MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 13, 1995

I. CALL TO ORDER AND ROLL CALL - The meeting was called to order by President Smith at 9:30 a.m. On roll call, the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald, Councilmen Samuel McLendon, Leslie Shaw and Allen Wyett. Also in attendance were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager Dave Jakubiak, Town Attorney John Randolph, Police Chief Joseph Terlizzese, Fire Chief Vincent Elmore, Fire Marshal John Wandell, Director of Public Works, Albert Dusey, Town Engineer, James Bowser, Director of Building and Zoning Robert Moore, Director of Recreation, Russell Bitzer, Planning/Project Coordinator Timothy Frank, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Father Lechiara from St. Edward Church. The Pledge of Allegiance was led by President Smith.

III. PRESENTATIONS

A. Recognition of Howard J. Falcon, Code Enforcement Board, From 1988 to 1995 -

Mayor Ilyinsky presented a plaque to Mr. Falcon in recognition of his service to the Town of Palm Beach.

B. Recognition of John H. Schuler, Zoning Commission, From 1994 to 1995 -

Mayor Ilyinsky presented a plaque to Mr. Schuler in recognition of his service to the Town of Palm Beach.

IV. COMMENTS OF THE MAYOR -

Mayor Ilyinsky stated that as a retired Lieutenant Colonel of the Marine Corps, he felt particularly strongly about representing patriotism, and suggested that the Town contribute to the 4th of July Celebration being held by the City of West Palm Beach in the range of $5-10,000 toward the festivities. The Mayor asked that this item be placed on the Agenda for formal consideration.

Mrs. Smith passed the gavel to Mr. McDonald and made a motion to add this item to the Agenda, under XII, New Business, D. Other, 4.

On roll call the motion carried unanimously.

V. APPROVAL OF AGENDA - The following items were added to the agenda: Item XII. D.5. Discussion of Cost of Living Adjustments for Town Employees and Item XII.D.6. Discussion to amend the Town Code to Use Market Value to Determine the Value of Town Property.

Mr. Moore stated that there had been a request for withdrawal on Item XV. B. 5, Variance #18-95. Item 7. - Variance 25-95, 1494 North Lake Way requested to defer until the July meeting. Item XV. B. 11, Special Exception 12-95, Paramount Theater, request by Mr. Lickle to defer until the July meeting.

Mr. McLendon made a motion for approval. Seconded by Mr. Shaw. On roll the motion carried unanimously.

Mr. Wyett made a motion to approve the Agenda as amended. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

VI. PUBLIC HEARINGS

A. Consideration of Request for Abandonment of a Portion of North Woods Road Adjacent to 334 North Woods Road, by Applicant U.S. Trust Company of Florida as Trustee - Resolution No. 16-95 -

Mr. James Bowser, Town Engineer, addressed the Town Council, stating that the U.S. Trust Company had requested that a portion of North Woods Road cul-de-sac, outside the paved area, be abandoned. The reason for the request was due to an error in measuring for the setback line for a new single family residence being constructed at that location. Mr. Bowser noted that there was a scaled distance of approximately 11 ft. between the paved area and the cul de sac on the line that is measured for the setback. Mr. Bowser stated that at the time of the application it had been rejected because of timeliness and the lack of utility comments. Subsequently, the applicant's explanation was accepted that only the affected utility companies provided letters, rather than all utility companies. The project was then rescheduled. Subsequent to that, Mr. Doney had suggested that letters from all utility companies be received, and those had now been received. Therefore, all utility companies had responded to the abandonment request. Seven out of fifteen neighbors responded, with two objecting. Karen Wright objected due to the blocking of the bicycle path access, and Barbara Levinson objected due to public safety, and for the applicant not demonstrating a need to have the right of way abandoned. Mr. Bowsers added that comments from both of the objectors had been attached in the backup material. The Town Staff comments were as follows: The Town Manager's Office had no objection, provided that their was no need to expand the paving of the cul de sac, and that a Public Utilities Easement be granted over the abandoned right of way. A portion of the abandonment request was to simultaneously dedicate a public utility easement over those lands, so that use by the utility companies would not be diminished. The Police Department did not object. The Fire-Rescue Department stated that a fifty foot circular cul de sac would best serve their needs. The existing cul de sac right now was less than 30 feet, and the re-dedicated cul de sac from a previous abandonment request was 30 feet. The Public Works Department felt that since Fire-Rescue wanted a 50 ft. radius, and only 30 was permitted, that consideration should be given before the abandonment as to whether the cul de sac should be expanded to its maximum to allow the greatest use by the Public Safety Department. There was also a concern that abandoning this right of way to allow more construction may set a poor precedent. Preserving the area for the utilities department was essential, and in addition no walls, hedges, or trees should be placed on the easement. In accordance with Ordinance 13-93, a privilege free calculation results in a payment to the Town of $32,010.53 should the abandonment be approved. If Council should approve the abandonment, staff recommended the following conditions be met: no walls, hedges, fences or trees be planted within the road right-of-way or dedicated public utility easement, and that the owner would pay for all fees relating to implementing the abandonment; dedications including, but not limited to document preparation and recording fees.

Mr. McLendon asked Mr. Bowser if this was the second requested abandonment on the same cul-de-sac?

Mr. Bowser answered affirmatively, saying that there had been four or five lots that were consolidated into one piece of property by a unity of title, and at that time there were a number of rights of way and easements abandoned and re-dedicated.

Mr. Paul Prosperi, representing the applicant, addressed the Town Council, showing a chart exhibiting the location of the proposed area of abandonment, along with an aerial photograph. Mr. Prosperi stated that as part of the process of buying the property, the Town had been asked to abandon the cul-de-sac and it was re-dedicated back--therefore, the legal record was changed to reflect the state of facts; the physical state of the property was not changed. The cul-de-sac had been laid out and in use in exactly that place, with exactly the same dimensions, for many years. Documents had been found that indicated the changes in the cul-de-sac had been worked out between then Town officials and had never been recorded. Over a year ago, a request had been made for the Town to change the legal documents to reflect the physical condition. Part of the application was the condition that an easement would be deeded back to the Town for access and utilities.

Mr. Shaw pointed out that if it were not for the fact that the builder had placed a small corner of the forms in what was now an easement, Mr. Prosperi would not be at the meeting asking for an abandonment, and be willing to give the Town the money.

Mr. Prosperi replied that what the architect had thought was happening was that the paved area would be re-dedicated to the Town.

Mr. Shaw stated that as the cul-de-sac presently existed, there was roughly 27 feet that was paved and usable, and that if he understood it correctly, the property owner was interested in having the Town abandon the portion of the cul-de-sac that was unusable and hedged. He asked if the applicant would be agreeable to having that portion which should be part of the cul-de-sac paved and an easement granted back to the Town, so that in effect the cul-de-sac would be increased in size, with whatever border barrier placed further back on the property?

Mr. Bowser commented that he had not proposed to expand the cul-de-sac to 50 feet, but rather to expand to the limits of the existing platted cul-de-sac, to allow more paving.

Mr. McLendon asked if the proposed driveways would be available to make turnarounds in the cul-de-sac?

Mr. Prosperi replied that because the gate posts would be set back that would allow some type of T turnaround. The net effect would be to increase the paving in the area.

Mr. McLendon asked if the applicant and the other owners owned a 10 ft. strip along the north side, extending all the way from North Lake over to the Trail, and would that stay as is?

Mr. Prosperi said that it would be paved and hedged on both sides.

Mrs. Smith asked if it was true that Mr. Prosperi would not be before the Council today unless the architect and builder had made a mistake.

Mr. Prosperi replied affirmatively, and he was also present because of the difference between cul-de-sac paved and cul-de-sac platted.

Mrs. Smith asked how many square feet were in the house?

Mr. Prosperi replied approximately 23,000 square feet.

Mrs. Smith asked Mr. Moore what the size of the property was?

Mr. Moore replied approximately 6 acres.

Mr. Prosperi replied it was 360 ft. along the lake, going to almost 300 feet in width in parts, and it had been big enough to accommodate three houses.

Mrs. Smith said that a great deal of time had been spent on the property. It was a massive property that had created a great deal of discussion and concern from the public and members of the Council, and that she still had a concern that the property could easily be re-designed, or could have been re-designed, to allow for the ten foot mistake. Before going further, Mrs. Smith asked if there was any member of the public wishing to speak to this issue?

Ms. Jackie Miller addressed the Town Council, on behalf of Barbara Levinson, who had filed an objection to the application. She re-emphasized some points that she was sure the Council was already aware of. The Town Code presently provided that the width of streets should not be less than 30 feet, and in this instance the right-of-way was 30 feet, with the paved portion being only 22 feet. The Code also provided that the radius of a cul-de-sac should not be less than 50 feet, and in this instance, the cul-de-sac right of way was 30 feet with a further reduction being asked for. Ms. Miller added that other jurisdictions provided similar code requirements; the City of West Palm Beach required 50 feet, Atlantis, Palm Springs, and the County of Palm Beach required 45 feet, and that provision of the County Code was also within the Fire Code, because that was why cul-de-sac radius' had to be as wide as they are, as a safety feature. The Town of Palm Beach also had another applicable provision, Section 7-17 of the Town Code - National Fire Protection Association Life

Safety Code Handbook, 1991 Edition. Section 1-5.6 of that Life Safety Code Handbook provided that alterations shall not diminish the level of life safety below that which exists prior to the alteration. Ms. Miller said that the way the applicant had framed the request suggested that it was a 2 1/2 foot reduction in the radius, and that was not the case. She pointed out the portion involved on the diagram of the property. Fire-rescue equipment required a 43.5 foot turning radius for the aerial truck, a pumping truck would require a turning radius of approximately 36 feet. The Public Works Department had suggested that the Town Council actually consider expanding the cul-de-sac. When considering an abandonment request the Council was supposed to look at the welfare of the public. Ms. Miller stated that an abandonment of 19.9% of the cul-de-sac was involved. She produced photographs of the street and cul-de-sac for review. Ms. Miller declared that the public welfare did not dictate that the application should be granted.

Town Clerk, Mary Pollitt stated that the Town Clerk's office had received a phone call just before the start of the meeting, from Mr. Thomas Chastain, 310 North Woods Road, who was in support of Mrs. Levinson and wanted the Council to know it.

Mr. Moore corrected the number of square feet on the property to be 68,820 sq. ft., or 1.58 acres, not 6 acres as he had previously stated.

Mr. Prosperi stated that in the interest of public safety and in the interest of increasing the size of the pavement in the areas in which a public works vehicle or fire truck could turn around, the abandonment should be approved, because it would result in an increase of the area of pavement, which would be paved at the expense of the applicant. The abandonment would increase the paved area installed at the expense of the property owner, and maintained at the expense of the property owner. A 50 ft. wide cul-de-sac was not possible, because it would involve the demolition of two homes.

Mrs. Smith stated that the Matthews property had not had a problem with a turnaround because there were no gates on the property. She asked Mr. Prosperi if his client would consider eliminating the gates so that the trucks could pull in more than 15 ft. if necessary?

Mr. Prosperi replied that the Matthews did not have gates, but there was a garage which presented a problem for turnarounds.

Mr. Wyett asked Chief Elmore how the Fire Department felt about the issue?

Chief Elmore responded that the Fire Department concurred with Mr. Bowser's recommendation. A large aerial truck could not turn around on the area, and a few more feet in radius would not help much. If it was added to, as Mr. Bowser recommended, it would be somewhat of a help.

Mr. Shaw made a motion that the abandonment be approved on the basis that the property being abandoned will be deeded back to the Town for its use, it would be paved, and no fencing or landscaping would be placed on the public easement so as to impede any vehicles, and any gates or fencing material would be properly set back so that there would be no need for a future variance.

Mr. Randolph clarified that an easement would be granted back to the Town, and that the motion did not contemplate the ability of vehicles other than Town vehicles being able to use the newly paved portion. If the easement were expanded to include any and all service vehicles, then there would be no loss, from a practical standpoint, as a result of the abandonment.

Mr. Shaw said that he would include any and all service vehicles as part of his motion.

The motion died for lack of a second.

Mr. McLendon asked Mr. Prosperi if an increase in building size would be involved by acquiring this additional area as part of the property?

Mr. Prosperi replied negatively, and that they would be happy to stipulate that they would not use the 600 sq. ft., which would allow the building to increase 125 sq. ft.

Mrs. Smith asked Mr. Prosperi if he anticipated coming back before the Council with more changes?

Mr. Prosperi replied that they would not make the building any bigger, and that they would agree never to include the 658 sq. ft. in any lot area or Floor Area Ratio calculations.

Mr. Shaw restated his motion from the record. Seconded by Mr. McLendon.

Mr. Wyett asked Mr. Randolph whether Mrs. Levinson would have reason to bring a lawsuit against the Town if the motion was passed?

Mayor Ilyinsky commented that he did not think the Council could base an opinion on whether someone was going to bring a lawsuit against the Town.

Mr. Randolph replied that every affected property owner who had standing had the right to bring a lawsuit, and that without seeing the basis of a lawsuit he would not be able to discuss the results. He did think there was enough in the record to rebut any statement that this issue was not in the public interest, based upon the fact that if this motion was to be passed, the cul-de-sac was actually being widened at the expense of the property owner. In addition, Ordinance 20-4 was a Subdivision Ordinance, which required that in a new subdivision a cul-de-sac be 50 ft., but even in that case there was the right to waive subdivision requirements. In this instance a subdivision was not involved, but this was simply a request for an abandonment, which had to be in the public interest and that would have to be determined by the Council, and subsequently by a court as to whether or not this was really in the public interest.

Mrs. Smith stated that she felt as though a terrible precedent was being set for anyone who came in with a building mistake--that the Council would go along and say that it was fine.

Mr. McLendon commented that he was not sympathetic to the fact that a mistake was made. After listening to Mr. Bowser and Chief Elmore he felt public safety would be improved and that was the reason he had seconded the motion.

Mrs. Smith stated that the error that was made was in measuring the setback line for the new single family residence. It was not to correct the public safety issue. The public safety issue had been brought up because of the turning radius, but the only reason this was being heard was because the applicant made a mistake in measurement from the setback line. The public safety issue was not the reason that this was being heard today.

Mr. Randolph asked for clarification of the motion. Mrs. Pollitt read the motion which was to approve with the following provisions: that a 10 ft. easement be granted back to the Town; that no fencing or landscaping would be placed on the public easement; that no variance for gate or fencing will be requested at a later date; that all utility vehicles would be able to use that easement.

Mr. Randolph clarified that the paving of the easement would be at the cost of the property owner, and that the privilege fee recited in the Resolution would be paid.

Mr. Bowser suggested that the easement be called a public utilities and roadway easement so that all of the public could use the roadway, not just public utility trucks.

Mr. Prosperi commented on the possibility of litigation in this matter, and on behalf of his client he suggested extending an indemnity to the Town for its legal expenses in defending itself against any lawsuit based on any action that would be taken today in granting this abandonment.

Mrs. Smith asked if the re-designed house, not using the ten feet that was in question today, had been approved by the Town through ARCOM?

Mr. Moore replied that was true.

Mr. Randolph clarified that the motion incorporated the offer of indemnification made by Mr. Prosperi.

On roll call the motion failed 2/3 with Mr. McDonald, Mr. Wyett, and Mrs. Smith casting negative votes.

