

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JULY 8, 1997

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A.M. on July 8, 1997. The roll was called, and the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Leslie Shaw, Councilmen Jack McDonald, Sam McLendon, and Allen Wyett. Also in attendance for all or part of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director James Demming, Fire/Rescue Chief Vincent Elmore, Police Chief Joseph Terlizzese, Director of Public Works Al Dusey, Town Engineer James Bowser, Facilities Maintenance Division Manager Joe Ugi, Director of Recreation Russell Bitzer, Director of Planning, Zoning & Building Robert Moore, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Father Lechiara of St. Edward's Church. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS - None

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky commented that the National Night Out would be held at St. Edward's Church on Tuesday, August 5, 1997, and encouraged everyone to participate.

Mayor Ilyinsky noted that the Town had entered into an Agreement with the Florida Department of Transportation (FDOT) to resurface Royal Palm Way from South County Road to the Royal Park Bridge, which would commence July 9, 1997. He remarked that the storm drainage project on Cocoanut Row was underway and would continue throughout the summer months.

President Smith thanked the Recreation Department for the Fourth of July Celebration, commenting that it was a grand success.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

Item XIV. B. 1, page 5, Consideration of Appeal of the Landmarks Preservation Commission to Undesignate 150-A Australian Avenue; Request by Quilty Properties, Inc. (Deferred from May 13, 1997, and June 10, 1997) - deferred to the August 12, 1997 Town Council Meeting, per letter dated June 30, 1997 from Mr. James R. Brindell.

Motion made by Councilman Wyett to approve deferral of Item XIV. B. 1 (Consideration of Appeal of the Landmarks Preservation Commission to Undesignate 150-A Australian Avenue) to the August 12, 1997 Town Council Meeting; seconded by Councilman McLendon. On roll call, the motion carried unanimously.

Item XIV. B.2, page 5, Consideration of Appeal of the Architectural Commission's Decision of June 25, 1997, Regarding 127 Oceanview Road; Request by Mr. Raymond W. Royce for Mr. Skip Gozzo, Deferred to the August 12, 1997 Town Council Meeting.

Motion made by Councilman Wyett to approve deferral of Item XIV. B. 2 (Consideration of Appeal of the Architectural Commission's Decision of June 25, 1997, Regarding 127 Oceanview Road) to the August 12, 1997 Town Council Meeting; seconded by Councilman McLendon. On roll call, the motion carried unanimously.

Item XIV C. 9, page 7, Special Exception No. 23-97 - Love Realty, Inc.; 350 South County Road; located in the C-TX Zoning District; to allow the expansion of a restaurant with nightclub (Galaxy Grill) from 5,175 sq. ft. to 6,375 sq. ft. providing 44 additional dining room seats and a service bar; and to allow the 13 additional required parking spaces within 500' of the restaurant in the Peruvian Avenue parking lot - deferred to the August 12, 1997 Town Council Meeting, per letter dated July 3, 1997 from Kim Juran.

Motion made by Councilman Wyett to approve deferral of Item XIV. C. 9 (Special Exception 23-97 - Love Realty, Inc.; 350 South County Road; to allow the expansion of a restaurant with nightclub (Galaxy Grill) from 5,175 sq.ft. to 6,375 sq.ft. providing 44 additional dining room seats and a service bar; and to allow the 13 additional required parking spaces within

500' of the restaurant in the Peruvian Avenue parking lot) to the August 12, 1997 Town Council Meeting; seconded by Councilman McLendon. On roll call, the motion carried unanimously.

Page 5, Add item XI. D. 9 - Consideration of Request to Extend Contract Until July 31, 1998, with Florida Department of Environmental Protection for Implementation of Lake Worth Inlet Management Plan.

Motion made by Councilman McLendon to add Item XI. D. 9 (Consideration of Request to Extend Contract Until July 31, 1998, with Florida Department of Environmental Protection for Implementation of Lake Worth Inlet Management Plan); seconded by Councilman Wyett. On roll call, the motion carried unanimously.

Page 5, Add Item XI. D. 10 - Consideration of creating a Fire-Rescue Substation south of the Lantana bridge in order to offer services to neighboring communities.

Councilman Shaw made a motion to add Item XI. D. 10 (Consideration of creating a Fire-Rescue Substation south of the Lantana bridge in order to offer services to neighboring communities) to the Agenda; seconded by Councilman McLendon. On roll call, the motion carried 4/1, with Councilman Wyett casting a negative vote.

Page 5, Add Item XI. D. 11 - Consideration of traffic flow modifications on South County Road (east side) north of Royal Palm Way.

Councilman Shaw made a motion to add Item XI. D. 11 (Consideration of traffic flow modifications in the Town of Palm Beach) to the Agenda; seconded by Councilman Wyett. On roll call, the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Adrian Winterfield addressed the issues surrounding the Occupational License problems. He invited attention to the July 1, 1997 letter of Town Attorney Randolph, which was based upon what he believed was an inaccurate assumption--that those individuals and companies renting post office boxes had no other activity in the Town or the County. He stated that the issue was not whether an Occupational License was required, but whether the Occupational License at a mail box was adequate.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF JUNE 10 AND 17, 1997

VIII. LICENSES, PERMITS, AND AGREEMENTS

- A. Charitable Solicitations - Other: Results Forms Filed Late - No Late Fees Paid
 - 1. The American Friends of the Israel Philharmonic Orchestra; No. 364-97
- B. Alcoholic Beverage Licenses - None

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

REGULAR AGENDA

IX. COMMITTEE REPORTS

- A. Report of the Ordinances, Rules, and Standards Committee Meeting of June 12, 1997

**REPORT OF THE ORDINANCES, RULES, AND STANDARDS COMMITTEE HELD
ON JUNE 12, 1997**

I. **CALL TO ORDER AND ROLL CALL:** A meeting of the Ordinances, Rules, and Standards Committee was called to order by Chairman Sam McLendon at 10:05 a.m. on June 12, 1997, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Lesly S. Smith were found to be in attendance. Also attending for all or part of the meeting were Mayor Paul R. Ilyinsky and Councilman Leslie A. Shaw. Others present at the meeting were: Town Manager Robert Doney; Town Attorney John Randolph; Assistant Town Manager Peter Elwell; Assistant to the Town Manager David Jakubiak; Finance Director Jim Demming; Director of Public Works Al Dusey; Director of Planning, Zoning, and Building Robert Moore; Police Department Major Michael Reiter; Recreation Director Russell Bitzer; and Town Clerk Mary Pollitt.

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

III. **CONSIDERATION OF CODE ENFORCEMENT BOARD FINES (*Deferred from April 8, 1997 Town Council Meeting*):** Mr. Jesse Newman, Chairman of the Code Enforcement

Board, reported on the consensus of the members of the Code Enforcement Board regarding fines relating to placement of yard trash on the streets and notification of the proper persons responsible for the fines. Mr. John Matich, member of the Code Enforcement Board, recommended the use of wood chippers to lessen the amount of yard trash placed on the streets. Mr. Ricky Caruso, member of the Code Enforcement Board, and Polly Earl, 209 Seaspray Avenue, also addressed the Committee.

Karen Sears appeared on behalf of a sub-committee from the Civic Association formed to address the issue of yard trash. Ms. Sears said the sub-committee was interested in the issues of aesthetics and safety. The Civic Association sub committee recommended a letter be sent from the Town to residents listing a specific yard trash schedule for each owner that could be passed on to the owners' gardeners; that violations of the yard trash ordinance would be the responsibility of the owners and not the gardeners; the first fine would be \$50 with the second fine being \$100; and weekend enforcement would be strictly enforced. Ms. Sears said the subcommittee also recommended that yard trash be allowed to extend only four feet (not six feet) from the curb out onto the street.

Mr. Dusey reported the Public Works Department is experimenting with a different collection method starting the week of June 16th and would like to reach the point where large piles could be picked up anytime by appointment and small piles could be picked up in a different, more effective way. Mr. Dusey said that his Department is reviewing different scheduling to allow for trash piles to be placed on the streets on Mondays in place of Saturdays.

Mr. Randolph suggested notices regarding violations for piling yard trash on the streets may be left on doors of the residences or a citation may be mailed to the property owner making the property owner strictly responsible regardless if the owner is at home.

Mr. House said that if the property owner were cited and issued a notice to appear, compliance could change drastically. Mr. House said that presently a signature is required on the notice to appear at the time it is issued.

Mrs. Smith said that if the property owners were made aware that whatever lawn services the owners employed were acting as agents of the owners and the owners would then be responsible for any actions of their agents, the code enforcement officers would have the ability to cite and fine the property owners regardless if they were in Palm Beach or not.

Mr. Randolph replied he thought the existing ordinance gave the code enforcement officers the right to cite the owners of the properties. Mr. Randolph said the ordinance could be clarified by stating that the property owner shall be strictly responsible for the placement of trash in violation of the ordinance.

Responding to questions regarding notification of absentee property owners, Mr. Randolph replied that if the Town notifies the property owner at the proper mailing address and the fine is not paid within a period of time, a lien may be placed against the property. Mr. Randolph said the property owner would be notified of the fine, and if they did not pay that fine within a certain amount of time, a lien would be filed against the property. After discussion regarding the issue of responsibility for fines, **THE COMMITTEE RECOMMENDED THAT THE OWNER BE RESPONSIBLE FOR THE FINES. THE FINES WOULD ACCUMULATE AT \$50 FOR THE FIRST DAY; \$100 FOR THE NEXT DAY; \$200 FOR THE THIRD DAY WITH THE OWNER BEARING THE RESPONSIBILITY OF WHOMEVER THEY EMPLOYED TO TAKE CARE OF THE PROPERTIES.**

Mr. Randolph clarified that the Town's staff would still be able to cite whomever they see putting the trash on the street. Either the owner or his agent could be cited with the ultimate responsibility for paying any fines lying with the owner.

Chief Code Compliance Officer Brian House explained that two ordinances are currently used to levy fines. One of the ordinances for placing yard trash out in the street (illegal trash piles) carries \$50, \$75, \$100, and \$150 fines and the other ordinance for obstructing the right-of-way states \$50, \$100, \$200, and \$400 fines.

Mrs. Smith suggested that the two ordinances should be consolidated so that both of the ordinances are covered and brought up to code. Mrs. Smith added that the two separate ordinances should be cited when appropriate. Mr. McLendon thought that the more serious of the two should be cited if they both applied.

The Committee heard from Major Michael Reiter from the Police Department, Public Works Director A1 Dusey, and Chief Code Compliance Officer Brian House regarding the issuing of citations for yard trash infractions.

Mr. Randolph said that the issue of enforcing the yard trash violations would depend on how the ordinance was drafted. Mr. Randolph suggested the fines should be imposed on the property owner, accumulating on a daily basis, for violations of the yard trash schedule. If at the discretion of the Public Works Department, the Code Enforcement Officer, or the Police Department, a determination is made over and above the yard trash schedule violation that the trash is blocking the right-of-way--a more serious offense, then the owner could be charged with both violations. Mr. Randolph pointed out that the vehicle for fining maybe different for each of the violations. The daily fine for putting out yard trash piles would be sent to the property owner (certified mail if necessary); however, the fine for blocking the right-of-way would be a written citation with a notice to appear before the Code Enforcement Board. Mr. Randolph said a distinction exists between the two fines in that one is a violation notice while the other one is a matter of proof that would require testimony through the Code Enforcement Board procedure to show the right-of-way was blocked.

THE COMMITTEE RECOMMENDED THAT THE TWO DIFFERENT ORDINANCES PERTAINING TO

PLACING YARD TRASH IN THE STREETS BE USED TO CITE VIOLATIONS WHEN JUSTIFIED; THAT WHEN THE TWO DIFFERENT VIOLATIONS OCCUR FOR THE SAME TRASH PILE, IT IS MANDATORY THAT BOTH VIOLATIONS ARE CITED AND THE FINES ESCALATED ACCORDINGLY; AND THAT CONES (PROVIDED BY THE OWNERS) BE USED TO IDENTIFY THE YARD TRASH IN THE STREETS.

Mr. McLendon discussed the issue of weekends and night enforcement of the yard trash ordinances with Major Reiter. Major Reiter said that all of the patrol units are instructed to enforce all of the Town's ordinances at all times regardless of the time of day or the time of the week, particularly those incidents that may be a public safety hazard.

IV CONSIDERATION OF TELECOMMUNICATIONS ORDINANCE: David Jakubiak, Assistant to the Town Manager, summarized the intent of the ordinance. Mr. Jakubiak said the comprehensive ordinance deals with a number of areas in the telecommunications field, and is a result of the Telecommunications Act of 1996. The Town has had franchise renewal discussions with the cable company and plans to have discussions with the telephone company. Mr. Jakubiak said those companies have wire line services that can be franchised by Federal and State Laws; however, these companies can provide other types of services under the Telecommunications Act. Mr. Jakubiak explained that the Telecommunications ordinance Attorney Nicholas Miller drafted dealt with issues regarding compensation, competitors, and working in rights-of-ways.

The Committee, Staff, Town Attorney Randolph and Attorney Miller (via conference call) discussed the proposed Telecommunications ordinance. Mr. Miller said the proposed ordinance was an attempt to bring together in one place under a single ordinance the process for dealing with telecommunications providers, open system video operators (which may or may not materialize), cable television operators, and all of the people who want to build and occupy the rights-of-way for their own private networks. Mr. Miller described the ordinance as combining four ordinances into one. Mr. Miller suggested that the draft of this ordinance should be distributed to several companies who may have interest in this ordinance for review.

Mr. Miller summarized the two policy issues contained in the ordinance:

1. Compensation--this ordinance states that any company wanting to use the rights-of-way in the Town must use them in accordance with the Town's rules and regulations; and
2. The Town must be paid for the use of the rights-of-ways.

