MINUTES OF THE TOWN COUNCIL MEETING HELD ON JULY 12, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL - The July 12, 1994 Town Council meeting was called to order by President Wiener in the Town Hall Council Chambers at 9:30 AM. On roll call, the Elected Officials found to be in attendance were: Mayor Ilyinsky, President Wiener, President Pro Tem Weinberg, Councilwomen Smith and Royal and Councilman Shaw. Also attending were Town Manager Doney, Town Attorney Randolph, Mr. Elwell, Mr. Jakubiak, Mrs. Peters, Mr. Moore, Mr. Boggs, Chief Elmore, Chief Terlizzese, Mr. Dusey, Mr. Bowser, Mrs. Crozier, Mrs. Kelly and Mr. Brown.

Invocation

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

Comments of the Mayor

III. COMMENTS OF THE MAYOR - Mayor Ilyinsky indicated he will be giving his comments throughout the meeting.

Approval of Agenda

IV. APPROVAL OF AGENDA - Mr. Doney requested Item X.A.1, Res. No. 36-94 be deferred until the 9-9-94 Town Council Meeting; Mr. Moore requested XIII.C.1, Site Plan review with Zoning Variance No. 56-93 and XIII.C.3, Variance 25-94 Cathleen McFarlane and XIII.C.4, Variance No. 26-94 Stephen Myers be deferred until the 8-9-94 Town Council Meeting; Mrs. Peters requested Item VI. A.1, Charitable Solicitation Permit for American Cancer Society be deferred until the 8-9-94 Town Council Meeting; Mr. Shaw suggested there be a time certain set for the discussion on the Phipp's Estate and he suggested it be heard as the first item after lunch at 1:30 PM and a motion was made by Mr. Shaw to approve the Agenda as amended. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

> **NOTE:** Items listed on the "APPROVED AGENDA" will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that certain items be deleted from same and be individually considered.

Approved Agenda

APPROVED AGENDA (ITEMS V. THROUGH VI.) - Motion was made by Mrs. Smith to approve the Approved Agenda as amended. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

V. APPROVAL OF MINUTES OF APRIL 12, 1994

Licenses & Permits

VI. LICENSES AND PERMITS

A. Charitable Solicitations

Charitable Solicitations

1. American Cancer Society; No. 19-95
2. United Jewish Appeal, Inc.; No. 49-95
3. Garden Club of Palm Beach; No. 123-95
4. Paracare Association of Palm Beach, Inc.; No. 143-95
5. Gulf Stream Council, Boy Scouts of America; No. 304-95
6. Adam Walsh Children's Fund; No. 314-95
7. Colonial Dames of America; No. 316-95
8. Growing Together, Inc.; No. 339-95

Regular Agenda

REGULAR AGENDA

VII. PUBLIC HEARING

Res. 31-94

A. Landmark Designation for 301 Australian Avenue - Consideration of Resolution No. 31-94 - Deferred from June Meeting - Mrs. Peters gave the oath to all those who would be testifying on this matter. Mr. Moore recalled last month, there was a presentation made and the portion of the public hearing was reached where there was a motion to accept the Designation Report and they were under the section for public comments. Attorney J Barry Curtin addressed the Council noting there was a legal problem with regards to notification and this matter was deferred and the Building Department sent out 128 notices to the list of property owners supplied by Mr. Curtin and they received 99 cards indicating delivery had been made. He reported it his recommendation they move forward on this designation. He asked Attorney Randolph if this should be postponed as 20 cards have not been received which indicate that the notice has been received.

Attorney Randolph reported the notice has been sent and that is all that is required and the response of the return of the green cards has no relevance. Mr. Moore suggested they move forward with the remainder of the hearing.

Mrs. Wiener asked if the Town's duty has been fulfilled to which Mr. Randolph responded affirmatively and suggesting the hearing go forward today, and the other point is the Council is required to act within ninety days of the date the property was recommended for designation by the Landmarks Commission.

Attorney Curtin addressed the Council indicating he represented the receiver for the Brazilian Court Hotel. He advised there was a misdescription in the deed and this concerned approximately 120 of the units that were conveyed. He has gone back to the receiver and the RTC to try and resolve this problem, but unfortunately the title company has not come up with a resolution. He suggested the proposed solution would be to appear before the Court through the receiver, and the RTC has supported it, however the question is whether or not the title company will write their policy over and they will go before the Court for the declaratory judgment. He recalled the settlement documents which they settled with the RTC states unit owners will convey all of their property interests and one of the interests was the commercial interest, but the deed did not have that provision in it about the commercial property as it was prepared by the RTC. He advised the receiver believes if this property is landmarked, it would be better for them due to the FEMA restrictions and the fact that if the property were hit by a hurricane, it could not be reconstructed without elevating the entire structure about 3.5 feet.

Mrs. Smith asked who was the receiver and Mr. Curtin responded the court appointed receiver is Mr. Kent Miller, whom he represents. Mr. Moore advised for the record the RTC which holds the units does support the landmarking of the property.

Mr. Moore recalled last month, Mr. Frank reported the Landmarks Commission found the Brazilian Court Hotel exemplified Criteria A, C and D, which were read last month.

Mrs. Jane Day of Atlantica Research reported this hotel was designed in 1925 by Rosario Candella, a New York architect, and it opened on New Year's Day in 1926, noting it is a Mediterranean Revival style building, constructed of hollow clay tile with rusticated stucco on the exterior. She noted it has an interior courtyard with archways typical of the style. She advised in 1936 an addition was built to the hotel by architects Treanor and Fatio, and that too has a second courtyard and a new entranceway with a new fountain installed in the courtyard and other features of the Mediterranean Revival style, and is highly recommended for landmarking as it is an excellent example of what was going on in the 1920's and 1930's and work of two master architects. Res. 31-94

Mr. Curtin asked to put several items on the record and stated on behalf of the receiver the Brazilian Court represents much of what is different and distinctive about the Town of Palm Beach, and preserving its architecture is a measure of preserving the cultural link with the past. He believed it was important and pointed out the hotel is a nonconforming use and this brings about a series of operational problems. He felt the economic viability of the Hotel and maintaining that viability is equally important as the architectural and preservation issues. He pointed out under Section 8.10 of the Code concerning nonconforming uses, there is a provision that if the hotel were destroyed, it would be permitted to be rebuilt, however, they could not occupy it for this nonconforming use and he requested the Town Council take that into consideration that that section of the Code should be addressed to which the Town staff does agree.

He advised there is a variance on this subject to be heard later in the agenda and he encouraged the Council to continue extending the PUD Ordinance which currently relates to the R-B and it be extended to R-C, which would then include properties such as the Brazilian Court and other hotel properties in the Town, as the problems relate to a nonconforming use in the R-C District and there are other properties in the Town of a similar nature and in allowing the placing of the PUD overlay onto this property, which would allow special conditions to allow properties such as the Brazilian Court Hotel, to function and operate and have conditions imposed which would be governed by the Town Council rather than the proceedings they have been required to go through to date.

Mr. Randolph recalled there is an item on the next year's zoning calendar to allow use as well as structures to be grandfathered and the other matter is a variance which is on the agenda for later today, but the landmarking is not tied to these particular matters.

Attorney Randolph read the Resolution No. 31-94:

> A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARK PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER XVI ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84 ALSO KNOWN AS CHAPTER XVI ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Weinberg noted that inasmuch as the property meets the criteria found in the Landmarks Ordinance, A, C and D, he moved for the adoption of Res. No. 31-94. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

VIII. COMMITTEE REPORT — Committee Report

A. Finance and Taxation Committee Meeting of July 6, 1994 — Finance & Taxation Comm.

REPORT OF THE FINANCE & TAXATION COMMITTEE ON MEETING HELD ON

JULY 6, 1994

I. CALL TO ORDER AND ROLL CALL: The Finance & Taxation Committee meeting was called to order by Chairperson Wiener at 10:07 AM in the Town Hall Council Chambers. On roll call, Chairperson Wiener and Committee Member Smith were found to be in attendance. Other Elected Officials attending were Mayor Ilyinsky, Councilmen Weinberg and Shaw. Also attending were Mr. Doney, Mrs. Crozier, Mrs. Kelly, Mrs. Peters, Mr. Bitzer, Chief Elmore, Assistant Chief Koelz, Chief Terlizzese, Major Croft, Mr. Rufer, Mr. Crouse, Mr. Jakubiak, Mr. Moore, Mr. Dusey and Mr. Wilson. — Roll Call

II. APPROVAL OF AGENDA: Agenda was approved as printed. — Appr. of Agenda

III. FY95 PROPOSED BUDGETS: — FY95 Proposed Budgets

A. Consideration of Various Budget Issues in Furtherance of June 1 and 2, 1994 Finance & Taxation Committee Meetings.

The Committee heard the comments of Mr. Doney who summarized the Exhibits and his memorandum (with enclosures) dated July 5, 1994 to the Committee. Among various other comments and highlights, Mr. Doney noted that the "tentative" operating millage rate recommended today is partly due to the following expanded municipal services for FY95:

1. Beach cleaning in the amount of $39,341.
2. Annual cost for operation and maintenance of the Sand Transfer Plant in the amount of $162,000.

The Committee heard the comments of all of the Elected Officials in attendance, as well as Mrs. Crozier, and hearing the assurance of Mr. Doney that staff will make every effort to have further reductions of proposed expenditures for FY95 and increases in non-ad valorem revenues. After discussion by the Committee, IT IS THE COMMITTEE'S RECOMMENDATION THAT A "TENTATIVE" OPERATING MILLAGE OF 4.65 MILLS BE SET FOR THE FY95 GENERAL FUND BUDGET, WITH THE ANTICIPATION THAT

THE OPERATING MILLAGE FIGURE WILL BE LOWER WHEN FINALLY ADOPTED. Additionally, the recommended Debt Service Millage for FY94 is .5791 mills for a total proposed millage (operating plus debt service) of 5.2291 mills or $5.23 per $1,000 of taxable value. This 5.2291 mills is approximately .48% higher than the FY94 Total Millage of 5.2039 mills.

Any Other Matters

IV. ANY OTHER MATTERS:

Inclusion of donations in Calendar

A. The COMMITTEE RECOMMENDS THAT AN ARTICLE ON POTENTIAL LIST OF DONATIONS TO THE TOWN AND PREVIOUS MAJOR DONATIONS RECEIVED BY THE TOWN BE INCLUDED IN THE 1995 CALENDAR/ANNUAL REPORT.

4th of July

B. The COMMITTEE, AFTER HEARING THE COMMENTS OF MR. WEINBERG ON FUTURE FOURTH OF JULY FESTIVITIES, RECOMMENDS THAT THE TOWN COUNCIL TAKE THE LEAD TO INITIATE AN EVENT BY ASKING FOR DONATIONS FROM PRIVATE SOURCES FOR A FOURTH OF JULY EVENT IN 1995.

Budget Reports-Donations

C. THE COMMITTEE RECOMMENDED THAT ON BUDGET REPORTS WITH REGARDS TO DONATIONS, IF THERE HAS BEEN NOTHING DONATED FOR THREE YEARS, THAT THESE LINE ITEMS BE ELIMINATED.

Public Hearing re; FY95 budget

D. After being informed by Mr. Doney that there is a conflict with the County Commission's budget hearing, with regards to the first public budget hearing tentatively scheduled by the Town Council for September 8, 1994, and since the County has preference on choosing these budget hearing dates per State Law, IT IS THE COMMITTEE'S RECOMMENDATION THAT THE FIRST PUBLIC HEARING FOR ADOPTION OF THE FY95 ANNUAL MILLAGE RATES AND BUDGETS BE HELD AT 5:01 PM ON TUESDAY, SEPTEMBER 13, 1994 AND THE SECOND AND FINAL PUBLIC HEARING BE HELD ON TUESDAY, SEPTEMBER 27, 1994 AT 5:01 PM.

E. Mr. Doney reminded all present that on Thursday, August 4, 1994, at 10 AM, there will be a Special Town Council Meeting to adopt the "Tentative" Operating Millage Rate and to announce that the State required first public budget hearing for FY95 will be held on September 13, 1994 at 5:01 PM in the Town Hall Council Chambers.

Adjournment

V. ADJOURNMENT. Meeting was adjourned at 10:55 AM.

signed by Hermine L. Wiener and Lesly S. Smith, Finance & Taxation Committee members.

Budget-FY95

Mrs. Wiener noted it is the recommendation of the Committee that a tentative operating millage rate of 4.65 mills be set for the FY95 General Fund Budget with the anticipation that the operating millage figure will be lower when finally adopted. Mrs. Smith moved the recommendation for the tentative operating millage rate of 4.65 mills be adopted. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Donations to the Town

Motion was made by Mr. Shaw that the recommendation of the Committee with regards to an article on potential list of donations to the Town and previous major donations received by the Town be included in the 1995 Calendar Annual Report. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

4th of July

Motion was made by Mrs. Smith that the Committee's recommendation on future Fourth of July festivities and the recommendation is that the Town Council take the lead to initiate an event by asking for donations from private sources for the Fourth of July Event in 1995. Mr. Weinberg seconded the motion and asked if he could expound on the recommendation that if such funds are not forthcoming, the Town itself shall be responsible for same. Mrs. Smith recalled the Town Council is going to take the lead and they will get the money for it someway or another and she would be happy to give the first check for this celebration. On roll call, the motion carried unanimously.

Donations & Budget Reports

Mrs. Smith moved the Committee recommendation on budget reports concerning donations, if there has been nothing donated for three years, that these line items in the budget be eliminated. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Weinberg moved the Committee's recommendation that the public hearings on the budget be held at 5:01 PM be held on September 13, and September 27, 1994. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Old Business

IX. OLD BUSINESS

A. Ordinance - Second Reading

Ord. 11-94

1. Ordinance No. 11-94 - Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach (See Item X.A.1.) - Town Attorney Randolph read the Ordinance No. 11-94 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER 19 OF THE TOWN'S CODE RELATING TO STREETS AND SIDEWALKS, SO AS TO PROVIDE A NEW ARTICLE RELATING TO WORK WITHIN THE ROAD RIGHTS-OF-WAYS AND EASEMENTS; PROVIDING FOR THE CREATION OF A MANUAL ENTITLED "STANDARDS APPLICABLE TO PUBLIC RIGHTS-OF-WAY AND EASEMENTS WITHIN THE TOWN OF PALM BEACH; PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Royal moved for adoption of Ordinance No. 11-94. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Other

B. Other

Potable Water

1. Discussion of Potential Alternative Sources of Potable Water - Update by Town Staff and Town Attorney - Mr. Doney advised the Town Staff have held meetings with representatives of the City of Lake Worth, Riviera Beach and representatives of the County regarding the provision of potable water sources, also there have been meetings with the South Florida Water Management District representatives on the use

of the West Palm Beach Canal, also known as C-51 as a potential source of non potable water for irrigation purposes.

Potable Water

Mr. Dusey addressed the Council identifying they are at the point in the study where there can be preliminary engineering studies to determine the costs of getting water from one or more of the alternative sources into the Town and what improvements that would need to be done on island to make the system work. He believed this could be accomplished without spending too much money and to the point where they will have sufficient information for presentation to the Mayor and Council to discuss how close they are to pricing. He asked for authorization to spend up to $20,000 on this phase of the work and if it is approved, it should come from the Undesignated General Fund budget.

Motion was made by Mr. Shaw that the report of Mr. Dusey be accepted and an amount up to $20,000 be authorized to come from the Undesignated General Fund Balance. Seconded by Mrs. Royal who asked if this was potable water only to which Mr. Dusey responded affirmatively. Mrs. Royal wanted to know if they brought in nonpotable water and that is sixty per cent of the water to be used, would that not cut the costs of potable water? Mr. Dusey stated that there was a preliminary study on the use of the C-51 Canal as a source of nonpotable water and that element has been completed, so there is no reason to pursue that any further at this point in time. Mrs. Royal asked if that including the cost of piping also? Mr. Dusey responded it did up to Southern Blvd. and south to the south town limits, the crossing and the treatment plant and storage. He recalled it didn't site the facility. Mrs. Royal thought they were rough estimates and asked if they would get rough estimates out of this for the potable water to which Mr. Dusey responded affirmatively, indicating that will allow the staff to give equally preliminary figures on the capital costs and operating costs of the water per thousand gallons, to make a determination if they are in the ballpark with West Palm Beach. Mrs. Royal asked if when he was looking at the potable water sources, were they looking at bringing into the Town the same volume of water which they currently are purchasing from the City of West Palm Beach. Mr. Dusey stated he is looking at getting all of the potable water in Town but they are going to get down to the unit costs. He noted potable water has to be supplied first and as an element of that, he thought they would be looking at the C-51 Canal and other sources for nonpotable. Mrs. Royal thought if the amount of potable water necessary could be brought down, she would presume the cost will also come down. Mr. Dusey agreed, noting they would be looking for the total amount of potable water needed and until there is a sure source, he is reluctant to pursue the nonpotable issue. He knows the C-51 canal is an excellent source, however, it may not be feasible during drought conditions. Mrs. Royal felt while they were putting in pipes they should be putting in dual pipes for the both systems as that certainly would be less expensive. Mr. Dusey recalled the C-51 source would be competitive with the West Palm Beach costs and in fact may be a little cheaper, but this C-51 Canal is one piece of a puzzle and it fits somewhere in the total puzzle, but he has to gather up the other pieces to have the total picture to make a determination as to whether or not it is feasible. Mrs. Royal commented it will require a second set of pipes to which Mr. Dusey agreed, noting it has already been costed, but how it fits into the whole picture, he is not sure.