B. Consideration of Request for Abandonment of a Portion of the Southerly 200 Feet of Middle Road and Re-Dedication of New Cul-De-Sac, by Applicant Stuart Subotnick, as Trustee of the 88 Middle Road, 1994 Land Trust, and Barbara Harmon - Resolution No. 17-95 -

Mr. Bowser, Town Engineer, addressed the Town Council, stating that an application had been received from Stuart Subotnick as Trustee for the 88 Middle Road Land Trust, and Barbara Harmon, to abandon the southerly 200 feet of Middle Road. Concurrent with this, they asked to rededicate a cul-de-sac in either a circular or hammerhead configuration. The roadway currently had no turn around, and they prefer the hammerhead configuration. Public Utilities Easements would be dedicated over any lines that were existing and that would not be abandoned or relocated. Mr. Bowser added that 14 notices had been sent out to neighbors, with 9 responses received, plus one from a resident outside of the area. All respondents did not object to the abandonment, however, some people had expressed a preference for the hammerhead turn-around, as well as an interest in seeing what the proposed street scape would look like if this approval was made.

Staff comments included: from the Town Manager's office - that the cul-de-sac be approved by the other Town Departments and proper easements be dedicated; they also suggested that the utility companies be represented at this meeting. Planning, Zoning, and Building Department - no objection. Fire Rescue - preferred the 50 ft. circular cul-de-sac, however, the hammerhead turn- around was workable, but was their second choice. Police Department - did not object. Public Works - an electrical circuit on the south end of Middle Road would need to be abandoned, and the proponents would be required to reestablish that circuit shortened with the proper lighting at the new cul-de-sac. There was an east/west easement that crossed at the end of Middle Road presently, and it was being asked that a 24-hour a day, seven day a week ingress/egress easement be granted to Public Works for service to lines. All easements would remain free of structures or plantings; existing manholes were not to be buried. A storm drainage system is to be extended from the terminus of Middle Road to the Town system, and the existing system should be analyzed for upgrade. The Director of Public Works preferred the circular cul-de-sac, however, the hammerhead design could work with the Public Works Department operations.

The applicant had calculated the privilege fee in two manners: One, if the hammerhead design were approved it would be $121,111.24. The circular cul-de-sac would be $47,123.97. The applicant indicated that if the hammerhead design was approved, he would waive the adjustment and therefore make payment of $237,021.00 for the abandonment.

Town Staff recommended that the abandonment be approved, and that the circular cul-de-sac option be approved. They had prepared two Resolutions so that if either cul-de-sac were approved, the calculations and Resolutions would be available for Council. If the abandonment was approved, the following was recommended: all abandoned pavement base and curbing which was not incorporated would be removed at the owner's expense; the approved cul-de-sac be constructed with appropriate curbing to Town standards; that the Town storm drainage system be extended, at the owner's expense, to the new cul-de-sac, and the existing system be analyzed for adequacy and be upgraded if directed by the Town Engineer; existing street lighting system be modified at the owner's expense as directed by the Town Engineer; access easement be granted to the Public Works Department for access to existing utilities; no structures or plantings are to be placed on the utility easements or within Town rights of way; owner will pay for all reasonable relocation and adjustment costs of existing public utilities; the proposed gates, walls, and landscaping be subject to review and approval of the Architectural Commission; a proper yard trash disposal area as approved by Public Works be established upon private property and be readily accessible to Town equipment; and that all fees relating to implementing the abandonment and dedications, including, but not limited to document preparation and recording fees be paid by the owner.

Mr. Prosperi presented photographs and site plan of the property involved, showing a 100 ft. wide circular cul-de-sac. He stated that what existed at the end of Middle Road now was only a 30 ft. wide deadend. There was really no cul-de-sac existing there now. What they were suggesting was a T-shaped cul-de-sac, which met County standards, and which would accommodate Fire and Public Works vehicles. Another reason for the preference for the T-shaped cul-de-sac was that it would keep the most attractive aspects of Middle Road in place. Mr. Prosperi said that 20-25 cars could be accommodated on the property, so there was adequate parking for staff and guests.

Mr. Wyett asked where the yard trash from the estate would be stored for pick-up?

Mr. Prosperi replied that they would be complying with the new standards, creating a trash pick-up area, and he pointed out the area on the plan.

Mr. Shaw asked what the standard was for on-site parking for large estates?

Mr. Moore replied that there was no actual standard required. The applicant would be asked to address that, and indicate parking areas by way of a site plan. That would be included in the Special Exception and Variance Requests. The Council had the ability to ask the applicant where parking was intended.

Mr. Shaw commented that before he asked the applicant, he was trying to found what other large properties on the island had done?

Mr. Moore replied that depending on the size of the property, anywhere between 50-100 vehicles could be parked.

Mr. Prosperi pointed out that they were not adding any space, and that there were two, rather than four, houses. Since no entertainment space was being added, and only garden space, he did not anticipate a problem. He demonstrated on the drawing where cars could be parked.

Mrs. Smith asked if there would be a unity of title on the entire parcel?

Mr. Prosperi said that 86 Middle Road, 88 Middle Road and 121 El Bravo Way were one property. Mrs. Hanley's property would remain exactly in the configuration that it was and would maintain a separate legal ownership.

Mr. Jim Brindell, on behalf of Spencer Partridge, 22 Middle Road, addressed the Town Council. He stated that a very large estate of approximately 4 acres was being dealt with, and the concern that Mr. Partridge had with respect to the abandonment and the other applications that would come before the Council today, had to do with the parking for staff, service personnel, and guests. Mr. Brindell continued that because of the size of the property and the request for abandonment, it seemed that it would be quite reasonable to require as a condition of abandonment that the parking be provided on site for staff, service personnel, and guests. While the number of homes currently on this property was being reduced, that did not eliminate the fact that in the future this property could certainly accommodate more structure, more guest facilities, and more entertainment facilities. Mr. Brindell thought it was a very good time to try and do something for the public benefit in terms of impact on the street, by placing his suggested condition on the abandonment.

Mr. Brindell presented photographs giving some sense of the portion of the street that would be occupied by vehicles. The block appeared to be about 500 ft. long, so a very large portion of that street would be taken up. Mr. Brindell said that it seemed fair that if the owner wanted the street abandoned that they should not push parking outside of the property and up the street, considering that they have 4 acres of land, plus the abandoned area. Mr. Brindell asked that the photographs be made a part of the record on behalf of Mr. Partridge. Mr. Brindell thought that there was an opportunity to approve the applicant's request and show a benefit to the public interest by dealing with the parking on site.

Mr. Randolph clarified the form a recordable agreement would take, and how the conditions would be enforced. He added that some concern would have to be taken as to the layout of the property so as to accommodate the number of cars that might result from any event, thus the problem may not be purely the problem of the property owner, but may have to be addressed by the Town at the site plan review stage or at this abandonment stage.

Mrs. Smith asked Mr. Prosperi to clarify the parking situation.

Mr. Prosperi replied that his client would not agree to a recordable agreement that would take away the rights that every other citizen had to park on the streets, but that they would stipulate that they would park all full-time and regular employees and staff on the property.

Mrs. Smith questioned the width of the streets involved, and whether it was possible for cars to pass by the cars that would be parked there?

Mr. Prosperi replied that it would be unidirectional, and cars would be able to pass parked cars.

Mr. Bowser stated that the Public Works Department would still like to be able to have access to the property when needed in order to service the easements.

Mr. Prosperi stated that he thought this issue had been resolved with the agreement of a ten-foot easement.

Mr. Bowser said that this would facilitate maintenance operations, however, Mr. Dusey did feel that the requirement that the Public Works Department contact the owners before gaining access to the property may hinder them.

In response to the question of notification of property owners before gaining access to their properties, Mr. Dusey stated that public easements are routinely accessed for cleaning sewers, etc., without prior notice.

Mrs. Smith asked if there was not sufficient access to the property from El Bravo way and the southeast corner of the property?

Mr. Dusey responded negatively; that there were sewer lines that ran in a different direction that were internal to the property.

Mrs. Smith asked if there was some way that access could be obtained from South County Road?

Mr. Bowser replied that there was a wall there.

Mrs. Smith then asked Mr. Prosperi if there was some way that access could be created for the Public Works Department.

Mr. Prosperi pointed out access points on his visual, stating that if Middle Road was not abandoned, there would still be a problem of getting onto the property.

Mrs. Smith asked if this issue would be enough to hold things up today?

Mr. Randolph stated that it must be resolved between the Public Works Department and the applicant.

Mrs. Smith asked Mr. Prosperi if he could think of an additional access or easement that could be given from either County Road or Middle Road, in order to allow access for the Public Works Department?

Mr. Prosperi replied that he did not understand what the problem was; the easement would be honored.

Mr. Dusey replied that there was a number of residents who had gates and give the Public Works Department access 24-hours a day, 7 days per week. His concern was trying to make a telephone contact to try and get on the property when sewer lines were backed up. If it was acceptable to the Town Council that the Public Works Department do that, they would find a way to accomplish it.

Mr. Prosperi responded that he could give Mr. Dusey a clicker or a control number for the gates that would provide access from Middle Road.

Mrs. Smith asked Mr. Dusey if that would solve the problem?

Mr. Dusey replied affirmatively.

Mr. Brindell questioned the point of adequately addressing parking in the site plan, or if it should be discussed at this time?

Mr. Randolph stated that parking could be addressed at either point, and that he believed there would be much more latitude in dealing with a legislative matter to impose conditions than would be available in the site plan review.

Mr. Brindell suggested a condition that could be part of the motion if the abandonment was approved. That was, that all house and ground staff, service providers, and overnight guests shall park on the private property grounds. Other guests shall park on the property grounds to the maximum extent reasonably practicable, which would not preclude parking on the public street. Any future modifications of the site plan shall not reduce the amount of on-site parking which could be accommodated in the parking areas in the driveway from that shown on the site plan.

Mr. McDonald made a motion to approve the hammer head cul-de-sac, along with the payment of approximately $247,000 to the Town, with the conditions that the Public Works Department be provided with a control or a control number to have access 24-hours a day to the sanitary sewers; incorporating Mr. Brindell's suggestion regarding parking; and all the conditions raised by the Town Engineer and the Public Works Department. Seconded by Mr. Shaw.

Mr. Prosperi stated that Mr. Brindell's suggestion was not acceptable, to the extent that it covered overnight guests. They would be happy to stipulate that regular staff employees and service personnel would park on the private property, but Mr. Kluge felt very strongly that he was improving the situation, not worsening it, and further restrictions on the movement of his guests would be unacceptable.

Mr. McDonald noted that it was not unreasonable to expect an owner to provide on site parking for overnight guests.

Mr. Prosperi responded that his client felt this would be an unfair burden on him, and that he understood the notion of service personnel, but to put him to a standard which was required of no one else on the street was unfair.

Mrs. Smith asked how overnight guests and overnight staff would be differentiated?

Mr. Prosperi replied that he did not know, however, the restriction was being placed in excess of what applied to anyone else in the Town. In addition, if Middle Road was not abandoned, the area would be available for overnight guests or staff, and there would be less parking on the site to accommodate those overnight guests and staff.

Chief Terlizzese of the Police Department, stated that although it was posted "no parking" on Middle Road; occasionally there was some parking required by residents on the street for service vehicles or parties.

Mrs. Smith stated that since Middle Road was designated as "no parking," there could be no parking on the road at all.

Mr. Prosperi stated that having Middle Road designated as "no parking" was fine.

On roll call the motion carried unanimously.

Mr. Randolph stated that the applicant found the motion unacceptable, and it was not appropriate to read the Resolution for Abandonment at this time.

Mrs. Smith commented that since the motion was unacceptable, and the resolution was not read because the abandonment was not certain, what would be the purpose in reviewing the Site Plan and Variances concerning this property later on in the meeting?

Mr. Randolph replied that the Variances and the Site Plan Review were totally independent, separate and apart from the Application for Abandonment, and that if a delay in acting on the Resolution would be beneficial, the reading of it could be postponed until later in the meeting. He added that if the Resolution was read subject to the conditions imposed by the motion and was found unacceptable to the property owner, the Resolution would become moot.

Mrs. Smith asked Mr. Randolph to read the Resolution.

Mr. Randolph read Resolution #17-95:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF THE SOUTHERLY 200 FEET OF THE RIGHT-OF-WAY OF MIDDLE ROAD, PALM BEACH, FLORIDA, AND DEDICATING A NEW CUL-DE-SAC, HAMMERHEAD, AND UTILITY EASEMENT.

Mr. Randolph noted that this Resolution, if passed, would be subject to all of the conditions incorporated in the previously approved motion.

Mr. McDonald made a motion to approve the Resolution as stated. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

<u>APPROVED AGENDA</u> (ITEMS VII. THROUGH VIII.) - APPROVED.

VII. APPROVAL OF MINUTES OF APRIL 11, 1995

VIII. ALCOHOLIC BEVERAGE LICENSES

A. Application for Transfer of a 4COP Alcoholic Beverage License by Mr. Maurizio Ciminella for Amici Partnership d/b/a Amici Bar & Ristorante, 288 South County Road

IX. CHARITABLE SOLICITATIONS PERMITS

A. Regular

1. Paracare Association of Palm Beach, Inc.; No. 143-96
2. The International Society of Palm Beach, Inc.; No. 232-96

B. Other

1. Hispanic Cultural Arts, Inc.; No. 305-95 (Approved by Town Manager pursuant to Ordinance No. 4-95. Reason: Results forms filed late twice and two-week advertising requirement prior to June 24, 1995, event was waived.

REGULAR AGENDA

X. COMMITTEE REPORTS

A. Report of the Water Committee Meeting of May 18, 1995 -

REPORT OF THE WATER COMMITTEE MEETING HELD ON MAY 18, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Water Committee was called to order by Chairman Samuel C. McLendon at 10:00 a.m. on May 18, 1995, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Allen S. Wyett were found to be in attendance. Others attending the meeting were: Town Manager Robert J. Doney, Town Attorney John C. Randolph, Assistant Town Manager Peter B. Elwell, and Town Clerk Mary A. Pollitt.

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

III. WATER SUPPLY MATTERS

A. CONTINUED CONSIDERATION OF PROVISIONS OF PROPOSED WATER FRANCHISE AGREEMENT WITH CITY OF WEST PALM BEACH

The Committee members, Staff, and Town Attorney Randolph reviewed the draft dated May 17, 1995, of the Proposed Franchise Agreement with the City of West Palm Beach. Chairman McLendon requested that Mr. Elwell incorporate changes, as discussed at the meeting, regarding the percentage of the surcharge; the formula for the wholesale cost of water tied to a cost-of- service study; the removal of the last sentence in Section VII, TERM, on page 15; and the addition of a phrase clarifying the replacement cost basis under Section XII, MISCELLANEOUS PROVISIONS, on page 21. The Committee requested that the revised draft agreement be presented to the Town Council for their consideration at the June 13, 1995, Town Council meeting. THE COMMITTEE RECOMMENDED THAT, AFTER CONSIDERATION AT THE JUNE 13, 1995, TOWN COUNCIL MEETING, THE AGREEMENT BE TRANSMITTED TO WEST PALM BEACH MAYOR NANCY GRAHAM WITH A COVER LETTER FROM MR. MCLENDON SUGGESTING A MEETING TO DISCUSS THE AGREEMENT.

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 11:45 a.m.