Mr. Miller pointed out that this ordinance does not permit the Town to regulate the quality of service (over the wires) by the providers; however, it does require the providers to state what types of services they are offering. The Town would have regulatory authority over the providers' behavior in the rights-of-way.

The Committee discussed the time table for enactment of a telecommunications ordinance. Mr. Miller suggested the Town should have an ordinance in place before any additional franchise agreements are signed. Mr. Randolph stated that a draft ordinance has been prepared and the staff now has more work to do before it is presented to the Town Council. Mr. Randolph said no further action is needed by the full Town Council to proceed with the work that needs to be done on the draft ordinance by staff.

Responding to questions from Mr. McLendon, Mr. Miller replied the Town's Charter should have no ambiguity about the Town claiming all of the authority that it otherwise has under law, and that is an important point.

Mr. Miller summarized the compensation part of the ordinance which he considered to be the most controversial part of the ordinance. Mr. Miller said a fair market value for the use of the right-of-way is 5% plus pay for cable and OPS; for telecom the draft provides for 10% of gross revenues plus whatever in-kind facilities are negotiated in the context of the franchise. Mr. Miller reiterated that the 10% figure is very controversial, and BellSouth will probably not want to pay any additional percentage when that franchise negotiation is underway. Mr. Miller added that resellers who use the services are also subject to pay compensation to the Town. Mr. Miller said that the Town should assume all of the services will be offered in a de-regulated world, and the pricing structures will be functions of pure marketing mechanisms by the owners of the companies.

After hearing the comments of Mr. Miller and the staff, Mrs. Smith requested that a list of comparable charges by other municipalities be assembled for presentation to the Town Council. Mr. Doney suggested the staff provide a revised legislative draft with the comments from appropriate staff members, the Town Attorney, and Mr. Miller with annotations in the margins. A bullet list could be put together from those comments for consideration by the Mayor and Town Council. Mr. McLendon and Mrs. Smith concurred with that course of action.

V. CONSIDERATION OF COMMERCIAL YARD TRASH ISSUES: Mr. McLendon stated the issue before the Committee was the need for a clarification for the charge of yard trash generated from commercial properties as authorized under Resolution No. 23-97 which was effective April 1, 1997. Mr. McLendon said the confusion resulted from the \$185/load not being specified "per load", "per week", or "per year."

Mr. McLendon added that a clarification was also needed to define "commercial properties", because the Four Arts Society was tax exempt but classified as a commercial property for the purpose of yard trash billings.

Mr. Dusey reported that a new piece of equipment, a trailer vacuum, will be available on a loan basis during the week of June 16th, and this may be an answer for efficiently picking up the smaller yard trash piles. If this operation is efficient, it may then result in an increased schedule for pick-up of yard trash piles thus reducing the time the piles are left on the streets.

Mr. Dusey reported that approximately ten customers in Town would generate more than one truck load of yard trash per week if the cuttings and trimmings were scheduled carefully. Mr. Dusey mentioned the possibility of overtime that would be necessary if the locations of the heavy users were serviced at 100%.

After discussing the issue of charging tax exempt properties for yard trash pick up, **THE COMMITTEE DIVIDED ON THEIR RECOMMENDATION: MRS. SMITH RECOMMENDED TAX EXEMPT PROPERTIES' FEES SHOULD BE WAIVED, AND MR. MC LENDON RECOMMENDED TAX EXEMPT PROPERTIES SHOULD BE CHARGED FEES FOR YARD TRASH PICK UP.**

After discussing the issue of charging \$185 per week, per load, or per quarter for yard trash pick up for commercial entities, **THE COMMITTEE RECOMMENDED THE CHARGE FOR PICKING UP YARD TRASH FOR COMMERCIAL PROPERTIES BE \$185 FOR EACH LOAD AFTER ONE FREE LOAD IS PICKED UP EACH WEEK.**

VI. CONSIDERATION OF CONDITIONS FOR SCHEDULING SPECIAL BOARD OR COMMISSION MEETINGS:

Mr. Randolph reported that the Architectural Commission Ordinance dealt with the issue of holding special meetings to consider special circumstances. Mr. Randolph said that if the provision was not in a board's or commission's ordinance to call a special meeting, it would be difficult for a board or commission to call such a meeting.

Mrs. Smith recalled the Architectural Commission has called special meetings to deal with situations in the past, and the concern for the most recent Architectural Commission Special Meeting was the tone of the letter requesting the meeting with the threat of litigation if that meeting were not called. Mr. Randolph clarified that the Architectural Commission, as a group, should decide to set any special meeting, and a meeting should not be set outside the group at the behest of the chairman or any other member of the commission.

Mr. Randolph, responding to Mr. Moore's comments concerning costs for special meetings, said he would not recommend codifying any amount for a special meeting because this might act as an encouragement to hold special meetings. Mr. Randolph said the fee could be construed as covering the costs of any such meeting and provide some sort of sanction for a meeting. Mr. Randolph stated that presently, it is stated that the Architectural Commission shall meet monthly and the Commission, as a body, may schedule additional meetings in order to process applications within the time required by the Code. The Code requires the Commission to react within a thirty day period, and if the Commission determines that requirement cannot be met, a special meeting can be set up. After discussing the issues regarding the convening of special meetings for boards or commissions, **THE COMMITTEE RECOMMENDED THAT ALL DECISIONS FOR CONVENING SPECIAL MEETINGS BY ALL TOWN BOARDS AND COMMISSIONS BE MADE AT REGULAR, PUBLISHED MEETINGS AND NO SPECIAL MEETINGS COULD BE CALLED IN THE INTERIM.**

Mr. Bitzer explained the scheduling of the seven meetings of the Golf Commission held during a calendar year. Mr. Randolph said that the Golf Commission itself should set any special meetings if it deems an item of business of enough importance to call a special meeting. Mr. Randolph said the issue of emergency meetings did not need to be addressed because in the history of the Golf Commission, no need for an emergency meeting was ever present. The Golf Commission should be instructed that the call for any special meetings should be by the Commission itself and not by one individual. The Committee concurred with Mr. Randolph's comments regarding the Golf Commission and thought that similar instructions applied to the Seaview Park Commission also.

VII. CONSIDERATION OF CHARITABLE SOLICITATION PERMITS ISSUED BY THE TOWN CLERK'S OFFICE *(Deferred from March 11, 1997 Town Council Meeting):*

The Committee discussed the possibilities of raising the application fee from the current \$25 to \$50 and increasing the fines for filing late results from \$25 to a higher amount. Mr. Shaw suggested form 990 filed with the Internal Revenue which lists an organization's financial information be submitted by a charitable organization in lieu of an audit or compilation.

After discussing the requirements for a Charitable Solicitation Application, **THE COMMITTEE RECOMMENDED A CHARITABLE ORGANIZATION BE REQUIRED TO SUBMIT EITHER AN AUDIT, COMPILATION, OR FORM 990 WITH THE APPLICATION; INCREASING THE \$25 PERMIT FEE TO \$50(PLUS THE ADVERTISING COSTS); AND RETAINING THE \$25 FEE FOR FILING RESULTS FORMS LATE.**

VIII. ANY OTHER MATTERS: Mr. Moore said he had some additional information regarding the occupational license issue, clarifying language in Ordinance Number 8-97, specifically the use of the word "business" in the new

Section 10.17. Mr. Moore read the following new language:

"Adding a new Section 10.17 as follows, Section 10.17, Business Services, Any person or company engaging in a business that provides business support type services in common, such as but not limited to, telephone answering, secretarial, business equipment and desk space to other persons or companies in a common occupancy space or operation for the purpose of assisting other persons or companies to do business shall maintain a copy of each person's or company's occupational license for inspection in the common areas at all time. Providing support to unlicensed persons or companies up to including leasing to a company that advertises a business at said address without proof of Town occupational license by lessee shall put the business service license in violation and shall be considered operating without a license. The person or company receiving the business support services must also display their Town Occupational License in their sub leased area."

Mr. Moore said many businesses have been eliminated and the new language describes what a business service is which is a master area supplying business services to smaller individuals within that master area. Responding to questions from Mr. McLendon concerning occupational license requirements for landscape contractors, Mr. Moore explained that three types of landscaping contractors were identified at one point several years ago; however, the Mayor and Town Council decided not to require licenses for them. After the Department of Business and Professional Regulation for the State of Florida changed requirements for licensing contractors, presently, only the contractors who have offices in the Town of Palm Beach are required to have Town occupational licenses.

IX. ADJOURNMENT: The meeting was adjourned at 3:55 p.m.

ORDINANCES, RULES, & STANDARDS COMMITTEE

SAMUEL C. MC LENDON, COMMITTEE CHAIRMAN

LESLY S. SMITH, COMMITTEE MEMBER

Councilman McLendon, Chairman of the Ordinances, Rules, and Standards Committee (ORS) Meeting, reported that the meeting had been held on June 12, 1997, with the Committee recommending that the owner of property under citation would be responsible for Code Enforcement fines, which would accumulate at \$50 for the first day, \$100 for the second, and \$200 for the third day. He noted that citations would include citing a person caught making an illegal placement of material, and made a motion that the recommendation of the ORS Committee be approved.

Mayor Ilyinsky suggested that the service and gardeners should be cited, with the owner of the property being notified of same. He referred to a situation regarding a neighbor who was out of the country, leaving the care of his property in the hands of his service, who had neglected the care of the property.

Mr. McLendon added that the recommendation of the Committee included that putting trash out at the wrong time, OR violating the traffic lane requirement involved two fines (two separate Ordinances) which would be supplementary to each other. He included the recommendation in his motion of approval; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mayor Ilyinsky commented that he believed this recommendation would be a disaster; if a property owner was out of the country the notice could take several days to receive, and the owner would then owe a larger fine.

Town Attorney Randolph advised that approval of the motion would require an ordinance change--the way it presently read the fine for garbage and trash in the street was \$50, \$75, \$100, and \$150, based on first, second, third, and fourth offense. The change would increase the amount, which would accumulate per day.

Mrs. Smith noted that there would be a great deal of discussion before the change could be made in the ordinance, and that perhaps the landscape services in Town could be put on notice that attempts were being made to control the trash in the streets.

Mr. Wyett suggested that this issue go to the Public Works Committee in an effort to coordinate regulations with fines.

Mr. Shaw agreed with the Mayor concerning the impracticability of the recommendation, and moved that the motion approving recommendation of the ORS Committee regarding Code Enforcement Fines be reconsidered by the Town Council. The motion was seconded by Mr. Wyett. On roll call, the motion passed unanimously.

Mr. Shaw then made a motion that the ORS Committee recommendation be based on occurrences, rather than on days, notifying the property owner per event; seconded by Mr. Wyett.

John Matich addressed the Town Council, stating that a property owner should have the option of coming before the Code Enforcement Board before a fine was levied.

Town Attorney Randolph explained that the property owner would be given a citation or notice to appear by the Code Enforcement Officer, and would have the opportunity to come before the Code Enforcement Board to contest it.

On roll call, the motion carried 3/2, with Councilmen McDonald, Shaw and Wyett voting approval; Councilman McLendon and President Smith voting denial.

Mr. McLendon continued with the report of the ORS Committee Meeting. The Telecommunications Ordinance had been considered, especially regarding compensation to the Town for the use of right-of-ways. Since the Ordinance was not yet entirely complete, the Committee did not have sufficient information to make specific recommendations.

Mr. McLendon referred to the discussion of Commercial Yard Trash issues, noting that the Council had adopted an extra charge for commercial yard trash pick-ups, and there had been some confusion regarding the charges. Charges to tax-exempt entities had been discussed, with differing opinions resulting. The Committee had recommended that the charge for picking up yard trash for commercial properties above the one load per collection period be \$185.00. The application of that to tax exempt entities was still not resolved, and Mr. McLendon requested Town Council input.

Mr. Wyett commented that original discussions had the intent of exempting non-taxable properties, which basically would mean about 10-11 properties in Town. He stated that he did not believe that churches, and museums should be charged for picking up trash, as the quality of life was enhanced by them. He suggested that the Town Council approve exempting all tax-exempt organizations from the trash pick up charges.

Mrs. Smith stated that there were actually only three properties (The Four Arts, The Flagler Museum, and Bethesda Church) that would be affected, as only the second load was charged for.

Mrs. Smith passed the gavel and made a motion that the tax-exempt properties have the trash pick up charges waived; seconded by Mr. Wyett. On roll call, the motion carried 3/2, with Councilman Shaw, President Smith, and Councilman Wyett casting positive votes; Councilmen McDonald and McLendon casting negative votes.

Mr. McLendon continued with the ORS Committee Report, referring to the recommendation of the Committee that the charge for picking up yard trash for commercial properties be \$185.00 for each load after one free load is picked up each week, with the exception of tax-exempt properties. He made a motion to approve the recommendation; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Dusey asked what should be done with the monies already collected from commercial properties for trash collection--he estimated that from both tax-exempt properties and other commercial properties there was an amount of \$75,000 collected for the two-quarters, or a six month period.

Mr. Wyett moved that the tax-exempt properties be refunded the entire payments made, and a credit be given to the remaining commercial users, and at the end of the year a check be issued for any amount not used.

Mr. Dusey recommended that everything collected so far be refunded. He would determine the best method of doing that.

Mr. Wyett agreed to amend his motion to include the recommendation of Mr. Dusey that everything collected so far be refunded, with Mr. Dusey determining the best method of accomplishing that; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. McLendon continued with the report, referring to the consideration of conditions for scheduling special Board or Commission Meetings. The Committee recommended that all decisions for convening special meetings by all Town Boards and Commissions be made at regular, published meetings, and no special meetings could be called in the interim.

