Wearn's application requests were ever considered.

Mr. Randolph stated it seemed to him that what Mr. Deziel was saying was that under footnote 3, the Special Exception granted in 1994 was not the kind of Special Exception considered after 1980. If that argument was used, it would actually be against footnote 3, because if there had been no Special Exception considered after 1980, footnote 3 would not even apply, and Mr. Wearn would not have to be present for a change of ownership. The reason for drafting that portion of the Ordinance was to grandfather in everyone existing before 1980, but in instances where a Special Exception had been considered after 1980 and all of the criteria had been reviewed, it would be necessary to come before the Town Council for a change of ownership.

Mr. Moore stated that the intent of footnote 3 was to see what type of intensity the one shoe store might have as a new shoe store versus the old shoe store. In the debates and discussions it had been limited to whether or not the new store would be Town-serving, so the Town Council could inquire as to the type of operation and whether or not they intended to be Town-serving. Mr. Moore stated that Mr. Wearn had narrowed it to the way he would like to see it interpreted, but he believed there was room for the question to be addressed.

Mr. Moore continued that what was taking place was an argument about the definition of Town-serving, and that he thought Mr. Wearn was present only to address the Town-serving aspect. Mr. Moore added that he believed that if the intensity of use was going to change it could be the subject for discussion, however, staff comments related to the Town-serving status.

Mrs. Smith stated that one of the points clarified here tonight was that Mr. Beck was not the owner in May of 1994, and there is a new owner now, and there will be an additional intensity of use in reference to the 1994 minutes. Mrs. Smith stated that it helps the public to know how the Club will be used and that is what the Town Council is sitting here to determine.

Mr. Deziel stated that his clients' concerns were primarily with the parking, and how the change in the intensity of use will affect the tenants in the Plaza. He added that his clients did not believe that they have had accurate and complete information as to exactly what was happening. Mr. Deziel asked Mr. Moore what the distinction was as to who the owner was, as it did not matter who was being represented, but that the applicant had made a representation that did not appear to be consistent with what was being said today regarding the proposed use.

Mrs. Smith asked Mr. Moore the appropriate time to discuss the parking in Royal Poinciana Plaza?

Mr. Moore responded that the owner of the Plaza, Mr. Spiegel had discussed this with the Building Department, and had put together a concept of redesign of the existing lot to increase the amount of valet spaces available. Mr. Spiegel was aware that the design would require Council approval.

Mrs. Smith commented that had Mr. Spiegel filed this in a more timely fashion, it would have alleviated the concerns of Mr. Deziel's clients.

Mr. Wearn asked who Mr. Deziel's clients were?

Mr. Deziel replied that they were George Dempsey, and Edward from Edwards Salon.

Mr. Moore stated that he had told Mr. Spiegel that staff would be very supportive of any plan that was going to be

within reason and acceptable to the Town's standards to improve the parking at the Plaza, and apparently tenants had put additional pressure on him to adopt it.

Mr. Wearn stated that his point was that on this change of ownership, the new owner should not be visited with this problem, which was apparently a problem that had grown for some time.

Mrs. Smith stated that the Club was something that many of the residents of the Town were looking forward to joining, and if there were parking problems they would be put to rest, and the Town Council could alleviate the concerns. The parking would be Mr. Beck's problem, and this was merely a public dialogue.

Mayor Ilyinsky stated that if Mr. Wearn would be a little more candid and tell the Town Council that there would not be an enormous increase of intensity in the use of the eating facilities everyone would feel more comfortable.

Mr. Wearn stated that there were 330 seats and it was a Club, and that is the intensity of use that was applicable, and the number of seats, and the supply and demand, and what the Town-serving people wish answered the question.

Mr. Wyett stated that he must rely upon the May 10, 1994 Council Minutes, and that Town Council did its work in asking the proper questions, and Mr. Wearn's response was that there was no change in the social and dining area as it was being relocated; there was no increase in the intensity of use, and there was no change in the parking. Mr. Wyett noted that, by innuendo, the Town Council had now been led to believe that there would be an intensity of use, whereas in the last section, when Mrs. Smith asked if lunch would be served on a daily basis, Mr. Wearn had responded that it was not a subject of consideration at this time. Mrs. Smith had recalled that the theater had to come before the Town Council once per year to renew their authorization to have matinees, and because of the parking problem in the area the serving of lunches in the Club on a daily basis it would become one of the main dining areas in the neighborhood. Mr. Wyett stated that the change of ownership and the intensity of use opened matters up for this Town Council to follow through and enforce the concerns of the previous Town Council. Mr. Wyett told Mr. Wearn that unless he was prepared to address that subject at this time, he would make the motion that the matter be deferred until next month.