WATER COMMITTEE

SAMUEL C. MCLENDON, COMMITTEE CHAIRMAN

ALLEN S. WYETT, COMMITTEE MEMBER

Mr. McLendon stated that the proposed Water Franchise Agreement with the City of West Palm Beach featured the following highlights:

Agreement included only potable water, leaving the Town the right to pursue a non-potable system; it defined the non-emergency pressure minimums; it excludes from City ownership the portions of the system which were paid by third parties; calls for a 5-year capital program modified annually, with projects in the Town in proportion to Town versus City revenues; it stipulated a hydraulic model to be done of the water system; it reiterated commitments of both parties to water conservation with the recognition of the effect of larger landscapes in the Town; the rate structure would be the same in the Town and City; any surcharge legally imposed would be used for water improvements; the Town participation in rate making was requested, with fairness and cost allocation included; a 50-year term limit as opposed to a 30-year term limit, with 10-year options, and discussion of a distribution system and wholesale purchase of water.

There were a few minor changes on the draft, which had been brought to Mr. McLendon's attention by Mr. Shaw. Most of them had been made, however, two points needed Council attention:

Mr. Shaw had suggested that in reference to the surcharge, an indication should be made that the money be used to offset the funding of the improvements included in another section.

With respect to the timeliness of their correction of problems, Mr. McLendon felt that as long as completion was attained, the starting point would not make any difference.

Mr. Shaw stated that his concerns had been that last minute corrections would not be made, simply because they had 18-months. If a problem could be resolved in a 30-60 day time limit, there should be no delays.

Mr. Wyett made a motion to accept the Water Committee Report of May 18, 1995. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

Mr. Shaw stated that he had sent a memorandum to Mr. McLendon just as a point of clarification, not as something to be brought up at this meeting.

Mr. McLendon mentioned that he had not yet had a response from the City of West Palm Beach to his letter sent several weeks ago.

Mrs. Smith asked Mr. McLendon if he anticipated sending the Water Contract before he received an answer to this letter?

Mr. McLendon replied affirmatively, remarking that a letter of transmittal had been prepared with the suggestion of a meeting during the week of July 17th.

Mr. Shaw made a motion that the Water Contract, with the changes indicated by Mr. McLendon, be sent to the City of West Palm Beach. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

B. Report of the Ordinance, Rules, and Standards Committee Meeting of May 23, 1995 -

REPORT OF THE ORDINANCE, RULES & STANDARDS COMMITTEE MEETING HELD MAY 23, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Ordinance, Rules & Standards Committee was called to order by Chairman McDonald at 2:00 PM on May 23, 1995, in the Town Hall Council Chambers. On roll call, Chairman McDonald and Committee member Shaw were found to be in attendance. Other Members of the Town Council attending the meeting were: Council President Smith and Councilman Wyett. Also attending the meeting were: Town Manager Doney; Planning, Zoning and Building Director Moore; Recreation Director Bitzer, and Ms. Reedy.

II. APPROVAL OF AGENDA: Agenda was approved as written.

III. CONSIDERATION OF POTENTIAL REVISED ATTENDANCE REQUIREMENTS

FOR TOWN BOARDS AND COMMISSIONS. Mr. Shaw said he felt that all regular members, and alternates of Boards and Commissions should have the same attendance requirements, and no one should miss more than two consecutive meetings. He said he would like the maximum number of absences changed from three to four, but not more than 50% of the scheduled meetings, and no more than two unexcused absences. Members would be asked to resign after receiving four unexcused absences from meetings.

Mrs. Smith said she also would like alternate members of Commissions and Boards to be required to attend all meetings. She also wondered if required attendance would hinder the Landmarks Commission since a lot of those members are sometimes gone for three or four months in the summer. Mr. Moore said some consideration has been given to those people in the past, and he hoped any changes would not affect sitting members of Commissions and Boards.

After discussion, the ORDINANCE, RULES & STANDARDS COMMITTEE RECOMMENDS the following:

1. Alternate members of Commissions and Boards should attend all meetings, and meet all attendance requirements of full member.

2. No individual member, regular or alternate appointed after the effective date shall miss more than two (2) consecutive scheduled meetings. The effective date for this requirement for members currently sitting on a Commission or Board will be November 1, 1995.

3. Members will be entitled to a maximum of either three (3) or four (4) absences, each calendar year to be determined by the Town Council, if recommended by the Chairman. Upon the 5th absence, member shall tender their resignation.

4. In order for an absence to be excused member must notify the Town Manager's office by letter, faxed or mailed, no later than noon on the Friday prior to a regularly scheduled meeting unless the absence is an emergency. Affirmation that failure to notify the Town Manager by letter will make the absence unexcused.

5. Illness, death and requirements of legal process shall be considered as excused absences. Eliminate the statement "personal hardship" from the ordinance as it now states.

6. Recommend increasing the alternates on the Code Enforcement Board by one (1), making a total of three (3) so it will be consistent with other Town Boards and Commissions.

IV. ANY OTHER MATTERS: None

V. ADJOURNMENT: Meeting was adjourned at 2:55 PM.

ORDINANCE, RULES, AND STANDARDS COMMITTEE

Jack McDonald, Chairman

Leslie A. Shaw, Committee Member

Mr. McDonald stated that the meeting on May 23, 1995 resulted in six recommendations to the Town Council, one of which would require a decision today. Mr. McDonald reviewed the six recommendations from the meeting (transcript of meeting printed above).

The Town Council decision was required on Recommendation 3, stating that members would be entitled to a maximum of either 3 or 4 absences each calendar year to be determined by the Town Council, and upon the _______ absence, members shall tender their resignation.

Mr. Shaw made a motion to accept the report of the ORS Committee. Seconded by Mr. Wyett.

On roll call, the motion carried unanimously.

Discussion regarding the recommendations ensued.

Recommendation 1: that alternate members of the Commissions and Boards should attend all meetings and meet all attendance requirements for full members. Mr. Wyett made a motion to approve this recommendation. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

Recommendation 2: that no individual member, regular, or alternate appointed after the effective date shall miss more than 2 consecutive scheduled meetings. The effective date for this requirement for members currently sitting on a Commission or Board will be November 1, 1995. Mrs. Smith added that this date was chosen so that members of Commissions or Boards that are away for the summer would be made aware and would not be subject to being excused without prior notice.

Mr. Wyett made a motion to approve this recommendation. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

Recommendation 3: that members be entitled to a maximum of either 3 or 4 absences each calendar year. Mrs. Smith noted that the ORS Committee had not agreed upon this item and that the Town Council would make a decision.

Mrs. Smith asked if the absences were being defined as excused or unexcused? She added that excused absences had been defined as illness, death, and requirements of legal process, and that she could see circumstances where members of a Commission may be faced with a severe illness resulting in a death, and may miss 3 meetings within the course of a year. She found it very difficult to recommend dropping such a person from the Commission for that reason. She believed that it should be a question of whether the absence is excused or unexcused, and that she would like to see it written as members would be entitled to a maximum of 3 unexcused absences. Mrs. Smith also noted that a review would take place of members missing the morning or afternoon session constituting an absence, as it was determined at the meeting that it would be considered an absence unless a member is present for the whole meeting.

Mr. Wyett felt that a provision for extenuating circumstances could be the solution to the problem.

Mr. Wyett made a motion that members be entitled to a maximum of 3 unexcused absences each calendar year, and upon the 4th absence the member shall tender their resignation, unless they petition the Town Council under the term "extenuating circumstances." Seconded by Mr. McDonald.

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

Town resident, Adrian Winterfield, addressed the Town Council, stating that if all of the alternate members were required to attend all meetings the question would come up as to whether they had a vote, and how it would be determined which of them would have a vote in the absence of a regular member. He believed this could be taken care of in the Ordinance. He agreed with Mr. Wyett's principle of petitioning, however, the term "petitioning" was a little vague, and Mr. Winterfield suggested requesting a public hearing allowing the Commission member to present evidence.

Mrs. Smith asked Mr. Moore how the Commissions were currently set up?

Mr. Moore replied that seniority determined who would vote.

Recommendation 4: In order for an absence to be excused, a member must notify the Town Manager's office by letter, faxed or mailed no later than noon on the Friday prior to the regularly scheduled meeting, unless the absence is an emergency. Affirmation that failure to notify the Town Manager by letter will make the absence unexcused.

Mr. McLendon made a motion to approve the recommendation. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

Recommendation 5: Illness, death, and requirements of legal process shall be considered excused absences. Eliminate the statement "personal hardship" from the Ordinance as it now stands.

Mr. Wyett made a motion to approve the recommendation. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

Recommendation 6: Increasing the alternates on the Code Enforcement Board by 1, making the total of 3, so as to be consistent with other Town Boards and Commissions.

Mr. McLendon made a motion to approve the recommendation. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

Mr. Doney clarified that at the July and August Town Council meetings there would be appropriate Ordinance amendments for each Board and Commission to enact and implement the changes, and that after the second reading the Ordinance would become the effective date of the changes.

Mrs. Smith stated that the next matter of business was the memorandum from Mr. Shaw on the presentation by Committee Members following Declaration of Conflict of Interest.

Mr. McDonald suggested deferring this matter as it had not yet come before the ORS Committee for consideration.

XI. OLD BUSINESS

A. Appointments

1. Code Enforcement Board - Two Three-Year Terms to Expire April 1998, and One One-Year Term to Expire April 1996 (Deferred from May 9, 1995) -

Mr. Shaw made a motion that Mr. John Matich be moved from an alternate position to a full time position, and he nominated Mr. Robert Gottfried, a general contractor, to a full time position, and Dr. Leon Schwartz as an alternate.

The ballot included the appointment of two-three year terms to expire in April, 1998; and one one-year term (as a result of the resignation of Mr. Falcon) to expire in April, 1996.

Mr. Elwell read the results for the Code Enforcement Board: John Matich and Robert Gottfried for the two 3-year terms; Trent Steele for the 1-year term; and Mr. Irving Wolfe remained an alternate, with Dr. Leon Schwartz becoming an alternate.

2. Zoning Commission - One Alternate Two-Year Term to Expire February 1997 -

Mrs. Smith explained that nominations would be taken for the appointment of an alternate member required for one 2 year term to expire in February, 1997 as a result of the resignation of Mr. Schuler.

Mr. Shaw nominated Mr. Jack Pyms. Mr. McLendon nominated Mr. Charles Henderson. Mr. Wyett nominated Jorge Sanchez and Eileen Curran. Mr. Shaw nominated Frank Appleton.

Mrs. Pollitt announced the results of the Zoning ballots. Mr. Jorge Sanchez was elected to be the alternate to serve the remainder of the term to expire in February, 1997.

B. Ordinances (Second Reading)

1. Ordinance No. 6-95 - Amendment to the Sea Turtle Protection Ordinance -

Mrs. Pollitt read Ordinance No. 6-96:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER XIV, PROVISION 3 OF THE TOWN'S CODE OF ORDINANCES, ENTITLED SEA TURTLES, BY CHANGING VOLUNTARY GUIDELINES TO MANDATORY REGULATIONS AND BY ESTABLISHING A SCHEDULE OF FINES

FOR VIOLATIONS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mrs. Smith stated that this was the second reading, and that the Ordinance had been approved.

C. Other

1. Consideration of Beach Erosion Matters

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

Mr. Richard Walesky, Director of Palm Beach County Department of Environmental Resources Management, addressed the Town Council to give a brief status report. He focused on what had happened in the past month and what would be happening in the next month.

Regarding the Sand Transfer Plant, Mr. Walesky recalled that last month the engine and transmission to operate the pump system had been ordered, and delivery was expected in early July. It would then take about 10 days to install the pump, and at that point the Sand Transfer Plant would be substantially renovated, with maintenance being done until the piping catches up with it. In the next 30 days, some improvements would be made to the access to the Sand Transfer Plant, at County expense. On May 17, Dames and Moore had been authorized to do the design work and prepare the specifications on the piping that goes under the inlet, with expectation of draft documents being received by July 7. A two week period would follow for review, with another week for refinement of the documents. On July 21, it was expected to have completed engineering designs and bid documents so that bids could be obtained. Regarding the financial package, the budget remained as reported. They were still projecting that they would be able to turn on the Plant the first week of November.

Mr. Jim Koontz, 232 LaPuerta Way, addressed the Town Council, stating that he was giving the Council a letter mentioning that Mr. Klinger of the Palm Beach County Department of Environmental Resource Management is chairman of the Florida Shore and Beach Preservation Association, which will meet at The Breakers in September. Mr. Koontz felt that department was perfectly capable of doing any studies needed in the future, reading remarks from a letter to him from Dr. Finkel of Boca Raton and quoting remarks from a telephone conversation with Dr. Dean concerning beach erosion. Mr. Koontz noted the letter that he had sent to the Town Council on May 18, 1995, recommending that an independent expert, such as Dr. Finkel or Dr. Dean, be retained as advisor on all beach erosion questions. He again requested that such an expert be hired.

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

Mr. Albert Dusey, Director of Public Works, addressed the Town Council, stating that two meetings had been held with the Department of Environmental Protection (DEP), and a permit should be issued by August 1, 1995. The Army Corps of Engineers should issue permits by mid to late August. Regarding environmental issues, biologists from the U.S. Fish and Wildlife Service would visit the Town this week for inspection. Turtle nests in the mid-Town area were being overwashed by surf, and a relocation program was being suggested. That would then allow construction to start in late August. There were a number of potential pitfalls in the permitting process, but Mr. Dusey was very optimistic that the permitting end of the project was going as planned.

Regarding funding, Mr. Dusey explained that DEP had indicated that the funds remaining from the PEP Reef monitoring process should be available for monitoring this project. Every project done in the State required follow-up to make sure that there was no adverse impact. There would be no federal funding available for this project for several reasons; one reason was that the project had been substantially changed from the original design, including injecting groins into the process, and also that the whole question of funding for this type of thing at the federal level was under very strong review at the administrative/legislative level in the federal government. The door had not been completely closed, however, as the future may hold changes in the rules. The U.S. Fish and Wildlife Service offered to fund 50% of the dune vegetation project, or approximately $50,000. Palm Beach County was considering a contribution for the project, and the Town Manager's office was following up on that.

Mr. Dusey continued that, with the tapers, the renourishment project ran from Via Bethesda on the north side, to a point of 200 ft. north of Via Marina on the south side. The design berm was at 9 ft. mean sea level (MSL) and was at a width of 25 ft., then sloping into the ocean. The fill quantity estimation was 600,000 cubic yards.

Regarding the groin field, Mr. Dusey stated that the consultant had designed eleven groins, running from Seabreeze Avenue, to Gulfstream Road, in varying lengths. Each groin had a single row of reef units, with each reef unit sitting on a 26 ft. wide geo-mattress. The portion of the units in the active surf zone would be protected with boulders in the upper zone.

Regarding the schedule, Mr. Dusey indicated that the Town had submitted the permit applications to DEP and the Corps of Engineers on June 7. Today, the Council would be asked to award a contract for disassembling the reef and a temporary relocation of reef units to be used for the groin. On June 19, it was hoped to get a sea turtle nest relocation approved, which would allow a start of fill work, with the hopes of awarding the dredging and groin field contracts on July 11, 1995. Issuance of A Notice to Proceed for the fill project was anticipated on August 1, 1995, starting filling in late August. Upon completion of the fill work, the reef units that were stored off-shore would be retrieved, and then the groin field construction would start. The consultant had looked at using one contract to do everything, however with the permitting and sequencing necessary, that would not work.