Town Attorney Randolph explained that the determination of holding special meetings should be an issue handled by the full board, as opposed to only the Chairman of the Board making that determination. Often an applicant that felt aggrieved by an action taken by a Board or Committee, would request a special meeting (as a result of financial considerations, etc.), however, rather than having the Chairman making that decision, it would be more appropriate for the entire Board or Committee to make the decision on any special meeting at a public meeting. The Boards and Committees would be given the notification that no special meetings would be called, except at the meeting itself. He noted that there were procedures in place for calling emergency meetings.

Mr. Shaw made a motion to approve the recommendation of the ORS Committee that all decisions for convening special meetings by all Town Boards and Commissions be made at regular, published meetings, and no special meetings could be called in the interim; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. McLendon then referred to the final item considered by the ORS Committee at the meeting of June 12, 1997: consideration of Charitable Solicitation Permits Issued by The Town Clerk's Office. The Committee recommended a charitable organization be required to submit either an audit, compilation, OR Form 990 with the application; increasing the \$25 Permit Fee to \$50 (plus the advertising costs); and retaining the \$25 fee for filing results forms late.

Mr. McLendon moved that the recommendation of the ORS Committee recommending that a charitable organization be required to submit either an audit, compilation, OR Form 990 with the application; increasing the \$25 Permit Fee to \$50 (plus the advertising costs); and retaining the \$25 fee for filing results forms late; seconded by Mr. Shaw. (*Motion was later withdrawn--please see following action*).

Mr. Wyett suggested that the same charities file the same forms every year, and recommended giving a longer license fee period than one year, with the provision that if the charity was in default the longer time period would be waived.

Town Clerk Pollitt explained that there were many considerations regarding approval of the charitable functions on a yearly basis--the zoning requirements, what kind of event would be held, the Police Department approval, as well as the frequent staffing changes within the charitable organizations. She requested some time to study the suggestion of Mr. Wyett.

Town Attorney Randolph advised that all charities should be treated alike, and it must be kept in mind that the primary reason for the Charitable Solicitation Ordinance was to notify people within the Town to whom their money was being given, and to advertise to the public what this charity was doing.

Mr. McDonald moved that this issue be placed on the Agenda for the August 12, 1997 Town Council Meeting; seconded by Mr. McLendon.

Mr. McLendon and Mr. Shaw withdrew the first motion made in this regard.

On roll call, the motion of Mr. McDonald to place this issue on the agenda for the August 12, 1997 Town Council Meeting carried unanimously.

(End of Discussion of ORS Committee Report)

X. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 8-97 - Amendments to the Occupational Licenses Ordinance

Town Attorney Randolph read Ordinance 8-97:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10, ARTICLE I, "IN GENERAL", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 10-1, SECTION 10-8, SECTION 10-14, AND SECTION 10-17, AMENDING GENERAL LICENSE REGULATIONS AND FEES; DELETING ARTICLE III. ASTROLOGERS, FORTUNE-TELLERS, CLAIRVOYANTS, ETC., DELETING ARTICLE VII. COIN-OPERATED DEVICES, AND DELETING ARTICLE IX. MERCHANTS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Director of Planning, Zoning, & Building Robert Moore explained that the language that had been in question at the reading last month had been clarified, and approved by the Ordinances, Rules, and Standards (ORS) Committee.

Mr. Shaw moved to approve Ordinance 8-97 as amended; seconded by Mr. Wyett.

Mr. Adrian Winterfield addressed the Town Council, stating that the language substituted and recommended by the ORS Committee muddled the waters as far as the mail drop was concerned. The business service designation was extremely vague, as well as occupancy in common. He understood that it was the intention of the Town Council to postpone the question of the mail drops. He submitted that the practice was either valid or it was not, and if it was not valid there was absolutely no reason why the practice should be continued. It was his opinion that there was no reason to re-issue licences to those people who rented private mail boxes.

Mr. Moore noted that the mail drop issue would be discussed next, and a determination would be made regarding that. He recommended that Ordinance 8-97 be passed on second reading.

Mr. Wyett suggested that the charges in the Ordinance for space be consistent in all categories.

Mr. Moore explained that the subjects had been discussed by the Blue Ribbon Panel in order to make the determinations.

Mr. Shaw questioned the categories of "art gallery" and "merchant": He noted that the merchant fee was \$1,000 for over 8,001 sq. ft., whereas the art gallery fee was \$990.00 for over 8,000 sq. ft. He suggested that there was a lack of consistency. ~his item was later addressed under XK. ANY OTHER MATTERS)

On roll call, the motion to approve Ordinance 8-97, as amended carried unanimously.

- a. Consideration of Occupational License Issues - Post Office Boxes
(Deferred 30m April 8, 1997, and June 10, 1997)

Town Attorney Randolph referred to his memorandum of July 1, 1997 to Mr. Moore wherein this issue was discussed. It was his understanding that there were no charges for Occupational Licenses for businesses who received mail at the U.S. Post Office. (Mr. Moore noted that was correct). Consequently, Mr. Randolph saw no difference between someone who advertised a business using a U.S. Post Office Box, or receipt of mail, and someone who rented a commercial mail box and simply received mail in a corporate name. He did not believe that the simple receipt

of mail was a conduct of business under the definition of the State Statute and the Town Ordinance, which would justify issuing an Occupational License for that sole use. The more complicated questions would come in drawing the line as to when a person advertising an address at a commercial mail box location did need to get an Occupational License. He noted that if mail was collected at a location that was not enough to cause sufficient contact within the Town to allow the issuance of an Occupational License. If, however, at that same location, an individual/entity used a desk, or a common secretary, fax facilities, etc., that could be determined as doing business there, and an Occupational License could be required. Mr. Randolph advised that it must be determined, as a matter of fact, whether someone receiving mail at a commercial mail box was doing other business at that location--if that was so, then an Occupational License would be required. Unless there was proof that someone was doing business in his/her home after receipt of mail at a commercial mail box location, an Occupational License could not be required. If it was found that someone was conducting business in his/her home, contrary to the Zoning Ordinances, then a citation could be issued for that. Mr. Randolph noted that the obligation was on the Town to be able to prove that someone was operating in violation of the Town Code, which required that someone who had a permanent business location within the Town of Palm Beach must have an Occupational License. He stated that he did not believe that simply the receipt of mail by an entity in the Town was sufficient contact within the municipality to determine that was a permanent business location within the Town.

Mr. Shaw moved that the issuance of any Occupational License in the Town of Palm Beach be prohibited, unless the entity had a bona fide office, with office space that met the codes for the particular location, and that facilities need to be checked by the Fire Department for compliance before the issuance of Occupational Licenses.

Mr. Moore asked that the motion be modified to be "during the year."

Mr. Shaw agreed with the modification and added the following language to his motion: "on an annual inspection prior to renewal." (The entire motion would now read: Mr. Shaw moved that the issuance of any Occupational License in the Town of Palm Beach be prohibited, unless the entity had a bona fide office, with office space that met the codes for the particular location, and that the facilities needed to be checked by the Fire Department on an annual inspection prior to renewal.)

Mr. Wyett seconded the motion.

On roll call, the motion carried unanimously.

b. Consideration of Taxi Stands (Deferred from June 10, 1997)

Police Chief Terlizzese addressed the Town Council, stating that research had been done, finding that under the Taxi Ordinance several Taxi Companies had paid a fee to operate a taxi stand on Worth Avenue. The Ordinance could be changed if the Town Council so desired.

Mr. Wyett commented that he had observed that the taxi stands were frequently vacant, and in an effort to obtain more spaces for shoppers he suggested that the taxi stand spaces be converted to public parking spaces.

Chief Terlizzese explained that currently the Taxi companies were permitted to pay a fee to park there. Any change would require an Ordinance amendment.

Mrs. Smith remarked that the Taxi companies should be provided notice that this issue would be discussed before the spaces were abolished from their use.

Chief Terlizzese noted that in the past there was a need for on-street parking for Taxi companies, as there were no beepers, cell phones, etc.--they needed to be seen by the public, however, with the modern communication systems the need was no longer there.

Mrs. Smith suggested this issue be put on the Agenda for the August 12, 1997 Town Council Meeting so that the Ordinance could be reviewed and the Taxi companies could be notified before any changes were made.

B. Other

1. Consideration of Authorization for Town Manager to Execute Two-Year Extension Agreement for Banking Services with First Union National Bank of Florida for Fiscal Years Ending September 30, 1997, and September 30, 1998 (Deferred from May 13, 1997, and June 10, 1997)

Finance Director Demming recommended that the Town renew the Banking Agreement with First Union National Bank for the first two year renewal year period; the service had been satisfactory to staff, issues raised at the previous Town Council Meeting had been addressed, and representatives from the bank were present for discussion.

Town Manager Doney concurred with the recommendation.

Mr. Wyett raised the issue of direct deposit, and the provision of free checking services for Town employees.

Mr. Demming explained that the Town presently offered direct deposit for bi-weekly and weekly payrolls, and the bank had offered to give free checking to participating employees. He noted that Florida Statutes prohibited mandating that employees participate in direct deposit.

Regarding the ATM machines requested by Mr. Shaw, Public Works Director A1 Dusey stated that was not a major concern to Public Works employees.

Mr. Shaw moved approval of the Banking Agreement as presented; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

2. Consideration of Request by the Greater South County Road Association to Revise the Location of the Memorial Plaque Recognizing the Donors to the South County Road Tree Planting Project

Public Works Director A1 Dusey reported that the Greater South County Road Association had requested permission to install the Memorial Plaque on the southwest corner of South County Road and Brazilian Avenue on the triangular plot of land in front of the J. Pierce Picture Framing Shop, which was in the Florida Department of Transportation (FDOT) right-of-way. There was no objection by staff, however, the Association would need to coordinate with FDOT to obtain permission.

Mr. Shaw moved approval of the request by the Greater South County Road Association to install the Memorial Plaque on the southwest corner of South County Road and Brazilian Avenue. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Quarterly Update on Implementation of Recommendations in the Nowlen, Holt, and Miner, P.A. Report

Town Manager Doney reported that the update was set forth in the June 26, 1997 memorandum from Finance Director Demming, and of the 37 original comments made by Nowlen, Holt, and Miner, 29 had been totally implemented. The remaining 8 items were at various stages of completion.

Mr. Wyett asked if credit card use had been implemented in all Town locations?

Finance Director Demming responded that use of the credit card was only at the Marina currently. Cost estimates revealed approximately \$540 for hardware per site, plus the monthly charges estimated at \$200-\$300 per month, for each location. There appeared to be a good demand for the use of credit cards at the Recreation Center, and the Golf Course would have a demand for it. Mr. Demming advised that there would be better accountability, the monies would get to Town accounts faster, and there would be no problem with any bad checks.

Mr. Shaw moved that implementation of the credit card system go forward as quickly as possible. The motion was seconded by Mr. Wyett.

Mr. Demming suggested that surveys (a demand study) be done regarding the use of a credit card system to determine the volume of activity and the cost/benefit relationship. He would report any future activity in this regard to the Town Council.

On roll call, the motion carried unanimously.

4. Quarterly Update on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town

Town Attorney Randolph reported that he had provided information in regard to those items from the Status Report of Unpaid Assessments, Solid Waste Fees, Code Enforcement of the Finance Department, which had been referred to him. There were six different matters under consideration:

Guilford Dudley, Jr. - Ocean Dune Assessment

The Town Council had authorized suit to be filed in the event that it would be appropriate. The Dudley matter had originated in 1976, with an outstanding amount of \$3,776.20 as of June 30, 1997. It presented problems in collection, since it had not been collected or pursued for a period of 20 years. In addition, a prospective purchaser had been given a letter from the Town indicating that the amount had been paid. There was a caveat on the stamp that noted that the purchaser would have to do his/her own check of Town records. It was the recommendation of Mr. Randolph that this matter not be pursued by way of litigation, as it would not be financially beneficial to the Town to pursue the matter.

Mr. Shaw made a motion to remove the unpaid assessment regarding Guilford Dudley, Jr.

After discussion, it was determined that the report of Mr. Randolph would be dealt with in its entirety, therefore, Mr. Shaw withdrew his motion.

Mr. McDonald moved that:

- the recommendation of Mr. Randolph to drop the Guilford Dudley, Jr. (Ocean Dune Assessment Resolution 13-76) assessment be accepted;
- the Bulkhead Assessment Resolution 14-76, Elizabeth T. Ward/Gerard Haryman assessment be dropped;
- all of the Sidewalk Assessment charges be dropped, since they were all in excess of five years, which was the Statute of Limitations on those items (Suzanne Thayer - \$783.69; Elizabeth T. Ward - \$467.25; Palm Beach Royal Palm, Inc. - \$1,415.05);
- the Code Enforcement Board Fine of \$402.26 regarding Mary V. Hanke, 177 Clarke Avenue be dropped;
- the required time period of 90 days be allowed to elapse regarding the Code Enforcement Board Fine regarding S. Jeyanandarajan/Padmini Jeyanandarajan, 216 Oleander Avenue, and then have the Code Enforcement Board determine if foreclosure proceedings would be implemented.
- no action would be taken on the Adrian Winterfield judgment;
- the Town proceed with a civil action regarding the Hazardous Materials fine regarding George Tarricone, Incident No. 747.

The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Town Manager requested direction on the report of Finance Director Demming.

Mr. McDonald stated that all of the Solid Waste Assessments were all nominal amounts, and there had been no information regarding the response to the certified letters sent out.

Director of Public Works A1 Dusey replied that the certified letters included information letting the property owner know that if payment was not received by a certain date, then a municipal lien would be filed. If a response or payment was not received, the Finance Director would be requested to place a lien on the property in the Municipal Lien Book.