Mr. McDonald seconded the motion.

Mrs. Downey stated that she did not think that there would be anything more Town-serving than this Club, and that there were still the same number of seats as before, and that reservations must be called in. She added that Mr. Beck had very nicely said that he would not have the lunches when the Theater held matinees.

Mr. Wyett stated that the Town Council was very concerned that there would be no parking spaces when people did make reservations at the Club, or Dempsey's, or TooJays.

Mr. Moore stated that in reference to Mr. Wearn's presentation on May 10, 1994, he made it clear that he represented, not Mr. Beck at that time, but the estate of Mr. Holder. Mr. Moore added that there was now a new owner...

Mr. Wearn interrupted, saying that Mr. Moore was not accurate, and that he had represented that he was representing the Poinciana Club, Inc., whose president was Albin Holder.

Mr. Moore said that it was clear to the staff and elected officials at that time that the applicant was the successor of the late Albin Holder. Mr. Moore noted that at that time Mr. Wearn represented that the Poinciana Club would have no changes, and the Town Council relied on that information in order to pass the Special Exception. Now, Mr. Moore explained there was a new owner, and Item L was triggered, and Mr. Wearn is back representing the same corporation, but with a new owner, and the operation would be different than what had been proposed in the Special Exception in May of 1994. Mr. Moore stated that he felt it was a legitimate request of the Town Council to ask whether or not the intensity of use was going to change.

Mr. Shaw stated that the fact was that this application had come before the Town Council three or four times, and today the issue was 6.40L, a change of ownership. Mr. Shaw commented that the same question was always asked--what was the purpose and intent of the Club? Mr. Shaw remarked that he did not question the Town-serving aspect, however, the issue was that the presentation made in 1994 was that the Poinciana Club, as understood by the Town Council, was going to be a seasonal club, and not year round. In addition, it would have limited luncheons, and that was the basis under which the Club would operate.

Mr. Wearn stated that the application for a Special Exception addressed each and every criteria of a special exception, and had received approval in May of 1994. He said that he would read from the transcript of the Town Council meeting of May 10, 1994.

Mrs. Smith asked why there was no answer to the question of the use increasing, and if there would be lunch every day except Wednesday, and would the Poinciana Club be a seasonal club?

Mr. Wearn stated that he thought he had already answered that, and that he was trying to answer it again by...

Mr. Wearn then read from the transcript:

"Councilwoman Smith: I have one more question. Have you had any input as to whether or not, or has any decision been made as to whether or not you'll be expanding and serving lunch every day, which presently is not being done?

Mr. Wearn: It's not a subject, to my knowledge, for consideration for this application.

Councilwoman Smith: The reason that I thought of it is that when the Playhouse has their matinees they have to come before the Council for special approval because of the parking problems there. If the Poinciana Club is going to be upgraded and becomes one of the main dining facilities in the area, what will you do for the parking on a daily basis, it's very crowded over there.

Mr. Wearn: All I can comment in response is that obviously the patrons, as this is upgraded and as it becomes more attractive, as we would hope it would, then they would demand better handling of those questions, and quite obviously I think they would be, by the simple nature of the Club desiring to serve its members."

Mrs. Smith stated that was the same thing that was being heard today.

Mr. Wearn stated that he was beginning to point out the number of Special Exceptions that had been considered on a change of ownership, and the last one that involved this specifically, at the Poinciana Plaza, was Special Exception 4-95 Je Me Souvien, Inc. Au Bar, change of ownership where solely and only on demonstrating the Town-persons more than 50% was the basis for the approval.

Mr. Wyett stated that there was no change in method of operation there, and it was not apropos to bring it up at this time.

On roll call the motion carried unanimously.

XIV. ANY OTHER MATTERS -

There were none.

XV. ADJOURNMENT

The meeting was adjourned at 9:15 P.M.

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Mary A. Pollitt
Town Clerk