Mr. Dusey said that today, the Town Council was being asked to authorize staff to apply to the U.S. Fish and Wildlife Service for a dune re-vegetation project. At the last Council meeting, an expenditure of up to $100,000 had been authorized for design, specifications, permitting, etc., and another $185,000 was needed to get the construction started. Some of the reasons for that were that the permtting fees were $38,500, additional corps borings would cost $45,000, and a survey for a new erosion control line would cost $10,000. Mr. Dusey continued that approval of a contract for reef relocation and removal was being asked for today in the amount of $294,000. Three contractors had bid on it and the low bid was $294,000. Mr. Dusey said that other means of disposal of the excess units were being looked into as a way of reducing the expenditure for the relocation and removal.

Mrs. Smith asked Mr. Dusey to state who the consultant was. Mr. Dusey replied it was Applied Technology Management (ATM), with a local office in West Palm Beach, and the main office in Gainesville.

Mr. McDonald asked Mr. Dusey if all of the costs fell within the anticipated costs for the project?

Mr. Dusey replied affirmatively, and that the consultant would give an updated construction estimate within the next few days.

Mr. Wyett suggested that the Town may be able to use the remaining reef modules, and that several residents had expressed an interest in using them.

Mr. Dusey replied that storage of the modules would be a problem, and very expensive. If they could be retrieved from storage at Site 4, that could be a possibility.

Mr. Dusey then went over each item for Council approval.

He requested authorization for staff to apply for the U.S. Fish and Wildlife grant for the dune re-vegetation project.

Mr. Wyett made a motion for approval. Seconded by Mr. Shaw. On roll call the motion passed unanimously.

Mr. Dusey then requested authorization of an additional expenditure of up to $185,000 for design, specifications, permitting, etc., to come from the beach protection reserves.

Mr. Shaw made a motion for approval. Seconded by Mr. McDonald. On roll call the motion passed unanimously.

Mrs. Smith asked Mr. Dusey if there was any other place that some of the modules could be stored if there was interest in using them on other beaches?

Mr. Dusey replied that the reason for using Site 4 was that it was a permitted site for storage, but that he would explore other sites.

Mrs. Smith noted that it had been discussed at the Council Meeting last month that the Town would help any private resident in determining how they would go about the construction of groins on private beaches, so if the modules could be used as a part of the groins on private beaches, the Town would be happy to help residents. She pointed out that it may be wise to see if there was not another storage area in addition to Site 4, further to the north, so that when the Town moved the modules out they could be put in more than the one site.

Mr. Dusey responded that suggestion would be explored.

Mr. Wyett asked the estimated cost per groin field?

Mr. Dusey replied about $130,000.

Mr. Wyett confirmed with Mr. Dusey that the cost for a resident would be between $100,000-$200,000 to buy the modules and get a permit.

Mr. McDonald made a motion to approve Resolution #20-95. Seconded by Mr. Wyett.

Mr. Randolph read the resolution:

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING CONTRACTS TO CONE CONSTRUCTORS, INC., FOR THE RELOCATION OF THE MID-TOWN BEACH PEP REEF.

On roll call the motion passed unanimously.

Mr. Jesse Newman, a resident of the northend of Palm Beach, addressed the Town Council, stating that he had been through a year of the beach and the engineers, and that the real noise was not the tractors, but the beeping as they back up. He added, however, when the progress was looked at it was something one could live with.

On roll call the motion carried unanimously.

Mrs. Smith noted that Mr. Dusey would be reporting back to the Town Council at the next meeting, and asked him what he anticipated would be in place by that time?

Mr. Dusey responded that the reef would be about half removed, with some of it stored. He anticipated having the contract award on both projects, the groin project, and the fill project.

c. Consideration of Proposed Ad-Hoc Advisory Shore Protection Board - Deferred from May 9, 1995 Meeting -

Mrs. Smith explained that at the May 9, 1995 meeting the Advisory Shore Protection Board was voted in, and Mr. Wyett had stipulated that he felt there were many qualified residents in the Town who would be able to serve on the committee who would be sending in their resumes.

Mr. McDonald commented that today the Council would decide how the Board was comprised, terms, etc.

Mr. Doney advised that Mr. McDonald had made a motion from last month instructing that the Council appoint an Ad Hoc Advisory Shore Protection Board, with all details of the Board being submitted to the Town Council by the June 13, 1995 meeting.

Mr. McDonald suggested a board that would be composed of 15 people, 2/3 of which must be Town residents, and that the board be selected and appointed by having each Town Council person appoint one member, and those five members would select the remaining ten members, submitting those names to the Town Council for approval. The first nominations would be made at the July meeting, with the duration of the Board being for two years, with the Board making recommendations to the Town Council concerning any aspect of shore protection.

Mrs. Smith commented that it had been her understanding at the last meeting that this Board would be like any other Town Commission, under the same guidelines and rules, which mandated all Town residents.

Mr. Randolph stated that the procedure of choosing members of this Board had not been decided at the last meeting.

Mr. McDonald asserted that all expertise would be valuable, and that this was not a commission, but a committee, so it could be treated a little differently, therefore he did not want to limit membership to nine and only Town residents.

Mrs. Smith replied that she did not think this committee should be any different than any other committee. She suggested checking back in the minutes of the last meeting so that there would be no confusion as to what was to be determined today.

Mr. Wyett disagreed that having 15 members on a committee was unwieldy, as well as the formula being used. He suggested simplifying the process by making the committee conform to standards. He suggested receiving all resumes, taking from those the most qualified.

Mayor Ilyinsky asked Mr. Pryor how the Civic Association felt about having non-residents as members of committees?

Mr. Louis Pryor addressed the Town Council, as a private citizen of the Town of Palm Beach, stating that he thought it would be an advantage to have outsiders, particularly those who had previous experience with similar problems. He suggested that perhaps the number of outside members could be limited, but that it would be a shame not to consider them at all.

Mrs. Smith stated that she was strongly opposed to having any non-resident sit on any Town committee, unless it was not recognized as a committee, but as an advisory committee.

Mr. Pryor responded that it was his experience that if a committee included experts, there was a commitment to attend meetings, whereas an expert who was not a member of the committee may not have the same commitment.

Mr. Shaw suggested a compromise by making non-resident members non-voting members, but full active members, so that decisions of the board would be made by residents.

Mr. Adrian Winterfield, a town resident, addressed the Town Council, stating that commissions should be in the position of advising the Town Council. He suggested postponing any decision at the present time.

Mrs. Polly Earl addressed the Town Council, stating that the idea of some kind of double standard was creeping in, and that beaches and preservation had a nature where some outside expertise would be helpful. She suggested that the ORS Committee look again at the Ordinance regarding the Landmarks Commission.

Mr. McDonald stated that he wanted to get the proposed board into a functioning mode and he was willing to compromise on some of the issues regarding the formation of the board.

Mrs. Smith stated that at the last meeting the board had been passed, and now it was a question as to its make-up, and the proposed make-up was not acceptable to her. She therefore passed the gavel to Mr. McDonald, and made a motion to deny or disagree with the make-up of the new board, and suggested that Mr. McDonald present something to the Council in writing that would be more definitive and Town oriented.

The motion died for lack of a second.

Mr. Shaw made a motion that this board be created for a duration of one year, with a total of ten members, 7 being Town residents, 3 being non-resident experts in the field having a non-voting capacity. Seconded by Mr. McDonald.

Mr. Wyett suggested the non-residents on the board could be appointed by the residents appointed by the Town Council.

Mr. Shaw amended his motion to say that the appointments would be considered at the November Town Council Meeting, with ten members, with not less than 7 Town residents as voting members, with 3 non-residents as non-voting members.

Mrs. Smith confirmed that none of these people would be professionals with any ties or associations or any business dealings with the Town, so as to avoid any question of conflict of interests.

Mr. Adrian Winterfield addressed the Town Council, suggesting that whatever is done should be done by resolution, because there was so much information floating around it was hard to follow it.

Mr. Randolph recommended that if the motion was voted on today, a resolution be brought back for adoption at the next meeting, which would incorporate the suggestions that had been made today.

On roll call the motion carried 3/1 with Mrs. Smith dissenting.

Mrs. Smith asked if there were any comments by the public, and also inquired of Mr. Randolph the possibility of re-opening the Landmarks Preservation Commission and the Code Enforcement Board vacancies which were created by the determination of the Town Council that no non-residents could serve on Town committees. She asserted that it would be very appropriate at this time to send this to ORS to have the committee make-up considered by them.

Mrs. Hermine Wiener, 324 Garden Road, addressed the Town Council, stating that a lot of thought and study went into having members of the various commissions being Town residents. One of the reasons for this was that things that effect people cost money, which should be spent only by residents with other residents in mind. She pointed out that experts that show up for these types of commissions have one main interest, and that is their own. She alleged that Town residents with a future stake in matters were needed. She said that she believed that when the decision was made to have only Town residents serving, it was because it was in the best interest of the entire Town.

Mr. Jesse Newman, Town resident, addressed the Town Council, stating that he had been a resident of the Town for 44 years. He had served on the Zoning Commission, Landmarks Commission, Architectural Commission and the Code Enforcement Board, and during all of those years, there had been two non-residents on the Landmarks Commission. He urged that all members of the proposed board be Town residents.

Mr. Jim Koontz addressed the Town Council, stating that the idea of having a committee decide something on coastal engineering was analogous to needing surgery and going to a committee of laymen for recommendations. Expertise was needed, and laymen could not give good advice. He then read additional information from the letter he had received from Dr. Dean, concerning the Sand Transfer Plant and coastal problems.

2. Consideration of Palm Beach International Airport (PBIA) Proposed I-95 Interconnect Project - Status Report -

Mr. Doney addressed the Town Council, reporting that the Mayor and Town Council had not received an official response to Mayor Ilyinsky's letter to Mayor Graham dated June 8, 1995. The request to the City of West Palm Beach was to ask for the City's specific position relative to the ongoing usage of the firm that was hired jointly by the Town of Palm Beach and the City of West Palm Beach (Sullivan & Cromwell) to fight the proposed PBIA-I-95 interconnect project. At this point, Mr. Doney recommended that the Town Council consider the following:

1. As this would be an ongoing and evolving issue, the Town should await the formal written advice from Mayor Graham as to the City's official position.

2. That the Town Council authorize today that a letter be sent again to Mr. Jeff Jacobs, who is with Sullivan & Cromwell, requesting:

a. specific additional actions the Town and the City should take relative to the federal funding and federal jurisdictional issues;

b. Sullivan & Cromwell recommend in writing what specific actions should be taken at the State level, and identify the estimated dollars and scope of work for Sullivan & Cromwell to fight the project at the State level.

Mr. Doney said that the issue at the State level may be the most effective, however, at this point the Town should proceed in accordance with the specific direction of Sullivan & Cromwell.

c. Ask Sullivan & Cromwell for any other additional specific actions that this Town Council should take in order to fight this issue.

3. Authorize the Mayor to write an additional letter to the Metropolitan Planning Organization of Palm Beach County (MPO), which is the local transportation policy group.

4. Direction from the Town Council to staff or Town Attorney to take any additional specific actions.

Mr. Wyett asserted that from what he had been reading it seemed that the scene of battle had moved from Washington to Tallahassee, and that energy should be redirected to the State, specifically Governor Chiles.

Mayor Ilyinsky stated that he was somewhat disappointed in Representative Clay Shaw's letter as there was confusion as to who actually would be funding this project. He was disappointed in the entire Republican attitude toward this, as well as with the lack of response from Mayor Graham. The only reason for the project was to increase the size of the airport. Mayor Ilyinsky pointed out the involvement of Democratic Representative Harry Johnston, who had been extraordinarily helpful regarding this project.

Mrs. Smith added that Mayor Ilyinsky should not take the lack of response from Mayor Graham personally, as he had only written her four days ago.

Mayor Ilyinsky asked Mr. Doney if the Town Council had put a limit on expenses to Sullivan & Cromwell?

Mr. Doney replied affirmatively, and that up to $12,500 of Town funds had been authorized. Mr. Doney suggested that to get involved at the Tallhassee level would be very expensive, and to do nothing further until the City of West Palm Beach gives a written response, allowing Sullivan & Cromwell to continue in the meantime.

XII. NEW BUSINESS

A. Ordinances (First Reading)

1. Ordinance No. 7-95 - Amendment to Schedule of Fees for Occupational Licenses - APPROVED.

Mr. Randolph read the Ordinance:

THIS IS AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER X, LICENSES AND BUSINESS REGULATIONS, BY AMENDING SECTION 10-14, RELATING TO SCHEDULE OF FEES FOR OCCUPATIONAL LICENSES, DELETING SECTIONS 10-17 AND 10-18 RELATING TO REGISTRATION AND REQUIRED INFORMATION, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING FOR CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Wyett made a motion to accept the Ordinance. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

B. Resolutions

1. Resolution No. 18-95 - Support Adequate Funding for Educational Opportunities, Programs, and Services Offered by the Palm Beach Community College -

Town Manager Doney addressed the Town Council, stating that Palm Beach Community College offered Institute of Government services attended by Town employees from time to time, as well as opportunities for residents to attend. From the staff prospective, Mr. Doney recommended that the Town Council consider adopting Resolution No. 18-95 to show support for adequate funding for the educational opportunities and programs offered at the college. The Resolution was also recommended very strongly by the Palm Beach County Municipal League.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, STRONGLY SUPPORTING THE PROGRAMS AND SERVICES OFFERED BY THE PALM BEACH COMMUNITY COLLEGE, REQUESTING THAT THE LEGISLATURE OF THE STATE OF FLORIDA SUPPORT THIS COMMUNITY COLLEGE BY PROVIDING ADEQUATE FUNDING, REQUESTING THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY TO JOIN THE MUNICIPAL LEAGUE IN ITS EFFORTS TO PERSUADE THE STATE LEGISLATURE TO PROVIDE ADEQUATE FUNDING FOR THE PALM BEACH COMMUNITY COLLEGE, REQUESTING OTHER MUNICIPALITIES TO SUPPORT THIS RESOLUTION, PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to accept Resolution No. 18-95. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

C. Bid Awards

1. Sealed Bid No. 95-03; Police Department Front Steps Reconstruction - Resolution No. 12-95 -

Mr. Bowser, Town Engineer, addressed the Town Council, stating that two bids for the Police Department front steps had been received. The project as bid was over the project estimate. When the estimate had been received from the architect it had been thought to be in excess, and staff had taken it upon themselves to reduce the budget. Now that the bids are in, it has been found that the prices even exceed the original architectural estimate, being $25,779 above budget. Staff had noted that since the project was initiated due to a safety concern, that recommendation is to move forward with the project. The difference in the two bids received was $3,742.00. A second portion of this project was to have tiles added to the risers, and also a bench to be added in between the two sets of steps, which would also be tiled. Mrs. Polly Earl had indicated that the Preservation Foundation would stand behind their pledge for both alternates no. 1 and 3. Item No. 1 was in the amount of $700.00. The prices received were to install the tile only, and the Preservation Foundation would be purchasing the tile. The estimate for the tile for Item No. 1 was $2,800.00. Alternate No. 3 was to have the seat constructed with tile, and that price was $2,050.00, with the tile costing an additional $2,800.00.

Mr. Bowser continued that staff recommendation was to go ahead with the bid award, with the numbers changing slightly; an additional $27,360.42 would be needed and it is recommended that it be transferred from the unappropriated Capital Improvement Fund budget.