Mr. McDonald recommended that nothing be done, other than recording the assessments in the Municipal Lien Book.

Town Attorney Randolph explained that a Title Company was required to contact a Municipality in order to eliminate any lien from the Title Policy; the lien would be paid before a client could close on the property. If the Title Company did not call, and the lien was in place, the property owner would have an action against the Title Company in the event payment was required by the Town of Palm Beach. He advised that the Town would have to consider adopting an ordinance in order to provide that Municipal Liens would be recorded in the County records, which was not currently done.

Mr. McDonald suggested that this matter be discussed under the Code Enforcement Board Ordinance which was on the Agenda at a later time.

5. Progress Report by Applied Technology and Management, Inc. on Update to the Comprehensive Coastal Management Plan

Director of Public Works A1 Dusey explained that in March of 1997, the Town Council had authorized that the Comprehensive Coastal Management Plan be updated. Applied Technology and Management, Inc. (ATM) had been hired to do the project, and a progress report would be presented to the Mayor and Town Council for consideration.

Dave Decker, of Applied Technology and Management, Inc., addressed the Town Council reporting that the summary document presented preliminary findings and recommendations for the management of the Island's eastern shoreline. After comments and questions today, ATM planned to compile the suggestions received at the Shore Protection Board Meeting in June, and Town Council comments to create the final draft plan to be submitted to staff for review.

Because of the magnitude and financial implications of this project, Mrs. Smith suggested that Mr. Decker present the overview today, with a full presentation and discussion of the ATM report being held in October, when most residents would be in Town.

Mike Barnett, ATM Engineer presented an overview of the ATM preliminary report. He referred to the graphics in the report package, where a series of zones throughout the Island and extending from Lake Worth Inlet to South Lake Worth Inlet was displayed. Four different zonal designations were studied in order to derive the shore line reach boundaries exhibited in the report. One was based on similarity of land use type, which were designated as LU in the graphic; shore protection structures were identified by similarity of type; mitigation requirements were principally constrained by near shore hard bottom resources as mapped by the Palm Beach County Department of Environmental Resource Management in 1993; and a determination of coastal processes that were occurring on the Island. Extensive beach profiles of the Island had been obtained, with the exception of the areas that were currently being monitored by

the University of Florida in conjunction with the Mid-Town Project. Coastal Construction Control Line aerial maps were reviewed, as well as the video assessments of the shoreline by the Florida Department of Environmental Protection (FDEP). The records maintained by Palm Beach County on the amount of sand transferred by the Sand Transfer Plant had been reviewed, as well as the Corps of Engineers records for beach fill placement, and the Mid-Town Beach Restoration Project fill quantities. A sediment budget had been derived by comparing the most complete data sets available--that being comparison of the 1990 and 1997 sets. The sediment budget computations that appeared in the summary report were the result of comparing shore line change on the Island between the two sets of surveys. It had been determined that with the exception of the extreme north and south ends of the Island, as well as the Mid-Town area, the entire Island was erosional to varying degrees. Eleven reach areas on the Island had been designated, prioritizing those individual reaches and the management actions that should be taken to restore sand transport on the Island.

Mr. Decker commented that the Island had been divided into eleven sections to look at the erosion rates, and based on that and the need for shore protection, the recommended action elements had been developed. There were eight (8) principal improvements called for, and there were many more that would come in terms of day to day management initiatives, etc. It would not be purely the responsibility of the Town of Palm Beach to implement almost all of these items--it would be a joint effort with the State of Florida, the Corps of Engineers, and possibly Palm Beach County. All of the initiatives had been prioritized and presented to the Town Council in order, one through eight, and were not all within the municipal limits of the Town. He noted that the \$66 million funding involved the total package. He advised that the 10-year planning schedule was also flexible, and could be extended.

Mr. Barnett explained that the Department of Environment Protection would most likely be a willing and substantial participant in a number of the initiatives, due primarily to public access. Those segments of shoreline that have appropriate access by the general public would garner more of the State's financial support in helping to offset the costs of the restoration and subsequent maintenance. In order to derive the numbers in the summary report, only limited analyses had been run on the data compiled to date. During the next two weeks further analyses would help refine the costs and quantities required.

Mayor Margot Roberts of the Town of South Palm Beach addressed the Town Council, stating that she had attending all of the Shore Board Meetings, and they were doing an excellent job. She praised the entire group, remarking that the Town should be very proud of them.

Mr. Dick Bresee addressed the Town Council, cautioning that the groins should be carefully studied before any removal takes place. No groin should be taken out unless replaced.

Gary Lickle, Chairman, Shore Protection Board, addressed the Town Council, stating that the Board was very pleased with the preliminary ATM report. He encouraged the Town Council and the public not to panic with regard to the dollar figures, as there was still much discussion to take place.

Mr. Wyett made a motion to accept the preliminary ATM Report, referring it to the Shore Protection Board for analysis and recommendations; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith asked when it was anticipated that the final form of the report would be ready for discussion in a public hearing?

Mr. Lickle commented that there was a need for public education about the project before any referendum could be held.

Mrs. Smith expressed concern that discussion be held at public hearings when residents were in Town, as opposed to delegating it to the Shore Board to inform the public; the public would then have the opportunity to discuss the report and the financing in public hearings.

Mr. Lickle expected that a final form of the report would be ready for public presentation and discussion in October/November of 1997--most likely at the November 12, 1997 Town Council Meeting.

Mrs. Smith noted that a Special Town Council Meeting could be set at the October Town Council Meeting if so desired.

6. Consideration of Proposal to Move the Issuance of Occupational Licenses from the Planning, Zoning, and Building Department to the Finance Department (*Deferred from June 10, 1997*)

In response to the question of the Mayor, Mr. Shaw explained that he was suggesting that Occupational Licenses be moved to the Finance Department because the responsibility of the Finance Department incorporated annual collection of dollars to the Town revenue, whereas the Planning, Building & Zoning Department was responsible for the issuance of permits and the fees associated with them. Once a project was completed, the Building Department was no longer involved in the project. He considered the annual billing and collection of the license fee a Finance Department responsibility.

Town Manager Doney stated that Occupational Licenses had been moved from the Finance Department to the Building Department in 1985, and he believed that was where it should remain, both operationally and organizationally.

Director of Planning, Zoning & Building Robert Moore suggested that a management study be done concerning this issue, with a report made to the Town Council. He maintained that public service was the final consideration, and he would return to the Town Council with more information.

Mr. Shaw made a motion that this issue be researched and reviewed, coming back before the Town Council no later than March, 1997; seconded by Mr. McDonald.

Adrian Winterfield commented that in the course of the study it should be determined whether there were any inconsistencies in the application of the present Ordinance. It was his opinion that there were many such inconsistencies, that should be identified as part of the study so that the Town Council could best determine how to eliminate them.

Mr. Wyett stated that he was not in favor of breaking the responsibility between the two departments; the system was working and he did not believe it was necessary to spend more time on the issue.

On roll call, the motion carried 4/1, with Councilman Wyett casting a negative vote.

7. Consideration of Continuing to Operate the Par 3 Golf Course as an Enterprise Fund (*Deferred from June 10, 1997*)

Town Manager Doney explained that Mr. Demming, Mr. Bitzer and he had discussed the issue of eliminating the Par 3 Golf Course as an Enterprise Fund, accounting for it as a program within the General Fund. The Golf Course had been created as an Enterprise Fund for special identity and accounting purposes to allow it to be monitored and tracked. It had never been intended that the Town would ever be repaid for the \$5 million general obligation bond issue to purchase the Golf Course; it was intended that the annual operation and maintenance costs and the long term costs be handled through the operating revenues of the Par 3 Golf Course. It had functioned as an Enterprise Fund from 1973 to the present time, and Mr. Doney indicated that it was his belief that the Enterprise Fund did give special and particular valuable identity to the accounting of the funds for the Par 3 Golf Course. It was his recommendation that the Enterprise Fund for the Par 3 Golf Course be continued.

Finance Director Jim Demming addressed the Town Council, stating that this issue concerned a policy question and the intention of the Town Council. One of the benefits of having Par 3 as an Enterprise Fund was the ability of comparison with the private sector counterparts in order to determine how well service was being provided for the Town and the public. Another reason for the Enterprise Fund for Golf Courses was that everyone in the community did not play golf, and the thought was that taxes should not subsidize a particular operation that was not utilized by the general public. He recommended that the Par 3 Golf Course remain as an Enterprise Fund for the time being.

Director of Recreation Russell Bitzer commented that the day to day operations of the Golf Course would not be affected by changing from an Enterprise Fund to the General Fund. He offered to answer any questions in regard to the issue.

Mr. Shaw noted that the Golf Course was a recreational facility for the benefit and beauty of the Town of Palm Beach, which was its primary purpose. He suggested bringing it back to the General Fund, where there was no issue of fees, interest on loans, etc. The Golf Course was not operating at a loss, however, it appeared that way because of accounting procedures.

Mr. Wyett commented that the Enterprise Fund was working well, and suggested leaving it that way.

Mr. Shaw withdrew his request for consideration of the Enterprise Fund operation of the Golf Course.

8. Update by Chief Terlizzese Regarding the Request to Florida Department of Transportation for Signalized Pedestrian Crossing at the Par 3 Golf Course on State Road A1A (*Deferred from May 13, 1997*)

Police Chief Joseph Terlizzese reported that he had written a letter on May 27, 1997 to the Florida Department of Transportation (FDOT) requesting a pedestrian crossing at the Par 3 Golf Course on State Road A1A. The reply had been that the installation of a signalized pedestrian crossing at that location was not appropriate, based on their review. They did, however, authorize the Town of Palm Beach to install a sign system that would consist of advanced warning signs with flashing beacons. After consultation with Public Works Director A1 Dusey, Chief Terlizzese stated that he believed it was a good idea to install the suggested sign system.

Public Works A1 Dusey advised that he believed the sign system was a solution to the problem. It would entail the use of a button that pedestrians could push, activating flashing yellow lights on signs that would indicate to approaching traffic that there was a crossing. The estimated cost was \$25,000 for installation of the system.

Mr. McDonald asked Chief Terlizzese if the FDOT had indicated what type of data they had used?

Chief Terlizzese replied that they had used the accident record of what had happened in that location in the past. He noted that it was mandatory by Florida law that vehicles were supposed to stop and yield to pedestrians on a posted

crosswalk. Mr. McDonald moved approval of the sign system to be installed at the Par 3 crosswalk; seconded by Mr. McLendon. Mr. Wyett suggested that the FDOT be urged to approve a full lighting system at the crosswalk.

On roll call, the motion carried unanimously.

Mrs. Ann Herman suggested that the signs include the words "golf carts."

Chief Terlizzese replied that the State had uniform traffic signs, and that was what had to be used.

Mr. McDonald noted that funding for the project would come from the Undesignated General Fund. He clarified that the advanced flashing beacons, activated by the pedestrian would be used.

Chief Terlizzese commented that the beacon system would assist all those residents living in condominiums in the area.

On roll call, the motion carried unanimously.

9. Status Report on Water Franchise Agreement Negotiations with the City of West Palm Beach

Town Attorney Randolph reported that subsequent to the last Town Council Meeting, President Smith had written to the Mayor of West Palm Beach, advising that the Town had not had a meeting since March 7, 1997 with the City of West Palm Beach. She asked that another staff to staff meeting be conducted prior to the July 8, 1997 Town Council Meeting. A response had been received that a meeting could be scheduled, however, it could not be held until July 7, 1997 at 2:00 P.M. A telephone call had been received on that day advising that Mayor Graham would not be able to attend that meeting, which was then canceled. It was now understood that another meeting would take place on July 24, 1997.

Mr. Wyett suggested that a consensus be taken to give authority for Town Attorney Randolph to inform the City of West Palm Beach that negotiations would be broken off if there was no significant progress made.

Mr. McLendon referred to the proposed questionnaire to go out to other municipalities, with the intent of showing that Palm Beach was the only community in the State that was being served on a retail basis for its water supply.

Mrs. Smith suggested that the survey should be handled by the Director of Public Works and be sent to the Director of Public Works in other communities.

Mr. Dusey and his staff would distribute the surveys, offering to send the results of the survey to all respondents, and returning to the Town Council with a report on the information gathered.

Mr. McLendon mentioned his memorandum with comments concerning the February 10, 1997 meeting with the City of West Palm Beach, which would be distributed to all Council members.

Mr. McLendon announced that a meeting had been arranged to be held on July 9, 1997 with himself, Public Works Director Al Dusey, Town Engineer James Bowser, and John Potts from Hutcheon Engineering to go over the proposed reclaimed water plan.

Mr. McDonald commented that the Water Contract was an issue three years ago, and still was an issue, and urged that the surcharge issue be resolved.

Town Attorney Randolph added that all who had attended the meetings held between the Town and the City of West Palm Beach had been encouraged by the progress that was being made. The lack of follow up from those meetings had been discouraging, however, the extent of progress could not be determined until the next joint meeting on July 24, 1997.

President Smith noted that a great many things had been agreed to at the previous joint meetings, and that the facts concerning follow up would be determined at the next joint meeting.

10. Status Report on Town of Palm Beach vs. City of West Palm Beach Regarding Downtown Master Plan

(This item was heard immediately following X. OLD BUSINESS. A. I. b. because of a time conflict)

Town Attorney Randolph reported that he had submitted a draft Settlement Agreement in regard to the Town of Palm Beach vs. City of West Palm Beach concerning the Comprehensive Master Plan. The purpose of submitting it today was to attempt to resolve both of the cases pending, with the hopes that approval would forward it to the City of West Palm Beach Commission at their meeting of July 14, 1997. He noted that a request had been made by the City for a change in the Agreement, eliminating the requirement for a public hearing for substantial changes to Flagler Drive [paragraph 14 (g)], which he had not agreed to incorporate, but was passing along for consideration.

Mrs. Smith commented that the Town Council had gone through the Agreement step by step in the closed door

attorney/client sessions, and she opposed eliminating paragraph 14 (g) from the Agreement, because of the potential impact of traffic on residents of Palm Beach.

Town Attorney Randolph noted that there was a slight language amendment in the draft agreement regarding paragraph 14 (g), through a request by the City that asked that the word "substantial" re-design be included, as well as the request to eliminate paragraph 14 (g) entirely. He explained that the reasoning given by the City for the requests was that the Comprehensive Plan of the City already envisioned a redesign of Flagler Drive, it would not be necessary to hold a public hearing for all changes to the roadway--the City would like to amend the paragraph to provide that in the event the City planned to commence any substantial redesign of Flagler Drive, the City would provide the Town notice of such intent in order that the Town could respond accordingly. It was not intended that the Town not be given notice.

Mr. Randolph advised that the issue before the Town Council was whether to eliminate the requirement for a public hearing, per paragraph 14 (g) of the draft Agreement.

Pam McNierney, of the City Attorney's Office of West Palm Beach, addressed the Town Council, stating that she had requested the addition of the word "substantial" so that a public hearing would not have to be held for things such as curb cuts. The Mayor of the City of West Palm Beach had requested the changes in paragraph 14 (g).

Mr. Wyett moved that the draft Agreement include the requirement that the City have a public hearing regarding any substantial redesign of Flagler Drive. The motion died for lack of a second.

Mr. Shaw made a motion that the draft Agreement be approved as written, and to authorize its execution upon approval by the City of West Palm Beach; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

XI. NEW BUSINESS

A. Appointments

1. Building Board of Adjustments and Appeals - Two Three-Year Terms to Expire July 2000

Director of Planning, Building & Zoning Robert Moore recommended that Ames Bennett and John Nora be reappointed to the Building Board of Adjustment and Appeals.

Mr. Shaw made a motion to reappoint Ames Bennett and John Nora to the Building Board of Adjustment and Appeals; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

B. Sealed Bids

1. Sealed Bid No. 97-07 - Ibis Isle Bridge Repair; Resolution No. 39-97

Town Engineer James Bowser reported that the Ibis Isle Bridge had some spalling under the deck due to corrosion of the reinforcing steel, and part of the bridge deck would be cut out, concrete replaced, work would be done on the abutments, some abandoned utilities would be removed, and the railing on the south side of the bridge would be fixed. Bids had been received, with the low bid being \$28,959.00. A contingency had been requested because the deck needed to be cut back until good steel was reached, which point was not known at this time; therefore, a \$15,000 contingency had been requested.

Mr. Wyett moved approval of Sealed Bid 97-07- Ibis Isle Bridge Repair; Resolution No. 39-97. The motion was seconded by Mr. McLendon.

Mr. Randolph read Resolution 39-97

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO GENERAL BUILDING SERVICES, INC., FOR THE IBIS WAY BRIDGE REPAIR.

On roll call, the motion carried unanimously.

C. Resolutions

1. Resolution No. 40-97 - Request by The Breakers Palm Beach, Inc. for Easement on Whitehall Way for D-13 Stormwater Pump Station Outfall

Town Engineer James Bowser reported that The Breakers was constructing D-13 Stormwater Pump Station which would service The Breakers' properties, as well as a portion of South County Road. The Station was being constructed, and would be operated and maintained by The Breakers at their sole cost. In order for them to have the water reach the Intracoastal, which now does so by a Town-owned 24-inch gravity line, The Breakers needed to build a force main from the Pump Station. The request was for an easement upon Town road right-of-way in order to place the pipe. Staff

recommended approval. Mr. Bowser noted that the agreement included that when The Breakers finished with the patch on Whitehall, they would put a micro surfacing on the roadway.

Mr. Shaw expressed concern over fees paid for easements granted.

Mr. Bowser explained that he believed the acceptance of the water from A-1-A, and the drainage of the Pinewalk properties were mitigating items.

Mr. Shaw suggested that clarification be made that the Town would be willing to forego the fees for use of the right-of-way in exchange for the fact that The Breakers was taking care of other waters of the Town.

Mr. Bowser commented that charging fees for easements was being proposed and was in the plans for the future.

Director of Planning, Building & Zoning Robert Moore commented that this was part of The Breakers Planned Unit Development (PUD), and they were required to put the storm drainage in.

Mr. McLendon noted, in an attempt to clarify future easement charges, that this project held a joint benefit for the Town, and was paid for by The Breakers. He questioned the legal description in the plan, suggesting that it include naming Cocoanut Row.

Mr. Bowser replied that he would review the legal description, and note the Cocoanut Row portion. The Agreement would be modified to say that any easement fees would be waived in lieu of Pinewalk and drainage of A- 1-A.

Mr. Wyett made a motion to approve Resolution 40-97; seconded by Mr. Shaw.

Town Attorney Randolph read Resolution 40-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA GRANTING A STORM DRAINAGE EASEMENT TO THE BREAKERS PALM BEACH, INC.

Mr. Randolph suggested that perhaps the third "whereas" clause should read, rather than: Whereas it is in the best interest of the Town of Palm Beach and The Breakers.. to the following: Whereas it is in the joint interest of the Town of Palm Beach and The Breakers.

On roll call, the motion carried unanimously.

Mr. Bowser commented that he would work with Town Attorney Randolph to be sure that he was satisfied with the final form of the Agreement.

D. Other

1. Consideration of Request by the Citizens' Association South of Sloan's Curve for the Town to Provide Beach Cleaning Services from Sloan's Curve to South Town Limit

Public Works Director A1 Dusey reported that he had been approached by the Citizens' Association South of Sloan's Curve asking if an estimate could be prepared for the costs of a Town-provided beach cleaning service. Currently the beaches were being mechanically cleaned through private sector services, with the individual condominiums in the area being invoiced monthly for the service. He advised that it would be cost effective for the Town to provide the beach cleaning service three times per week. The Citizens' Association would then reimburse the Town for the costs of cleaning the south end, and then they would bill their members.

Mr. Shaw suggested that The Breakers be contacted to determine if that property could be incorporated in the project.

Mr. McDonald asked what length of beach would be required to make the program economically feasible?

Mr. Dusey estimated that it would be thousands of feet.

Mr. McDonald made a motion to approve the Town-provided beach cleaning service from Sloan's Curve to the South Town Limit, with the understanding that any parts of Town that wanted the service could have it too, as long as they met the required length; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Dusey stated that he would return to the Town Council with a budget for capital purposes.

2. Consideration of Official Town Position Regarding Potential Relocation of the duPont PEP Reef

Assistant Town Manager Peter Elwell referred to his memorandum of July 1, 1997 regarding the above reference subject, noting that the recommended language was at the bottom of the first page. The Town Council had previously taken the position of leaving the reef in place, and slightly modified language was being recommended because some of

the circumstances had changed relating to the use of Artificial Reef Site #4. (Please see recommended language below)

We believe the duPont PEP Reef should be allowed to remain in place as a biological artificial reef, unless it is causing demonstrable harm to the coastline. If the proper authorities determine that the reef is harming the natural coastal processes in the surrounding area, then we do not object to its relocation to Artificial Reef Site #4 or some other appropriate site.

Mr. Wyett made a motion to approve the statement as the official statement of the Town on the potential relocation of the duPont PEP Reef; seconded by Mr. McLendon.

Mr. Hans Rauch, of American Coastal Engineering, Inc. addressed the Town Council, stating that he had been diving up and down the reef, and it was doing splendidly. Tabulation of 70 species of fish and 50 species of crustaceans had been established.

Mr. Dick Bresee suggested that two questions be considered: how will the reef be used in the future; and should the Town of Palm Beach name be used in that method? He questioned if it would be used as a sales promotion item in the future?

Jennifer Frost, representing Willis H. DuPont, addressed the Town Council, stating that the County had recently endorsed the reef remaining in place. She noted that the biological reef system that had grown up in the area in the last nine years was rather substantial. She noted that the Town of Palm Beach was being asked to endorse the biological aspect of the reef.

Mr. Elwell clarified that there were two issues involved: a biological issue, and an engineering issue. He suggested that the Town not become involved in the discussion of the engineering issues, because there were ongoing communications between the State and the applicant relating to those issues, although the Town was certainly an interested observer in the discussions because of the potential implications for a future beach project.

On roll call, the motion carried unanimously.

3. Consideration of Request by Florida Department of Transportation to Rehabilitate Flagler Memorial Bridge Beginning May 1, 1998 to August 31, 1998

Roberto Rubio, of the Florida Department of Transportation (FDOT) addressed the Town Council, stating that the Flagler Memorial Bridge would need rehabilitation, and requested to be able to work during the night, as the bridge would need to be closed for at least four days, and if able to work at night the project could be completed faster.

Mr. McDonald asked why it was necessary to work on the bridges every year?

Mr. Rubio explained that the previous rehabilitation project could not accomplish these repairs as they had run out of money, however, it was important because the two beams in question were fracture critical.

Mr. Shaw asked if there was a long term plan for the maintenance of the bridge?

Mr. Rubio replied that the bridge was evaluated every two years as part of the national bridge inspection program, and bridges were maintained based on the results of those inspections.

Mr. Wyett made a motion to approve the request of the FDOT to rehabilitate Flagler Memorial Bridge; seconded by Mr. McLendon.

Mr. Shaw asked how the repairs could wait for one year, since they were critical?

Mr. Rubio replied that the beams were marginally safe.

On roll call, the motion carried unanimously.

4. Consideration of Authorization for Mayor to Execute Interlocal Agreement Between the Town and City of West Palm Beach for Structural Collapse and Trench Rescue for Fire-Rescue Purposes

Mr. Shaw made a motion to approve authorizing the Mayor to execute the Interlocal Agreement between the Town and the City of West Palm Beach for Structural Collapse and Trench Rescue for Fire-Rescue purposes; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

5. Consideration of Parking Meter Maintenance and Collection Program Improvements

Public Works Director A1 Dusey reported that since May 9, 1997 the Town had been maintaining the meter system, and collecting the monies. The meters along the Mid-Town Beach were not in good shape, and would need rehabilitation. He proposed that 184 meter heads be rehabilitated at \$40 each, for a total cost of \$11,000, and that the

system be converted to electronic mechanisms at a total cost of \$122,400. He had suggested the conversion since the mechanisms were very accurate, and there would be no need to have a person allocated to maintain the meters. He noted that the electronic meters could not be set for free minutes, such as the 15-minute free parking meters at the north Post Office, so he requested direction on those meters. He proposed funding could take place through the Undesignated Funds in the Capital Improvement Program.

Mr. Wyett asked if his proposal covered all of the meters in Town?

Mr. Dusey replied negatively--the 680 electronic mechanisms would take care of all of the Town Meters.

Mr. Wyett stated that there were several areas in Town where meter revenue was quite low, and suggested that a cost analysis be done on those meters before any more money was spent on them.

After discussion of cost effectiveness, Mr. Wyett moved that this issue be deferred to the August 12, 1997 Town Council Meeting to give Mr. Dusey time to determine what was practical. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

6. Consideration of Request for Funding on Studies for Appraisals, Traffic Counts, and Consultant Reviews for Easement/Rights-of-Way Permit Fees

Town Engineer James Bowser reported that a methodology for occupancy, degradation, and obstruction of Town right-of-ways was being determined. Originally it had been suggested that Palm Beach County Property Appraiser number be used for property values in determining right-of-way values. A more accurate determination would be to use an MAI appraiser, although a local company had advised that a rather than a full MAI report, a survey could be done to come up with some land values. The estimate for this service would be between \$5-\$10,000. In order to determine traffic counts for obstruction fees, counts would have to be gathered, which was estimated at \$3-\$5,000. Staff requested that a maximum of \$15,000 from the General Fund balance be utilized to obtain the necessary information.

Mr. Wyett suggested that appraisers values were usually 80-85% of market values, and if their discount was added back in the market value could be ascertained, rather than pay a service to do the work.

Mr. Bowser explained that the methodology had to be defensible, and the recommendation was for that purpose. He welcomed any alternative suggestions.

Town Attorney Randolph advised that the fair market value could be ascertained, then allowing a formula to be applied generally across the board on that, or an appraiser could be hired to determine the value of an easement. He explained that the intent of adopting an ordinance in this regard would be to charge everyone using the right-of-way for the use and degradation of the right-of-way, which would include the City of West Palm Beach, Florida Power & Light, the Gas Company, etc. The right of the entity would also have to be considered.

Mr. Shaw suggested that MAI appraisals not be done, and that a methodology of assessing be determined internally.

Assistant to the Town Manager David Jakubiak addressed the Town Council, stating that Telecommunications Attorney Miller, Town Attorney Randolph, Town Engineer Bowser, Public Works Director A1 Dusey and he had discussed the ordinance and the compensation issues. It was very important that the Telecommunications Ordinance be passed before the right-of-way manual was passed and implemented. There were going to be major issues relating to compensation, which would have to be fixed where it would be fair and reasonable, so one provider was not being charged a certain rate, while another provider was charged another. Compensation issues were being studied, and he would report back to the Town Council, as directed at the last Ordinances, Rules & Standards (ORS) Meeting, with a summary of the types of fees recommended.

Mr. McLendon asked if any discussion had been held regarding different kind of rates for overhead and underground facilities?

Mr. Jakubiak replied that there were various rates that could be implemented--for example, a box 5' high could have a rate based on structural rate, or amount of space taken in a right-of-way, versus something like a leasing charge for leasing a conduit to a provider. Compensation issues such as BellSouth leasing their lines to an AT & T and collecting revenue, may become an issue of whether BellSouth should pay revenue to the Town.

Mr. McLendon asked if both a fee based on percentage of revenue, and an occupancy fee could be collected by the Town?

Mr. Jakubiak responded that the Town could collect whatever was legally permissible, which was why legal advise was being sought. Attorney Miller did recommend that the studies proposed by Mr. Bowser be completed, and then a report would be compiled of the types of fee categories, as well as what other cities were charging.

Mr. Shaw made a motion that the tax rolls be used as the basis for fees, the idea of a traffic count be put aside for the time being, and to go forward with the degradation/occupancy portion of the study, with the formula/methodology being ascertained and reported to the Town Council at the September Town Council meeting. The motion was seconded by Mr. Wyett.

Mr. Bowser commented that a methodology would be devised, and he would report back to the Town Council.

Mr. McLendon emphasized that if traffic counts had been accepted at other cities he would like to know that information.

Mr. Bowser replied that Attorney Miller was investigating the issues.

On roll call, the motion of Mr. Shaw carried unanimously.

7. Consideration of the Code Enforcement Board Ordinance

Mr. McDonald explained that he had requested that Town Attorney Randolph review the Code Enforcement Board Ordinance to determine if it provided Code Enforcement Liens parity with ad valorem taxes--to establish a duration of 20 years if it did not, and to determine a procedure for recording municipal liens.

Town Attorney Randolph advised that the current ordinance did need to be amended to include the 20 year Statute of Limitations. The Florida State Statute had been amended so as to extend that time, and the Town Ordinance should likewise be amended. He did not see anything in the State Statute indicating that the Code Enforcement liens should be on a parity with ad valorem taxes, however, he would investigate further.

Mr. McDonald suggested that further investigation continue, because he believed that the addition of the language was possible, which would make the lien superior to all other liens of record.

In regard to recording municipal lines, Town Attorney Randolph advised that an ordinance could be adopted that would allow the Town to take those things recorded in the Municipal Lien Book, at a certain point, and record them in the Circuit Court. There was no such ordinance in existence currently.

Mr. McDonald suggested that such an ordinance be drafted.

Town Attorney Randolph clarified that he would draft a change to the Code Enforcement Board Ordinance to include the 20-year duration, bring back a suggestion in regard to recording Municipal Liens, investigate the possibility of putting Code Enforcement Board Liens on a parity with ad valorem taxes, and would report back to the Town Council at the next Town Council meeting.

Mr. McDonald made a motion that the ordinance change be drafted, and that Mr. Randolph report back to the Town Council next month with the information on recording liens; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

8. Consideration of Request to Amend the Dates of Two (2) Public Hearings to Adopt FY98 Budget and Tax Rate

Town Manager Doney referred to his memorandum of July 2, 1997 concerning the requested amendments of dates for Public Hearings, as well as the memorandum dated June 4, 1997 from Finance Director Demming, and Town Attorney Randolph's memorandum of June 23, 1997, noting that it would be necessary this year to have an ordinance to adopt the FY98 Budget and Millage Rate. He suggested that the first Public Hearing take place on Thursday, September 4, 1997 at 5:01 P.M., and after the necessary legal advertising, the second Public Hearing would be held on or after Wednesday, September 17, 1997 at 5:01 P.M.

It was decided that the September 4, 1997 be moved to September 5, 1997, if the appropriate advertising requirements could be completed. Otherwise, the meeting would be held on September 4, 1997.

9. Consideration of Request to Extend Contract Until July 31, 1998, with Florida Department of Environmental Protection for Implementation of Lake Worth Inlet Management Plan.

Public Works Director A1 Dusey reported the Department of Environmental Protection had requested that the existing contract for the Lake Worth Inlet Management Plan be extended by one year, which would allow the Town to receive an additional \$14,000 from the State. Further amendments would allow new appropriations. Mr. Dusey recommended that the Town Council authorize signing the extension.

Mr. Wyett made motion to approve authorization for the Town Council President to sign the extension of the Contract with the Florida Department of Environmental Protection for implementation of the Lake Worth Inlet Management Plan; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

10. Consideration of creating a Fire-Rescue Substation south of the Lantana bridge in order to offer services to neighboring communities.

Mr. Shaw stated that there had been an article in the newspaper regarding the fact that Lantana had been providing

EMS service to the municipalities of Manalapan and South Palm Beach on a cost basis. He noted that the County would probably be taking over for Lantana, and he suggested that the Town Council give consideration for the Town of Palm Beach to offer those services to South Palm Beach and Manalapan.

Mr. Shaw moved that this item be part of the Agenda for the August 12, 1997 Town Council Meeting. The motion was seconded by Mr. McLendon. On roll call, the motion carried 4/1 with Mr. Wyett casting a negative vote.

11. Consideration of traffic flow modifications on South County Road (east side) north of Royal Palm Way.

Mr. Shaw made a motion to add discussion of traffic flow modifications on South County Road to the Agenda for the August 12, 1997 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald acknowledged that the Town insurer had agreed to allow the law firms selected in the Mar-a-Lago matter to proceed. The amount had been capped at \$160 per hour. He suggested that the Town could negotiate a better hourly fee with Mr. DeVault.

Councilman McLendon referred to the letter of June 30, 1997 regarding the transfer to division A.E. and asked Town Attorney Randolph for clarification.

Town Attorney Randolph explained that the case had been filed originally in State Court in front of a particular judge. It had then be removed to Federal Court, which had been dropped and re-filed in State Court. Because the issues in the new State Court suit were almost identical to those that had been filed in the original suit, it was believed appropriate that it go back to the judge who was going to handle it originally. A motion recommending that had been filed, and the Court granted the transfer back to the original judge. The "A.E." was the designation given for a particular division within the Circuit Court.

XIII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR JUNE 1997

Mr. Shaw moved to approve the Warrant List and Fund Expenditures for June 1997; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

XIV. DEVELOPMENT REVIEWS

- A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of June 25, 1997 - Minutes Available in Town Manager's Office

- a. DEFERRALS AND CONTINUATIONS - MAJOR PROJECTS

B 16-97 Application by James Woolems, 1080 North Ocean Blvd., for demolition of existing residence and construction of new two-story Mediterranean style residence - deferred.

B32-97 Application by Skip Gozzo, 127 Ocean View Road, for new Bermuda style residence - denied.

B52-97 Application by Jonathan Gladstone, 281 North County Road, for addition of second story to existing one story home - approved.

B36-97 Application by Addison Development, 236 Via Las Brisas, for new two-story Mediterranean style residence - approved.

B38-97 Application by Addison Development, 234 Via Las Brisas, for new two-story Mediterranean style residence - approved.

B45-87 Application by Euro Homes, 232 Everglade Avenue, for new luxury duplex - deferred.

B48-97 application by Hamlin Beattie and Loti Woods, 1263 North Lake Way, for demolition of existing structure and new residence - approved.

B49-97 Application by Jeffrey Fisher, 146 Seminole Avenue, for new home to replace demolished residence, including pool and garden - approved.

B51-97 Application by Michael Burrows, 1030 North Lake Way, for new two story single family residence - deferred.

B53-97 Application by Michael Burrows, 1020 North Lake Way, for new single family residence - deferred.

B40-97 Application by Martin and Maria Mochorowski, 1494 North Lake Way, to demolish existing single family residence and pool, and build a new 7,197 sq.ft, residence, and swimming pool - approved.

b. NEW BUSINESS - MAJOR PROJECTS:

B54-97 Application by Edward D. Lewis, Trustee, 220 Kawama Lane, for new residence - deferred.

B55-97 Application by Mr. and Mrs. John Zenko, 232 Tangier Avenue, to demolish existing residence - approved.

B56-97 Application by Hammon Avenue Partners, Inc., 110 Hammon Avenue, for three unit townhouse project - approved.

B57-97 Application by Harold and Maya Cohen, 297 Tradewinds Drive, for additions and interior renovations to existing one story house - approved.

B58-97 Application by Krasnow, 120 Jungle Road, for garden pavilion - approved.

B59-97 Application by Marvin Schur, 1090 North Lake Way, to construct new residence - approved.

Mr. Shaw made a motion to approve the Architectural Commission report; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

B. Appeals

1. Consideration of Appeal of the Landmarks Preservation Commission to Undesignate 150-A Australian Avenue; Request by Quilty Properties, Inc. *(Deferred from May 13, 1997, and June 10, 1997)* - **Request for Deferral to August 12, 1997, per letter dated June 30, 1997, from James R. Brindell**
2. Consideration of Appeal of the Architectural Commission's Decision of June 25, 1997, Regarding 127 Oceanview Road; Request by Mr. Raymond W. Royce for Mr. Skip Gozzo - **Request for Deferral to August 12, 1997, per letter dated July 3, 1997, from Raymond W. Royce**

C. Variances, Special Exceptions, and Site Plan Reviews

At this time, Town Clerk Pollitt administered the oath to all those who would be speaking to the following Variances, Special Exceptions, and Site Plan Reviews.

Old Business

1. Consideration of Proposed Declaration of Use Agreement for Special Exception No. 30-95 with Variance, 264 The Grill, 264 South County Road

Ex-parte communication was not declared by any Council member.

Director of Planning, Zoning & Building Robert Moore stated that this item had been placed on the Agenda by the staff. Zoning Administrator Castro had been working diligently with Mr. DeMarinis and his attorneys on the Agreements that had been reached concerning the expansion of 264 The Grill nine months ago. One of the conditions had been that a Declaration of Use Agreement be entered into with the Town, and agreement had not yet been reached on that, therefore, it was being brought back to the Town Council today for consideration.

Zoning Administrator Paul Castro addressed the Town Council, providing a memorandum dated June 25, 1997 outlining what had happened over the past nine months. Exhibits attached to the memorandum included the original Declaration of Use Agreement proposed by the applicant, and the proposed language that Town staff had modified relative to the requirements of the Declaration of Use Agreement, various memorandums, and minutes from the Town Council Meetings of February 13, 1996, where the original approval of the Special Exception occurred, as well as the

October 8, 1996 meeting where the Declaration of Use Agreement was approved in concept by Town Council. Staff had stated that part of the Declaration of Use Agreement required the applicant to adhere to Ordinance 5-97, which was adopted in the interim between the time the Declaration of Use Agreement was provided to staff and the October 8, 1996 meeting. The language could not be modified to satisfy Mr. DeMarinis, and the issue was now before the Town Council for consideration.

(At this time, Attorney Howard Rudolph was sworn in by Town Clerk Pollitt).

Attorney Howard Rudolph, on behalf of Mr. DeMarinis, addressed the Town Council, stating that there was no objection to A, B, and C of the proposed language submitted by town Staff for the Declaration of Use Agreement, however, there was an objection to D and E. He explained that part of the problem of signing the Declaration of Use Agreement was that it was constantly changing during that period of time. He explained that his client had the understanding that there would be no valet parking in Phipps Plaza or the entrance, according to the minutes of the Town Council Meeting held on February 13, 1997. The next document dealing with the valet issue was contained in the February 20, 1996 letter from Mr. Castro identifying some of the necessities in the Declaration of Use, where it again stated that the applicant shall not have valet parking operations in Phipps Plaza or in the entrance into Phipps Plaza. On October 18, 1996 Mr. Castro had written a letter wherein it was stated that the only condition that was being added in connection with the valet parking signage was that there should only be one valet sign on the east side and west side of South County Road directly adjacent to the restaurant. He asserted that this condition was supposed to be included in the Declaration of Use as of October 18, 1996. When it came time to sign the Declaration of Use, that was not the case.

Mr. Castro submitted that in between the time the document was prepared the Ordinance had changed. Ordinance 5-97 had been adopted, and the language could not be amiably worked out. Therefore, the applicant was not prepared to sign the document as modified.

Mr. Rudolph maintained that his client was attempting to work something out, but the conditions were changing, and a completely different Declaration of Use was being presented.

Director of Planning, Building & Zoning Robert Moore pointed out that the Ordinance in question did not go into effect until April of 1997, so there had been several months in between then and the letter of October, 1996 during which the Town was certainly ready to sign, and Mr. Castro was certainly not insisting on compliance of an Ordinance that had been enacted in April, 1997. It was their refusal to sign the Agreement that prompted their problem of sleeping on their rights, and they lost their chance for any grandfather claim. The basis of Mr. Rudolph's argument was that they should be grandfathered for what they agreed to when the Special Exception was granted in October of 1996. They would not sign the Agreement, slept on the rights, the Ordinance changed, and the Declaration of Use Agreement was adjusted accordingly.

Mr. Rudolph maintained that they had not slept on their rights, and that they had been prepared to sign the Declaration of Use Agreement. The document had been reviewed by Town Attorney Randolph and that caused a time lag, which was part of the problem. He stated that he believed the language could be worked out very easily in resolution of this whole matter.

Mr. Castro maintained that he had marked a copy for Mr. Deziel several months ago, and the language in Exhibit 2 was exactly the same. Mr. Randolph had also marked up the language; it was in rough form and he had faxed it to Mr. Deziel months ago for his review. Although it was not typed it was substantially in the same form and content as provided in Exhibit 2. This occurred before Mr. Rudolph became involved in this case.

Mr. Rudolph submitted that the delay proved that the applicant had not slept on his rights, and the applicant should be allowed to grandfather in the two signs. The reason for the two signs, as set forth in the letter from Mr. Castro of October 18, 1996, was that 264 The Grill was in a unique situation in that there was no loading zone directly in front of the front door.

Mrs. Smith asked Mr. Rudolph when he became the attorney for Mr. DeMarinis?

Mr. Rudolph replied that it was much later in this process, that it was sometime in the Spring.

Town Attorney Randolph stated that in the interim period of time before the Declaration of Use Agreement came in, the Ordinance had been passed, and he maintained that the Ordinances of the Town prevail, and that people must abide by those ordinances. If there was no Agreement signed, the Town would simply enforce the provisions of the Ordinance. If the applicant refused to enter into a Declaration of Use Agreement, then that condition of granting the Special Exception would not be met and they would not have the approval.

Palm Beach Police Captain Bob Price stated that the Police Department opposed a second sign on the east side of the street for safety reasons. If there was a sign on the east side of the street people may believe that there was valet parking on that side of the street, which was not the case. The Ordinance stated that it could only be in the red loading zone. Also, he noted that according to the minutes of October 8, 1996, Mrs. Smith had stated that two signs were not needed in front of the restaurant, but until residents understood about valet parking there was no problem, and then it was agreed that would be a temporary situation.

Mayor Ilyinsky commented that the restaurant was in a unique location, and he suggested that a testing period be done with the use of two signs.



~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON JULY 8, 1997~~

Mr. Wyett made a motion to approve the two Town parking signs (one on each side of the street) with the provision that once per year the applicant come back for a standard continuance, based on the fact that there had been no problems; seconded by Mr. McLendon.

Mr. Rudolph explained that they would like to keep the Town sign where the loading zone was, and on the other side of the street there would be a small black and white sign that said "valet" with an arrow.

Mr. Wyett stated that he preferred the signs to be Town signs, although he would allow the arrow.

On roll call, the motion failed 2/3, with Councilman McDonald, Councilman Shaw, and President Smith casting negative votes; Councilman McLendon and Councilman Wyett casting positive votes.

Mr. Shaw made a motion that the Declaration of Use Agreement as originally prepared by Mr. Deziel, which indicated that the owner would comply with the Town of Palm Beach Ordinance for all parking signage be upheld.

Mrs. Smith asked if Mr. Shaw would clarify that the Building Department and Town Attorney Randolph had looked at a Declaration of Use Agreement that was agreeable to the Town, and that was the final document?

Zoning Administrator Paul Castro explained that there was not a Declaration of Use Agreement in a form acceptable to the Town at this time. He had drafted the language based on comments from Mr. Randolph and himself regarding the modifications proposed to the Declaration of Use Agreement that had been submitted by Mr. Deziel.

Mr. Shaw amended his motion to include that the Declaration of Use Agreement be accepted as Exhibit 2 "Town Staff Proposed Language in the Declaration of Use Agreement", and that it be signed within 30 days; seconded by Mr. McDonald.

Mr. Rudolph asked that section "e", and the second sentence in "d" of the "Town Staff Proposed Language in the Declaration of Use Agreement" be stricken.

Town Attorney Randolph clarified that it was understood that the conditions related in Exhibit 2 referred to Item 1 of the Declaration of Use Agreement, and would not exclude other language incorporated in the Declaration of Use Agreement.

Mr. Rudolph clarified that the applicant would agree to section "e" of Exhibit 2, with the addition of language that said if Ordinance 5-97 was repealed then there would be no obligation on the part of the applicant to follow it, and that the second sentence in section "d" of Exhibit 2 be stricken.

At the request of President Smith, Town Clerk Pollitt repeated the motion before the vote was taken: To approve the Declaration of Use Agreement that incorporated the language in Exhibit 2, with language from the original Declaration of Use Agreement as prepared by the Town, and it must be signed within 30 days.

Mr. Shaw clarified that it was the Declaration of Use Agreement that was originally prepared by Mr. Deziel, with the replacement of Item 1 with the Exhibit 2 language.

On roll call, the motion carried 4/1, with Councilman McLendon casting a negative vote.

2. Variance No. 6-97 - Michael Kalisman, 146 Dunbar Road; located in the R-B Zoning District; to allow construction of a two-story addition on an accessory building on a lot under 20,000 sq. ft., a variance to the one-story limit per Sec. 5.51(b); and, to allow a variance to Sec. 5.36(b) to provide a 9'x15' parking stall in front of the privacy gate in lieu of 9' x 18' required. (*Deferred from March 11, 1997, April 8, 1997, May 13, 1997, and June 10, 1997*)

Attorney Ron Kolins, representing Michael Kalisman, addressed the Town Council, exhibiting material for viewing of the proposed construction. A number of suggestions had been made at the last Town Council Meeting regarding Variance 6-97, which had been incorporated in the proposal being presented today. The building now was 19'11", the window was made opaque, and the door opening had been eliminated.

Zoning Administrator Paul Castro stated that staff failed to see a hardship relative to granting a variance for the addition. In addition, staff believed there was no hardship relative to the setback of the gates from the street pavement, as the property was very deep and contained adequate space to provide the necessary 18' separation between the pavement and the gates in order to meet Town Code.

Attorney Kolins stated that he had planned on discussing the gates separately, and requested that the first portion of the variance only be discussed at this time.

Attorney Frank Lynch, on behalf of Dr. and Mrs. Krumholz, the neighbors at 136 Dunbar Road, addressed the Town Council, stating that even though the suggested modifications had been made, the height of the proposed addition was too high. He stated that a precedence would be created if the project was approved, and that there was no hardship addressed.

Attorney Kolins stated that there was a de minimus square footage deficiency, there was no imposition on the neighbors, and all of the suggestions made by the Town Council at the previous Town Council Meeting had been followed. He urged that the project be approved.

Mr. McDonald expressed concern about the hardship issue, stating that he did not see that the hardship burden had been met.

Attorney Kolins maintained that the hardship had a relationship to the land as it was found. His client had found that he had no alternative for a guest house except the proposed location. The other structure on the property was inadequate, and was used for the household help. He submitted that the hardship was the way that the property laid.

Mr. Wyett suggested that both parties take some time to discuss this matter together outside of the meeting in an attempt to come to some resolution.

Mr. McLendon made a motion to defer Variance 6-97 to be heard after the next item; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

(Variance 6-97 was continued after Variance 21-97)

New Business

3. Variance No. 14-97 - Mr. and Mrs. Jeffery W. Smith, 241 Sanford Avenue; located in the R-B Zoning District; to allow construction of a one and two story addition providing a 5.1' side yard setback in lieu of 15' required.

Ex-parte communication was declared by Councilman Wyett with Attorney Deziel concerning the plan expansion; by Councilman Shaw with Attorney Deziel in discussion of the application; by Councilman McDonald with Attorney Deziel in reference to his having any items on the Agenda.

Attorney Robert Deziel, representing Mr. and Mrs. Jeffrey Smith, addressed the Town Council, incorporating by reference provisions A through G in his application that was submitted, entitled Variance 14-97. He summarized that the property was in the R-B Zoning District, and the applicant intended to build an in-fill addition that would require a side yard variance. With the addition, the applicant would have a front yard setback well in excess of the Code requirement, and a relatively low cubic content ratio of 3.73. He exhibited some pictures of the property, and neighboring residences. He noted that the location of the existing structure when it was originally built was at its current location, and the hardship was the combination of the modifications in the Zoning Provisions since the structure was originally constructed, and the fact that the current garage was built in that location.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: Comprehensive Plan: should demonstrate hardship; Building Department: no objection; addition is in line with existing 5.1 setback; Town Manager: request additional information on reasons for variance. He corrected Mr. Deziel in that the addition was not an "in-fill" addition, but an addition in line with an existing setback. The hardship identified had been used in the past.

Mr. Wyett made a motion to approve Variance 14-97, based on the hardship as outlined by the petitioner; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

4. Variance No. 19-97 - Paul P. Dickey, Jr., 215 Pendleton Avenue; located in the R-B Zoning District; to allow construction of an addition providing an 11.74' east side yard setback in lieu of 15' required.

Ex-parte communication was not declared by any Council member.

Architect Jim Ashley, representing Paul Dickey, addressed the Town Council, producing exhibits of the proposed project, stating that the variance requested was for reduction of the sideyard to 11.74' in lieu of the 15' required. He corrected the address as 216 Pendleton Avenue. He noted that the addition was a single story addition, but was attached to a two-story house. The hardship was that homes in the past had been much smaller, and now there was a need for a larger family in this home in order to make it adequate for use.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: Comprehensive Plan: should demonstrate hardship; Building Department: no objection, is in line with existing setback at 11.74; Town Manager: requested additional information in reasons for variance.

Mr. Wyett made a motion to approve Variance 19-97, with the hardship being the modifications in the Zoning Code since the structure was originally built; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. McDonald commented that the Building Department should set some standards and guidelines for exhibits presented to the Town Council that were compatible with the visual system in the Town Council Chambers, so that there would be some uniformity in what was presented, and so that all Council members could see adequately in order to make their decisions.

Mrs. Smith agreed that the Town Council should see the same elevations that would be presented to the Architectural Commission.

5. Variance No. 20-97 - Constance J. Roeder, 331 Polmer Park; located in the R-B Zoning District; to allow construction of a second story providing an 8' side yard setback in lieu of 15' required, and to allow a 31.85% lot coverage in lieu of 30% maximum allowed.

Architect Robert Bell addressed the Town Council, distributing photographs of the other homes on the street, and an aerial photograph of the property, explaining that the applicant intended to put a second floor staff quarters upon the garage, accessing it by a stair to the west side. An 8' setback on the side was being requested in lieu of the 15' required. The lot coverage was 31.37, which was allowable in the R-B Zoning District as a single story, however, adding the second floor would reduce that maximum to 30%, which would result in an increase of .48% lot coverage. He addressed the hardship as follows:

1. The house had only two bedrooms, with no staff quarters. All of the other homes of Polmer Park had staff quarters above the garage.
2. The father of the applicant was age 77 and had four hip replacement surgeries and recent quadruple bypass surgery, which limited his mobility and required him to use a walker. This, combined with his respiratory ailments, made it impossible for him to care for himself and necessary for him to winter with his daughter in Florida. Thus, it would be necessary to have a live-in care provider during the winter months. Denial of this application would result in an unnecessary and undue hardship on the applicant, by denying her staff quarters for a live-in care provider.
3. The second stow addition would bring the applicant's house into conformity with the other homes constructed on Polmer Park, all of which had staff rooms over the garage. The house at 331 Polmer Park was the only house without staff quarters. As such, it was neither compatible with the other homes on Polmer Park, nor was it compatible with Palm Beach standards for a home of this quality.
4. There were only three houses on the north side of Polmer Park. The applicant's garage was located to the rear of the main structure, well back from the street. Placing a second story directly on the existing garage would not deprive any neighbor of view, light, air, or privacy. No house was closer than 100' to the proposed second story addition over the garage.
5. Subdivision of the parcel bordering on the west would result in a nonconforming unbuildable lot.
6. Similar variances for sideyard setback and lot coverages had been granted on the street and surrounding R-B Zoning District. In 1995 a similar variance was granted to the resident across the street for a second story addition.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: Comprehensive Plan: should be designed to conform to Code; Building Department: No objection to the second stow, however, the stairs were an encroachment into the sideyard. The plot plan and floor plan indicated that the stairs could be located in a different location, either in the rear of the property or internally inside the garage area; there was no hardship identified for the stairs, and it was suggested that the stairs be reversed and face in the opposite direction; Town Manager: requested additional information on reasons for variance. Mr. Moore noted that the requirement for live-in help was not a means for granting of a hardship.

Architect Bell pointed out that other areas had been considered for placement of the stairs, however, electrical equipment prohibited placing them internally; if the cabana area off of the pool was used it would have to be totally obliterated, and everything shifted toward the garage, making it almost impossible to get a car in.

Mr. Moore suggested that the garage could be brought forward and creating a place for stairs.

Mr. Bell maintained that bringing the garage forward had been considered, however, the existing garage front face was the only entrance to the kitchen.

Mrs. Smith suggested that Mr. Bell take the suggestions of Mr. Moore to put the stairs in the back of the garage and move the garage forward.

Mr. Shaw made a motion to approve Variance 20-97, without the stairs on the side, so that the sideyard setback was 12.5', and allow the applicant to redesign the stairs, and to permit the de minimus variance on the lot coverage, with no encroachment on the side.

Mr. Bell clarified that the motion included that a second floor could be added in line with the first floor, that another location must be found for the stairs, and that the lot coverage of 31.85% would be approved.

Mr. Shaw agreed. Mr. McLendon seconded the motion. On roll call, the motion carried unanimously.

6. Variance No. 21-97 - Rhonda H. Nasser, 242 Park Avenue; located in the R-C Zoning District; to allow applicant to convert a one car garage into living space, thus increasing the nonconformity of the two family dwelling.

Attorney Paul Thibadeau, representing Rhonda Nasser, addressed the Town Council, stating that the two family house included a very old one car garage that had not been used as a garage for a very long time. He application was simply to use the garage space as living space for the downstairs unit. He maintained that it was important to look at the street--of the 25 houses on the street 7 of them had received permission to convert their garages to living space. There were 14 garages on the street, and 7 of them had been converted to living space. Three of those had absolutely no off street parking. Under Ordinance 1-97, staff recommended that the new two family houses being built have all required off street parking enclosed, which meant a garage. There would be two off street spaces required for each unit. This residence would require four covered off street parking spaces. The variance requested was to reduce the one that was there now, so that there would be no covered off street parking. There would still be two off street parking spaces, which was far in excess of most of the other properties on the street. The hardship was the small, platted lots, and there was nothing that could be done to build a conforming structure in that Zoning District. The house, as constructed, was built in accordance with the setbacks and requirements at the time. The new Zoning Ordinance should not apply to Park Avenue, or the residence in question.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: Police Department: indicated that the application would impact parking on the subject street, which was already impacted.