Mrs. Royal noted in the third paragraph of the memo from Mr. Dusey, it states they will obtain the cost of system improvements on island to make the existing distribution system work, and she asked if that was also for a single source of water? Mr. Dusey answered it could be for a single or dual source. Mrs. Royal stated she would like to see it costed out for both single and dual in the next phase? Mr. Dusey responded that was his intent but when he states "dual" he is talking about sources from Lake Worth and Riviera Beach. Mrs. Wiener believed when Mrs. Royal talked about "dual" she was talking about two sets of pipes. Mrs. Wiener thought another thing that was missing is that Mr. Dusey is bringing to the Council's attention that the C-51 Canal is not always available as what happens is the South Florida Water Management District decides when the water can be used and when it cannot be used, as they have their regulations which would have to be followed under particular conditions.

Mrs. Smith understood there were preliminary costs for a non-potable system and the laying of another set of pipes and as part of that cost, has he figured in a storage place for the nonpotable water? Mr. Dusey responded he has figured in the cost of storage, but not necessarily the location of same. Mrs. Smith commented the request for $20,000 is to discover the actual cost of bringing potable water to the Town, and she thought this was a reasonable cost as when they consider what they are looking at in the long run, which will be millions of dollars in a potential bond issue in years to come and she thought they should move ahead of it.

Mrs. Wiener asked Mr. Dusey if he recalled how much money was spent since Day One when they discussed the water systems. Mr. Dusey recalled when they go back several years when they started the negotiations with West Palm Beach and hired the consultants with the studies that were done and the negotiations, it was between four to five hundred thousand dollars. Mr. Doney agreed noting it was broken down into the water supply study and alternatives by Montgomery, the negotiations authorized by the Town Council, and the water conservation issue.

Mrs. Wiener indicated she was not prepared to continue on this road, as she has seen where it has led and there has been a lot of money spent, along with staff time, and she believes it is throwing good money after bad and she will not be in favor of the motion. She thought if they can't get along with certain understandings, they shouldn't be signing long range contracts. She would like to see what happens and live with this for the time being and give West Palm Beach an opportunity to come to the Town and let them know what kind of improvements they would be making in the system and what they are going to do if they want the Town of Palm Beach to be a long range customer. She believed they would continue to be supplied with water as they are supplied now and there is no reason to sign any contracts and she wanted to wait and see what happens.

Mrs. Smith believed the monies previously spent were for negotiations and it did not come to fruition and she questioned the wisdom of spending the money with nothing coming back. She knew it was a previous Council and she thought the authorization of the $20,000 will give the present Council the information that they feel they need to explore how they will end up on this water issue. She didn't want to sit by the telephone and wait for the City of West Palm beach to call.

Mrs. Wiener noted a large part of that money was not for negotiations but was for the various studies.

On roll call, the motion carried 3-2 with Mr. Weinberg and Mrs. Wiener voting against the motion.

Sand Bypassing at the Lake Worth Inlet

2. Sand Bypassing at the Lake Worth Inlet -

a. Consideration of Proposed Interlocal Agreement Regarding Local Co-Sponsorship of a Long Term Sand Bypassing Project. Mr. Doney advised he has sent a memo to the Mayor and Town Council dated July 6, 1994, with the proposed interlocal agreement between the Town of Palm Beach and Palm Beach County for the operation of the sand transfer plant at the Lake Worth Inlet. He noted this does express the intent of the Town and the County to work together and by being local co-sponsors of the Sand Transfer Bypassing Plant at the Lake Worth Inlet. He thought another important aspect is the expressed intent by the parties to ensure the Port of Palm Beach District joins the partnership with costs to be shared equally. He advised the terms of those specific obligations would need to be set forth in a subsequent agreement. He recommended the Town Council authorize the execution of the Inter Local Agreement by Mayor Ilyinsky and the Town Manager be authorized to follow up with any other actions necessary.

Mr. Weinberg noted the memo states that the upgrading of the Plant is considered an interim solution which will eventually be replaced by more modern technology and he asked if a goal has been set for this replacement? Mr. Doney reported they have in a sense that the Lake Worth Inlet Management Plan report should be completed by the end of August and that will be before the Mayor and Town Council, however, both the Plan and the Corps of Engineers Coastal study talk about the long term improved system for sand bypassing, and what is being proposed is an interim measure.

Mr. Weinberg noted another paragraph in that memo relates to the fact that the local sponsorship costs will be equally shared and he asked what efforts have been taken to involve the Port of Palm Beach in this matter? Mr. Doney responded at the staff level through Mr. Murphy previously and at the County Commission level, the Chair has spoken to several of the Port of Palm Beach Commissioners and they have had meetings with both the Port officials and the County Commission regarding the sand transfer bypassing in the Lake Worth Inlet Management Plan and although the Port has not made a commitment, he is hopeful that there will be cooperation as the individual commissioners have expressed an interest.

Mrs. Smith asked why would the Port of Plan Beach want to share 33% if they could get the benefit without putting up any funds? Mrs. Wiener recalled there were some problems several months ago and the Town was ready to go to court on this and it was worked out together and she thought that it was to the Port's interest to participate.

Motion was made by Mr. Shaw to approve the proposed Interlocal Agreement for the long term sand bypass at the Lake Worth Inlet. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Proposed Settlement of Lawsuit - Town of PB v. Palm Beach County

b. Consideration of Proposed Settlement of Lawsuit - Town of Palm Beach v. Palm Beach County. Attorney Randolph advised he will need authorization to settle the pending appeal pursuant to the discussions had with the Council. Mrs. Smith moved authorization be given to the Town Attorney to settle the pending appeal. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

City of West Palm Beach's proposed down-town Master Plan

3. City of West Palm Beach's Proposed Downtown Master Plan - Procedural Confirmation of Town's Objection Filed with the Interlocal Plan Amendment Review Committee - Mr. Doney advised he has sent a memorandum dated July 8 to the Mayor and Council on this subject stating the objections, which were considered by the Interlocal Plan Amendment Review Committee and have been forwarded to the Florida Department of Community Affairs and there is no further action needed by the Town Council, but he thought if the Council agreed with the stated objections to have a motion that they do concur and they should proceed on this matter. Mrs. Wiener noted there was an article in the newspaper over the weekend on this subject, noting the Council is here to protect the Town's interests and investments, wherever they may be. She stated in the article there were pictures depicting the Town's property, which she thought were maintained and kept in total repair at all times, and she did consider the building a blight or an eyesore in the commercial areas of West Palm Beach, and it is incumbent upon staff to advise when they are in a situation when the value of the Town's property could be drastically reduced as a result of downzoning. She felt whatever is done there will be to the own best interests of the City of West Palm Beach, and she was sure there would be other property owners who would be affected by this downzoning, and she underlined that the buildings owned by the Town of Palm Beach are clean, neat and total repair.

Mrs. Smith agreed with the President's statement and concurred that the Town is not a slum landlord in West Palm Beach, and she thought they were attempting to spot zone which decreases the value of the property of the Town, and these are assets of all of the taxpayers of the Town and she thought to say that a building must be five stories when there are surrounding buildings with twenty stories is unacceptable and the Town will object on behalf of all of the people. She believed it all started with the City of West Palm Beach asking the Town to tear down a building and turn it into a park for the people of West Palm Beach and that certainly was not a financial solution with which the Town would agree, unless they wanted to swap some property with the Town and give the Town a place to store water, but other than that it was not acceptable.

Mr. Alexander Beal addressed the Mayor and Council noting the moment there is a limit on a building or an area of land to one story or two stories, as against the possibility under the present zoning to be developed at five, ten or twenty stories, all of this is grounds for eminent domain damages, as it constitutes a taking on the part of the City of West Palm Beach. He encouraged the Council to notify the City of West Palm Beach that they would intend to bring a suit for damages under eminent domain if they proceed with this matter. He felt this property was so separated from the other business areas of the City of West Palm Beach and he thought they should be advised what the Town intends to do.

Mrs. Royal asked where this would go next to which Mr. Doney responded what happens now would be the Florida Department of Community Affairs has to ultimately review the proposed comprehensive land use plan changes and they make a determination. Mrs. Royal believed a number of the objections made by the Town were struck down and wondered if all of the objections would go to the Department of Community Affairs to which Mr. Doney responded affirmatively.

Mrs. Royal moved to confirm the actions taken administratively by Mr. Doney. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

4. Reconsideration of Results of Accounting Review of FCC Form 393 to Establish Basic Tier Rates and Associated Equipment Charges for Comcast Cablevision - Continuation from June Meeting - Mr. Doney noted this is an ongoing issue and due to the time involved with Comcast's response which was received July 9, there has not been adequate time to make an assessment of that response and review for presentation to the Town Council and he recommended that this matter in order to be given proper consideration be deferred until the August 9, 1994 Town Council meeting. Mr. Weinberg so moved. Seconded by Mrs. Royal. On roll call, the motion carried unanimously. Comcast (deferred)

X. NEW BUSINESS — New Business

A. Resolutions

1. Resolution No. 36-94 - Adoption of Standards Applicable to Public Rights-of-Way and Easements Within the Town of Palm Beach (See Item IX.A.1.) - This resolution was deferred. Res. 36-94

2. Resolution No. 38-94 - Amending Recreation Department Fee Schedule Classifications and Rates - Attorney Randolph read the resolution by title: Res. 38-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING RECREATION DEPARTMENT TENNIS AND YOUTH PROGRAM FEES.

Motion was made by Mr. Weinberg to adopt the Resolution. Seconded by Mrs. Royal who asked that the golf fees also be looked at in the Fall. On roll call, the motion carried unanimously.

B. Bid Awards — Bid Awards

1. Sealed Bid No. 94-010 - Reroofing a Portion of Town Hall - Recommend S & S Roofing South, Inc. in the Amount of $31,133 Per Memorandum Dated July 1, 1994 from Mr. Dusey - Consideration of Resolution No. 39-94 - Attorney Randolph read the Resolution No. 39-94 by title: Sealed Bid 94-010 Res. 39-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING A CONTRACT TO S & S ROOFING SOUTH, INC. FOR THE REROOFING OF TOWN HALL OVER PERSONNEL.

Mr. Weinberg moved for adoption of Res. No. 39-94 awarding the contract for reroofing to S & S Roofing South, Inc., in the amount of $31,133. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

2. Sealed Bid No. 94-023 - Seaview Park Tree Planting - Recommend Jenkins Landscape Company in the Amount of $24,000 Per Memorandum Dated July 1, 1994 from Mr. Dusey - Consideration of Resolution No. 40-94 - Attorney Randolph read the Resolution No. 40-94 by title: Sealed Bid 94-023 Res. 40-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING A CONTRACT TO JENKINS LANDSCAPE COMPANY FOR THE SEAVIEW PARK TREE PLANTING.

Motion was made by Mr. Weinberg, seconded by Mrs. Royal to approve Res. No. 40-94 awarding the contract to Jenkins Landscape Co. in the amount of $24,000. On roll call, the motion carried unanimously.

C. Appointment — Appointment

1. Building Board of Adjustments and Appeals - Two Terms to Expire July 1997 - Mr. Shaw noted letters have been received from the two members who now serve on this Board that they are willing to be reappointed and it looked to him that this procedure has been for the Council to reappoint and wondered if they had looked to determine if there were alternates or other members of the community who might wish to serve. Mr. Moore responded on this board they are required to have a certain number of professions represented and the Ordinance reads they should be Town residents, if possible, and if not, anyone they can get to serve on the Board. After further discussion, a motion was made by Mrs. Smith, seconded by Mr. Weinberg to reappoint Mr. John Nora and Mr. Ames Bennett to the Building Board of Adjustments and Appeals. On roll call, the motion carried unanimously. Bldg. Board of Adjustments and Appeals

D. Other — Other

1. Consideration of Recommendation from Auditing Services Selection Team for Independent Auditing Services - Mr. Doney explained there is a recommendation by the Auditing Services Selection Team for Moore, Caler, Donten and Levine to be appointed as Auditors and he would like authorization to proceed with the contract. Independent Auditing Services

Mrs. Smith noted prior to the selection, they designated a point system and points were given for each category and during the presentations, it was determined that two partners of this firm would be doing 75% of the work and 25% would be done by their staff members and the Selection Team felt it was important to have the same two people and the fact that they were partners made a big difference in the selection of this firm. Mrs. Crozier explained the other two firms committed to only ten per cent of their partner time and partner involvement was a factor in the selection of this firm. Mrs. Wiener asked what would happen if it was discovered that this 75% figure of partner involvement was not the case. Mrs. Crozier stated they would have to live up to that commitment as that was an important issue to the team. Mrs. Smith pointed out there is a cancellation clause in the event they do not live up to the terms of the contract. Motion was made by Mr. Weinberg that the recommendation of the Selection Team be adopted to retain the auditing firm of Moore, Caler, Donten & Levine to handle the auditing services for the Town. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Palm Beach Valet Parking Services - use of Phipps Ocean Park

2. Consideration of Request by John P. Kavekos, President, Palm Beach Valet Parking Services, for Use of Phipps Ocean Park on Evening of February 3, 1995 - Attorney Doyle Rogers representing Alfred Taubman who has engaged John P. Kavekos of the Palm Beach Valet Service to handle parking for a seventieth birthday party on the evening of Feb. 3, 1995. Mr. Rogers explained there will be 150 to 200 spaces needed and after a survey of the area, Mr. Kavekos knows it would be difficult to find that many parking spaces and is making the request of the Town that he be allowed to use Phipps Ocean Park for this extra parking. Mr. Doney explained he had written to Mr. Kavekos telling him that this parking at Phipps Ocean Park has always been used on a first come-first serve basis and he was not aware of it being used for the purpose stated and staff could not approve this request, and if it was going to be considered further, it would have to be considered by the Town Council. He stated his concern about the hours of use of the parking lot, as it would be during the evening hours, from 6 PM to 11 PM, and the concern there is there are residential areas to the south. Mr. Rogers pointed out there is a buffer zone there on the north end. Mr. Weinberg noted there was none to the south, however.

Mrs. Smith asked if a request for use of public property such as this has ever been made before to which Mr. Doney responded he does not recall such a request. Mrs. Smith noted this park is usually closed at sundown and noted they wished to rent the parking spaces and asked what they felt was a fair price. Mr. Rogers responded approximately $150 for the evening. Mrs. Smith felt that was not enough and they would be setting a terrible precedent as there is Town property throughout the Town that citizens would request be used for parking and it would have an impact on the neighborhoods. She recalled other people park the cars by valet parking up and down the road so she didn't want to see a precedent set for the use of Town property for a private party, particularly when the park is closed to the public.

Mrs. Royal commented she thought from a security and safety standpoint, it would be much better to have the cars parked at Phipps Park rather than along South Ocean Boulevard. Mr. Rogers explained that was the primary purpose for the request.

Mrs. Wiener noted this is not an unusual number of cars for a large party and asked where they would normally park the cars? Mr. Kavekos responded if they all arrive at the same time, it would be a tough assignment. Mrs. Wiener responded that is a pretty normal occurrence. Mr. Kavekos stated it is tough to get in and out of the house. Mr. Rogers pointed out they would be having off duty policeman to handle the traffic.

Mr. Shaw asked what was the difference between Mr. Taubman's property and Sloan's Curve as there is a vacant lot there, and if they could acquire permission to use that lot, that may be a more expedient way to deal with the traffic and the valet parking. Mr. Kavekos commented this space would not be able to handle all of the cars. Mrs. Wiener stated the Council's concern is making sure they are taking care of the residents of this Town and not establishing a precedent which could cause serious problems down the road.

Mr. Rogers stated he will check on the lot, but wished to point out that safety is a problem too. Mrs. Wiener agreed but knew there are cars which park in that vacant lot.

Mr. Weinberg moved the request be denied. Seconded by Mrs. Smith. On roll call, the motion carried 4-1 with Mrs. Royal voting against the motion to deny.

Proposed Interlocal Agreement with Solid waste Authority re: Solid Waste Disposal

3. Consideration of Proposed Interlocal Agreement with Solid Waste Authority Regarding Solid Waste Disposal - Mr. Doney reported he had a communication from Mr. Don Lockhart, Executive Director of the Solid Waste Authority and the issue of where the solid waste stream exists as disposal is becoming quite an issue since the Supreme Court decision created some uncertainty for the County Solid Waste Authority. He advised they are asking that the Town enter into an Interlocal Agreement with them that the Town will send its' solid waste to the Solid Waste Authority, and there is a provision in the Agreement to address the fact that the Town would have some flexibility regarding the Solid Waste disposal in the future and they have agreed to add a provision allowing termination of the proposed 16 year agreement by providing at least six months notice of the Town's intent to terminate the agreement.

Mr. Doney recommended that the Town Council authorize the Interlocal Agreement be executed by the Mayor and the Town staff follow up with additional actions as set out in his memorandum to the Mayor and Council dated July 7, 1994. Mrs. Royal commented that this can be terminated in the event that Mr. Dusey finds another source which would be better for the Town financially. Mrs. Smith noted they are taxed for this so even if a better financial deal was found, the Town would still have to pay taxes on these services.