Mrs. Polly Earl, Director of the Preservation Foundation stated that, for the record, the Preservation Foundation agreed to furnish the funds for the tile as described by Mr. Bowser. She added that contributions would be asked for from citizens throughout the Town to fund this beautification of the historic Town Square.

Mr. Bowser added that he would like to thank Smith Architectural Associates for preparing the drawings shown today.

Mr. Wyett commented that the original cost had been estimated at $45,000 with the cost now being $65,000, and suggested that a rail down the center of the steps would perhaps solve the problem.

Mr. Jesse Newman addressed the Town Council, stating that the Palm Beach Chamber of Commerce would like to contribute $1,000.00 towards the steps.

Mr. Louis Pryor pledged $1,000.00 from the Civic Association.

Mr. Prosperi pledged $1,000.00.

Mr. Wyett pledged a donation of $1,000.00

Mayor Ilyinsky pledged a donation $1,025.00.

The South County Road Association pledged a donation of $500.00.

Mr. Shaw pledged a donation of $500.00.

Mr. McDonald pledged a donation of $500.00.

Mrs. Smith pledged a donation of $500.00.

Mr. Randolph stated that the bid would be effective and the money pledged would be used against that amount.

Mrs. Smith passed the gavel and made a motion to approve the project. Seconded by Mr. Shaw.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH,
PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO BURKHART CONSTRUCTION, INC.
FOR THE POLICE DEPARTMENT FRONT STEPS RECONSTRUCTION.

On roll call the motion carried unanimously.

2. Sealed Bid No. 95-05; 1995 Underground Street Light Wiring and Conduit - Resolution No. 13-95 -

Mr. Bowser, Town Engineer, addressed the Town Council, stating that the construction climate now was extremely to the Town's disadvantage, as contractors were very busy and prices have gone up significantly, anywhere from 15-30%. In past years it had been possible to meet budgets, however the prices on the four bids today were all above the original estimates.

Mr. Bowser continued that staff recommendation on the underground street light wiring and conduit project was to delete one of streets. Two bids had been received, with the low bid coming from Burkhart Construction in the amount of $50,413.00, which was $37,000.00 lower than the second bidder. This was a significant increase over prices that had been paid in the past. The two contractors that normally bid for jobs did not even bid because of their work loads. One portion of the work was to refeed one of the sanitary sewer pump stations, so authorization was being asked to spend $8,000.00 with an $800.00 contingency out of the SSRP program to pay for that portion of the project.

Mr. Bowser pointed out that one street would be deleted, which is Nightingale Trail; therefore the total award recommendation was $38,230.62, with up to $8,800.00 to be spent for the sanitary sewer replacement program to cover the costs of the electrical fee for the sanitary sewer pump station at the end of Via Palma.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH,
PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO BURKHART CONSTRUCTION, INC.,
FOR THE 1995 UNDERGROUND STREET LIGHT WIRING AND CONDUIT PROJECT.

Mr. Dusey addressed the Town Council, stating that it was at the end of the wiring replacement program, and that it was not a dire emergency, but something that needed to be done.

Mr. Shaw asked if there would be a public safety issue if the project were postponed?

Mr. Dusey responded that this was not the most critical underground wiring required in Town, however, he could not give a risk analysis on it, because it could fail tomorrow, although that was not likely. He added that deferral was a possibility.

Mrs. Smith asked Mr. Dusey how much additional monies would be required if the project was put off until next year?

Mr. Dusey said that he had no way of knowing at this time.

Mr. Shaw made a motion to defer the project and to reject all bids. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

3. Sealed Bid No. 95-04; El Brillo Way/El Bravo Way Storm Drainage Improvements - Resolution No. 14-95 -

Mr. Bowser, Town Engineer, addressed the Town Council, stating that four bids had been received for the El Brillo Way/El Bravo Way Storm Drainage Project, ranging from $796,730 to $1,306,849.00. As with the other projects, this project was over budget, and staff recommendation was to use various accounts to make up the shortfall. There were three major segments to the project: the storm water pump station collection system; the water main, which the City of West Palm Beach would be paying for; and the irrigation main with non-potable water. Town staff recommended the project be awarded, utilizing funds from other projects and money from the unappropriated general fund budget, and that the non-potable irrigation lines not be constructed at this time.

Mrs. Smith asked Mr. Bowser the cost of installing the non-potable irrigation lines?

Mr. Bowser responded $25,384.19.

Mr. Bowser added that recommendation had been made to have the sanitary sewer replacement program pay for the sanitary sewer costs on the project; that the street re-surfacing program pay for the asphalt that would be used on the street; that $25,000 from the pipe replacement program be used; and $43,000 of the remaining $90,000 in the Clarke Avenue project. That would leave a $44,717.41 request from the undesignated General Fund Budget.

Mr. Wyett read from Mr. McLendon's written comments:

Mr. McLendon was very disappointed in all of the bids, considering them too high, and he asked if it would be feasible to postpone or re-bid. He disagreed with staff on the non-potable pipe, feeling that all of it should be put in, but using 6-inch diameter piping.

Mrs. Smith asked Mr. Bowser how long the job would take?

Mr. Bowser replied that the City of West Palm Beach needed to approve the water main portion of the work, and they apparently had cancelled their July 3rd meeting, and may not hear it until July 17th.

Mrs. Smith said that she understood that Mr. Doney had asked the City of West Palm Beach to waive the advertising period for this project, and to hear it at their next meeting.

Mr. Bowser commented that they had not heard back from the Mayor of the City of West Palm Beach concerning this.

Mrs. Smith asked if a favorable response was anticipated?

Mr. Doney replied that it would be placed on the agenda for the July 17th City Commission Meeting.

Mr. Bowser stated that if West Palm Beach responded favorably, then the first week of November would be the anticipated completion date.

Mr. Shaw made a motion for approval, with the inclusion of irrigation. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO SULLIVAN BROTHERS, INC., FOR THE EL BRILLO/EL BRAVO WAY STORM DRAINAGE IMPROVEMENTS. THIS IS THE ALTERNATE WHICH INCLUDES THE BASE BID AMOUNT IN SECTION I OF $796,730.00.

4. Sealed Bid No. 95-11; Jungle Road/El Vedado Road Storm Drainage Improvements - Resolution No. 15-95 -

Mr. Bowser addressed the Town Council, stating that four bids had been received on the project, with the low bid being $730,060.00 from Ryan Incorporated Eastern, to a high of $1,090,776.00. Staff recommended that the project be awarded utilizing funds from other projects and money from the unappropriated General Fund Budget.

Mr. Bowser continued that the funding requirements would be $29,563.00 from the sanitary sewer replacement program; $14,009.10 from street re-surfacing; $25,000.00 from pipe replacement; $43,000.00 from the Clarke Avenue project surplus; and $89,054.14 from the undesignated General Fund. The total award was $730,060.00. Mr. Bowser noted that the time schedule would be the same as the other project, facing the same request from the City of West Palm Beach for the water main work.

Mr. Shaw stated that there is a flooding problem on the street, and made a motion to approve the project. Seconded by Mrs. Smith, who passed the gavel.

On roll call the motion carried unanimously.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING A CONTRACT TO RYAN INCORPORATED EASTERN FOR THE JUNGLE ROAD/EL VEDADO ROAD STORM DRAINAGE IMPROVEMENTS. THIS IS THE ALTERNATE RESOLUTION IN THE AMOUNT OF $730,060.00.

D. Other

1. Consideration of Proposed Palm Tree Beautification Project by Greater South County Road Association for Area Along South County Road from 1/2 Block North of Seaview Avenue to 1/2 Block South of Worth Avenue - Resolution No. 19-95, Including Request for Town Manager to Execute Landscape Maintenance Agreement with Florida Department of Transportation

Mr. James Bowser, Town Engineer, addressed the Town Council, stating that the Greater South County Road Association had worked with the DOT and Town Staff for a project to place Palm trees along South County Road from one-half block north of Seaview Avenue to one-half block south of Worth Avenue. They had received a Certificate of Appropriateness from Landmarks for the trees within the Town Hall Square Historic District and they have also reviewed the entire project.

Ms. Chris Franks, Chairperson for the Beautification Committee had requested that the Town sign a Landscape Maintenance Agreement with the Department of Transportation, which is a requirement of the DOT, that the local municipality have this Maintenance Agreement, and also for the Town to ask the DOT to purchase safety grates to be used on the trees, which would be at no cost to the Town. The association would be paying all of the installation costs and maintenance for the first year, with the Town doing the maintenance in the future. There was a resolution attached, asking the Town Manager be authorized to execute an Agreement with DOT for the landscaping, conditional upon the Risk Manager, Town Attorney, and Public Works Director reviewing and approving the document. A letter would also need to be sent to DOT requesting the grates.

Ms. Christine Franks addressed the Town Council, stating that they were pleased that Mr. Sanchez had committed to oversee their project and all of the work that they would do would be under his supervision. The DOT would donate the grates to the Town of Palm Beach, with no cost involved. Before they would issue an order to have them manufactured they requested that the Town sign a Maintenance Agreement with them, and the South County Road Association had pledged to make sure that the trees were maintained with water and fertilization for the first year. There would be no costs to the Town other than the time that would be involved from the different staff members working on the project. The Risk Manager, Barbara Martinuzzi, had looked over the insurance aspect of this project, and had been pleased. The same company that supplies the insurance for Worth Avenue had been used, and there is a two-million dollar coverage, with the Town of Palm Beach as additionally insured and the DOT as held harmless. Ms. Frank said that the association felt privileged to be a part of the project and certainly appreciated the Town Council considering their request. They would not have made this progress if it had not been for the Town being patient in their guidance and assistance and she expressed appreciation to Mr. Dusey, Mr. Bowser, Mr. Martinuzzi and Mr. Frank, and looked forward to the continuation of the relationship to the completion of the project.

Mrs. Smith asked how many Palm trees would be put in?

Ms. Franks replied that there would be a total of 133 Palm trees.

Mr. Wyett asked what type of Palm trees?

Ms. Franks responded that in the Letter of Appropriateness from the Landmarks Commission they could be either the Adonidia or Alexandria Palms. The reason for the choice was because of the costs involved in supplying the trees that would meet the stipulations of the Landmarks Commission--the higher the tree, the more expensive it would be, and the Adonidias were very expensive.

Mr. Moore, Director of Building and Zoning, stated that one consideration involved with the Christmas Tree Palm was the susceptibility to lethal yellowing. There would be both a cost and replacement factor. Mr. Moore also inquired as to whether the South County Road Association was going to handle all replacement as well.

Ms. Frank replied that she had not addressed that specifically, but assumed that would be the responsibility of the South County Road Association, because it was their responsibility to supply the trees in the first place. The only thing they were asking from the Town was to sign the Maintenance Agreement with DOT, strictly for maintenance, not replacement.

Mr. Moore added that Mr. Sanchez and his partner, the landscape architect, would oversee the installation, and Ms. Frank agreed with that.

Mrs. Smith asked if there was anyone else wishing to speak to this issue?

Mr. McDonald moved for approval of the Resolution, with the understanding that the South County Road Association would handle tree replacement. Seconded by Mr. Wyett.

Mr. Randolph read the Resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE A LANDSCAPE MAINTENANCE AGREMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, FOR THE MAINTENANCE OF LANDSCAPING ALONG SOUTH COUNTY ROAD, STATE ROAD A-1-A, FROM ONE-HALF BLOCK NORTH OF SEAVIEW AVENUE, TO ONE-HALF BLOCK SOUTH OF WORTH AVENUE.

Mrs. Smith asked Mrs. Martinuzzi if she were comfortable that there was no liability to the Town in this project?

Mrs. Martinuzzi, Risk Manager, addressed the Town Council, stating that this program was a similar program to what the Town had with Worth Avenue Association over the past several years, with the exception of the involvement of DOT. The Maintenance Agreement with DOT was their standard agreement, similar to those signed in the past for other areas. Certificates of Insurance had been received from the South County Road Association, listing the Town as an additional insured with the liability requirements that were standard for all of the Town programs. She was comfortable with the program as it was presented.

On roll call, the motion carried unanimously.

Ms. Frank added that if anyone would want to purchase a tree, there were several available.

Mrs. Smith asked how many trees had been donated for the project?

Ms. Frank replied that there were about 30 pledged.

2. Consideration of Legislation Concerning Ex-parte Communications/Quasi-Judicial Bodies -

Mr. Randolph stated that he had provided the Town Council with information concerning the proposed legislation relating to quasi-judicial communications and disclosure requirements. The legislature had passed it, and it had been presented to the Governor. Mr. Randolph suggested in order to allow for ex-parte communications that the law provided that a resolution or ordinance be adopted, incorporating disclosure requirements. The minimum disclosure requirements were set forth in the legislation itself. Mr. Randolph added that he would need input as to preparation of the resolution to be presented at the next Town Council Meeting.

Mr. Wyett made a motion to approve directing Mr. Randolph to prepare a resolution incorporating the minimum disclosure requirements set forth in the ordinance. Seconded by Mr. Shaw.

Mr. Randolph recommended that a determination be made at staff level as to the disclosure methods, suggesting that as ex-parte communication took place in regard to a quasi-judicial matter, Council Members make a memorandum of it, and send it to the Town Manager to be put on the record.

On roll call the motion carried unanimously.

3. Consideration of Voting Delegate(s) to the Florida League of Cities' 69th Annual Convention, August 17-19, 1995, Kissimmee, Florida -

Mr. Doney stated that Mr. Shaw had indicated that he planned to attend the Convention and would like the Town Council's consideration for approval. Mr. Doney added that if more than one elected official attended, designation of voting delegate and alternates should be made.

Mr. McDonald made a motion to approve Mayor Ilyinsky, Mr. McLendon, and Mr. Shaw attending the Florida League of Cities' Convention, with transportation and lodging costs to be paid by the Town, and the Mayor designated as the voting member, with Mr. Shaw as the alternate. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

4. Consider Donation to the City of West Palm Beach to help underwrite the costs of the July 4th Celebration -

Mayor Ilyinsky suggested that the Town of Palm Beach contribute to the costs of the July 4th Celebration held by the City of West Palm Beach, in the amount of a donation of $5,000.00

Mr. Wyett suggested a donation in the amount of $10,000.00.

Mr. McDonald suggested a donation of $5,000.00. Seconded by Mr. Shaw.

Mr. Doney suggested that the motion include funding for the authorization come from the Undesignated General Fund balance.

Mr. Wyett accepted the suggestion of a donation of $5,000.00, amending the motion to include funding from the undesignated general fund. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

5. Discuss the Cost of Living Adjustment for Town Employees -

Mr. Wyett stated that it has been historical that cost of living was based on a percentage published by the Federal Government, and it was historical that it had been awarded across the board. However, in more recent times, Mr. Wyett explained that industry was adopting a different approach to cost of living, which may be appropriate for the Town of Palm Beach. He proposed that the Town Council would adopt the percentage, as it normally would do, however, staff would have the prerogative of distributing this based on merit, having nothing to do with the merit increases. The idea was, that if a particular employee was given a substandard rating, there would be an option of giving either none, or less than the full amount of a cost of living increase. The money that was saved by not giving out the cost of living increase to a non-deserving employee could then be added to the cost of living increases of the other employees, especially those rated above average. This would also be a very strong signal to under-performing employees that they had better shape up if they wanted to get the next year's cost of living increase. Mr. Wyett asserted that it had been proven in private industry to be very effective. There would be no additional cost to the Town with this proposal.