Captain Bob Price of the Police Department stated that records showed that there were 39 spaces available, with 48 permits issues, which was in excess of 9 permits over the available parking spaces.

Mr. Moore continued with staff comments: Comprehensive Plan: should demonstrate the hardship; Public Works: garage floor level should be raised to 7.5' if it was converted; Building Department: no hardship; Town Manager: requested additional explanation on reasons for hardship. Mr. Moore stated that the Town Council had recognized in 1989 that the requirement for at least a one car garage was desirable for single family duplex units. Recently, it had been changed to require two car garages, and the conversions referred to by Mr. Thibideau were part of the reason the Town Council had studied the situation in order to recommend the garage requirements. There were terrible parking problems on this street.

Mr. Thibadeau replied that the key to the application was the fact that there were two off street parking spaces now, which would not change. The garage had never been used for parking for a great number of years. Therefore, the impact on the street as a practical matter was very minimal.

In response to the query of Councilman McDonald, Mr. Moore explained that he believed the previous conversions of garages had taken place before there was any prohibition of doing so, before any Ordinance required garage parking, or they were converted illegally.

At this time, President Smith asked for declarations of ex-parte communication by any Council members. There were none.

Mr. Julian Rogers, 240 Park Avenue, and manager of the Roof Garden Ballroom located in the Palm Beach Hotel addressed the Town Council in opposition to Variance 21-97. He stated that he was somewhat confused because the property had included four parking spaces when he had managed it in 1988. There was always a paved asphalt parking space at the rear of the property which was dedicated to parking for the owner of the property. There was now a fence put up in the alley, cutting off the access to the Palm Beach Hotel, which had resulted in litigation. He noted that the Town had denied any parking permit to any resident at the Park Avenue Inn, where there were 29 rooms. He maintained that when the fence had been installed the loading, unloading, garbage pick-up, and construction parking had been taken away. All of that activity now occurred in the front yards of the people on Park Avenue. He stated that as a representative of the Condominium Association he opposed Variance 21-97; as a resident he opposed Variance 21-97.

Mr. Charles Hickman, representing Grace Development, the owner of the commercial units in the Palm Beach Hotel Condominium, specifically the restaurant and ballroom unit on the ground floor of the Condominium, addressed specific reasons as to why Variance 21-97 should be denied. The existing parking that would remain if the application was granted would be two parking spaces behind the garage, although according to Town Code it would not really be two parking spaces because stacking was not allowed. He cited Section 6.21.a. 1 of the Town Zoning Code. He called attention to Ordinance 5.50 (A), where it was stated that in the R Zoning Districts of the Town no accessory structure should be used as or converted to a dwelling unit. He maintained that the garage was currently an accessory structure, because it was a garage, and it was proposed to convert it into a dwelling unit. He cited Provision 6.21 c. 1 .a. wherein it was stated that at the time any building or structure was enlarged or increased in capacity by adding dwelling units, guest rooms, floor areas or seats minimum off street parking facilities with adequate provisions for ingress and egress in accordance with paragraphs A and B of this section, and the schedule of off street parking requirements as prescribed in this section must be complied with. He pointed out that with respect to the fact that there was an existing structure, the same provision in paragraph 2 stated that a use, building, or structure lawfully in existence at the effective date of this section, which shall be made nonconforming at the passage of this section, or any applicable amendment thereto, may be continued, even though off-street parking may not be provided in full

compliance with this section, but the degree of nonconformity due to a deficiency in providing the required off-street parking spaces may not be increased either by reducing the number of parking spaces which were provided at the time of the passage of this Ordinance, or by changing the use or occupancy of an existing building to a use or occupancy which increased the requirement for off-street parking. He then cited Section 8.20 of the Town Code concerning extension or expansion of nonconforming buildings. He drew attention to the improvements already made to the structure with respect to the compliance of the existing Building and Zoning laws of the Town, suggesting that there may be a history of violation of those laws.

Mr. Thibadeau stated that the garage was 10' x 20', and could hardly be made a living unit, and there was no intention to do that. He maintained that the only problems with the request were in two areas: the requirement for covered off-street parking, and the same number of parking spaces. He noted that the neighbors on Park Avenue had signed a petition in support of the request, which he submitted for the record. He emphasized that the objections to the Variance had nothing to do with the portion of the property in question, but with the east side of the property, which was under litigation.

Director of Planning, Building & Zoning Robert Moore stated that he was not aware of any violations on the subject property at this point, however, that was not relevant in consideration of the application today. He advised that staff saw no hardship in Variance 21-97.

Mr. McDonald moved that Variance 21-97 be denied, based on the fact that there was not a hardship, and he opposed converting any parking spaces. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

At this time, Variance 6-97, Michael Kalisman, 46 Dunbar Road, was continued.

Attorney Ron Kolins informed the Town Council that there had been no compromise, and explained that the neighbors, Dr. and Mrs. Krumholz had no objection to the height of the building, provided that they could not see it. He had offered heavy and tall landscaping to screen the area, however, that was not acceptable to the neighbor.

Attorney Frank Lynch stated that there was still a concern with the height, and there was still not a hardship.

Director of Planning, Building & Zoning Robert Moore stated that the issue was whether 300 sq. ft. of property could be granted a variance. If a variance could be granted, the neighbors would have to look at a 25' tall building instead of a 19' tall building. There was also the possibility that the applicant could connect the two structures and make it part of the main house, and that issue could be pushed by Mr. Kolins if so desired, which he could do from a technical standpoint. Mr. Moore stated that it was his opinion that would be a subterfuge, and the Town Council would then be faced with the decision to either uphold the opinion of the Building Department, or uphold the request of the applicant. He pointed out that the Building Department did see a hardship with the 300 sq. ft. shortage.

Mr. McLendon made a motion that the first portion of Variance 6-97 be approved, based on the modifications brought today; seconded by Mr. Wyett with the provision that the petitioner be obligated to provide sight screening landscaping.

Zoning Administrator Paul Castro asked if there were any specifics on the height of the landscaping?

Mr. Kolins stated that landscaping grows and the intent was to put in landscaping of a type that would grow tall, designed to screen. The lush landscaping currently in place would be left and embellished.

On roll call, the motion carried 4/1, with Mr. McDonald casting a negative vote based on the hardship.

Mr. Kolins then addressed the gate portion of Variance 6-97. The request was for a 9' x 15' parking stall in front of the privacy gate in lieu of 9' x 18' required. He noted that the street behind the driveway had parking spaces that were 8-10' wide, so the spirit and intent of the Ordinance in terms of a car not sticking out in the travel lane while the gate was opening would be satisfied.

Director of Planning, Building & Zoning Robert Moore stated that staff had found no hardship involved in the gates.

Mr. Kolins withdrew his request at this time.

7. Special Exception No. 21-97 - Palm V. Associates, Ltd., 234 Worth Avenue; located in the C-WA Zoning District; to allow the property owner to open the art gallery space (1,495 sq. ft.) to the adjacent store (1,724 sq. ft.) thereby allowing a 3,220 sq. ft. space exceeding the 2,000 sq. ft. maximum allowed.

Attorney Roger Stanton, representing Palm V. Associates, Ltd., addressed the Town Council, stating that the Special Exception was required because the two properties combined would exceed the 2,000 sq. ft. maximum. The operator of the art gallery was Richard Danskin, who had been in the Town for 5-7 years. The Town-serving requirement had been met, and Mr. Stanton entered a letter confirming such for the record.

At this time, ex-parte communication was asked for by President Smith.

Councilman Shaw declared ex-parte communication with Attorney Peter Broberg on the merits of the case.

Zoning Administrator Paul Castro stated that the letter provided by the applicant was not sufficient to meet the Town-serving documentation, as it was required to be submitted by a certified public accountant independent of the business. Other than that, staff had no objection.

Mr. McDonald asked for clarification on the Town-serving requirement as to whether an affidavit must be provided, or merely a letter?

Mr. Castro responded that the language basically stated that there were two different ways of providing Town-serving documentation: to provide flexibility to the applicant to demonstrate that he is meeting the Town-serving requirement, he could either provide a list of all of the customers/clients, or documentation from a certified public accountant saying that they had reviewed the documentation and told the Town what it was, and that it was in fact meeting the Town-serving requirement.

Burton Handelsman, representing Palm V. Associates, Ltd. explained that the plan was to cut a notch into the existing wall, which would allow patrons to have the use of the space as well. He stated that the certified public accountant requirement of the Town Code seemed to be modified in the next sentence of the Ordinance. The bookkeeper used by Mr. Danskin was an independent account, and was not an employee of the organization. He quoted the Ordinance as follows: "or market studies prepared by an independent professional firm or data from similar operations under the control of the applicant." He understood that the organization met those requirements. Mr. Danskin had informed him that he had never had a CPA, and that the financial organization filed his tax returns as well.

Mr. Wyett made a motion to approve Special Exception 21-97 with the provision that should the tenant use change the space would revert to two spaces and the wall between would be sealed; seconded by Mr. McLendon.

Town Attorney Randolph explained that the language in the Ordinance concerning the Town-serving requirement was very broad and did not seem to require a CPA.

Mrs. Smith stated that since the language was broad and had been interpreted by the applicant that the letter in question complied with it, then the Town Council should accept the letter, however, it would be up to the Building Department to determine that there was a CPA if required.

Director of Planning, Building & Zoning Robert Moore stated that the CPA was asked for because it was required for the renewal of Occupational Licenses, however, if the Town Council believed the evidence to be satisfactory that would be sufficient.

The Town Council agreed in unison that the letter in question was acceptable.

On roll call, the motion carried unanimously.

8. Special Exception No. 22-97 - Lillian M. Rousseau, 336 South County Road; located in the C-TS Zoning District; to allow property owner to establish two tenant spaces in this one-story building's gross leasable area as: 1) a 3,916 sq. ft. retail use (Lewis Pharmacy) in lieu of 2,000 maximum allowed, and; 2) a 1,344 sq. ft. office space on a first floor (1,344 sq. ft. not accessible from the street).

Attorney Greg Kino, representing Lillian M. Rousseau and Lewis Pharmacy, addressed the Town Council, stating that Lewis Pharmacy had been operating in the Town for 50 years. He noted that the parking requirements of the Town would be met, the Pharmacy was Town-serving, and a certification from a CPA had been provided indicating that 77% of the business was Town-serving. The signage would be minimal and meet Town Code.

Director of Planning, Building & Zoning Robert Moore noted that as the new tenant came into the building in the office space being carved out from Lewis Pharmacy, a Special Exception application would have to be filed by that tenant.

Attorney Kino explained that the reason the Special Exception was being asked for presently for the 1,344 sq. ft. of office space for the remainder of the space on the first floor was because it made sense for planning the whole store, as substantial interior renovations were being done. Prior to any occupancy of the rear space, all Town requirements would be met.

Mrs. Smith asked why improvements would be made to the rear space if the tenants were not yet known?

Mr. Kino replied that the interior renovations were not economical to do piecemeal, and would have an impact on the Pharmacy. He suggested that a condition be imposed on the request for the Special Exception for the rear 1,244 sq. ft. of office space that prior to the issuance of an Occupational License the applicant must receive approval from the Town Council and the Town-serving documentation be provided. In that way, the Town Council could approve or disapprove any tenant.

Mr. Moore explained that a Building Permit could be issued to do the work for the fire sprinkling and shell office space, however, he cautioned that a Special Exception for an unknown tenant should not be granted because the impact on the neighborhood was not known, and the second means of egress was not shown on plans submitted. He suggested that all of the rights for the occupancy of that space be reserved for the time when a tenant was found and could file for a Special Exception.



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Mr. Kino explained that the space was divided, and his client did not want to be left with dead space of 1,344 sq. ft. in the rear of the building. It was being divided because the Pharmacy did not want more than the 3,916 sq. ft. they had requested. He requested that part (2) of Special Exception 22-97 be approved.

Zoning Administrator Castro pointed out that the rear space did not have to be an office space--another tenant, such as a clothing store, or any type of retail use would not require a Special Exception.

Mr. Wyett made a motion to approve Special Exception 21-97; seconded by Mr. Shaw.

Attorney Stanton withdrew the second portion of the Special Exception request (1,344 sq.ft. office space on the first floor).

Mr. Shaw clarified that the approval was for the 3,916 sq. ft. retail use for Lewis Pharmacy. On roll call, the motion carried unanimously.

9. Special Exception No. 23-97 - Love Realty, Inc.; 350 South County Road; located in the C-TS Zoning District; to allow the expansion of a restaurant with nightclub (Galaxy Grill) from 5,175 sq. ft. to 6,375 sq. ft. providing 44 additional dining room seats and a service bar; and to allow the 13 additional required parking spaces within 500' of the restaurant in the Peruvian Avenue parking lot. - Request for Deferral to August 12, 1997, per letter dated July 3, 1997, from Kim Juran

XV. ANY OTHER MATTERS

At this time, Director of Planning, Building & Zoning Robert Moore referred to Ordinance 8-97, which had been adopted earlier in the meeting. He noted that under discussion Councilman Shaw had raised the issue regarding the difference in the cost of a license between a merchant and an art gallery of over 8,000 sq. ft. Mr. Moore clarified that the fee for the art gallery was correct at \$990.00 and asked that a motion be made changing the fee for a merchant of over 8,000 sq. ft. to read \$990.00 rather than \$1,000.00.

Mr. McDonald made a motion to amend the fee for a merchant of over 8,000 sq. ft. to read \$990.00 rather than \$1,000.00 as contained in the fee schedule for Ordinance 8-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XVI. ADJOURNMENT

The meeting was adjourned at 8:50 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn - 7/21/97