Mrs. Smith asked if the amount of the assessment would be decreased as she noted in the letter from the County Commissioner Carol Roberts and the Solid Waste Authority Board members, it states the Board has until September 1, 1994 before the final tax roll is set and can decrease the amount of the assessment from what goes on to the TRIM notice and asked if that has ever happened? Mr. Dusey responded he did not believe so, but he believed it could happen. He stated the assessment proposed for this year is to decrease it slightly.

Sherry Weinschenk, Assistant Director for Recycling at the Solid Waste Authority addressed the Council, indicating the residential rates specifically will not be increased. She stated the flow control issue which they are addressing by signing the Agreement may affect the commercial assessment rates that are being charged at this time, especially if they do not get the assurances from municipalities for the control of the flow of garbage and a certain revenue stream, they would have to maintain the assessment at a higher level for commercial businesses and that is currently on the TRIM notices which have been sent out. Mrs. Wiener asked if there was any discussion about lowering the residential rates? Ms. Weinschenk responded there is always discussion about lowering the rates, however, what is happening is the apportionment of where the solid waste is generated may change the payments made by single family versus the multi family.

Ms. Weinschenk advised if in the event all of the municipalities decide to not sign the Interlocal Agreements, there is a possibility, down the road, there may be an effect on residential, if they can't get a guarantee from the commercial sector.

Mrs. Smith asked if the Town signs this agreement, is she stating if other municipalities do not sign on, the Town will be paying for it to which Ms. Weinschenk responded affirmatively, as this will require a team effort of 37 municipalities to work in good faith together.

Mrs. Smith made a motion that authorization be granted to enter into the Interlocal Agreement with the Solid Waste Authority of Palm Beach County regarding solid waste disposal. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Proposed Interlocal Agreement with Solid Waste Authority for Municipal Recycling & Grant Management

4. Consideration of Proposed Interlocal Agreement with Solid Waste Authority for Municipal Recycling and Grant Management Mr. Dusey explained there are two existing agreements with the Solid Waste Authority, one for recycling which expire a year from now and the other from Grant Management which expires in September. He advised the Solid Waste Authority has come back to the municipalities with a proposed new agreement and some of the features are that they would now start sharing the revenues from the commercial sector for the paper goods and in order to be eligible for that money, this agreement needs to be signed. He advised the downside is with respect to the grants available from the State for which they are eligible at the rate of $9400 per year, the Solid Waste Authority is requesting that for two years the total grant money go to the Solid Waste Authority to help pay for a recycling center in the South County area and that has been in the past, five per cent of the grant money does go to the Solid Waste Authority for administration of the grant itself, which he viewed as a reasonable request.

He noted another provision is that 20% of the grant would go to the County-wide education program of the Solid Waste Authority and that was a sticking point from his perspective, and perhaps the Council has other concerns, but he did not believe that this request was reasonable as he thought the Town needed the money more than the Solid Waste Authority. He recommended the contract be authorized to be executed by the Mayor, striking out the provision for the 20% for the county-wide educational program and provide that agreement to the Authority and see if they wish to execute it on their behalf. Mrs. Royal asked if there would be a decrease in other costs, as long term, she believed recycling should be saving money. Mr. Dusey responded normally they do not use up their allotment at the Solid Waste Authority, so monies are not paid in tipping fees, so anything that is taken out of the waste stream, other than the good that recycling does, doesn't benefit the Town financially to any great degree. He noted that on long term, there would be some benefit.

Mr. Shaw asked as the programs expand, as far as the goods that can be recycled, does he envision there will be needed time and personnel in Palm Beach to collect the goods? Mr. Dusey responded a fair amount of money is now being spent on equipment, as the equipment they now have is not necessarily suited to recycling, but in the manpower area, they are shifting resources.

Mr. Shaw asked if the pick up for recycling a five day a week program to which Mr. Dusey responded it is once a week. Mr. Shaw asked if at this time they don't envision the fact that they may need to revisit a facility more than once a week? Mr. Dusey responded in the wintertime, they may collect some of their multi family residences twice a week.

Ms. Weinschneck addressed the Council asking to review the reasons for the establishment of a new interlocal agreement for municipal recycling and grant management between the Town of Palm Beach and the Solid Waste Authority and to address her concerns regarding the staff recommendation to not execute the Interlocal Agreement in its present form. She addressed the staff's desire to modify Paragraph 15 (f) entitling the Authority to retain only 5% of the annual recycling and education grant for grant administration and not the additional 20% to be set aside to fund a county wide recycling educational program. She noted the change in the Interlocal Agreement was initiated in response to the changing needs of the recycling program. She noted the recycling program in the Town of Palm Beach is highly successful and speaks highly of the commitment of the Public Works staff, especially Mr. Dusey. She stated without the Town's contribution and a similar contribution of most municipalities in the County, Palm Beach County would fall short of the State's 30% goal set to be reached and maintained by Dec. 1994, however, their work is only half done and based on the recommendation by a municipal taskforce, the County must meet a 50% recycling and reduction goal by 1998, or consider a County wide volume base collection program, and while the County looks to the municipalities for assistance in achieving both the 30 and 50 per cent goals, the responsibilities and the consequences for achievements lie with the County or the Solid Waste Authority. She stated in reaching these goals education does play a major role and consequently so does that portion of the grant set aside to fund the county wide recycling educational program. She thought the municipalities contribution of setting aside 20% is an acknowledgement of their responsibility in assisting the County to reach its recycling and production goals. She felt by not contributing to the educational program, the Town would deny its residents and businesses the direct benefit of printed posters and literature and promotional giveaways at approximately 5¢ per residence, desk side waste paper recycling containers at approximately 25¢ per containers; canvas enviro shopping bags at the cost of $2 per resident and direct educational mailings at approximately 15¢ per residence, which totals $1800 which is the Town's twenty per cent educational program grant contribution. She advised the Authority would have to charge the Town's residences and businesses for something which has been free up to now. She commented on the School Education Program which is also funded in part by the grant and the Authority could not deny the Town's access to these educational outlets.

Ms. Weischneck stated the Authority does recognize the budget constraints for local governments and as part of the new Interlocal Agreement has introduced a municipal per ton revenue sharing for the delivery of commercial wastepaper to a SWA designated facility, with a total of 1500 businesses in the Town and a conservative potential recovery of 500 lbs per business per year, this revenue share could total at least $3700 per year in additional revenue for the Town, to be used in whichever way the Town should choose, and this is a feasible funding alternative to retain the 20% recycling and education grant allocation. She requested the Town Council to approve the Interlocal Agreement retaining the 20% for the educational program.

Mr. Dusey addressed the comments of Mrs. Weischneck indicating he still wanted to retain the monies in the Town as he felt the Town deserved it. He advised the literature provided by the County is not used as they don't have curbside programs but they pick up in the backyards, so the literature is not used, and they don't participate in the 20% rate and he isn't sure where the money comes from.

Mrs. Royal asked if the magnets furnished came out of the 20%? Mr. Dusey responded they took the whole grant last year and bought the blue containers and the magnets and the Town took advantage of that. Mrs. Royal wondered if the bags would be used by the members of this community to which Mr. Dusey responded he does not have a particular use for them.

Mrs. Smith noticed the recycling program currently costs the Town approximately $57,000 per year to which Mr. Dusey responded that is the increase for next year. Mrs. Smith asked if the grant monies from the State were $9400 and he asked what if the State decided to increase the grant to for example $100,000, would the Solid Waste Authority take all of that too? Mr. Dusey believed that would be the case. Mrs. Smith agreed they shouldn't go along with it. Mrs. Weischneck reminded the Council that the grant is given to the Counties from the State on a per capita basis and because of the agreement with the municipalities, they would receive a per capita rate for their population.

Mrs. Smith noted they are already taking five per cent and now they want an additional twenty per cent.

Motion was made by Mr. Shaw that the Town Council consider the proposed Interlocal Agreement with the Solid Waste Authority of Palm Beach County, with the provision of the 20% needed for countywide educational program deleted and therefore will not be approved. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Changes to the County's Adopted 2010 Future Land Use Atlas Series

5. Consideration of Comments from the Town Regarding Proposed Changes to the County's Adopted 2010 Future Land Use Atlas Series - Mr. Doney reported the issue is that the County in identifying land use designation in the unincorporated area of Palm Beach County is intended to redesignate the Town's Skees Road Yard Trash Site Property to a residential future land use classification. He stated the Town's intent has been to use this site for yard trash disposal well into the future and he believed it in the Town's best interest that any future potential developers of residential properties which now abut the existing yard trash disposal that a significant planted buffer be planted on their property to totally sightscreen it from the Town's property and the deeds resulting from the subdivision development acknowledge the continuing use of the Town's property as a disposal site. He advised the Town does have perimeter landscaping around its property but it is believed that if there is any future development of the surrounding properties of a residential nature, could after the fact bring criticism of the Town's usage of its property, which well proceeded many of the residential uses.

Mrs. Smith moved that the Town Council authorize a letter be sent over the Town Council President's signature to the Palm Beach County Commission to be read into the record of that meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Voting Delegate for Florida League of Cities 68th Annual Convention

6. Consideration of Voting Delegate for the Florida League of Cities' 68th Annual Convention in Orlando on August 25-27, 1994 - Motion was made by Mrs. Smith to nominate President Pro Tem Weinberg to the voting delegate for the Florida League of Cities Convention, with the alternate being Mayor Paul Ilyinsky. Seconded by Mrs. Royal. Motion carried unanimously on roll call.

Approval of Warrant Registers

XI. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR JUNE 1994 - Motion to approve the Warrant Registers and Funds Expenditures Report made by Mrs. Smith, seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Communications from Citizens

XII. COMMUNICATIONS FROM CITIZENS -

Landscaping Trash

A. John Matich addressed the Council wishing to discuss yard trash, noting that every Friday morning the yard trash is picked up at the condominium next to his in the south end of Town, and last month he noticed an enormous amount of trash, and after he played 18 holes of golf and had lunch and went past this area, the trucks were still there loading up the trash. He thought it was about time that the Town takes action in having this large amount of trash being picked up. He believed that most of the landscapers were private and they could take away the trash, rather than depending upon the Town to do it. Mrs. Wiener recommended this issue be referred to the Public Works Committee for their consideration. Mrs. Smith so moved. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Development Reviews

XIII. DEVELOPMENT REVIEWS

Major Matters

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of June 22, 1994 - Motion was made by Mr. Weinberg to approve the Major Matters previously considered by the Architectural Commission at their June 23, 1994 meeting.

The major matters were:

B56-93 - Facade revisions to an approved project of Dr. Ross and Wendy Stone, 230 Clarke Ave. - approved conditionally.
B10-94 - Second story addition to residence of Mrs. Peter Schuster, 1720 S. Ocean Blvd. - Deferred until the July meeting.
B64-93 - Revision to an approved project for Gay Cinque, 9 Golfview Rd. - Deferred.
B15-94 - Remodel facade of building owned by Cook International, 350 Royal Palm Way. Deferred.
B24-94 - Demolish and construct two family dwellings at 353 Chilian Ave. for Barry Boyce Trustee. Deferred
B60-93 - Landscape Plan for Dr. Michael and Virginia Longo, 1090 N. Ocean Blvd. - Deferred.
B28-94 - New residence for Mr. & Mrs. Joe Jack Merriman, 11 South Lake Trail Circle - removed from agenda.
B30-94 - New residence for Michael Burrows, 1340 S. Ocean Blvd. - deferred.
B34-94 - New residence with guest house for 38 East Corp., 1330 S. Ocean Blvd. - Approved conditionally.
B37-94 - New residence with pool and cabana - approved with conditions.
B38-94 - Construct new beach cabana for Ron Schram, 1420 N. Ocean Blvd. - Approved with conditions.
B40-94 - New residence for U. S. Trust Co., Trustee Ann Fisher, 334 North Woods Rd., - Approved with conditions.

B49-94 - Renovations - removal of approved outriggers - Mr. & Mrs. Robert DeMario, 275 North County Rd. - Approved with conditions.
B41-94 - New residence for Antos Glogowski, 305 Indian Road - approved with conditions.
B42-94 - New residence for Mr. & Mrs. John Schuler, 200 Jungle Road - deferred.
B43-94 - New residence for Mr. & Mrs. Max Fisher, 931 N. Lake Way. Approved with conditions.
B44-94 - Demolition of buildings - Don Swanson, 560 South Ocean Blvd.
B45-94 - Demolition of main residence, pool and garage for George M. and Lyn M. Ross, 321 Tangier Avenue - Approved with conditions.
B46-94 - Demolition of main residence, pool, guest house and garage, for Jeffrey S. Raynor, 496 N. Lake Way. - Approved with conditions.
B47-94 - Construct two story garage addition for Dr. & Mrs. Kaye, 302 Eden Road - Deferred.
B48-94 - Addition for Palm V. Associates, 238-240 Worth Avenue - Approved.

B. Appeal

Appeal

1. No. A26-94 - Appeal of Architectural Commission's Decision to Deny the Installation of a Perimeter Awning by Mr. Maurice Shawzin on Behalf of Mrs. Beatrice Tollman, 977 South Ocean Boulevard. Mr. Moore gave the history, indicating this matter was before the Architectural Commission on three different occasions. He recalled at the first meeting the awning contract was asked to discuss alternatives with the property owner and at the subsequent meeting, Mr. Shawzin appeared for Mrs. Tollman and presented an alternative, who was asked to return as the Architectural Commission had concerns that the awning gave a commercial appearance, which Mr. Shawzin did but there was not a full board, and the matter was denied.

Appeal of Architectural Comm. decision to deny the installation of a Perimeter Awning - 977 So. Ocean Blvd.

Mr. Shawzin addressed the Council indicating Mrs. Tollman has been a resident of Palm Beach for over thirty years and has been recognized in magazines for her talents who has been compliant and has made a great contribution to the Town. He advised this property was owned by Mr. Harold Kaplan and it was used as an office and she thinks it looks like an office and with her extraordinary talents, has been doing a lot of work, and she felt the cold roof would be a little more complete with an valance to go around the perimeter of the house with a soffit made of the same fabric underneath the awning. He advised when it was turned down, Mrs. Tollman came up with a different proposal by eliminating the soffit and they created a different type look which he exhibited. He advised there will be large palm trees installed in front of the building at either driveway. Mr. Shaw wondered what enhancement does putting an awning on this building do for the property. Mr. Shawzin explained it is not really an awning but a little valance to soften the ice cold roofing that currently exists. He felt it was a dignified concept with this valance and if the Council wished to give a conditional authority to install it and if after it is installed it is the feeling of the Council that it's not beneficial and they don't like the way it looks, it will be taken down.

Mrs. Smith asked if he had a drawing of how this will look on the outside of this residence. Mr. Shawzin exhibited the drawing and the valance which they would like to install and it would be only four inches. Mrs. Royal asked if this could be conditionally approved for a time period of six months. Mr. Randolph explained what they are being asked to do is either uphold or not uphold the Architectural Commission's decision who denied it and if they had a condition, they could certainly put one on it, if that is what the Council wishes to do. Mrs. Weiner did not think it was appropriate to approve it for six months and then have them come back and discuss it again. Mr. Weinberg made a motion that the decision of the Architectural Commission be overruled and Mrs. Tollman be allowed to install the valance on the perimeter of her house. Mrs. Wiener gave the gavel to Mr. Weinberg to chair the meeting and she seconded the motion. On roll call, the motion carried 3-2 with Mrs. Smith and Mrs. Royal voting against the motion.

C. Variances, Special Exceptions and Site Plan Reviews

Variances, Spec.Excep. & Site Plan Reviews

<u>Old Business</u> - Variances, Special Exceptions, Site Plan Reviews and Development Reviews (Other)

Old Business:

1. Site Plan Review in conjunction with Zoning Variance No. 56-93 to authorize substitution of a restaurant on the site of an existing radio station at 3000 South Ocean Boulevard by H. Loy Anderson, application. R-D(1) District. Deferred from June meeting. Letter dated June 30, 1994 from John P. McCabe requesting deferral until August 9, 1994 meeting. This matter was deferred to the August 9, 1994 Town Council meeting.

Var. 56-93 Site Plan Review

2. Variance No. 21-94 - Frank T. Noska, 221 Onondaga Avenue; to allow construction of a pool in the street side yard providing a 9' setback in lieu of 25' required. R-B District. Deferred from June meeting. - Mr. Frank Noska addressed the Council indicating he was asked to come back with a revised version and he has moved the setback from nine feet to eleven feet. Mr. Moore noted the pool has been redesigned although it is a 15 x 40 pool within three feet of the main house and now eleven feet from the property line instead of the nine feet. He noted the setback has been lessened and now it is up to the Council to decide whether they feel this is appropriate.

Var. 21-94

Mrs. Wiener noted there was three feet setback from the house and she thought that was a little dangerous and would like to see that be reduced by another foot so there could be four feet between the house and the pool itself. Mr. Noska stated he had no problem with that. Mrs. Smith asked if he had considered moving the pool to the rear of the house as 15 x 40 is a very large pool and he still needs a variance of 14'. Mr. Noska stated the back yard will not accommodate the pool and the reason he wishes the 15 x 40 is for lap purposes. Mrs. Smith suggested they make the pool narrower as if they are just doing laps, that will accomplish that. Mr. Noska agreed it could be done in that way but a lap pool would diminish the value of the property. Mrs. Smith stated he is supposed to be demonstrating a hardship and not increasing the value of his property.