Mr. Doney commented that if the Town Council would so direct, he would meet with Mr. Crouse, the Personnel Director, and respond to Mr. Wyett's memorandum dated June 12, 1995, in which he proposes modification of cost of living increases.

Mrs. Smith suggested that Mr. Doney meet with Mr. Crouse and be prepared to speak to this matter at the July Town Council Meeting.

Mr. Shaw made a motion that Mr. Doney meet with Mr. Crouse and return to speak to the matter at the July Town Council Meeting. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

6. Discuss the Amendment of the Code to Allow the Market Value of Property to be used to Determine Value of Town Owned Property -

Mr. Wyett stated that it had come to his attention that the official formula used is the assessed value of property times the number of square feet. This would give less money than if the property would be purchased at market value as determined by recent purchases, and in the case of the two petitioners heard today. In both cases, the Town would have received more than double the amount of money if based on market value, determined by the recent buyer--determining the square foot value, and then multiplying by the square footage. In today's instance, the Town would have received approximately $400,000 rather than the approximate $200,000 paid by Mr. Kluge. The market value is the true value of property, and if a purchase was made from a resident, market value would be expected, not assessed value.

Mr. Randolph stated that he would be happy to look at this matter and come back with information at the next Town Council Meeting. The formula was derived based on the formula that had been incorporated in other similar ordinances. This had been a rather unique proposal when it was originally adopted.

Mr. Dusey stated that there was no preference on the methodology used. He did note that the application fee was only $250.00, however, and he did not believe that amount covered Town staff costs. He suggested looking at the application fee when considering changes in the Ordinance.

Mrs. Smith asked Mr. Moore if recuperating the Town's costs on major projects had not been looked into before, and inquired if something could be written into the Ordinance to cover this type of thing.

Mr. Moore replied that costs regarding Special Exceptions, Variances, and Site Plan Reviews that required the Town Attorney's time as well as other experts, had already been evaluated, and the Town is able to recover costs associated with those things.

Mrs. Smith asked if the Ordinance could be amended to include abandonments?

Mr. Moore replied that it would not be the Zoning Ordinance.

Mr. Randolph stated that what Mr. Moore was saying was that the Ordinance was a separate ordinance within the Building Department, and the matter being discussed was really within the Public Works Department. The Ordinance could be looked at, with the intention of recuperating direct costs.

Mrs. Smith noted that, from the discussion, this was something that the Council would like to have done.

Mr. Wyett made a motion to direct Mr. Randolph to study the Ordinance, and report back to the Town Council at the next meeting. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

XIII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR MAY 1995 -

Mr. Shaw made a motion to approve the Warrant Registers and Funds Expenditures Report for May, 1995. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE -

Mr. Adrian Winterfield addressed the Town Council, stating that Ordinance 7-95 cited as authority State Law 93-180, which was also the authority for Ordinance 13-93. He inquired whether the 1993 Ordinance could provide the authority for a second increase. He also inquired as to the provision in Ordinance 13-93 relative to the $25.00 per unit charge for apartments. He contended that a community service fee was not lawful and suggested consideration of a legal memorandum.

Mr. Winterfield referred to the legislation concerning ex-parte communication, commenting that although the Town Attorney had suggested a resolution in this regard, he believed an ordinance would be more appropriate so as to be part of the Town Code and available for all to see at all times.

Mr. Winterfield expressed his concern about the necessity of cancelling certain Public Works projects. He recalled that for certain projects in the past there had been assessments levied against the properties benefiting from the work. He asserted that it was possible that policy had been changed, or not applicable in certain instances, but he recommended consideration of the issue.

There were no other public comments at this time.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of May 24, 1995 - Minutes Available in Town Manager's Office

The Major Matters were:

B33-95 Addition for a residence at 209 Wells Road requested by Mr. Gregory Holloway - deferred.

B34-95 Addition to a residence at 1230 North Ocean Boulevard requested by Mr. W. Michael Gretschel - approved.

B35-95 Addition to a residence at 246 Esplanade Way requested by Mr. Henry D'Abo - deferred.

B36-95 Addition to a residence at 198 Via Marina requested by Ms. Sally Ross Soter - Needs variance: no action taken.

B37-95 Addition to a residence at 209 Banyan Road requested by Mr. and Mrs. Thorne Donnelley - approved conditionally.

B38-95 New residence at 240 Bahama Lane requested by Bruce and Susan McAllister - deferred.

B39-95 Addition to a residence at 302 Eden Road requested by William and Lisa Kaye - aproved conditionally.

B40-95 New residence at 218 Kenlyn Road requested by Mr. and Mrs. Hugh Davis - approved.

B41-95 Addition to a residence at 211 Bermuda Lane requested by Mr. Lindley M. F. Hoffman - approved.

B42-95 Addition to a residence at 630 Crest Road requested by Mr. and Mrs. Patrick Henry - approved conditionally.

C01-95 Addition to a residence at 1029 North Ocean Boulevard requested by Rychad Trust - approved.

C02-95 Demolition of a residence at 261 Seminole Avenue requested by Arturo Burigatto - removed from the agenda.

C03-95 Gates for a residence at 735 North Lake Way requested by Elizabeth Raese - deferred.

C04-95 New residence at 1350 North Ocean Boulevard requested by Ray and Sharon Flow - deferred.

C05-95 New townhouses at 230-232 Brazilian Avenue requested by J. V. Longwolf, Dr. Michael Long, Raymond Wolf - deferred.

B04-95 Remodel residence at 127 Oceanview Road requested by Ms. Jani Whitney - removed from the agenda.

B74-94 Modification to a residence at 496 North Lake Way requested by Jeffrey Raynor, Trustee - removed from the agenda.

B16-95 Demolition of existing structures and construction of a new duplex at 250 Everglade Avenue requested by Zack Ciomek - approved.

B28-95 Demolition of existing structures and construction of a new residence at 560 Island Drive requested by Misbah & Hend Ahdab - approved conditionally.

B21-95 Demolition-Alteration-Addition at 88 Middle Road requested by Stuart Subotnick, Trustee - approved.

B22-95 Demolition-Construction at 86 Middle Road requested by Elizabeth Frank - approved.

B26-95 New residence at 614 Tarpon Way requested by David, Robert, Richard & Frances Frisbee - deferred.

B30-95 Addition for a residence at 143 Casa Bendita requested by Mr. and Mrs. Eliot Gordon - deferred.

Motion made by Mr. Shaw to accept the Major Matters heard at the Architectural Commission at the May 24, 1995. The motion was seconded by Mr. McDonald.

Mr. Shaw said he noted that Mr. Randolph was not present at the ARCOM meeting of May 24, and he questioned if Mr. Randolph's presence was required at these meetings or did any problems arise that needed his attention?

Mr. Randolph replied he had a date conflict with that meeting and in this particular instance, no one from his office was available to attend the meeting. He said he discussed any potential legal issues with Mr. Moore in advance.

Mr. Shaw mentioned the possibility of arranging a tele-conferencing call with Mr. Randolph for future meetings.

Mr. Randolph replied that however the Town Council wished to arrange the meetings was fine with him.

On roll call, the motion carried unanimously.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Report by Town Attorney Concerning Consideration of Variances and Special Exceptions

Mr. Randolph referred to a six page letter dated June 1, 1995, addressed to Mr. Robert Doney, on the subject of variances and special exceptions. He offered to answer any questions the Council may have regarding the subject.

Mr. Moore said, from an administrative standpoint, it was to the point and concise and reflective of the textbook terminology of variances and special exceptions. Mr. Moore noted that case law was cited by Mr. Randolph showing that the hardship issue must be addressed. Mr. Moore reported that his department had modified the procedure, in consultation with Mr. Randolph, for applicants to identify the criteria within the ordinance that must be addressed to receive a variance.

Mrs. Smith agreed with Mr. Moore's comments and complimented Mr. Randolph on the report.

Old Business

2. Consideration of Potential Additional Study Items, Including the Issue of Recreation and Open Space, for 1995/96 Zoning Hearings (Deferred from May 9, 1995 meeting)

Mr. Moore said that items have been identified that will be forwarded to the Planner, the Consultant, and the Staff to perform studies on this summer. He continued that these items will be passed on to the Zoning Commission for further study this fall and subsequent recommendation to the Town Council.

After reading the list of the 15 study items, Mr. Moore reported that the zoning season is defined as November through April in the Town's Zoning Ordinance and the Comprehensive Plan. He added that it is also the same time period when landmarking can occur. Mr. Moore requested authorization to forward the study items to the Zoning Commission plus any additional items the Town Council may have.

Mrs. Smith asked the Council members if the study items included their recommendations?

Mr. Shaw was not sure that Item 9, Study Lot, Yard and Bulk Regulations as they pertain to the R-B zoning district in relation to the minimum lot sizes in R-A and R-AA zoning districts included his recommendations.

Mr. Moore replied that the general heading included Mr. Shaw's suggestions.

Mr. Shaw replied he was concerned that the general heading would not tell the Zoning Commission exactly what was to be considered. He was concerned that if lots were of a larger size than the actual minimum lot requirement in a zoning district, such as a 20,000 square foot lot, would they fall under the R-A regulations, although actually located in the R-B zoning district. He continued that if a deficiency existed in any one dimension for the R-A district, then the lot would revert to the actual district they were in and never go below their grade but would always have to rise to the highest.

Mr. Shaw said his second area of concern was the ratio of height elevations for a series of houses. He was concerned about single story houses with all the new two story houses being built; although the new houses are zoned as two story, a height ratio may be needed between the two properties. He suggested a change in a side yard setback to allow the maximum height may be an answer.

Mr. Moore responded that those items would be looked at and tied into study item number 15 also.

Mr. Shaw said he was concerned that the Town Council needed to make their study item requests detailed, because by the time the Zoning Commission received the requests and the public is informed, a zoning review has already been held.

Mr. Moore suggested that he review Mr. Shaw's suggested items one by one and reply by memorandum.

Mr. Wyett said he had three proposals, and one of those was to establish standards to encourage underground parking in townhouse multi-family dwellings.

Mr. Moore replied that was not included, but it would be added.

Mr. Wyett suggested that the Estate area, R-AA, should be amended to control the expansion of new clubs; however, Mr. Moore suggested standards should be established to preclude an estate becoming a club. Mr. Moore responded that was included in the list.

Mr. Randolph noted that the study item list should be amended to reflect the changes.

Mrs. Smith suggested that the "town-serving" item in 7(g) that was proposed for new restaurants, be applied across the board for all commercial entities.

Mr. Randolph suggested that it would be better to look at the item as applied across the board, rather than limiting it to only restaurants and clubs.

Mr. Wyett mentioned that the Town was quickly becoming "Restaurant Row," and one of the reasons he had brought this to study was to try to limit that effect in the Town. He suggested that the Zoning Commission should look at both restaurants and nightclubs as well as all other categories.

Mr. Adrian Winterfield addressed the Town Council, stating that he hoped the suggestion of the creation of a recreation district had been dropped. He stated that if a property owner had brought it before the Town Council it must be considered, but he submitted that it was totally improper for the Town Council to take the initiative, as there was nothing to be gained and was strictly a matter of ad valorem taxes.

Mr. Moore addressed that portion of the study items, stating that there was no request from any property owner that might have been affected by the discussion regarding a recreation district. He suggested that it not be included in the 1995-96 Zoning Season.

Mr. Wyett made a motion to authorize the forwarding of the study items to the Zoning Commission, with the changes discussed. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

3. Amended Site Plan Review No. 1-95 with Special Exception and Variances - Michael Pucillo, 230 & 232 Brazilian Avenue; to allow construction of a 5-unit, multi-family, three-story building per Section 5.48 of the Zoning Code; but, request variance to the special exception requirement of a maximum 25% lot coverage allowing <u>30.0%</u> lot coverage; also, a variance of Schedule A, Section 4.10 to allow 5 units on a 33,041 sq.ft. lot in lieu of 33,333 sq.ft. required. R-C District (Deferred from May 9, 1995 meeting) -

Mrs. Pollitt swore in all witnesses on the Variances and Special Exceptions included in the meeting.

Mr. Michael Pucillo, the applicant and owner of the property at 230 Brazilian Avenue, addressed the Town Council, stating that he was accompanied by Mr. Bob Jackson, the owner of the property at 232 Brazilian Avenue. Mr. Pucillo continued that the Town Council had heard this matter at the last meeting, and he would briefly summarize some of the things done since that last meeting, trying to address some of the concerns and variance elements that had been raised.

Mr. Pucillo noted that the project was a 5-unit, multi-family building, with 33,041 sq. ft., which was 291 sq. ft. short of the amount required for a 5-unit, multi-family structure. Current zoning approved 4.96 units, thus the request for variance as to density.

Mr. Pucillo indicated that the other Variance being requested was a 30% lot coverage, and a Special Exception on a 3-story structure. Mr. Pucillo stated that the building was 28.5 ft. in height, which had been reduced by 1 ft. since the last meeting; the lot coverage had been increased from 28.8% to 30%. The issue of a submerged basement had been suggested at the last meeting, and Mr. Pucillo said that had been pursued, and there was nothing in the Town of Palm Beach Zoning Code precluding the construction of a basement, however, staff had advised FEMA regulations would impact what type of basement could be put in a residential area, and could impact the ability to obtain insurance under FEMA standards. Therefore, Mr. Pucillo explained that they were unable to reduce the building down 4 ft. into the ground, as a result of flood insurance considerations. Mr. Pucillo noted the maximum limitation on a 2-story structure was 25 ft., and a 3-story structure had a limitation of 40 ft., and because they were not an underground basement as it was defined in the Town Code, the building had to be considered as a 3-story structure. Mr. Pucillo observed that when going from a 2-story structure to a 3-story structure, 5% of the lot coverage was lost, going from 30% to 25%--therefore the need for the Variance.

Mr. Pucillo summarized some other technical information regarding his request, stating that the engineering problems with regard to the garage had been worked out.

Mr. Pucillo submitted that he had clearly met the competent substantial evidence test, and that they were essentially replacing old buildings built in the 1920s with a very attractive new structure, consistent with the area, the use in the Town, and in conformance with all building codes and requirements.

Mr. Moore stated that this was the second review of this item, and Mr. Pucillo had pointed out the hardship and variance criteria, and many of these comments had not been seen when the staff had held its meeting regarding this property. Mr. Moore said that the Fire Department commented that fire sprinklers were requested throughout, the Police Department had no comment, ARCOM had commented that the increase in nonconformance did not meet criteria for granting variance, density should be 4 units, and no hardship exists. Mr. Moore read Mr. Bowser's statements: handicapped space did not meet code; turns were still tight, but may be manageable; retention of 1-inch water was required; existing landscaping can remain in the easement; no additional plants or replacement of existing will be permitted. The Building Department had commented that the density variance was a minimum variance; the overall height could be 40 ft. and 28.5 ft. were being requested; hardships must be addressed. Mr. Doney concurred with the comments of the Building Department and ARCOM.

Mr. McDonald asked Mr. Pucillo if it was his testimony that no reasonable use could be made of this property without the variance?

Mr. Pucillo replied that the no reasonable use criteria was criteria that came from the Bernard case. It was his view that a 4-unit building could be constructed, however, a basement could not be constructed under any circumstances, given the height of the building. Other uses could be made of the property, however they would be less desirable than what had been submitted. Mr. Pucillo commented that they were within the permitted use, and had met the standards for the hardship.