Mr. Noska stated he believed they are talking about a normal size pool versus the lap pool and he would like to have more than just a lap pool as his children will be using the pool and the money to create just a lap pool would not be cost effective. Mrs. Royal asked why it could not be installed in the back yard. Mr. Noska stated the distance from the rear line of the house to the property line in the back means there would be no room to move on either side, as there is a ten foot setback on the rear boundary line and there would be very little space in the rear.

Mrs. Royal asked which way would require less of a variance, the placing of the pool east/west in the north yard versus north/south in the east yard. Mr. Moore responded it would be less of a variance in the east yard as the narrow portion of the pool would be on the road. Mr. Noska advised that would put it 18' from the rear of the house to the rear property line and they would have to come in ten feet. Mrs. Royal noted it would mean a four foot variance. Mr. Noska stated there are power lines on the north side of the property and he wouldn't like to have the power lines draping over the pool, whereas if they place the pool on the side of the property, they can avoid that problem. Mr. Shaw noted it is a side street property, they are looking for the variance on the street versus a variance on the rear of the property which would effect the back neighbor and he thought that was a plus, however, there has to be a decision as to whether or not it will be a lap pool or a family swimming pool, and he tends to agree a 15 x 40 pool is a bit much, and a kidney shape pool tucked into the corner would have less of a variance, or else have a lap pool. Mr. Noska responded there will be nothing seen from the street and they would like a family pool and he thought it was unfair to say he cannot have it, as if it is located on the side line, it will not interfere with any of the other property owners. He reported the neighbor across the street has a pool of the dimension he is requesting and he thought it was unfair that they were able to do it and he would not be able to do it.

Mr. Moore explained as long as there is no other reasonable place to install the pool, the Council and the staff have considered the applications and if they were minimum variance requests, with the condition that the pools be sightscreened and the deed restrictions that the sightscreening would be in perpetuity, they have been granted.

Mrs. Wiener did not recall any complaints about the fact that these pools have been installed. Mr. Shaw noted there were three letters of concern received on this application. Mr. Noska stated the concern of the neighbors is where the pool equipment would be located, as Mrs. Fitzgerald's complaint was her bedroom was on his northern boundary and the property to the east also had a concern, but the filter system has been designed to be at the southeast corner of his property within the hedge, so it is closer to his house than any other property owner. He advised he has spoken to his closest neighbors about this. Mr. Shaw asked if the placement of the filter system on the southeast corner was an acceptable placement of that equipment from a zoning standpoint to which Mr. Moore responded affirmatively. Mr. Weinberg asked if there were any other objections that Mr. Moore might have from a building point of view to which Mr. Moore responded he had none.

Mr. Weinberg moved the variance be granted. Mrs. Wiener asked if he could add to the motion that the filter equipment be located on the southeast corner of the property to which the maker of the motion agreed. Mr. Shaw asked if he could also add to the motion that the pool would be four feet from the building. Mrs. Smith noted that would make the pool 14 x 40 instead of 15 x 40. Mr. Randolph noted another condition is that they would have a recordable landscape agreement. Seconded by Mrs. Royal with all the conditions stated. On roll call, the motion carried 3-2 with negative votes cast by Mrs. Smith and Mr. Shaw.

Var. 25-94

3. Variance No. 25-94 - Cathleen McFarlane, 456 and part of 458 Worth Avenue; applicant proposes to purchase a portion of 458 Worth Avenue creating a west side yard setback of 0 in lieu of 15' required. To allow the cubicle content to be 5.28 in lieu of 4.25 required, and to allow 8' high property line wall to match existing in lieu of 7' allowed. R-B District. Deferred from June meeting. - This matter was deferred to the August Town Council meeting.

Var. 26-94

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

Proposed Phipps Estate Sub.

5. Consideration of Proposed Phipps Estate Subdivision - Request for Approval of Plat and Replat, Agreement to Construct Improvements in Subdivision, and Related Matters - Attorney Paul Prosperi addressed the Council on behalf of the applicant, noting he has submitted materials to staff since the last meeting and he hoped they were responsive to some of the comments heard at that meeting. He referred to the phasing of the property, noting Phase One would consist of 16 lots; Phase Two which consists of 7 lots; and these 23 lots are the only lots which the current owner of the property is obligated to sell to Mr. Swanson.

Mr. Prosperi noted in the center of the property are ten lots which the current owners of the property are not obligated to sell, but they can sell. He advised contractual terms between the buyer and seller state the seven lots in Phase Two cannot be touched until a majority of the lots in Phase One have been sold to third parties. He believed because the roads will only have to be built at an elevation of six feet, the fill will probably be an average of six inches, which alleviates the problem of the danger to trees left in place. He advised Phase One and Two, which is about 14 of the 21 acres of the property will be the subject of the sale and Phases Three and Four, which total approximately seven acres may not ever be sold to the buyer and of the original fourteen acres, four acres will not be the subject of any immediate work. He thought that would mean that eleven acres, or more than half of the property would not be subject to any clearing or filling at the very beginning.

Mr. Prosperi explained in addition Mrs. Eigelberger intends to donate 16,000 square feet for a park and there will be an additional one and three quarters acres of common areas and an entry feature. He stated there will be about 13 acres which will not have any construction or development activities at the outset, which is almost two-thirds of the property.

Mr. Prosperi recalled at the last meeting there was some concern about perimeter landscaping, particularly on North County Road and on Kawama Lane, with the idea to maintain the existing look of the property as possible. He stated the two designated trees will remain, the large traveler palms will remain and the wall will remain and the entrance will be relocated and the former entrance will be filled in to look as the wall currently looks.

Phipps Estate

Mr. Prosperi recalled on Kawama Lane, there is an eight foot high ficus hedge in front of a four foot wall and they will plant palm trees behind that, which Mrs. Smith thought that might be too uniform and they now have come up with a Plan which identifies the trees which exist on North County Road and on Kawama Lane which they propose to save. He advised they hope to give the Preservation Foundation of Palm Beach seven or eight hundred feet of North County Road, with the exception of the entrances and the Town park and this would be fifteen feet wide of landscaped preservation easement and along Kawama Lane, an eight foot wide landscaped preservation easement for all of the trees which are identified on the plan, which will be preserved and an enforcement mechanism acceptable to the Preservation Foundation and the Town of Palm Beach would be created, whereby if any trees died, they would be replaced by a similar tree or it could be replaced with a lien running to the holder of the easement to pay for the replacement tree.

He felt if the canopy is kept the same, with some fill in with palm trees and other native trees, he would hope to be able to clean up the Kawama Lane perimeter as much as possible, in order to maintain as much of the look as possible, and again, he wished to state they are trying to maintain as much of the look and the buffer along North County Road, as now exists.

Mr. Prosperi recalled another question was the access to North Lake Way, explaining there are three entrances on North Lake Way which now exist and there would be three entrances on North Lake Way, as proposed. He advised one would be the entrance to the main house and this would be a private driveway entrance. He advised the second would be street entrances and there would be gates on those entrances which would be designed to look like residential gates. He distributed photographs of gates on entrances to residences on North County Road and North Lake Way near the subject property which show these gates and entrances are quite common to this particular area of Town. He advised the gates that are proposed would not be open to nonresidents, although the Town Fire, Police and Public Works Department would have limited access. He advised the main traffic to the property would be directed to the North County Road entrance.

Mr. Prosperi explained the North County Road entrance also had the Council concerned and he wished them to know they are abandoning their request for a gated community. He showed a graphic showing the entrance feature, noting they would still like an archway entrance, but have cut it back quite considerably from what was presented at the last meeting. He advised the interior height of this arch is now 20' and the exterior height of the arch is now 26' and it does not have a roof or a roof element. He reported the width of the arch is 34' inside and 68' outside, including two pedestrian gates, and is set back 57' from North County Road. He indicated there will be no gate and it will not be closed for limited access, and the former El Mirasol gate and others in the area, are as large as this gate, although they may not be arched over.

He advised there will be 900 feet of frontage and they are asking for subwalls on the archway which would total about 60' and that is about six or seven percent the width of the property which will be set back 57' from North County Road. He requested two structures, which would become accessory structures and would be commonly owned. He indicated the one structure on the north would be 500 square feet and the one on the south would be 700 square feet, and they would look like carriage houses and will be set back 90' from North County Road, and their purpose would be to house the activities of the Homeowner's Association, which would maintain the shrubbery, the public park and would dispose of the yard trash and would probably have some responsibilities with respect to the maintenance of the each of the houses, and the lawns and pools. He advised they would need a place to store all of the equipment needed and this is not an unprecedented request as all up and down the R-B District, there are commonly owned facilities, such as beach house, cabanas, and docks. He stated this request is for two small structures totally 1200' and set back 90' from the road and adequately sightscreened and hidden from view.

He recalled another question which came up was the criticism with regards to architectural uniformity, which did surprise them, as the seller of this property, Susan Phipps Cochran Eigelberger thought there would be uniformity and she had a preference, which some may agree with and some may not, for Spanish, Italian, French, Mediterranean or other similar traditional Palm Beach styles, however, her preference would not be contemporary, modern, or Regency styles. He commented since she owns the property, she like many other people who have sold or subdivided want to put a private restriction on this and that would be that the roofs would be sloping, hipped or gabled and there will be no flat roofs except for breezeways, colonnades, or accessory buildings which would not exceed 20% of the floor area, and the roofs will be covered with clay or cement tile and it could be flat, barrel or "S" in form. He respectfully would suggest that the Architectural Commission would be the appropriate forum to go into the details on the architecture. He did not know exactly what the houses would look like and they will be designed by the purchasers of the lots.

Mr. Prosperi advised they have no intention of creating some sort of cookie cutter subdivision or development on this property.

Mr. Prosperi recalled another issue was lot sizes, and he distributed an exhibit of fourteen lots which were typical of the development. He reported there are over 19 lots over 100' in width with the average size being 22,500 square feet, which is two and one quarter times the minimum size for a lot in the R-B Zoning District. He advised the density in this development is 38%, which is one-third of the maximum density which would be permitted in the R-B zoning district. He knew the lots do vary in size from 36,363 square feet to 19,075 square feet, with the depths varying from 251' deep to 180' deep. He noted the widths of the lots also vary from 179' wide to 100' wide.

He has read in some of the letters received that it is not possible to build an architecturally decent house on a lot of 100' and he reminded them it is the R-B Zoning District and he circulated pages from the Atlas which showed the size of some lots in the R-B Zoning District. He advised the intent of the applicant and Mrs. Eigelberger and the Phipps family is that the houses which go into these lots harken back to Palm Beach in the 20's and 30's, and he suggested they look at Clarke Avenue, which are 195' lots, with an average depth of 170 to 180 feet. He noted that Barton Avenue have 100' to 195' wide lots with an average depth of about 170'; and Dunbar and Wells Road have examples of lots which are uniformly the size of the smallest of the lots which will occur in this subdivision, and he asked if they thought those houses were the worse or best of Palm Beach. He believed that in some of the most recent subdivisions, such as Casa Bendita, those lots vary from 105, 107, 110 and 130, just exactly as they occur in this subdivision. He suggested that experience would not substantiate the claims that some people were making that 100' wide lot is not a sin and is the lot size established in the zoning code. He pointed out the minimum of these lots in the subdivision is almost twice the size of the R-B lot and is done in the density of 38% of the maximum permitted.

Phipps Estate

He asked the Council to consider generally the entire package, as it has been over a year and half since Mr. Swanson and Mr. Eigelberger have first met on this and approximately a year since Mr. Atterberry, Mr. Swanson, Mr. Moore and he have met on this and there have been many meetings with Town staff with a lot of compromises worked out, with problems solved to try and bring to the Council the best possible subdivision which can be done. He believed there were others who thought they could do better, but they are not the ones who are buying the property nor own the property and this subdivision does meet every requirement that he knows of that the Town has and comes in at more than double the size of the minimum lots and 38% of the maximum density, and creates 16,500 square feet in a public park and creates easements to save trees on which there is no obligation on the applicant to do so. He felt it also puts approximately two additional acres out of individual ownership so that it could be developed into common ownership where it will be landscaped and maintained as a buffer or an anchor for this area to create a feel of appearing from the street, much as it it appears now. He believed that would be something in the neighborhood of 15 percent of this property would be turned over to either commonly owned or public held parks or permanent green space, including at the entrance an area over 200' wide and 60' deep which will be what one will see at the end of the entrance drive, and it will be permanently green, and in effect, a commonly owned park. He thought they had to take into account the overall package and what they are trying to accomplish here, and it should be said that the location of the roads, the shape of the roads are in some way dictated by the desires of the property owner to retain, at least for the time being, the main house on up to ten lots, which would be a seven acre estate, and which they have worked around to accommodate the Eigelbergers. He advised the location of the entrance drive for the main house on North County Road was done in consultation with staff and with traffic experts to have it put at a location which would make the most sense.

He requested the Mayor and Council to look at this project as a whole and not come back and try to re-engineer the details, as the details are not independent and all are a function of other trade-offs which have been made.

Mr. Moore advised since the last meeting, there have been comments from Chief Elmore on the access from North Lake Way who has agreed to accept a Knox Box but not controlled devices which would have to be carried on the emergency vehicles for entry and exiting off of North Lake Way.

Mr. Moore explained the subdivision does meet the Town's criteria and he and his staff have studied it quite extensively and it has been put together with the Town's rules and regulations and it is at a point now where it will be debated by the Town Council as to the applicability and the interest they show on the individual items and is ready for Council review.

Mrs. Peters gave the oath to all who would be giving testimony in this matter.

Elliott Gordon, 143 Casa Bendita addressed the Council, noting that in the beginning he thought this area was going to be a compound, but Mr. Prosperi has just described it as a lovely residential area, and now has no objection. He stated he did have a concern however for those property owners who are not in Town and may not know about it and suggested the final decision be postponed until such time as there are more property owners and taxpayers back for the season.

Attorney Randolph explained there is nothing in the Code which would make an applicant be heard on these matters during a particular time and the Council has the right to give full consideration to an application and to postpone or defer an application in a manner which would allow the Council to ensure it is absolutely correct. He recalled the Council did defer this application for further information but those are the only reasons they can be deferred as it is not appropriate to defer it for no reason than to allow other people to be present, as there is nothing in the Ordinance which requires that and it could cause detriment to the property owner who has a use for his property at a particular time. He thought the important thing is that the public does receive notice of the hearings and that has been done, so everyone that wants to be in attendance can be in attendance.

Betty Marcus, speaking for her mother who is a property owner directly opposite the development at 444 North Lake Way addressed the Council. She agreed with Mr. Gordon and wanted the Council to know that her mother has not been notified of this officially and only knew about it through the newspaper. Mr. Moore responded there are no notifications given for subdivisions and there are no variances requested for this property. Ms. Marcus stated they do not object to the fact that Mr. Eigelberger wishes to develop the property and make it financially viable as possible, nor do they object to what he wants to do inside, but she has been at these hearings and never heard the first word about safety, which is her main concern. She explained North Lake Way at the entrance proposed is a very narrow and curvy street. She believed there would be fifty or sixty cars going back and forth if they propose to put up thirty three houses, and she pictured it to be a nightmare and a hazard. She suggested the gates be permanently closed and there be a restriction that when it is developed for the amount of lots the Council allows, there will be no further development on the ten lots which Mr. Eigelberger is proposing to keep for the time being. She wondered who would be using the park which they want to dedicate to the Town as it could not be the general public as they couldn't get inside. She thought rather than dedicate it as a park, they should use that land as an extra landscaped buffer around the property.

Mr. Moore advised the positioning of the gates are forty feet inside the roadway area, so they would be well off North Lake Way, which would mean two cars could be stacked there or possibly three cars while the gate is being opened or closed.

Chief Terlizzese addressed the Council indicating he felt there would be enough stacking room there, however, his problem with the gates is how the Public Safety people will gain entry with the push button system and he doesn't care for that.

Mrs. Smith asked what the width of the interior perimeter road to which Mr. Moore responded there would be 24 feet of pavement. Mrs. Smith asked if that would accommodate an emergency vehicle and two cars to be passing each other to which Chief Terlizzese responded affirmatively.

Mr. Dusey reported Mr. Bowser had a concern about the sight distance at the exits and entrances to ensure there is sufficient sight distance, and he believed all precautions have been taken to minimize the traffic hazards which may be caused by those entrances. Mrs. Smith asked why the determination was made that the best place to locate the entry way or exit would be opposite the Casa Bendita street, as when cars come out of Casa Bendita, and the cars turn south and the cars exiting the Phipps Estate and turn south, they would be crossing the north lane of North County Road and that would create a traffic problem in her mind. Mr. Dusey responded he was not in on that but normally they do try to line up these roadways to be at an intersection and they don't offset them, because there are more conflicts. Mrs. Smith asked if a signal would be installed as there will be a lot of cars coming out each street at the same time. Mr. Dusey responded he didn't believe there would ever be enough traffic to warrant a signal.

Phipps Estate

Mrs. Royal asked about the gates on North Lake Way wondering who actually would have the right to open and close these gates to which Mr. Prosperi responded the electric gates are to remain in a closed position and either by a push button mechanism or a code, they would be opened and that would admit residents and the Town's personnel onto the property from those entrances, and they would be signed that there would be no access from North Lake Way. He believed when they drove up to them there would be a pressure pad and they will open for exiting and to gain access, they would have to push in a code. Mrs. Royal thought it would be used quite extensively by the people who service the properties, such as maids and gardeners and the residents themselves would probably have two or more cars, so they are looking at a large number.

Sari Wilkey addressed the Council indicating she has written a letter and doesn't understand how the gates would work and asked if there would be a gate on North County Road to which Mr. Moore responded there would not be a gate but an archway. Ms. Wilkey asked what the purpose of having a gate on North Lake Way and not on the other. Mrs. Wiener believed it would be to preclude heavy traffic on the North Lake Way exit. Ms. Wilkey felt that would be a safety hazard and may create more traffic problems. Mrs. Wiener recalled the gates they had proposed last month were not the correct thing for them to be considering as they had a little security house there, but now they have submitted something else. Mr. Moore stated there was concern about vehicles entering and exiting on North Lake Way because of the traffic concurrency at Bradley Place, however, the traffic analysis done by their engineers and the Town's engineers has proven that would not be put out of concurrency and the applicant still chose to ask for the gated community. He stated the gates were designed on North Lake Way to restrict the traffic and encourage the traffic to use North County Road, however, Mr. Prosperi has informed the Mayor and Town Council that the gates and the gate house have been eliminated from the Plan, however, the gates on North Lake Way would remain and would be placed forty feet back from the roadway area.

Ms. Wilkey noted there still is a very prominent archway and they still want to have the two small buildings and asked what was to prevent them at a later date of having a gate added at that site, as perhaps that may be what they intend to do sometime in the future. Attorney Randolph responded in the event permission for the subdivision is granted and the matter is concluded, there will be a document prepared which will contain the conditions and one of those conditions could be that there not be a gate or a manned gate and that would be binding upon the property owners.

Dr. Marvin Rosenberg, 125 Chateau Drive, addressed the Council stated his concerns about the quality of this development, and asked if it is a fact now that there will not be a gate on North County Road to which Mrs. Wiener stated there will be no gate. Dr. Rosenberg asked about the landscaping strip on North County and asked if that would be a continuation of the landscaping so as to maintain the park like atmosphere along North County and he would like to see 60' of landscaping before one would get to the first residential lot, and the Site Plan does not affect it, and is not in keeping with the landscaping at Miraflores and Tangiers. Mr. Prosperi responded as part of the 16,500 square feet of land which will be dedicated as a park, there is 13,360 square feet under the canopy of the large designated tree. He referred to the north side of the property which will be the western line of the park and that will be continued until it intersects with North County Road. Dr. Rosenberg believed square footage was misleading and asked how many feet of setback would exist off of North County Road and he would like to see 60' of setback which could be landscaped which would maintain the integrity of the existing park on Miraflores and on Tangiers, and it would help preserve the vegetation and maintain the character of the area.

Dr. Rosenberg continued on with another concern, that most of the lots would be 100 feet in width and given the setbacks, that provides for rather narrow footprints for the residences and he suggested there should be a minimum lot width of 120'.

Leonard Davis, 120 Casa Bendita addressed the Council, indicating he has received many phone calls from friends and neighbors who are not in Town who urged him to attend this meeting. He didn't wish to address any of the specific details and his real interest is the concept of having a planned community of 30 homes in Palm Beach, which reminds him of the planned communities he sees in Delray and Boynton and other places and that is not the type of concept that they envision for Palm Beach, which is a Town of individual homes. He knows there are other gates in the community but they are for individual homes. He stated there are plenty of private streets where people live in homes they have built and that is fine. He has no problem with this area being developed but does have a problem with it being developed as a planned community.

Laurel Baker, Seaspray Avenue, addressed the Council, stating the presentation today and the revisions and the addressing of the concerns expressed was very good. She stated the other concern she had with the references to Clarke and Barton Avenues, they should bear in mind that those streets have alleys behind them, so there could be a narrow lot with a big house on it, but it will not have a garage on the front of the property. She didn't understand the gates on North Lake Way, but that is an issue which needs to be addressed by the Council. She was concerned about the width of the lots and the fact that the streets are just streets and doesn't reflect the elegance of the center of Town and those streets which have alley access.

Evelyn Harrison addressed the Council for the Garden Club noting she had many doubts about this but the presentation today has given her answers about the gate and the canopy of trees on North County Road. She stated she has another concern and that is the special trees and they should be absolutely protected and for those trees they want to move, they should take into consideration that is not always an easy process.

Mr. Prosperi pointed out only 14 lots are 100 feet in width and 19 of the lots do exceed the 100' and each of these lots are approximately two times the minimum size of a lot and many are up to three or three and one half times the minimum size of the lot. He thought when the siting of North County Road was organized, there is a preference to lining up entrances or driveway together, as if they didn't there is confusion with the cars turning into the same roadway, etc., and that dictated in part where this archway would be as well as the roadway. He noted with respect to Dr. Rosenberg's point, the line had been continued to where it intersects with North County Road. He addressed Mrs. Harrison's concern stating a large park has been created under one of the historic trees, which would be accessible to the Bike Trail through a pedestrian gate with benches which would be designed along with the Town and maintained by the property owners association.

Mr. Prosperi noted the exits on North Lake Way will have hedges set back quite far from North Lake Way, which will improve the sight triangles which already exist, and they will be conforming to the Town's Codes. He stated the gates will be set back 40' and will be amenable to whatever closure mechanism and signage they wish to have placed there which will discourage traffic in and out. He advised the traffic engineer, Frederick R. Harris, did not find a concurrency problem on North Lake Way.

Phipps Estate

He advised the guard house has been eliminated from the entranceway on North County Road, but they would like to have an entrance arch, which would be 30' wide and which is set back 57' from the roadway. He stated there is no club associated with this community, nor is there a membership fee, as it will be a community which will share certain common responsibilities by having an organized property owners association which will maintain the landscaping and the perimeter. He knows there is precedent for that in the Town, such as the Queen's Lane Cultural Society, which maintains the beach house for that street.

A short break was taken after which President Wiener reconvened the meeting.

Mrs. Wiener noted they are now in Executive Session and called on Mr. Shaw for his comments. Mr. Shaw felt the presentation today was a vast improvement over what came last month and many of the Council's concerns have been addressed and he was sure they would be able to continue in that same light.

He thought one of the concerns is the easement that he would like to see as well as other members of the audience and some of the Council and this would be on County Road. He thought they needed to have a little bit more on County Road than what was given on Kawama Lane, as he was hoping for 15' on Kawama noting he has moved it from 4' to 8' but there is still that walled look, and he thought if the wall could be pushed back further into the property, it would be taking away from the footage of each of the lots but it gives the openness to that street and eliminates concerns of the residents on Kawama as to how this will be maintained, and if this land is given as an easement or turned over to the Town, it would be better received. He stated his concern on the maintenance of the Property Owners Association, as he heard Mr. Prosperi reference other associations such as those with beach houses. He felt there was an ulterior motive of maintenance with a Beach House, and now they are taking about residents of this development maintaining property which has no direct value to them, and he was concerned about them not maintaining the shrubbery or trimming in the park or the trees that have died on North Lake Way, and therefore, he was not comfortable with the idea that this Association will take a long-term vested interest in the maintenance. He thought the comparison made with other streets with regards to 100' lots, they should remember those homes were built under a different set of standards as far as size, easements, setbacks, etc., so if those homes were built today with 25 and 30 foot setbacks, they too would have a slightly different appearance than they now have today.

Mr. Shaw commented on the El Mirasol Gate, indicating the El Mirasol gate was preserved and he didn't think they were here to make antiques, nor preservation items, so the purpose of maintaining El Mirasol was to maintain its heritage, and he didn't think it was fair to state by installing a similar style gate on this property would be maintaining it but it would be creating a heritage.

Mr. Shaw noted another issue is the gate off of North Lake Way, and he felt what seems to be coming forward ultimately is the elimination of those gates as who will drive through other than the people who live on the property and possibly one or two of the immediate neighbors who may want to cut through this development in order to get to North County Road. He thought the practical point of the gate is if they are only used as an exit, and in reality there is no entrance access, the residents do not have the means of coming in and opening them up and that will not solve the problem of the potential congestion and he felt they needed, as a Council, to be conscious of is that a number of residents of the Town are not in residence and they have expressed an interest to voice their opinion and he felt they did owe that to them, so whatever progress is made today, is a step forward, but it was his feeling final judgment needed to be reserved not only to all of the issues are resolved, but to give everyone a proper opportunity to address their concerns.

Mr. Prosperi responded to Mr. Shaw by stating the Town staff has ruled with the single exception of the common property line with the houses on Miraflores, each of these lots has at least two thirty or thirty-five foot setback, since the houses that back onto Kawama are through lots, so there would be two front yard setbacks on those lots, and they could build within ten feet of the rear property line, but in this case, they could only build within 30' of the rear property line. He recalled on North Lake Way for those lots which side onto that street, there is a 30' foot setback from the internal road to the subdivision so there will be a 30' buffer before they have the first house.

Mr. Prosperi stated his surprise there was a problem with the architectural uniformity, which was not their intent but was the reverse intent, and secondly, for 99.9% of the residents in Palm Beach if they went by this property, there would be nothing different on the property and they have gone a long way to keeping it landscaped and now they are accused of creating a compound within this community, which he did not think they were doing as they have the same street configuration, except they will be putting in easements which would try to keep this walled in place to look as much as it looks now and to maintain that idea as one drives by, that it is a jungly kind of place which people seem to like since it goes with the trees along that section of North County Road. He believed the only thing they would have, which he thought should be a matter of indifference to most people, is they will have a Property Owners Association and the reason they will have that is it will be an enforceable mechanism to maintain the common areas which are the perimeter landscape buffers, and this 20,000 square feet of space inside and 16,000 square feet of park which will keep this buffer. He thought those most affected would be those people who live on the corners of Chateaux and El Mirasol and Casa Bendita and North County Road, and they could look over and see what they have looked over and seen for thirty years and there will be nothing much different, except for the suggestion of a house behind all of that landscaping, and he did not think that should give them the idea it is a compound.

Mr. Prosperi stated the gates on North Lake Way were designed to answer the criticism of Mr. Levin, Mrs. Marcus and her mother and others to try and restrict access to North Lake Way, as there is a curve there, so they are trying to do something there. He believed one thing or another needs to be done, and that is either open the subdivision up and have through streets, and if that is done, there would be three streets going through for 55 or 60 lots, which would look exactly like Miraflores or Sanford or Sandpiper or West Indies and other streets on the north end, and they could do that he advised instead they are talking about 120 by 200, or 110 by 200 or 100 by 200, and there are only 14 lots which are 100' lots and most of the lots exceed the 100'. He recalled there were no lots under 19,000 square feet, so they have the buffers and have tried to bring something to the Council and they are not trying to be a community within a community and they have tried to preserve the Kawama Lane landscaping and will move the hedges back on North Lake Way to create a sight triangle and this will improve the traffic conditions which now exist at the corner of Kawama and North Lake Way, so they are doing what they can to bring this up and try to make it look to 99.9% of the people in the Town that there is nothing happening inside the property. Phipps Estate

He advised this will not be an exclusive Club and the only thing the property owners will share is a gardener who will keep up the standard that the perimeter landscaping will be maintained.

Mrs. Royal recalled the statement made by Mr. Prosperi earlier that a majority of the first 16 lots would have to be sold before the second phase would be initiated and asked for a clarification. Mr. Prosperi indicated the second phase consists of seven lots and the original sale will be of 23 lots, and 16 of those lots will be sold without encumbrances and 7 lots will not be able to be touched by the new purchaser until after the developer has dealt with 60% of the original 16 lots, which comes out to 9 or 10 lots. Mrs. Royal asked when the roadways would be installed to which Mr. Prosperi responded the roads will go in at the outset and there would be no clearing with respect to the other six lots. He thought as part of this, there will be an upgrading of sewer and storm water that will benefit not only this property but the surrounding areas, and also the lift station will be upgraded.

Mrs. Royal asked how will the public access the passive park within the current walls to which Mr. Prosperi responded there will be a pedestrian entrance into the wall from the bike path under the canopy of the northern most designated tree. Mrs. Royal asked if this gate would always remain unlocked to which Mr. Prosperi responded that property will be owned by the Town. Mrs. Royal thought if the park is to be enjoyed by the public, there would have to be access to it. Mr. Prosperi noted the park is a gift to the Town by Susan Phipps Cochran Eigelberger and whatever the Town wishes to work out with regard to the access or use of the park will be decided by the Town, and the applicant will undertake the maintenance of that park.

Mrs. Royal asked for a clarification on the lots which will be held by the applicant and asked if these lots will be platted? Mr. Prosperi responded the home owned by Mr. & Mrs. Eigelberger sit on part of four lots and they are not selling Mr. Swanson ten lots, which would include those four lots and if at a future date, they decided to tear down the main house, there could be four houses built on those four lots. Mrs. Royal asked again if the lots are being plotted under the current sub-division. Mr. Prosperi explained currently there is a Blenheim Subdivision and that is ten lots, 105 by 100 feet that run along the north side of Kawama Lane so Mr. & Mrs. Eigelberger would choose to sell those ten lots to ten different people, there would be ten 10,500 foot lots, and ten sets of driveways, ten families on the north side of Kawama, so legally, there are already ten lots already there, however, they are going to abandon them and replace them with ten 19,000 square feet of greater lots with restricted access with a preservation easement going to the Preservation Foundation, and he thought they needed to take into consideration what they have here and understand what the applicant is intending to do to improve this situation. He advised the applicants can sell off something less than the ten lots, but as long as they keep the four lots together, their house would be legal on those four lots. He understood that this Subdivision would not go forward unless the ten lots which the Eigelbergers want to keep are plotted as part of this subdivision.

Mrs. Royal referred to the easements asking who would be granting them and to whom would they be granted to which Mr. Prosperi responded they had asked the Preservation Foundation to be the receiver of these easements and it would be granted from all of the parties involved, the Phipps family interest and Mr. Swanson's interest. Mr. Randolph advised there can be joint grantors of the easements and he recommended in the Agreement that there be an enforcement mechanism built into the Agreement, so the Town would have control over that easement, even though it is being granted to the Preservation Foundation.

Mrs. Royal requested that when the water and sewage pipes are being installed, they install dual pipes as she truly believed the Town is heading towards a use of gray water for irrigation and when the trenches are being dug, they install two pipes so it would not have to be dug up later. She asked if the remainder of the utilities would be installed underground to which Mr. Prosperi responded affirmatively.

Mr. Weinberg stated his concern about the garden wall as he thought it looked like an entrance to a cemetery or a temporary Stonehenge. He believed there is a great desire for larger lots and Mr. Prosperi earlier indicated there would be fourteen 100' lots and if the veracity of the people who are concerned by the size of the lots is being considered, if they took three of those 14 100' lots and broke them down into five 20' sections, they could have 120' lots out of the remainder, and all they would be investing is three lots, and they would be able to have larger lots, which he thought would be a good return with regard to the beauty of the Town, and the comfort of the people who live there, and they will continue to not have a development look. Mr. Prosperi felt they could also take the 137.7' lot and the 179.3' lot and the 140' and 138' lot and make them all exactly the same size and shape. Mr. Weinberg agreed that could happen. Mr. Prosperi advised each lot, some dictated by location of trees, or by the curve of the road, or other characteristics and those different characteristics will yield an architectural result on the lot, which will do more to make this look less like a development than if they had 120' lots down the size as Mr. Weinberg had suggested.

Mr. Weinberg stated he is not going out with a tape measure and measuring the 120', as there should be variations which would give the optical illusion of having a larger lot. Mr. Prosperi reminded all that each of the lots is twice the size of the minimum lot size which they could have there. He referred to Mrs. Baker's statement about alleys and he knew Clark has alleyways, but Dunbar and Wells do not, and they are among the most attractive streets in Town, and he thought an architect could do a credible job on the 100' lots, and it is what the Ordinance does require. Mr. Weinberg indicated he was looking at it from a community point of view and he thought there would be greater satisfaction with a larger lot feeling rather than a "development" feeling. He knows there are all kinds of developments, with some being good and some being not so good, and he thought this subdivision had the potential of it being very good and he would like it to be so.

Mr. Weinberg referred to the concrete area between the garden wall and the gate and noting there were two structures added on each side of the gate, and he thought they went all out to create an open space, but then they added the two buildings which he viewed as obstacles from getting into the park area and if they are going to say "welcome" , they should say it with open arms rather than putting these structures in the way. Mr. Prosperi responded he would take that into consideration.

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Mrs. Smith referred to the lots on the Kawama Lane side, and continuing with Mr. Weinberg's discussion, Lot No. 1 stays at 132' and Lots 2 and 3 are 100', Lot 4 she believed had the tree house on it, Lots 5, 6, and 7 are 100, with Lot 8 with a tennis court on it and Lots 9 and 10 will remain under Mr. & Mrs. Eigelberger's control. Mr. Prosperi responded for the time being that is, but they are part of the 23 which will be sold. Mrs. Smith thought that if they were to give a twenty foot landscaped easement on the south side of the property, or the north side of Kawama Lane and made the lots an extra twenty feet wide, they would only lose one lot and would have the lots twenty feet wider than they are now, and particularly Lot 2, which is on the curve. She felt the landscaped strip which is currently on North County Road, which is 15', and if that could be extended to 20 or 25 feet, it would be back to where the proposed gates are coming off of North County Road. Mr. Prosperi explained the arch is at 57' off North County Road, and the easement is 15' behind the wall so the easement extends 23' back from North County Road.

Mrs. Smith asked if there was anything in front of the archway to which Mr. Prosperi stated there was not, except for the landscaping. Mrs. Smith asked if between the archway, which will be the entrance, and the wall is 57' and they are talking about 15' being landscaped? Mr. Prosperi noted the archway is 57' from North County Road. Mr. Eigelberger responded the wall is 8' from the property line. He advised the bike path is Town property and there is a four foot green strip between the bike path and the curve of the road, so if they come from the back of the road, there would be 4', 12' or 16' with 8' to the wall would be 24' and an additional 15' of buffer space as the preservation easement, which is 39'. Mrs. Wiener asked how far is that 39' from the archway. Mr. Eigelberger stated it would be 32' in from the property line. Mr. Prosperi believed it was 24' back from the wall. Mrs. Smith asked why the landscaped buffer could not be 24' back from the wall the whole width down, which would take them to the archway. Mr. Eigelberger believed that was a good thought as when that survey was done, it was presented to the Preservation Foundation, and all of the main trees were located and when the survey was completed, they presented it to the Preservation Foundation and it states in that letter a permanent green space easement will be a minimum of 15' and if there are large trees that happen to be 20' inwards, the easement does not have to be a straight line. Mrs. Smith agreed the whole line could be moved backward as landscaping does not grow in straight lines unless there is a ficus hedge, so that could be set back, and that could be 24' from the wall. Mr. Prosperi stated it would be no more than 30' from the property line to the entry arch.

Mrs. Smith advised what she is trying to determine is how far back from the wall would the landscaped strip be to which Mr. Eigelberger responded the intent was that all of the main existing trees they want to preserve which are located on the plan, and they are not in a straight line, and the intent was to save any major tree which is there which would allow the canopy to exist. Mrs. Smith stated that gives her a degree of comfort and then asked them to continue on down County Road to Kawama Lane, and she would like to know about that Kawama Lane side and that is why she asked for a twenty foot strip at the north side of Kawama Lane, and the rear side of the applicant's property and she is requesting a landscaped easement and making the lots 20' wider.

Mr. Eigelberger responded they did a survey of the larger Royal Palms and the large Ficus trees, on Kawama Lane and initially the plan was to leave some of that, but they want to install new landscaping other than for the major trees and to incorporate that into the permanent green space easement that the Preservation Foundation would hold and the Town would hold enforcement on it. Mr. Moore agreed it would be a joint enforcement with the Town and the Preservation Foundation. Mrs. Smith asked if they had decided on a specific depth for the landscaping on the Kawama Lane side to which Mr. Eigelberger responded it would be a minimum of eight feet, noting there was a two foot water easement there which will no longer be needed and that two feet could be a part of the landscaping area.

Mrs. Smith referred to the wall which is supposed to have planting in front of it, which doesn't show on the Plan, so there would have to be 12 to 24 inches of landscaping on the south side of the wall, which they are proposing to build. Mr. Eigelberger recalled there was a minimum of 4' provided for that landscaping. Mrs. Smith stated she still would like to see a larger landscaping easement.

Mrs. Smith asked about the North Lake Way landscaping, noting there is a lot of green canopy there and that is an area where people will drive by and wonder what has happened to the trees. She thought while they went through the construction, and demolition and the filling part as their own expert advised it does only take 2 inches over an existing root system to cut off the oxygen from the root system and it would cause the trees to die and she believed this area would be very opened up. Mr. Eigelberger responded the wall would have to moved back because of the sight vision on North Lake Way, as that is where the bend in the road is, and part of that landscaping must be removed as the visibility would be lacking and the hedge has to be moved back. He stated their intent is that approximately half of the width of the property will be retained and they will not remove any trees and will be adding some, so if one lives along North Lake Way, all of the large trees on the Dean property would remain, and those lots along there cannot be touched, so the only change would be due to the Town requirement where they have to move the hedge back because of the sight vision.

Mrs. Smith asked if they would be willing to give a landscaped easement to which Mr. Eigelberger responded their intent is to give a permanent green space easement to the Preservation Foundation on Kawama, North Lake Way and North County Road. Mrs. Wiener advised she has been informed by Mr. Moore that he has not seen that letter to the Preservation Foundation and suggested that if they have an arrangement with the Preservation Foundation, they must understand they are dealing with the Town of Palm Beach and she didn't believe any of this discussion should be taking place if the Town has not seen the letter. Mr. Prosperi pointed out the conversation with the Preservation Foundation only took place recently and a letter was sent to the Preservation Foundation today and he thought it would be presumptuous of the applicant, and the Preservation Foundation to make an arrangement without clearing it through the Town and it was mentioned to Mr. Moore and Mr. Randolph yesterday afternoon that this would be an area that will be pursued. He noted Mrs. Earl is here and will indicate their willingness to participate should it be the pleasure of the Council to pursue this with the idea there might be a joint enforcement mechanism, and advised this is not an arrangement which has been lettered.

Mrs. Wiener did not recall the Town ever being put into a position where some other entity other than the Town was entering into a joint enforcement and she is troubled by this. Attorney Randolph understood that yesterday, this was suggested by the applicant as a means by which to address the buffer and the decision does rest with the Council as to whether or not they want to maintain that easement or have it maintained by another entity. He did not think it mattered to Mr. Prosperi and his clients whether the Town had the easement or the Preservation Foundation had it, and they can speak to that but he did tell the applicant that the Town needed to maintain the ability of enforcement of the landscaped buffer and that would be a part of the agreement. Phipps Estate

Mrs. Wiener understood when there is a preservation easement it must be done by a preservation group and asked if this fell under that concept or is it something the Town can take on themselves? Mr. Randolph responded it doesn't have to be called a Preservation Easement as indeed if it were such, a preservation organization might have to take it on, and he views this as a landscaped buffer and the Town could accept it and take on the enforcement of same.

Mrs. Earl of the Preservation Foundation clarified that the Foundation pledges itself to help maintain the residential quality of the Town of Palm Beach and when this subdivision came to the public interest, they sat back and asked themselves what is it that the public derives from this property and their feeling was the feeling the public would get going down County Road and around the property with the landscaping and the traditional feel of Palm Beach and they asked themselves how they could help in that process and have had discussions with Mr. Eigelberger and Mr. Swanson about their willingness to ensure that this feeling would not be interrupted, and they are willing to help with that in any way the Town deems appropriate. She advised the Town has arrangements in place where there are easements and also a question of Town control and regulations, and they function quite smoothly, such as the facade easements the Preservation Foundation holds on several important buildings, such as the Daily News Building. She told Mr. Shaw that if the Preservation Foundation is involved with this easement, they have a right to insist on the maintenance to whatever standards the Town wishes and this is why they are here. She advised their sole concern in getting into this is because they frequently see plans and it goes through ARCOM and landscaping is approved and installed and then the property is sold, and the new owner removes it and that is what they are concerned does not happen and with the open space easement they could ensure that the landscaping features are not changed. She indicated they have had discussions with Mr. Eigelberger and Mr. Swanson and those discussions have progressed quite properly and it was her feeling that before this meeting, there should be something on paper which they have received today and they felt it was satisfactory and left scope to negotiate further about the easements, if that is what the Town desired, and she assured the Council she was not keeping any correspondence from them as this letter does not indicate the final form of anything and she wanted to be sure they were all negotiating in good faith on both sides and would share any information whatever with the Town.

Mrs. Wiener commented that all negotiations in this or any other matter as far as she is concerned are with the Town of Palm Beach and its elected officials and she wondered why they bothered coming to the Council. Mr. Prosperi responded they need the Town's signature on the Plat. Mrs. Wiener told Mr. Prosperi that this is where he should be dealing and not across the street and she was amazed that any private organization, and she didn't mean this statement be to the detriment of what Mrs. Earl does, but she was amazed they are talking about a major subdivision in this Town where a private organization has more knowledge of what is going on and letters are being exchanged and our Town Staff and Elected Officials know nothing about it. Mrs. Smith asked Mr. Prosperi if he was thinking of making this donation to the Preservation Foundation prior to getting approval for the subdivision? Mrs. Wiener announced she didn't wish to belabor this but there was something brought up which sounded strange to her, and she didn't understand their thinking as they are entitled to do anything they want, but whatever arrangements that have been made with third parties are of no interest to her personally. Mrs. Smith asked why Mr. & Mrs. Eigelberger would not make the gift of the Park Parcels A and B to the Town now as there would be nothing to stop them as the tax benefit will be there. Mr. Eigleberger advised that Park Parcel B under the tree is excluded from the sale of the property and they are offering it to the Town. Mrs. Smith asked if there was a contract on the property to which Mr. Eigelberger responded there has been a contract in effect for about a year. Mrs. Smith noted the plans she looked at were dated April 29, 1994 and that is only three months ago. Mr. Prosperi responded the process of a sub division approval is a lengthy one and requires preliminary submission and their first meeting with Mr. Moore occurred in September and then in January, February and finally, the submission made in April was the result of those meetings with staff and with professionals on behalf of the applicant. He stated staff required a sixty to ninety day period to put it on the agenda. Mrs. Smith noted that would have been the first date the plans were available for the public to which Mr. Prosperi responded affirmatively, noting the contract was signed in December but the closing has not taken place.

Mrs. Smith stated her concern was just about a year ago this Council was dealing with preservation easements on another piece of property and until she sees something on paper which she considers a firm binding thing, she is disturbed with some of these details they are looking at on this property. Mr. Prosperi indicated he had submitted a list of twenty details which are contemplated to be put into an agreement of some kind, which would be enforceable and recorded. He advised it is difficult that without talking to the Council ahead of the meetings, which they cannot do, it is difficult for them to figure out what will be required, so these things are being suggested, and additionally, that is why they went ahead and talked to the Preservation Foundation, as before it was suggested that someone might be willing to take this easement, there is some feeling that perhaps the Town may not have wanted to get into the business of enforcing the easement.

Mrs. Smith believed what they were dealing with if the public is wondering why the Council did not know about this ahead of time, and the reason they don't is because they deal in the Sunshine Law and everything must be discussed at a public hearing.

Mrs. Smith stated another concern is the wildlife on the property, recalling at the June Meeting it was not covered, and it is covered in the Code, Chapter 11.5, Natural Resource Protection, Article IV, and Section 11.5-53, recalling a letter was sent on June 7, which does not alleviate her concern as it states there will be an agreement which states the applicant has retained a second environmental consultant who will be available to assist in the relocation of wildlife and vegetation, should any listed species be discovered during the site work. Mrs. Smith continued with the statement that it should be determined before any approval is given that the Town should hire a consultant to review the management plan as provided by Code which will be paid for by the applicants. She stated she cannot believe there are no nesting birds, raccoons, possums, turtles, foxes, squirrels, rats or snakes which will not flee from this property to the surrounding neighborhood when this development has begun and she believed that the Florida Fresh Water and Game Commission should be requested to inspect this property prior to any approval.

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Mr. Prosperi recalled in an environmental review prepared by Gee & Johnson in November of 1993 and revised in April of 1994, they state five separate site visits were conducted during daylight hours to review the site and no known listed species were observed on the property. He stated they did observe squirrel, mocking birds, lizards, turkey vultures, cardinals and doves, and during the review it was brought to the consultant's attention about a fox on the property and none were observed during the site reviews. He assured the Council that if during site construction wildlife is encountered, Florida Game and Fresh Water Fish Commission can be called for assistance or guidance as to the removal and capture of the animals. He indicated he has contacted someone with a good reputation in Palm Beach as being successful in relocating wildlife and they have made an arrangement to retain him and keep him on retainer to remove any listed wildlife on the property which has been discovered and secondly, if neighbors to the property discover wanted or unwanted critters on their property which they think came from the applicant's property, those critters would be removed.

Mrs. Smith noted they stated the neighbors within 500' for a period of one year, but she would like to see the Florida Game and Fresh Water Fish Commission review the property, as turkey vultures are a species with which she was sure they wouldn't want to get into, but she knew they were protected and she thought the natural habitat should be checked. Mrs. Royal suggested they have a full environmental impact statement. Mrs. Smith felt this is something which should be done and should be looked into and the last thing she wished to bring is whether or not they have submitted a new plan which shows the wall as she recalled Mr. Eigleberger stating this property would be walled. Mr. Prosperi stated there is on their list of twenty-some items that a construction fence be installed around Mr. & Mrs. Eigelberger's property. Mrs. Smith asked if in a later plan, they would be showing the wall as the plan now states they will be constructing a temporary chain link fence. Mr. Prosperi responded it is his understanding there will not be installed a permanent wall. Mrs. Smith asked how they would be dealing with the question of the fill to which Mr. Moore responded the issue of the wall, if there is going to be one contemplated around the subdivision, it would be good for staff to see the location of the wall in relationship to the street and how it might effect any of the traffic movements and how the entrances to the property would be put through the wall as Mrs. Smith has related Mr. Eigelberger did advise them he intended to install a wall.

Mr. Eigelberger advised the Council he did not intend to install this wall for several years and at that point, he would pull a permit for it, but until they know exactly where the easement will be located and where the fill is, and the level of the soil, he would not attempt to put up the wall, however, he would like to do so in the future. Mrs. Smith asked what would they do to retain the fill as it would be needed outside the perimeter of what would be their grounds, as it has been determined it could be filled anywhere from six inches to 2.5'. Mr. Moore believed what has been stated earlier in this meeting is they no longer need to fill as much as they thought because of the elevation of the road, and other than the building pads themselves, they would not have to fill in more than six inches, so that has been revised.

Mr. Moore addressed the environmental study, noting the first one was woefully inadequate and it was rejected by staff, as they didn't believe it met the conditions of the Code, however, it was revised and resubmitted and that study was found quite adequate, and it does meet the Town's requirements, but Mrs. Smith pointed out it left the inadequate resolution of the animals as it dealt exclusively with the flora involved.

Mrs. Royal asked if it were to be determined that there were some specie on the endangered list, what would happen? Mr. Moore stated the review has been done and the Town does not have the responsibility but if it were suspected there were endangered species, the Ordinance allows them to have a study done at the expense of the applicant. He stated they could have their own environmentalist look at this and give an assessment. He advised if the Town felt the study was inadequate as far as the animals are concerned, and wished to have Florida Wildlife come in and take a look at it, this could happen and they could ask that to be done, but in the event there are specie discovered, it is a part of the Ordinance that they must be relocated if they are discovered during the course of construction.

Mrs. Royal asked about the vultures as she believed there were some on the premises. Mrs. Royal noted they were not listed as an endangered species. Mrs. Smith thought they were but didn't think they should get bogged down on this point at this time.

Mr. Shaw asked for a clarification on the fact they are talking about a Preservation Easement as a buffer and asked if that easement applied in addition to a building setback or in lieu of it, as if the building setback on these streets is already 30', the Preservation Easement has done nothing as pushing back the property lines to which Mr. Prosperi agreed, advising the Preservation Easement does not do anything about pushing back where the house can be built, and what it has to do is to determine what landscaping can be removed and which has to be preserved within a certain number of feet, and it would protect the wall on North County Rd., but would have nothing to do on where the house would be sited on those lots, which would be 30' from the property line, or approximately 42' from North County Road.

Mr. Shaw stated what he was looking for was not a matter of the preservation easement, but more or less an abandonment of a 15 to 20 foot strip in order to push the property lines further back into the property. Mr. Prosperi did not think the applicant would be amenable to that as they have to take into account the entire package of the subdivision, recalling the park dedication and the greenscape area at the entrance to the property and given the fact, they are operating at 38% of maximum density, and the lots are at an average of 2.5 times the minimum lot size, the applicant is not willing to cut down on the size of the lots, or reduce the number of lots in this subdivision application.

Mrs. Royal asked if the easement is going to be located at the rear of a property, does it give to the public anything more than a setback requirement would give the Town to which Mr. Randolph responded an easement would give more than a setback. Mr. Prosperi wished to point out none of the easements they are talking about giving exceed the setbacks, and he understood that a

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pool could not be built in front or side yard setbacks, so what they are doing is armoring and try to give ways to have enforcement mechanisms to preserve that which is there, which is in landscaping and existing walls, so there will be a greenspace buffer. He thought if the landscape easement was not there and he bought a lot and he didn't like for instance a Traveler palm, he could take it out, but with the landscape easement in place, that Traveler palm could never be removed. Mr. Randolph suggested the Plat delineate the easement and the language on the Plat would indicate to perspective purchasers of the property that no landscaping within that particular easement could be removed. Mr. Moore interceded this would be except for the exotic landscaping. Mr. Prosperi believed the purpose of the survey was to identify what was there which was indigenous and worthy of preservation.

Mrs. Royal stated she was convinced there was a benefit to the developer in giving the easement but she was not convinced as to what it would do for the Town. Mr. Prosperi explained the only purpose of this was to make it clear and enforceable to those who cared and when they drove by on either Kawama or North County Road, the trees that are there now which give the property a sort of unique look would remain there and no future property owner could remove them, and therefore change the look, and that would also screen and buffer any construction on the two lots on North County Road.

Mrs. Wiener gave her comments, asking first a question as to what number of lots could be platted on that property to which Mr. Prosperi responded the maximum density is 83, which he thought may be a bit misleading as it doesn't take into account the amount of land which would have to be allowed for roads. He stated Mr. Eigelberger has in his possession plans which were developed in the past with three streets straight through from North County Road to North Lake Way, with one showing 59 lots and the other 56 lots.

Mrs. Wiener wanted to talk about the wildlife, advising there are a number of people who have approached her who have a concern about a great quantity of wildlife on that property and wondered how they would go about assuring those people that the wildlife will not be a problem to those who live in the adjoining area. Mr. Prosperi responded they will put in the agreement that they will have on call at all times a qualified wildlife expert who, at their expense, will remove any such critter from any neighboring property and the Council can determine the radius and the period of time. Mrs. Wiener asked why they couldn't get rid of the critters on the piece of property they are developing when it is seen? Mr. Prosperi stated they can, but in fact during five site visits, none were identified. Mrs. Smith did not believe they were visiting the site at night. Mrs. Wiener felt this was an important part of the process and whether it exists or doesn't exist, she needed to have a situation where a serious job was done so that they can all sleep quietly at night.

Mr. Prosperi stated a wildlife expert will come onto the property, during the site work, to help identify and move the wildlife.

Mrs. Wiener commented she was speaking for herself but she would not be in agreement about easements, or the giving of property or anything of that nature, she will not agree to the entire concept unless all of it goes to the Town of Palm Beach, and that would be the enforcement, the further discussion of it, as this is for the enrichment of the Town. She felt that instead of them coming to the town with something they could fight about for months and months, and she is not urging they move forward today, as she felt they have done a good job, however, would hate to see them in a situation where they have something good before them, and because of someone's understanding of what should or should not be, she doesn't want to be in a position later on down the road have this disappear and then have some serious problems. She thought it made no difference if there were lots of 100' or 110' or 120', as the surrounding streets are mostly 100', and she didn't believe in spot zoning. She stated when someone comes to her with a plan where the lots are double the required size, willing to donate property to the Town, she felt this was something that deserved serious positive consideration. She was concerned about the gate situation on North Lake Way, and hoped that would be resolved.

Mrs. Wiener addressed the matter of uniformity, as such a thing cannot exist since there isn't one single structure in the Town which did not have to meet the best of the Architectural Commission, and regardless of what the owners of the property may desire, they are not the ones who can make that determination, other than on their own piece of property. She thought that was a fear that the Council should realize they didn't have to deal with as they were protected in that area.

She realized there were a number of things which still seemed to be resolved obviously and now she wished to make a determination as to what further instructions they would like to give to the applicants and their attorney.

Mrs. Smith asked on what two lots does Mr. Swanson propose to build the first two spec houses, as there has been a lot of conversation on expanding the lots and she thought on Lots 13 and 14, on the north side, there is a specimen tree and during the building process they would have to set back 25' from the tree; and on Lot 16, and part on Lot 17, there is the Mushroom Cottage, which Mr. Swanson stated he wished to move it so it would be located on one Lot, and she thought they should give consideration to increasing the lot sizes, and to increase the landscape buffers, and address Mr. Weinberg's concerns about the wall, and how much property would be left on County Road and how much on Kawama Lane, and whether the lots can be changed and made into irregular shapes, and what will they do about the gate on North Lake Way, and with all of this and other items discussed, she would move that this matter be deferred until next month and then they come back with everything platted out, taking into account the thoughts and concerns expressed today and the comments of the Council for this project. She knew Mr. Swanson had a wonderful reputation as a developer, as a builder, and may get carried away sometimes in trying to make his houses perfect, but they all commend the effort but they want it to be right. She stated they are all concerned about the animals. The motion was seconded by Mr. Weinberg.

Mr. Prosperi understood they would like to consider this more, but wondered if they could have some direction to staff that in the intervening 30 days, they could draft a recordable agreement which could be a part of the packet for the next meeting, as otherwise they are not making any progress. Mr. Randolph agreed they needed to be putting into the form the things they have talked about today. Mrs. Smith asked Mr. Prosperi to clarify exactly what he wanted to which Mr. Prosperi responded he would like to work with Mr. Randolph on the twenty points he has submitted and Mr. Atterbury and put it into a draft agreement.

On roll call, the motion carried unanimously.

A ten minute break was taken after which Mrs. Wiener reconvened the meeting.

Var. 38-93 one yr.extension

6. Consideration of Request for a One-Year Time Extension - Variance No. 38-93 - Stanley Knowlton, 255 Seaspray Avenue; to allow construction of a pergola setback 2' from the east property line in lieu of 10' and 6' from the front property line in lieu of 30'. R-B District. Since there was no one in the room to address this matter, this item was deferred to the end of the agenda.

New Business:

Var. 27-94

New Business

7. Variance No. 27-94 - Dr. and Mrs. Samuel Scher, 9 Golfview Road; to allow construction of a 15' sq.ft. elevator addition with a side yard setback of 4.5' in lieu of 15' required, increasing lot coverage from 42% to 43% in lieu of the 25% maximum permitted. R-A District. - Attorney Frank Lynch addressed the Council on behalf of the applicants, advising the proposed addition is to allow an elevator which would be approximately 15 square feet, 15 x 5 feet, and this is one of the variances requested as the lot coverage is exceeded on this property. He advised another variance is a side yard setback. He noted the area where they are seeking to put the elevator has a greater setback than the minimum setback of the property, as the minimum side yard setback is 4.9' which was established when the property was built prior to 1955.

Attorney Lynch advised they have tried to find another location on this property for the elevator shaft and basically there is no other area in the interior of the house where it could be placed to service both bedrooms.

He advised the hardship is the positioning of the building which would not allow them to put the elevator shaft in any location within the interior of the house, so it was thought it was best for this to go into this cut-in area, as it will best service the bedrooms and it will not be visible from Golfview Road. He advised there is a ficus hedge in this proposed location and it is 18' high and will completely shield the view from the neighboring property. He exhibited photographs which showed the area, both interior and exterior.

Mr. Moore advised the houses on this road are built on irregularly shaped lots and some of the properties have been subdivided. He advised the staff has no objection to the variance as he did not believe there were any alternate locations. Mrs. Smith asked how far was the elevator from Golfview Road? Mr. Lynch responded it is approximately 80' and 60' from the back end of this property.

Mr. Moore advised there is a letter of concern from a neighbor. Mrs. Wiener called for public comments. Attorney Scott Williams addressed the Council on behalf of his clients, Power-Love Associates and Palm V Associates who own the retail stores and mixed used properties on the south side of Worth Avenue. He advised there are retail shops on the first floor and there are apartment units on the upper floors. He believed the pictures exhibited earlier by the applicant's attorney were pictures from the Golfview side and not from the north side. He stated his clients have several concerns, one being noise. He stated they are also concerned about the unsightly nature of the elevator from the north. He heard the attorney state that the residence is presently nonconforming, both as to setback and also as to lot coverage, and he believed to grant the variance would be to extend and expand the nonconforming nature of the present existing structure.

Mr. Williams reported he drove down this street and it is a heavily improved street and he thought this would be one more added improvement to a property which is presently nonconforming. He believed the hardship seems to be the age of the applicants and although he is sympathetic to that, that is not a hardship as to the land, which he did not think was a unique hardship.

Mr. Randolph agreed that the hardship could not be the applicant's mental status or age and if this is granted, it would not be based on that but something unique to the land.

Mr. Moore reported the staff found the hardship was in the irregular shape of the lot and the general characteristic of the neighborhood did warrant this for consideration.

Mrs. Wiener asked Mr. Lynch to address the impact this would have on the neighbors to the north. Mr. Lynch noted right now the neighbors to the north look at the blank wall and they will continue to look at a blank wall, as right now it is the backside of an unused fireplace, and when it is completed they will still see a blank wall which will be the back of an elevator shaft moved slightly closer to the property line. He stated these apartments are located approximately sixty to seventy feet from the property and he thought the property which would be most effected would be the property to the east, as that is within twenty feet. He noted the apartment owners live on the other side of air conditioning units, dumpsters, and an alleyway. He advised the elevator will not be used frequently as there are two people who live in the house, and they will do anything possible within existing technology to eliminate the noise.

Mr. Lynch noted there are technologies, for instance a lubricant which will allow the hydraulic elevator to run more quietly than it would if it were a dry operation.

Mr. Shaw made a motion that this variance be approved, subject and conditional to certification that the type of mechanism that is being used, whether it be hydraulic or direct drive, or whatever technology is out there in the elevator world, be approved by the Building Department with the certification that it is the quietest form of elevator for private residences that can be installed. Mr. Weinberg seconded the motion.

Mrs. Smith questioned where the machinery would be located that would operate the elevator. Mr. Lynch stated it would be within the configuration of the elevator shaft. Mrs. Smith asked if that would be on the top of the tower to which Mr. Lynch responded he believed that is where it would be located. Mrs. Smith thought if it were located on the top, it would make less noise. Mr. Lynch was not sure. He reported he was in receipt of a letter from Miami Elevator which confirms they can provide a submersible power unit in lieu of the standard dry design, which will be located inside the oil reservoir tank and will reduce the sound transmission.

Mrs. Royal recalled in Mr. Williams' letter, he suggests the elevator be located in the interior of the home and asked if it would be possible to put it near the staircase? Mr. Lynch responded that would not be possible due to the design of the house, which is tight, and because of the location of the bedrooms at either end of the house, an elevator would not effectively serve both locations, and if wheelchair access is necessary, they wouldn't want to wheel one person through the other's bedroom, and that is why this location was selected. He advised they went through the house with an architect and this particular location requested was selected.

On roll call, the motion carried 4-1 with Mrs. Royal voting against the motion. Mrs. Wiener assumed there would be a written instrument handling the noise situation, to which Attorney Lynch agreed.

8. Variance No. 28-94 - Paul Maddock, 215 Jamaica Lane; to allow construction of an addition providing a front yard setback of 25' in lieu of 30' required. R-B District. - Jackie Alberran, Architect, addressed the Council for Mr. Maddock, noting this is a small two story residence and it has a one story side to it and this houses a kitchen which is 9 x 10 and in that area there are five doors, so there is not much they can do with that space and they wish to extend that area and make a functional kitchen. Var. 28-94

Mr. Moore believed there should be further information regarding the hardship, however, he thought it was provided and he has no objection, as this is in line with the first floor.

Mrs. Smith moved for approval of Variance No. 28-94. Seconded by Mr. Shaw. On roll call,the motion carried unanimously.

9. Variance No. 29-94 - Jeffrey Epstein, 358 El Brillo Way; to allow installation of gates setback 9' in lieu of 15' required at both driveway entrances. R-A District. - Mike Johnson addressed the Council on behalf of the applicant, noting the residence is located at the extreme end of El Brillo Way and the location of the gates will be at the westerly entrance, as he already has a gate at the east entrance. He advised the location will be beyond any residential traffic and the reason he needs the gate is because he has cars turning into his driveway to turn around and exit the street. Var. 29-94

Mr. Moore advised there is no objection from the staff.

Mrs. Smith asked if the gates were moved back, they would be able to either reduce the variance or not need it. Mr. Johnson responded they wouldn't have enough room as the gates cannot open outward. Mrs. Royal asked if the gates would be similar to the gates they have at the service entrance to which Mr. Johnson answered they will be similar and will be presented to the Architectural Commission. Mr. Shaw asked if they could use sliding gates to which Mr. Johnson responded they cannot use the sliding gates due to the difference in the elevation and it would be on an angle and it would look peculiar.

Mr. Weinberg moved Variance No. 29-94 be approved. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

10. Variance No. 30-94 - James Dunworth, 245 Seminole Avenue; to allow construction of a single family dwelling on 50' wide lot in lieu of 75' minimum required, and providing 5,900 sq.ft. of area in lieu of 10,000 sq. ft. required. R-C District. - Attorney Ron Kolins addressed the Council on behalf of Mr. Dunworth, advising the house presently on the property is very old and dilapidated and is termite infested and the ceiling is falling down and he believed the house could not be renovated. Mrs. Wiener pointed out this part would be considered by the Architectural Commission. Mr. Kolins stated the replacement house would be consistent with the rest of the neighborhood, but those lots are fifty feet wide and the neighborhood is one of multi-family apartments, so they are doing what is consistent with the neighborhood. Var. 30-94

Mr. Moore agreed this is in the R-C neighborhood and the present house on the property is not able to be repaired and staff has no objection.

Mrs. Smith asked when the house is torn down which would include the small house in the rear, she would not like to see two separate residences put onto the property. Mr. Kolins responded there would only be one single family home. Mr. Moore reported the size of the property dictates only a single family structure and it would have to meet today's zoning and there would be only one unit.

Mr. Shaw moved there be approval for Variance No. 29-94 with the stipulation that all current zoning regulations and requirements would be met and they would not seek a variance with hardship of the land to come back to the Council. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

11. Variance No. 31-94 - Eastbridge Capital, Inc., 350 Royal Poinciana Plaza; to allow installation of three 2' diameter roof-mounted satellite dishes, a variance from Section 5.51(f) of the Town Zoning Code. C-PC District. - Mr. Tom Parker, office manager of an office currently under construction in the Royal Poinciana Plaza, which will be Suite 308 and this is sublet from a law firm and is on the northeast corner of the Royal Poinciana Plaza. He advised the nature of the business is a primary dealer in U. S. government securities, which is regulated by the Federal Reserve and most of the information with which they deal is transmitted electronically. He recalled six or seven years ago, this information was transmitted by telephone line, but it is now received by satellite transmission and the dishes are required to receive the information. He stated the dishes are 24" in diameter and they require three of them. He advised there are a couple of these satellite dishes already on the building granted by the Town Council several years ago. He noted the dishes are not visible. Var. 31-94

Mr. Moore advised his staff has no objection, providing the dishes are completely sight-screened. Mrs. Smith recalled there is a parapet on this building and asked if the dishes would be visible from the Palm Beach Tower occupants. Mr. Parker responded negatively, noting there are eight air conditioning units there now, with only one visible.

Mrs. Royal moved that Variance No. 31-94 be granted, subject to sight screening. Seconded by Mr. Shaw who asked if the size of dishes were going to be considered next year by the Zoning Commission to which Mr. Moore responded affirmatively.

On roll call, the motion carried unanimously.

Var. 32-94

12. Variance No. 32-94 - George Kantor, 765 Hi-Mount Road; to allow relocation of the octagonal accessory structure to within 12' of the south side yard in lieu of 15' required, or in the alternative, to allow a 7' rear yard setback in lieu of 10' required. R-B District. - Attorney Broberg addressed the Council on behalf of the applicant, Mr. Kantor, indicating they wished to save a tree. He recalled in 1990, the property had an octagonal building on it which was landmarked and it had wings on it which were allowed to be removed and part of the approval of the landmarking was that the structure could be moved to any place on the property. He noted in 1994, there was approval of a single family home to be built on the property by the Architectural Commission, but there was a condition that there would be a deed restriction to keep the basic canopy of trees and the vegetation on all four corners of the property. He recalled in the process of complying with both the landmarking of the structure and the ARCOM's request, the octagonal structure was moved to the southwest corner, however, a surveyor did not locate a tree properly, and if they stayed within the setbacks which are presently in force, they would run afoul with the tree.

Mr. Broberg indicated their request is to move the octagonal structure five feet to the south to allow a ten foot setback on the sideyard, rather than 15'. Mr. Moore advised the staff recommendation is to move the house to the south rather than the east and that would leave a larger sideyard.

Mrs. Smith believed the applicant had spent a lot of time and money to keep the canopy in tact and tuck the housing into the landscaping, and for that reason, she moved for approval of Variance 32-94. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Var. 33-94

13. Variance No. 33-94 - Brazilian Court Hotel, 301 Australian Avenue; applicant requests that variances be granted to previously imposed restrictions applicable to nonconforming hotels allowing applicant to advertise existing hotel services. Applicant states that previously granted variances have unreasonably restricted the types of advertising permitted and requests amendment to said variances. R-C District. - Attorney J. Barry Curtin addressed the Council requesting a modification to the variance previously granted on 7-10-79 and the modification is to the condition which were:

1. The Hotel was to reduce to a bare minimum the bar and restaurant advertising done during the peak winter season, which was December through April; and
2. The hotel was to eliminate all public media advertising, with the only exception being the mailings on special events, such as guest speakers; and
3. The third condition was the hotel would cease all radio and television advertising for the bar and restaurant, other than enticements to the general public to use accessories at the hotel without being a room guest.

He believed the conditions were dealt with by way of a policy statement in January, 1993, concerning this hotel and a series of other hotels and their ability to advertise. He stated he would like for the record to have the variances cleared up as it no longer relates to the operation of the property and by virtue of the fact the hotel is now landmarked, they need to have the variance conditions modified.

Mr. Moore reported it is the staff's opinion it would be appropriate to remove the restrictions at this time.

Mrs. Royal asked if this was continued to be operated as a hotel to which Mr. Curtin replied to the best of his knowledge, the answer would be yes but the Council should understand that the receiver is operating it for the time being and at some time, the hotel will be sold.

Mr. Shaw knew there were other properties in Town which had these limitations on advertising and he asked if there was a potential by granting the lifting of these restrictions that this will be setting a precedent? Mr. Randolph recalled they modified these restrictions for some of the other hotels. Mr. Moore agreed, noting that the La Monegasque is a nonconforming restaurant in a multi family building but that is a restaurant and not a hotel. He believed the changes proposed today are for the direct operation of the Brazilian Court Hotel and that is what the request is although it will still be a non conforming hotel, but it would remove the precise conditions which were placed against the hotel in 1979. Mrs. Wiener thought the fact this is a landmarked building should totally allay their fears, and also what was previously done was an error as the hotel was there long before the surrounding area.

Mrs. Smith wondered what the background on this asking if it was because of the commercial use in a residential district that these restrictions were placed on this hotel and wondered if the Town Attorney could guess if the idea was to eliminate the Brazilian Court from this area? Mr. Randolph responded that was not the idea but it was a nonconforming use in the residential zone and they did not want to perpetuate nonconforming uses, and by not allowing them to advertise, the use would not be perpetuated.

Mrs. Smith hoped it wouldn't be that they wanted to drive them out of business as she always has thought the Brazilian Court was very much a part of this area and always wondered what had precipitated these severe restrictions on the property. Mr. Randolph responded the uses were accessory to the use of the hotel and they felt the restaurant and other activities within the hotel should only be advertised in conjunction with the hotel and to do otherwise would be advertising a commercial use, but he didn't think there was any intent to drive it out of business.

Mrs. Smith asked Mr. Curtin if he would only be advertising during the period from December through April to which Mr. Curtin responded they are requesting the conditions he quoted be completely removed, as they wish to advertise year round.

Mrs. Smith moved for approval of Variance No. 33-94. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

14. Special Exception No. 17-94 with Variance - Clement C. Mimun, beachfront parcel east of 1144 North Ocean Blvd.; to allow construction of a deck with umbrella covered tables and chairs. A variance from the 100' wide lot requirement is requested. Beach Area District. Mr. Clement Minum addressed the Council, requesting approval of the construction of a deck on the land he owns on the beachfront and to embellish the area. Spec.Excep. 17-94

Mr. Moore reported this is an undersized beach property which was sold off by a prior owner, as the Ordinance does require 100 feet in order to have a beachhouse. He recalled Mr. Minum made a request for a beach house which was denied, and now he wishes to have a deck with an umbrella and a set of stairs to get down to the Beach, and it would be a minimum use of the property. He advised Mr. Minum has secured the permits from the proper state agencies, and the staff recommends if this is approved, there be a Unity of Title with the home across the street.

Mrs. Smith moved for approval of Special Exception No. 17-94 with the condition that a Unity of Title with the main house be submitted. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

15. Special Exception No. 18-94 - Salvatore Ferragamo, 200 and 202 Worth Avenue; to allow removal of interior wall separating the men's from the women's shop thereby further exceeding the 2,000 sq.ft. limitation creating a space totaling 5,645 sq. ft. C-WA District. - Attorney Doyle Rogers addressed the Council representing the applicant requested authorization to remove the interior wall separating the men's and women's shop, which he thought would serve the public well, particularly the handicapped. He advised they have had two audits one for a five year period ending in 1991 which showed 68% Town-serving and one submitted on June 9, 1994 for the year ending May 31, 1994 showing 75%, which meets the requirement set forth in Section 6.40 on townserving persons. Spec.Excep. 18-94

Mr. Moore stated the only comment was that the townserving would have to be proven and Mr. Rogers has already addressed that and the staff has no objection.

Mrs. Smith moved for approval of Special Exception No. 18-94. Seconded by Mr. Shaw. Mr. Shaw hoped that in the event Ferragamo would move out of this area, this Special exception would not remain with the building and it would be divided up into the allowable 2000 square feet, to which Mr. Moore responded they have not created a grandfathered-in space and they would have to come back if they wished to use more than 2000 square foot segments. On roll call, the motion carried unanimously.

16. Special Exception No. 19-94 - Unique Restaurant, 20 Australian Avenue, the Bustani Building; to allow a restaurant to occupy 4,300 sq.ft. of area in lieu of the 3,200 sq.ft. previously occupied by Treetops Grill and in lieu of the 2,000 maximum permitted in a C-TS Zoning District. Pursuant to Section 6.21(D)(3) of the Town Zoning Ordinance, applicant wishes to provide required parking on the adjacent parking lot located in the R-C Zoning District. C-TS District. - Attorney Peter Broberg addressed the Council on behalf of the applicant. He advised the two proprietors, David Duback and Nino Yeager, are not in the room but should be here shortly as they have been here since early this morning. He advised the restaurant is currently known as Tree Tops and presently occupies 3,200 square feet and to expand that, which is already above the 2000 feet minimum in the C-TS zone, they have to come before Council for a Special Exception, and the application has asked for an additional 1100, which is actually closer to 1300 square feet as when everything is moved around, they found there was more footage. Spec.Excep. 19-94

Mr. Broberg advised they would have to provide off-street parking which can be provided in the R-C zone adjacent to the property. He stated the applicant would be happy to enter into any written documents required. He stated parking required is three seats for every parking space and presently, there are 80 seats and the parking could be provided and the agreement will be recorded.

Mr. Weinberg asked if the restaurant space would be west of where the bar is now? Mr. Broberg responded they plan to completely gut the building and relocate the bar to the front of the space and the restaurant will be in the rear.

Mr. Broberg noted the two proprietors both own restaurants in the southern part of the County, one does his marketing with direct mailings within a four mile radius where he gets well over 50% of his clientele and that is in conformity with the restaurant studies he has presented before which shows there is a five mile radius from which the restaurants draw their customers. He felt this would be more than sufficient to meet the Town-serving criteria that 50% of their customers are within the Town.

Mr. Broberg reported the other proprietor gets his customers for his restaurant by way of advertising and that is also within the radius defined. Mr. Weinberg asked what kind of cuisine would they be offering to which Mrs. Wiener responded she would like to hear Mr. Moore's comments first.

Mr. Moore stated he has some concerns, as he believed he heard Mr. Broberg state the application states 4300 square feet and he believed they now wanted more. Mr. Broberg responded there was a question when he first filed the application, as to whether or not they would be using the most westerly area, and they have now made a decision to do so. Mr. Moore asked what would be the total square footage. Mr. Broberg responded it would be approximately 4500 square feet. Mr. Randolph commented this was advertised at 4300 and if they want to use this extra space, this application would have to be readvertised. Mr. Broberg stated he would let it stand at the 4300 square feet. Mr. Moore noted he would have to come back if he wanted to use the extra space.

Mr. Moore talked about the required parking, noting the square footage would permit 150 seats and he asked if that is what they were looking for? Mr. Broberg responded the liquor license is already in existence and they do not need to have 150 seats for that license and the plan is to have between 120 to 130 seats.

Mrs. Wiener was concerned that there not be a piece meal situation, both with the license and then coming back with the additional square footage, and she would like to see this deferred so they could have the whole act together with the proper figures and the total plan. Mr. Broberg stated he would like to go with the 4300 square feet requested. Mrs. Smith asked if he was going to take all the space and work it out to whatever number of square feet he wants? Mr. Broberg responded there is a large marble bar there which will be removed and the plan is to use that space for the restaurant. He stated they will remove some of the square footage and there are some confines with regards to the kitchen.

Spec. Excep. 19-94

Mr. Randolph asked if there was any documentation available with regards to the Town-serving nature of the application? Mr. Moore stated there was not. Mr. Randolph stated so all they have is the oral representation that they will advertise within the five mile radius. Mrs. Smith did not think that was sufficient. Mrs. Wiener believed that type of documentation was accepted in the past as they don't yet have a track record.

Mrs. Royal asked why they don't start at the 2000 feet if they are new and prove they are town-serving and then move on to a bigger restaurant? Mr. Moore responded that would be the ideal way of doing it, however, that is not what they are asking for and they are stating they will be Town-serving straightaway.

Mr. Broberg reported the existing space is over 3200 and that is in excess of the 2000 allowed, and the proprietors state in their other restaurants, their draw is from a four mile radius and that would come up to the Town-serving criteria. Mrs. Royal felt they could still come across the bridge within that radius. Mr. Weinberg asked what the name of the restaurants were that the proprietors now own? Mr. Broberg responded one of them own the Copenhagen Grille in Boynton Beach and the other has the Porterhouse Grille in Boca Raton.

Mr. Broberg stated the reason they are requesting this Special Exception is they don't wish to start with the space they have now because they feel street frontage is very important and they want to have an entrance to the restaurant off of County Road. He stated the side street is one way heading east and it is difficult to get to it, as they are confined by the physical location. He stated all restaurants need a certain size to make it work and exposure is important.

Mr. Shaw was concerned if they were truly looking to have a nice restaurant as they are going to keep their liquor license, or are they looking to expand the bar, as they want to move the bar from its present location and the bar will be visible in the window, instead of the restaurant. Mr. Broberg didn't know if it would be precisely in the window to which Mr. Shaw responded it would be visible. He agreed with Mrs. Royal in starting out with what they now have but if their intent is to make the bar twice the size of what it presently is and that would be their focus. Mr. Broberg responded they are both restaurant people and they make money on their bar sales and they make money on their food. Mr. Shaw stated he doesn't want to see another Bradley's and what they will be focusing on is a massive bar business, and in reality that is why they are not going for 150 seats, as they are looking to be in the bar business. Mr. Broberg commented the owner of the building, Mr. Joe Bustani, has told him he too does not want to see another Bradley's there also.

Mr. Moore stated the liquor license to be transferred is a 4 COP license. Mr. Shaw noted that is a bar license so what they are creating is a bar and not a restaurant. Mr. Broberg disagreed stating they are creating a restaurant with a bar license.

Mr. Moore noted there has been a letter of objection sent by the neighbor, Mr. Cortes, who has lived with this for some time and it is important for any operator to address, such as cleaning up the alley and the problems that have been associated with the use of the alley along the west property line. He was sure Mr. Bustani was well aware of the problems and asked what he would do to be able to clean up those problems? Mr. Broberg reported the dumpsters have been moved from near the house and the grease traps have been taken care of, the alleyway is clean and there is no running water and the filters have been maintained in the exhaust system, and he walked through thru there and didn't smell anything.

Mr. Moore was asked what he knew of the problems, and he stated the dumpsters have been removed and the grease pits have been taken care of as well as the leaking water has been taken care of. He did know the ventilation system would have to be addressed as it is antiquated. Mr. Broberg was sure the landlord and tenant would be happy to take care of that. Mrs. Smith asked if this would mean new scrubbers and new fans to which Mr. Broberg responded Mr. Bustani has stated he would take care of it.

Mrs. Royal commented she could appreciate them wanting to have an entrance on County Road but she would hate to see a great big restaurant and suggested they take some of that back area and not use it. Mr. Broberg explained that is where the existing kitchen is now located. Mrs. Royal thought it was outdated to which Mr. Broberg did not agree. Mrs. Wiener noted they are entitled to have the restaurant there and the question is the size of the restaurant. Mr. Moore explained they could open a restaurant without coming to the Town Council for 3200 square feet. Mr. Randolph thought when the ownership was changed they would have to get permission to use it. Mr. Moore disagreed, noting this is a grandfathered in space and has not been to the Council since 1980. Mr. Broberg pointed out there has been a restaurant/club there since 1953.

Mrs. Smith stated she would like for someone to open up there and stay so there would be some stability there. Mrs. Wiener felt an entrance off of County Road would make a great deal of difference. Mrs. Smith asked if they would have just one entrance to the premises from County Road or would they also be using the side street entrance to which Mr. Broberg responded they would have two entrances, one in the front and one from the side street.

Mr. Moore asked if they would restrict the use of the rear alley for deliveries between certain hours, so the property owner to the west would not have his driveway blocked. Mrs. Smith asked where the deliveries would be made and Mr. Broberg noted it is off the alleyway which is the entrance to the kitchen. Mrs. Smith asked if they continued on through the alleyway when they were done with their deliveries or did they back out to which Mr. Broberg responded they back out. Mrs. Smith was sure that is what the problem is as when they back out, they block the driveway. Mrs. Smith asked if after the deliveries are completed, they proceed forward and come out on County Road. Mr. Bustani stated they could do that or they could make a jog through the parking lot and come out onto Chilean Avenue.

Mrs. Royal noticed the proprietors are now here and asked what kind of restaurant they were planning to have? Mrs. Wiener did not believe it really mattered. Mrs. Royal asked if she could ask them. Mr. David Dubac addressed the Council indicating he has been in the restaurant business for twelve years and owns the Porterhouse Bar and Grille, which is a steakhouse and his partner is Nino Yeager who owns the Copenhagen Grille in Boynton Beach which is a European Continental and they plan to combine the two concepts with approximately a $25 check average, as well as having a bar with piano and singing, etc., to give something new to the Palm Beach area. He stated his restaurant is known as a nightclub and a restaurant and they want to offer the same thing here. Spec.Excep. 19-94

Mr. Shaw moved that the application for the extra square footage be denied and they can open up as a 3200 square foot restaurant and he would be happy to review this in a year after they have proven they are Town-serving. He was a little concerned that this will be called a bar and not a restaurant. Seconded by Mrs. Royal. On roll call, the motion failed to carry 2-3 with Mrs. Smith, Mr. Weinberg and Mrs. Wiener voting against the motion.

Mrs. Smith asked specifically for the exact space they would be using? Mr. Broberg referred to the plan and advised they have decided they would not be using some of the space in the rear which space was used by a previous restaurant as the area where carry out service was handled. Mrs. Smith moved that the location designated by Mr. Broberg will not be used and there will be one entrance on South County Road and one entrance on Australian and all deliveries to be in the alley in the rear of the property and there will be no backing out onto Australian Avenue after deliveries and no blocking of Australian Avenue and if there is a problem on that, the Council would revisit the application; and there will be new scrubbers and the fan and the updated equipment in the kitchen, and it is noted the dumpsters have been relocated; and the new equipment would be in place by the time the restaurant is opened. Mr. Moore asked if they wanted to put a restriction on the hours during which the deliveries would be made? Mrs. Smith commented there would be no deliveries in the evening hours, and none before 8:00 AM in the off season and 9:00 AM in the season. Mr. Randolph asked if they wanted to include in the motion the regular affidavits that would be needed for Townserving? Mrs. Smith included the need for the affidavits for Town serving in her motion. Seconded by Mr. Weinberg. Mr. Randolph explained if the affidavits would show they are not Townserving in any one year, the operation would not be able to continue, to which Mr. Broberg agreed. On roll call, the motion carried 3-2 with Mrs. Royal and Mr. Shaw voting against the motion.

17. Variance No. 38-93 - Knowlton - Mrs. Wiener called for a representative to address the extension requested and there was no-one in the room. Motion was made by Mrs. Smith, seconded by Mr. Weinberg that this matter be deferred to the August meeting of the Town Council. Var. 38-93

D. Other

1. Consideration of Study Items for 1994-95 Zoning Season - Mr. Moore stated there are two items which he thought needed to be addressed for the Zoning Season, noting he was in receipt of a memorandum from Mrs. Royal asking for larger setback for the larger properties regarding Section 5.15 in Lot Area. He noted there always in a Site Plan Review and at that time, they can always discuss setbacks so he was not sure they wished to add this into the Ordinance, but they could ask the Commission to study it and take action, but the ability to negotiating the setbacks has already been under study. Study Items for 94-95 Zoning Season

Mrs. Royal asked to be able to amplify on this as she thought by adding footage to the setbacks as a minimum and when it is a large piece of property, the setbacks should come up to what they currently have for the larger pieces of property. Mrs. Wiener saw no reason why it shouldn't be studied. Motion was made by Mrs. Smith that the Zoning Commission look into the possibility of increasing the setbacks on the larger pieces of property and the development of the larger pieces of property and a decision should be made as to whether or not the property should be looked at during the season for zoning and landmarking. Seconded by Mr. Shaw.

Mr. Moore stated the next item is with regards to temporary signs in the commercial districts, noting as a result of a Code Enforcement ruling earlier in the year, Mr. Newman requested the Zoning Commission look at the restrictions for temporary signs and he thought it was worthy of study but he thought the Council should be the one to make that decision. Mrs. Smith so moved. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Shaw asked if he could make a suggestion on something to be studied by the Zoning Commission. Mr. Moore stated it is not too late for him to add something on the zoning calendar as the deadline is September 16.

Mr. Shaw asked if an item could be added with regards to shared parking when the use of parking normally used during the daytime by an office or a bank could be shared at night with a restaurant in the neighborhood. Mr. Moore recalled some work has already been done on this several years ago as this concept was looked at but it was not followed through with, so some of the work is already completed.

Mrs. Smith thought there should be no cost in investigating this to which Mr. Moore agreed.

Mr. Shaw moved his idea of shared parking for nightime/daytime use be explored by the Zoning Commission. On roll call, the motion carried unanimously.

XIV. ANY OTHER MATTERS - Mrs. Royal advised that she and Mrs. Smith were appointed as delegates for the Palm Beach County Intergovernmental Coordinator Taskforce meeting on August 1, 1994 and asked if Leslie Shaw can be the delegate. Mr. Shaw stated he will be happy to go. Any Other Matters

XV. ADJOURNMENT - There being no further business, the meeting was adjourned at 6:47 PM. Adjournment

Grace T. Peters
Town Clerk