Mr. Shaw asked if Mr. Pucillo had pursued the possibility of acquiring additional land?

Mr. Pucillo replied that he had not tried to buy land, as he believed it was owned by the government.

Mr. Moore added that the parking lot being addressed was a part of the Brazilian Court Hotel, which was deficient in parking, so any reduction of that property would not be permitted under Town Ordinance.

Mr. Shaw stated that one of his concerns was the potential of the garage to flood, and that he did not see access to the swimming pools, or service access.

Mr. Pucillo responded that one of the reasons that they had three extra spaces was so that service people could park in the garage and have access through the garage. He added that with respect to the drainage issue, Mr. Messler had looked at the drainage issues and done calculations and could address this.

Mr. Hugo Caccese, architect, addressed the Town Council, showing on the drawings presented where service could be accessed, indicating steps and doorways.

Mrs. Smith asked how trash would be picked up?

Mr. Caccese replied that trash would be carried to the trash pick-up area in the front of the project.

Mr. Wyett noted that five people would be using outside garbage facilities, and inquired as to how maintenance of garbage would be kept in a pleasant manner?

Mr. Pucillo responded that there may be some State regulations with respect to having a supervisory person involved with the proposed density, and it would be their intent to provide that, if necessary.

Mr. Pucillo addressed the hardship of the variance, stating that they had done everything they could to make the project work, and that the whole question of use involved the peculiar piece of property, the peculiar environment, and a peculiar situation.

Mrs. Smith suggested having only 4 units on the property, rather than five, eliminating the need for a variance at all.

Mr. Pucillo replied that the cost per unit would become prohibitive if that was done.

Mrs. Smith asked the approximate size of each of the units?

Mr. Pucillo responded approximately 3600 sq. ft.

Mr. Tim Messler addressed the Town Council regarding the drainage of the property, stating that it is a positive drainage with the garage having a positive flow. The back portion of the garage had a drainage system, draining into a positive system, draining into the storm sewers. Water quality had been met, and Mr. Messler stated that he felt the drainage would conform to all Town requirements.

Mr. Bowser, Town Engineer, addressed the Town Council, stating that he knew of no drainage problems on Brazilian Avenue as there were excellent pumping stations at the Marina for that area of Town.

Mr. Shaw asked Mr. Bowser if he felt the property would remain dry, and that the retention ponds in the front of the property were sufficient?

Mr. Bowser said that the 1-inch water quality requirement for properties to have was a benefit to the Town system, since when it starts raining there is less water going into the drainage system. It is up to the property owner to have a system that will adequately drain their own property into the Town system. There is no restriction put on it, once they have the first inch. Mr. Bowser stated that they had met the general engineering principles, and the property should not have a problem.

Mr. Wyett found that there was a hardship with the location of the property, as it was surrounded by high buildings which discourage residences other than multi-family, and that this was a unique and desirable project, and he made a motion to approve the project. The motion died for lack of a second.

Mr. Shaw made a motion to approve the project on the premise that it would be 4 units instead of 5, which would eliminate the need for variances.

Mr. Randolph stated that this would be a denial for the request for a density variance.

Mr. McDonald seconded the motion for discussion.

Mr. Wyett asked if the need for the variance would be eliminated with the reduction from 5 units to 4 units, and would approval then include the underground garage and 30% coverage?

Mr. Shaw replied it was his intention to reduce everything to size so that variances would not be required.

Mr. Moore stated that Mr. Pucillo would still need a height variance for creating parking under 4 units.

Mr. McDonald withdrew his second and asked Mr. Pucillo whether he would need a variance request for 4 units?

Mr. Pucillo replied that was correct. The property currently could construct 4.96 units under the Town Code without a variance, therefore there would be no density variance required. Mr. Pucillo objected to the change to 4 units, as the project would not work with 4 units. Currently there are 8 units on the property, and that would remain unless the proposed project was approved.

Mr. Shaw's motion died for lack of a second.

Mayor Ilyinsky commented that Brazilian Avenue had built up, and that he could not remember a single major project on Brazilian that had not gone through some controversy. He stated that this project would fit into the block, and was typical for the street. The Mayor said that the project lowered the density, which was something the Town fought for.

Mr. Wyett asked Mr. Pucillo if he considered 4 units uneconomical?

Mr. Pucillo responded affirmatively; that the property had been on the market for 2-1/2 years and that the cost of construction for units such as this make the construction of 4 units prohibitive. If it could not be 5 units, then the project would not be done.

Mr. Wyett made a motion for approval of the project with 5 units. Mr. Shaw seconded the motion.

On roll call the motion carried unanimously.

Mrs. Smith stated that she was making a change in the Agenda to hear Other C, Item 1. Consideration for a Request of a one-time time extension by Dr. and Mrs. William Kaye, 302 Eden Road, Variance #19-94, to allow construction of a 2-story garage addition that encroaches on the west 15-foot minimum side yard setback by 4.93, RB District. The reason for this change was that Mrs. Kaye may be in labor, and this Town Council did not want to be responsible for any delays.

Mr. Shaw made a motion to approve the variance. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

4. Consideration of Request to Modify the language in the Town's standard Kitchen Agreement. Variance No. 15-95 with Special Exception - Oleda Casscells, 756 North Lake Way. -

Mr. Ron Kolins, speaking for the applicant, addressed the Town Council, stating that he was not requesting that the standard kitchen agreement be modified across the board, but only for this particular case. He added that Mrs. Casscells had a Special Exception approved several months ago, allowing her to put a kitchen in an accessory building behind the main house on her property. One of the requirements had been that she enter into a kitchen agreement, with the purpose of the agreement to provide that the building would not be used as a separate and independent residence for anyone, but would remain as an accessory structure. Mr. Kolins stated that they had agreed to enter into a kitchen agreement, however, the standard kitchen agreement provided some provisions which merited modification in this case. Mr. Kolins added that both Town Attorney Randolph and Mr. Moore of the Building and Zoning Department had reviewed the modifications and had indicated no problem.

Mr. Randolph stated that he had reviewed the modifications suggested by Mr. Kolins and felt that they were reasonable and presented no problem.

Mr. Moore stated that he had reviewed the modifications suggested by Mr. Kolins and found no problem, however, it was a departure from agreements that had been executed by residents of the Town for many years.

Mr. McDonald stated that he could not support the request of Mrs. Casscells for several reasons: first, he did not feel that the Town Council should amend contracts in this form--it should be done at a Committee level. He had not seen Mr. Randolph's letter indicating that he had reviewed this. Secondly, he did not feel that one contract should be changed, unless all were changed.

Mr. Kolins discussed the proposed changes in the agreement. He stated that when the Special Exception had been approved, it had been made clear that the Dr. and Mrs. Casscells needed a professional person to spend time there to assist Dr. Casscells, who is physically infirm. He added that one of the proposed amendments to the standard agreement was that the word "employee" had been added, whereas the standard agreement had referred to use only by the owner's family and his bona fide guests. Secondly, Mr. Kolins addressed the requirement that the accessory building not be rented in the standard agreement, noting that he proposed inserting the language "independently rented," to make it clear that the building could not be rented out separate from the primary residence, but that the property in its totality could be rented out. Thirdly, Mr. Kolins proposed changing the requirement that a contract/purchaser must come before the Town Council in order to get permission to continue the Special Exception use. He stated that it would be a burden to selling the property, and he recommended striking that provision, and adding language which said "that the agreement shall be recorded, and shall be binding upon subsequent owners," eliminating the need to come before the Town Council for a hearing. Mr. Kolins stated that he had made several other changes concerning the right of the Town to enter the premises and remove the kitchen facilities, if it was determined that the agreement had been violated. He noted that there were no provisions in the agreement for notice, for hearing, and the opportunity for the owner to remove the kitchen in a reasonable amount of time if there was a violation. He had inserted language that included reasonable time and reasonable notice. Mr. Kolins asserted that the changes were consistent with the spirit of the intentions of the Town.

Mr. Kolins continued that there was nothing to prohibit the Town Council from approving or changing an agreement of this kind as it related to a particular individual. He stated that if it was felt that the changes were positive, then he proposed changing the standard agreement for all future people, and that there was nothing to preclude making these changes now.

Mr. Wyett stated that the standard agreement covered every need that Mrs. Casscells had, and he suggested Mr. Kolins submit his proposed changes to be incorporated into the agreement to the Town Council or Zoning Commission.

Mr. Kolins stated that he was following the procedures of the Town in submitting his proposal before the Council. He advised that he was withdrawing his application in order to reconsider his approach.

Mrs. Smith stated that it had been her understanding that Mr. Moore and Mr. Randolph had not had any problems with his application, and she believed there had been a certain amount of confusion in this regard.

Mr. Moore stated that he had discussed with Mr. Kolins that he had not felt that staff had the administrative ability to make the changes requested.

Mr. Kolins stated that he would submit a revised document containing the word "employee" to Mr. Randolph and Mr. Moore, which was the kind of a change that they could approve administratively. Mr. Kolins noted that the other changes could be dealt with on a more global scale at another time.

5. Variance No. 18-95 - Arturo Burigatto, 261 Seminole Avenue; to allow construction of a single family dwelling on a lot 50' wide in lieu of 75' required. R-C District (Deferred from May 9, 1995 meeting) - Letter dated May 19, 1995, from Mr. Francis X.J. Lynch requesting Withdrawal - This item was withdrawn from the Agenda.

New Business

6.a. Variance No. 24-95 - Barbara Harmon, 91 Middle Road; to allow creation of a nonconformity by establishing a cul-de-sac at the south end of Middle Road providing a new front yard setback of 21.9' for existing garage, in lieu of 35' required. R-A District -

Mr. Paul Prosperi, representing the applicant, stated that the reason for requesting the variance was that the distance between the existing garage and the end of the T cul-de-sac was currently 21.9 ft., requiring a variance of 8.1 ft. to meet the 30 ft. setback requirement.

Mr. Moore of the Building and Zoning Department, responded with staff comments: Police Department - no comment. Fire Department - no comment regarding setback; comments about cul-de-sacs had been given earlier in the meeting. ARCOM & Landmarks - a more conforming condition would prevail if a circular cul-de-sac 50 ft. radius were used. Building Department - no objection to existing building setback, because it is an existing building, and variance issues should be further addressed as the Town Manager comments.

Mr. Shaw made a motion to approve the variance because of the hardship of the existing landmarked building (the Hanley property). Seconded by Mrs. Smith, who passed the gavel.

On roll call the motion carried unanimously.

b. Special Exception No. 13-95 with Variance - 88 Middle Road 1994 Land Trust, 88 & 86 Middle Road and 121 El Bravo Way; to allow creation of a nonconformity, if a circular cul-de-sac is established at the south end of Middle Road, providing a new front yard setback of 17.4' for an existing accessory building; said accessory building is located in the R-B Zoning District requiring a 30' front yard setback. Also, to allow a kitchen in an accessory building pursuant to Sec. 5.51(b)(5) of the Town Zoning Code. R-B & R-A Districts -

Mr. Prosperi withdrew the variance request, as their was no circular cul-de-sac, and therefore no need.

Mr. Prosperi addressed the Special Exception to allow a second kitchen, which currently existed in one building, which was being demolished and relocated in another building.

Mr. Moore stated that as long as the land owner was willing to execute the Standard Kitchen Agreement there would be no problem.

Mr. Jim Brindell, on behalf of Spencer Partridge, the resident of 22 Middle Road, addressed the Town Council, asking that the comments made by him on the abandonment discussed earlier, as well as the two photographs submitted on behalf of Mr. Partridge be made part of the record. Mr. Brindell noted that a comment had been made earlier that the Special Exception was the appropriate place to address the site plan and the issue of parking. Mr. Brindell also noted that Mr. Prosperi had indicated that the problem that he had with the condition was that it referenced overnight guests.

Mr. Prosperi stated that he would have to read and study the condition and then discuss it with his client.

Mr. Brindell stated that representations had been made about the site plan regarding parking facilities. Mr. Brindell stated that he had suggested language which would say that all house and ground staff, service providers, and overnight guests shall park on the private property grounds; other guests shall park on the private property grounds to the maximum extent reasonably practicable; any future modifications to the site plan shall not reduce the amount of onsite parking which could be accommodated in the parking areas shown in the site plan for 84, 91 and 88 Middle Road and 121 El Bravo. Mr. Brindell now proposed to simply delete the reference to overnight guests, as he found it difficult to believe that the owner of the property would not park his overnight guests on his property.

Mrs. Smith asked Mr. Brindell why he had not withdrawn the overnight guest phrase this morning?

Mr. Brindell replied because he had thought about the issue, and come to the conclusion that language would work, and he was attempting to find a way to resolve the issue happily for everyone.

Mrs. Smith clarified that overnight guests was now withdrawn.

Mr. Prosperi asked Mr. Randolph if it was his opinion that the conditions of the abandonment were changed?

Mr. Randolph replied that the Town Council would have to so amend the condition made at the public hearing earlier.

Mrs. Smith asked Mr. Randolph if it would be appropriate for a motion to be made to reconsider the abandonment, which had been the first thing on the Agenda this morning?

Mr. Randolph stated that the problem was that it had been a public hearing earlier, and people were in attendance who had relied upon what had occurred at that time, and who may no longer be present to address the issue.

Mr. Prosperi stated that he would like to go ahead with the condition as it was, and he could communicate Mr. Kluge's decision at a later date, as he believed that what was done at a public hearing could not be changed.

Mr. Brindell responded that would work fine.

Mrs. Smith stated that was why she had mentioned that if Mr. Brindell had withdrawn the language in the morning during the public hearing it would have been smoother.

Mr. Shaw made a motion to approve Special Exception 13-95, for the Standard Kitchen Agreement. Seconded by Mr. McDonald.

Mr. Randolph clarified that the motion to approve the Special Exception approved the kitchen with a Standard Kitchen Agreement, and did not incorporate language from earlier in the meeting. However, Mr. Randolph added, the abandonment, if it took place, would incorporate that language.

Mr. Prosperi pointed out that second kitchens should not be conditioned upon parking considerations and site plan reviews. Speaking on behalf of Mr. Kluge, he stated that there had been a lot of talk of treating people equally, and from his own experience of practicing law in the Town of Palm Beach since 1976, parking requirements had never been associated with the Standard Kitchen Agreement, regardless of property size. Mr. Prosperi asserted that an assumption was being made that someone with a large garden would have larger parties than someone with a small garden, and a standard was being put upon Mr. Kluge which did not exist on any other property owner in the Town.

Mr. Shaw re-stated that the Special Exception was to allow the second kitchen, and that was what his motion had been made to approve, and that was the end of the motion.

On roll call the motion carried unanimously.

c. Request for Waiver to Section 12-51 of Town Code (Hours of Work) to allow construction operations from 7:00 A.M. to 7:00 P.M., Monday through Friday, from June 1 to December 1, 1995, by Barbara Harmon and Stuart Subotnick, 86, 88, and 90 Middle Road and 121 El Bravo Way. R-A and R-B Districts -

Mr. Prosperi addressed the Town Council, stating that his clients would like to extend the working hours in order to take advantage of daylight, with the intention that the project could be substantially completed by the beginning of the season, by December 1st. Mr. Prosperi added that his client would like to have the house completed so that it could be occupied by December 1st, which would also eliminate the nuisance of construction noise for neighbors. Mr. Prosperi noted that Mrs. Ford, of El Bravo Way, had objected to the extended work hours, and they would agree that the work on 121 El Bravo Way would not go into overtime, however, they would like the ability to work on 86 and 91 Middle Road. Mr. Prosperi stated that representation had been made to all neighbors that if a request to stop work after hours at any time was made, it would be done immediately.

Mr. Moore stated that if Saturday work was done, it would be permitted from 8:00 A.M. - 6:00 P.M., however, they were asking for Monday - Friday, from 7:00 A.M. - 7:00 P.M. The usual allowed hours for construction were from 8:00 A.M. - 6:00 P.M., Monday - Friday.

Mrs. Smith said that starting at 7:00 A.M. may cause a problem for some residents, and the question of the Thanksgiving Holiday was not addressed.

Mr. Prosperi replied that work would not be done on the Thanksgiving Holiday.

Mrs. Smith asked if work would be done on the Friday after Thanksgiving?

Mr. Prosperi replied that he thought they could stipulate that.

Mrs. Jeanne Ford, 4 El Bravo, addressed the Town Council, stating that she thought the request was unreasonable, as the Town already allowed an extra 1-1/2 hrs. to work, and stopping at 7:00 P.M. was not acceptable.

Mrs. Smith noted that correspondence received from neighbors supported the project, but all complained about the extension of construction hours.

Mrs. Ford added that people do not go away for 6 months anymore, and the so called summer hours of work last for 6 months, and it was very noisy with the large machinery being used on this large project.

Mr. Moore clarified that normal construction hours were from 8:00 A.M. to 6:00 P.M., and from December 1 through April 30 the hours were cut back.

Mr. Wyett pointed out that Mr. Kluge would be able to operate six days a week instead of five days a week, if no change was made at all, and asked Mrs. Ford if 8:00 A.M. - 6:00 P. M. six days a week was preferable?

Mrs. Ford replied that most of her company visited in the summer.

Mr. Prosperi withdrew, on behalf of the applicant, the request as it related to 88 Middle Road, proceeding with only 91 Middle Road, which was interior work.

Mrs. Smith clarified that regular hours would pertain to 88 Middle Road, with the 7:00 A.M. - 7:00 P.M. hours pertaining only to the property on 91 Middle Road.

Mr. Wyett made a motion to approve the hours of 8:00 A.M. - 7:00 P.M., Monday - Friday. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

7. Variance No. 25-95 - Frederick J. Keitel III and Diane de La Begassiere Keitel, 1494 North Lake Way; to allow construction of residence on a lot 100' wide in lieu of 125' required. R-A District. - Letter dated June 2, 1995, from Mr. Dean Vegosen requesting Deferral to July meeting - THIS ITEM WAS DEFERRED TO THE JULY 11, 1995, TOWN COUNCIL MEETING.

8. Variance No. 26-95 - John and Judy Grubman, 1102 North Ocean Blvd.; to allow construction of an addition to a nonconforming cabana (Sec. 8.21), and to allow addition to exceed the 10' maximum building length permitted; the proposed east side addition would lengthen the building to 17.8'. In addition, a variance is requested to allow the construction of a brick and wood fence 42" in height, in lieu of the 30" maximum allowed in the open vista by Section 5.47(a)(1) of the Town Zoning Code. Beach Area District -

Mr. Peter Broberg addressed the Town Council, representing the applicants, stating that the application asked for approval to an addition of 87 sq. ft. to an existing beach house. He stated that the existing beach house was non-conforming and was also landmarked, and the addition was to be built on the east side of the existing beach house, 10 ft. wide by 8.7 ft. deep. He presented pictures showing the condition of the property. Mr. Broberg continued that the present code in the area required 100 ft. frontage of lot to have a beach house with 20 ft. frontage and 10 ft. depth, and that the present beach house was 13 ft. wide and 9 ft. deep, so the additional square footage would be under code allowances. As literally interpreted, Mr. Broberg asserted that the ordinance would deny the petitioner the right to have a beach house that could be used in conjunction with their home. Mr. Broberg added that this was a diminimous variance request, in that the code allowed a maximum of 20 ft. wide, and the total proposed square footage was less than allowed by the code. In addition, Mr. Broberg maintained that the property met all requirements of the code regarding obscured vistas to the ocean.

Mrs. Smith asked if the wooden fence was part of the property being discussed?

Mr. Broberg pointed out the fence belonging to his client on the schematic he had presented, adding that he also had pictures that showed the property and beach area.

Mr. Broberg explained that part of the application was for replacement of the white picket fence with a fence matching the style of the adjacent property.

Mr. Broberg stated that the granting of these variances would not allow any special privileges for the applicants, as they would be within the meaning of the Town Code.

Mrs. Smith asked if the plans had gone to the Landmark Commission?

Mr. Moore replied negatively, and that the legal description of the property indicated it was landmarked when the Grubman house was landmarked, however, the map did not show it. He added that the expansion plans would be required to go to the Landmark Commission.

Mr. Broberg stated that he had polled the neighbors in the area and there had been no objections.

Mr. Moore relayed the staff comments: ARCOM and Landmarks - should be brought up to conformance with the Code, should not exceed 200 sq. ft. maximum; Town Engineer - no comment; Fire

Department - no comment; Police Department - no comment; Building Department - 200 ft. maximum configuration, and on the open vista area there was no hardship. The Town Manager commented that variances should be further addressed. Mr. Moore said that as long as the 200 ft. maximum was not violated, the variance should be considered. He noted that the open vista requirement would have to be addressed by Mr. Broberg.

Mr. Shaw made a motion to approve the variance on the landmarked beach house as it would be a hardship to build on the side under the requirements and as it fell under the size requirements of 200 ft. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

Mrs. Smith stated that the next portion of the request concerned the variance to replace the existing 42" wooden fence with a brick and wooden picket fence of the same height, which would exceed the 30" height restriction for the vista area as described in Section 5.47(a)(1) of the Zoning Code.

Mr. Wyett suggested that the piers be eliminated, with the picket fence itself being maintained, because he saw no hardship in granting a variance.

Mr. McDonald agreed with Mr. Wyett.

Mr. Shaw asked Mr. Broberg if his client would agree to lower the fence to 30"?

Mr. Broberg said that he did not think that would be a problem, and that the fence could be brought down to 30".

Mr. Shaw then made a motion that the variance be accepted, with the modification to the height of the spindles so as not to exceed 30". Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

9. Special Exception No. 10-95 - Stephan A. Yeckes, 100 Emerald Beach Way; to allow a conversion of a residence use to a cabana use, in conjunction with construction of a primary residence, thereby permitting a kitchen in an accessory building pursuant to Section 5.51(b)(5) of the Town Zoning Code. R-AA District -

Mr. Stephen Yeckes, agent for the applicant, addressed the Town Council, stating that this item should have accompanied the variance requested at the last meeting and had been left off; it was merely a Special Exception request for an additional structure to be built on the property in addition to the existing structure, which was designed as a cabana. Mr. Yeckes agreed to sign the Standard Kitchen Agreement, and requested approval of the Special Exception.

Mr. Moore agreed that this had been left off of the variance application of last month, and as long as the Standard Kitchen Agreement was signed, the staff recommended approval.

Mr. Wyett made a motion to approve the Special Exception. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

10. Special Exception No. 11-95 - Palm Beach Orthodox Synagogue, Unit C-22, the Roof Garden Ballroom of the Palm Beach Hotel, 235 Sunrise Avenue; to allow a house of worship in a C-TS Zoning District -

Mr. Moore stated that the Zoning Districts in the Town required houses of worship to go through the Special Exception process, and the Synagogue had addressed all requirements needed, except the Town serving issue, which would be addressed.

Dav Mizrachi, President of the Palm Beach Orthodox Synagogue, addressed the Town Council, stating that the Synagogue had been founded about a year ago by a small group of Palm Beach residents, whose needs for a traditional orthodox house of worship were not being met. Mr. Mizrachi maintained that they had enjoyed the goodwill and support of Rabbi Feldman and all members of Temple Emanu-El, and that the congregation had now grown to 71 members, a majority of whom were residents of Palm Beach. He would furnish a membership list upon request. Services were currently conducted in the Roof Garden Ballroom in the Palm Beach Hotel.

Mr. Moore stated that the application was in order for consideration of the Town Council.

Mr. Wyett made a motion to approve Special Exception 11-95. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

11. Special Exception No. 12-95 - Palm Beach Caffe, Inc., the Paramount, 139 North County Road; to allow 52 outdoor restaurant seats pursuant to Sec. 6.61 of the Town Zoning Code, and to grant a parking variance of 29 spaces required for this proposed 108 seat restaurant. C-TS District. - Letter dated June 2, 1995, from Mr. Garrison duPont. Lickle, requesting Deferral to July meeting - THIS ITEM WAS DEFERRED TO THE JULY 11, 1995, TOWN COUNCIL MEETING.

C. Other

1. Consideration of Request for One-Year Time Extension by Dr. & Mrs. William Kaye, 302 Eden Road - Variance No. 19-94; to allow construction of a two-story garage addition that encroaches the west 15' minimum side yard setback by 4.93'. R-B District - (THIS ITEM WAS HEARD EARLIER IN THE MEETING).

2. Consideration of Request for Six-Month Time by E.R. Bradley's Saloon, 111 Bradley Place - Variance No. 17-94; to allow enclosure of awning covered patio area; said glass enclosure constitutes an expansion of a nonconforming structure, prohibited by Section 8.20 of the Town Zoning Ordinance. C-TS District -

Mr. Brooks Ricca, attorney for the applicant, addressed the Town Council, stating that a six month extension on Variance 17-94 was being requested. Mr. Ricca explained that after the Variance had been granted, construction was begun, however problems had evolved within the partnership. He submitted that whatever could be done to be a good neighbor was desired, and a six month extension was needed in order to resolve the partnership issue and move forward.

Mr. Moore stated that there had been correspondence with Mr. Coniglio attempting to move forward with the variance, and staff was satisfied that an effort was being made. Mr. Moore pointed out that usually a certain length of time was requested.

Mr. Ricca indicated to the Council that he was confident if a six month extension could be granted they would be able to move forward.

Mr. Wyett asked Mr. Moore if there was anything the Council could to do to improve the situation between the landlord and the tenants?

Mr. Moore replied that he knew of nothing that the Council could do with respect to the landlord/tenant relationship.

Ms. Mimi McAndrews, attorney, addressed the Town Council, representing Royal Poinciana South Apartments, stating that they did not oppose the requested variance, but there were some concerns that needed to be addressed. She suggested that some conditions should be put on the six-month extension, as the residents in Royal Poinciana, as well as the residents in the Biltmore had no desire to put Bradley's out of business, but would like some peace and quiet at a reasonable hour of the night. She maintained that the perception by the residents was that nothing had been done over the past year, and residents were concerned. She suggested conditions such as asking Bradley's to close the flaps and not have outside service after 10-11:00 P.M.

Mr. Moore stated that the application for variance had been made by the Coniglios of E.R. Bradleys, and documented efforts had been made by the Coniglios. He noted that the Town Council had never turned down an extension request the first time it was requested, and there was representation that plans were to move forward.

Mayor Ilyinsky asked what would happen if they were unable to move forward because of the reluctance of the landlord?

Mr. Ricca stated that he believed the problem would be solved with changes in management of the property, but that if his clients were unable to solve the problem, the variance would lapse. Mr. Ricca maintained that if the owners were told they would be better off working with E.R. Bradleys, rather than another entity coming in, perhaps things would work out.

As part of the history associated with E.R. Bradleys, Mr. Moore stated that the patio had been an opened patio, and in the early 1980s permission to put a canvas cover over it was granted by the Town Council. Additionally, Mr. Moore said that a request was made for drop curtains, which the Town Council also granted. Mr. Moore added that when the Coniglios took over the property they thought that windows could be put in on a permanant basis and began the installation of the windows, only to remove them by order of the Town Building Department.

Ms. McAndrews commented on the report of Chief Terlizzese with complaints, and noted that her clients were asking for some sign from the Town Council that there would be no further delay in relieving the noise. She added that was why the suggestion had been made to lower the flaps.

Mr. Ricca commented that the police reports would indicate that 50% of the complaints were anonymous, with 80% coming from the Royal Poinciana South Apartments, all coming from only a few people. He suggested the use of common sense in evaluating the noise issue.

Police Chief Terlizzese addressed the Town Council, stating that every night when the police get noise complaints they go by and the manager lowers the flaps down, turns down the volume on the music, and the complaints go away. He added that the police officers that work in the area recommended the building be enclosed somehow. He stated that he believed that rolling down the flaps at a certain time, and including the double doors at the entrance would probably solve 90% of the noise problems.

Mrs. Smith noted that the Police report also mentioned that the major police activity in the area took place between 12:00-3:00 A.M., and she asked Chief Terlizzese if that was when the majority of the complaints came into the Police Station?

Chief Terlizzese responded that would be about 51%.

Mr. Wyett suggested that a reduction in the volume of music be accepted, that the flaps be dropped at a certain hour, and the noise occurring late at night outside the front door be policed. He explained that the reasoning behind these suggestions was to eliminate the majority of complaints, thus improving the landlord/tenant relationship, thus eliminating the need for a six-month extension.

Mr. Ricca submitted that they were before the Town Council to ask for an extension, and that they had to do something before the season began.

Mrs. Smith pointed out that the extension would take them through Christmas vacation, which was historically a very noisy time.

Mr. Ricca maintained that since that was one of the two most profitable weeks that his client had during the entire year, the project would undoubtedly be finished before Christmas.

Mr. Moore pointed out that by agreement with the Town, the roll down flaps were only for inclement weather, but that since the noise problems had begun there had been no enforcement of the agreement.

Mr. Wyett made a motion to allow the flaps to come down after 10:00 P.M. during the extension period, which would be until December 11, 1995.

Town Attorney Randolph clarified that the only thing holding the applicants back were the restrictions imposed by the landlord.

Mrs. Smith pointed out that a year ago the stipulation had been made that one way to solve the problem was to enclose the patio, and at that time it had been discussed that the enclosure had been turned down, however, the Council then believed that the noise problem would be solved by enclosing the terrace. She said that it was forcibly suggested that the applicant, E.R. Bradleys, come in and request a variance at the June, 1994 Town Council Meeting. Mrs. Coniglio had come to the meeting, applying for the suggested variance. That variance had then been granted.

Mr. Ricca stated that he did not have the authority to agree to close the flaps at 10:00 P.M., but that he would recommend it to his clients.

Mr. Wyett repeated his motion that the variance extension be approved, expiring December 11, 1995, with the operators of E.R. Bradley's lowering the flaps, and the music level, at 11:00 P.M. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

3. Consideration of Request for One-year Time Extension by Claude Mimum, 1144 North Ocean Blvd. - Special Exception No. 17-94 with Variance; to allow construction of a deck with umbrella covered tables and chairs. A variance from the 100' wide lot requirements requested. Beach Area District. -

Mr. Claude Minum addressed the Town Council asking for an extension of the time extension on Special Exception 17-94, with variance, as a State permit was also required.

Mr. Moore stated that Mr. Minum had been ready for a building permit and found out that the State permit was required, and staff recommended approval.

Mr. Shaw made a motion to approve a one-year time extension to Special Exception 17-94. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

XVI. ANY OTHER MATTERS - There were none.

XVII. ADJOURNMENT - The meeting was adjourned at 8:45 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn