MINUTES OF TOWN COUNCIL MEETING
HELD ON JUNE 11, 1996

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order by President Smith. On roll call, the following Elected Officials were in attendance: Mayor Ilyinsky; President Smith; President Pro-Tem McDonald; Councilmen Shaw, McLendon, and Wyett. Also in attendance were: Town Manager Robert Doney, Town Attorney John Randolph, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Fire Chief Vincent Elmore, Police Chief Joseph Terlizzese, Director of Public Works Al Dusey, Town Engineer James Bowser, Director of Building & Zoning Robert Moore, Planning/Project Coordinator Timothy Frank, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt.

I. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Dr. Cromie from Royal Poinciana Chapel. President Smith led the Pledge of Allegiance.

II. PRESENTATIONS

A. Recognition of Anne Sory Keresey, Landmarks Preservation Commission - Alternate Member From 1994 - 1996

Mayor Ilyinsky thanked Mrs. Keresey and presented a plaque in recognition of her service on the Landmarks Preservation Commission.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky noted that the Hurricane Season had begun. The Mayor urged residents to plan ahead, spread the information to prepare, and call the Town Staff for a copy of the Town's 1996 Public Storm Preparedness Plan.

The Mayor stated that the construction season was here, and asked that residents bear with the disruption while the public infrastructure was maintained and enhanced.

Mayor Ilyinsky reminded everyone of Flag Day, June 14, and suggested that everyone should fly a flag.

The Mayor advised that Russ Bitzer should be contacted for information regarding the Town July 4th Celebration.

President Smith stated that the July 4th would start at 6:30 P.M., and that she looked forward to seeing everyone there.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

Move item XII.C.1., Consideration of Request by BellSouth Telecommunications, Inc. To install cables, overhead on the existing pole line to complete the connection between Wells Road and the new Phipps Estate Subdivision, to be heard after item XI.C.1.

Mr. Shaw made a motion to approve moving Item XII.C.1 to be heard after item XI.C.1. The motion was seconded by Mr. McLendon, and on roll call was approved unanimously.

Item XV.D.3. , Consideration of Request by Mr. Robert E. Deziel for a Waiver to Zoning in Progress to permit AT&T Wireless Services to install a wireless communications panel at First National Bank Building, N.E. Corner of Royal Palm Way and South County Road, was withdrawn.

Mr. Deziel stated that he was withdrawing the request for the Waiver to Zoning in Progress.
as this information would be included under Item XI.C.3. (Which was moved to be heard immediately after lunch).

Item XI.C.3., Consideration of Personal Communications Services (PCS) Wireless Technology - Request for Towers Siting and Related Issues, was moved to a "time certain", immediately following the lunch break.

Mr. McLendon made a motion to approve the withdrawal of XV.D.3, as well as hearing Item XI.C.3 immediately after the lunch break; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Add item XI.C.6., Consideration of Department Management Qualifications as Part of an Annual Review Process.

Mr. Shaw made a motion to consider Item XI.C.6 for discussion at the July Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Add item XI.C.7., Consideration of Traffic Flow and Passenger Unloading in Commercial Locations.

Mr. Shaw made a motion to add, under Item XI.C.7, consideration of traffic flow and passenger unloading in commercial locations; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Paul Rampell, attorney representing the Mar-a-Lago Club stated he was prepared to make a presentation at this meeting for Special Exception Number 18-96.

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

APPROVED AGENDA (ITEM VI - VII):

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

VI. APPROVAL OF MINUTES OF APRIL 9 AND 23, 1996, AND MAY 14, 1996

Mrs. Smith requested the April 9 minutes, page 21, paragraph 6, be amended to recognize the Citizens Association South of Sloans Curve in addition to the Civic Association.

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Boys and Girls Clubs of Palm Beach County, Inc.; No. 104-97
2. Hospice Guild of Palm Beach; No. 205-97
3. The International Society of Palm Beach; No. 232-97

REGULAR AGENDA: APPROVED.

VIII. LICENSES AND PERMITS - NONE

IX. PUBLIC HEARINGS

A. Landmark Designation of 153 Clarke Avenue - Consideration of Resolution No.29-96

Mrs. Pollitt confirmed Proof of Publication, and swore in all witnesses at this time.

Mr. Frank explained that there had been a request to defer this item until the November meeting. Mr. McDonald made a motion to defer Resolution 29-96 until the November meeting; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

B. Landmark Designation of 255 Clarke Avenue - Consideration of Resolution No.30-96

Mr. Frank stated that the Landmarks Preservation Commission had found that the subject property, 255 Clarke Avenue, had met the following criteria for designation: Criterion C - that it embodied distinguishing characteristics of an architectural type or as a specimen inherently valuable for the study of a period, style, method or construction or use of indigenous materials or craftsmanship. Criterion D - representative of the notable work of a master builder, designer, or architect whose individual ability had been recognized, or who influenced his age. Mr. Frank announced that Mrs. Jane Day would continue with the presentation.

Mrs. Day stated that the building permit for the property had been signed by John Volk himself, on March 30, 1927. This was one of the very early works in his career. The house had been designed for Alfred Feltman, while Mr. Volk was working for the firm of Craig, Stevens, & Volk. The house was a good example of a Mediterranean Revival style. Although there had been many alterations to the building since it was built in 1927, many of those had been done by Volk himself, in partnership with Gustav Maas, and later by Belford Shoumate, another well known architect. The front facade of the house, however, retained its character from 1927, with the most important feature being the Plateresque design over the front entranceway, which was classical Spanish applied ornamentation, and not as prevalent in the Mediterranean Revival style houses that had been designated. The house was a good example of the style of John Volk.

Mr. Shaw made a motion to accept the Designation Report; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve Resolution 30-96; seconded by Mr. McLendon.

Mr. Randolph read Resolution 30-96:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER XVI, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER XVI, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried unanimously.

C. Landmark Designation of 640 South Ocean Boulevard - Consideration of Resolution No.31-96

Mr. Frank stated that the subject property, 640 South Ocean Blvd., had been found by the Landmark Preservation Commission to meet the following criteria: Criterion A - it exemplified or reflected the broad cultural, political, economic or social history of the nation, state, county or town. Criterion D - that it embodied distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship. The Landmark Commission had also found that it was representative of the notable work of a master builder, designer, or architect whose individual ability had been recognized, or who influenced his age. In this case, the architects were Addison Misner, and Marion Syms Wyeth. Mr. Frank noted that the owner was a willing participant in the program.

Mrs. Day stated that 1923 was an important boom year in the development of the Town of Palm Beach. Addison Misner had 17 major projects going in 1923, including the subject property. There had been some changes to the house over time--the front entranceway was redone by Misner himself, and later he had added 5 rooms and a garage to the west side of the property. In 1947, the house was further altered by Marion Syms Wyeth. It had been re-roofed in the past year, and the present owners were willing participants in the program.

Mr. Shaw made a motion to accept the Designation Report; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve Resolution 31-96; seconded by Mr. McLendon.

Mr. Randolph read Resolution 31-96:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER XVI, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER XVI, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call, the motion carried unanimously.

D. Landmark Designation of 309 Hibiscus Avenue - Consideration of Resolution No.32-96

Mr. Frank stated that the property had been reviewed by the Landmarks Preservation Commission and met the following criteria for designation: Criterion A - exemplified or reflected the broad cultural, political, economic, or social history of the nation, state, county or town. Criterion C - embodied distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship.

Mrs. Day stated that the house had been built by John C. Gallagher, who had built three houses on the corner of Hibiscus and Brazilian Avenue in 1923. The house was another variety of the Spanish style architecture--the mission style, that came to Palm Beach through a design in California. The architect was unknown. This was an important property because the owner had come forward and asked for designation on the basis of her neighbor being designated earlier this year.

Mr. Shaw made a motion to accept the Designation Report; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve Resolution 32-96; seconded by Mr. Wyett.

Mr. Randolph read Resolution 32-96:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER XVI, ARTICLE III, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER XVI, ARTICLE III, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Moore reminded everyone that the annual Preservation Celebration would be held on Tuesday, June 18, 1996 at the Breakers Hotel. In the fall, there would be a joint workshop sponsored by the Preservation Foundation, to include Landmarks Commissioners, and Town Council in order to discuss the tax issue, landmarking in general, and perhaps districts.

On roll call, the motion carried unanimously.

X. COMMITTEE REPORTS

A. Report of the Water Committee Meeting of May 21, 1996

REPORT OF THE WATER COMMITTEE MEETING HELD ON MAY 21, 1996

I. CALL TO ORDER AND ROLL CALL: A meeting of the Water Committee was called to order by Chairman Samuel McLendon at 10:30 a.m. on May 21, 1996, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Allen Wyett were found to be in attendance. Other Elected Officials attending for all or part of the meeting were Mayor Paul Ilyinsky, President Lesly Smith, and Councilman Leslie Shaw. Members of the Town Staff attending the meeting were: Town Manager Robert Doney, Town Attorney John Randolph, Assistant Town Manager Peter Elwell, Director of Public Works Al Dusey, Town Engineer Jim Bowser, and Acting Town Clerk Jackie Reedy.

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

III. CONSIDERATION OF PROPOSED WATER FRANCHISE AGREEMENT WITH THE CITY OF WEST PALM BEACH AND RELATED ISSUES: Mr. McLendon reported that the last, returned franchise agreement with West Palm Beach was unanimously rejected, and the specific franchise agreement was temporarily put aside.

IV. CONSIDERATION OF STATUS OF ALTERNATE WATER SOURCES:

A. TREATED CANAL WATER FOR IRRIGATION: Mr. McLendon said the application for the treated canal water has been submitted to the South Florida Water Management District for half of the estimated cost of the Aquifer Storage and Recovery research study. If the canal water alternative does not become a reality, Mr. McLendon said the ASR study would include valuable knowledge for the future. The application for the consumptive use permit for the canal, without restrictions, is in the preparation process.

Mr. Bowser indicated the application may be completed by May 24th.

B. TREATED RE-USE WATER FOR IRRIGATION: Mr. McLendon said the re-use water is owned by the Town and does not require any permitting, except for the way it is used. Mr. McLendon reported the Staff prepared a liberal cost estimate, based on a source of 10 million gallons per day of which the Town owns approximately 5 million gallons, and that estimate was approximately $47 million. The estimate was not practical from a competitive point of view.

Mr. McLendon said preliminary numbers, based on usage of 5 million gallons with some ASR input, indicated this is a more practical approach.

Mr. McLendon noted that the Everglades Club has its irrigation replacement source in operation, and the Palm Beach Country Club is almost ready to initiate a similar system. The Breakers has one operational segment of horizontal wells at number

11 fairway that was completed a year ago. This segment has been successfully tested, although the system has not been used since, based on available information. Mr. McLendon said the amount of gallons required for irrigation needs to be determined before the Town would have an operational dual system.

C. PRELIMINARY CONCLUSIONS ON SHALLOW AQUIFER STORAGE AND RECOVERY (ASR):

Mr. McLendon said, as stated previously, the application for half the amount required for the cost of the research and study has been submitted.

Mr. McLendon referred to the Montgomery Report on Aquifer Storage and Recovery and said he understood the report called for using off peak, bulk water from the City of West Palm Beach and storing the water in aquifer storage to supply the needs. Mr. McLendon said he could find no justification or support for the $0.50/1,000 gallons purchase price, and the report was not pertinent.

(The following two items were heard after item VII. and included in item VI.)

V. CONSIDERATION OF LEGISLATIVE ACTION, INCLUDING LOBBYIST TO AMEND STATUTE:

(See discussion under item VI.)

VI. CONSIDERATION OF LEGAL ACTION ON EXISTING STATUTE APPLICATION:

Mr. McLendon said he had received Mr. Randolph's Memorandum of Law. Mr. McLendon stated he had some reservations regarding the success of legal action. Mr. McLendon noted that Mr. Randolph was authorized by the Town Council to be prepared to file the suit. Mr. McLendon asked Mr. Randolph to provide an update regarding the potential success of a suit and the potential costs.

Mr. Randolph replied that his memorandum expressed his opinions, and those have not changed. Mr. Randolph stated filing such a suit would have a good chance of success. Language exists within the statute which indicates the intent and purpose of the surcharge statute was to allow a municipality to charge the surcharge in unincorporated limits surrounding the municipality but not to charge it to other municipalities which were adjacent to it. Mr. Randolph said existing arguments on the other side, in writing, have been made by the attorney for the City of West Palm Beach. Mr. Randolph stated it is a policy matter of the Town Council deciding if it would proceed with a law suit, based on those two different opinions. Mr. Randolph said he would hesitate to state a percentage for success of the law suit.

Mr. McLendon asked Mr. Randolph if a contingency suit could be considered where the Town would pay Mr. Randolph's fees if the suit were successful and would pay nothing if the suit were not successful?

Mr. Randolph replied he did not think that approach would be appropriate since he works for the Town on an hourly basis. Mr. Randolph said he was not sure, if the Town prevailed with the law suit, if the Town would retrieve a sum of money. A Declaratory Action, with the Court declaring the surcharge was not appropriate, could be the ruling.

Mr. McLendon asked Mr. Randolph what success the Town has had using a lobbyist for modifying State Statutes in Tallahassee?

Mr. Randolph responded the Town has used a lobbyist on a stand-by basis for many years. That lobbyist has been used for assistance during legislative sessions for issues that were of interest to the Town. Mr. Randolph did not remember any Town proposed legislative amendments over the years where a lobbyist was used.

Mr. Doney concurred with Mr. Randolph that no lobbyist was used for that purpose over the last twenty-five years. Mr. Doney said Mr. Ron LaFace was used to assist the Town regarding a bill that was sponsored locally that provided reimbursement from the State for the Ocean outfall at the end of Royal Palm Way that was taken out of service when the Town connected to the Regional Sewage Treatment Plant.

Mr. McLendon suggested that wording should be inserted into the State Statute "if the annual revenue, derived from a surcharge to a particular municipality, exceeded some substantial number, ($100,000 - $200,000 - $500,000) then that municipality would have to hold public hearings and justify that the charges were valid."

Mr. Wyett stated he had a practical concern regarding the use of one lobbyist, who may not be effective, when a majority vote is needed in each of the two houses in the State Legislature, plus the signature of the Governor. Mr. Wyett said that West Palm Beach or any other municipality involved would be hiring persons to defeat the issue, and the legislation may take three, four, or five years.

Mr. Doney reported that when the Town was seeking State funding assistance for the Mid-Town Beach Renourishment Project, approximately six years ago, several local State Legislators were contacted. The Mayor, Town Council, and Staff appeared before the Palm Beach County Legislative Delegation with the support of the local legislators and with that support advanced procedurally, to the full House and Senate.

Mr. Doney suggested that an attempt could be made through the Florida League of Cities to test the idea and to determine what other municipalities would support the Town. Mr. Doney said, according to Mr. McLendon's list of municipalities who pay surcharges, the 40 municipalities who pay surcharges are part of a total of 390 municipalities in the State of Florida.

Mr. Randolph responded that, through past experiences, the Florida League of Cities was hesitant to assume proposals where the municipalities may be divided on the issue.

Mr. McLendon suggested that the Town should at least discuss this situation with at least a couple of people, who have been successful, to find out what their experiences were.

Mr. Wyett suggested starting with the list of 40 communities to determine if any interest exists in joining with the Town to resolve the legal issue.

Mr. McLendon responded he did not agree with that approach because more opposition would be attracted when the Town did not specifically deal with the City of West Palm Beach. Mr. McLendon asked Mr. Randolph what procedure would be followed if a lobbyist were selected?

Mr. Randolph suggested the Town should contact the stand-by lobbyist, Mr. LaFace, who is successful and speak to him independently about the process.

Mr. McLendon asked if any charge would be incurred if he contacted Mr. LaFace?

Mr. Randolph replied he did not think there would be any charge for an initial conversation. Mr. Randolph suggested an expert in the field of utility law should also be contacted, who would then work with the lobbyist.

Mr. Wyett suggested the Town should start by contacting the local representatives for the State House and Senate after the upcoming elections to determine if any local support existed.

Mr. Randolph responded that he did not think this was the typical locally sponsored bill but an independent bill that would have to be put through the Legislature.

Mr. Wyett said if the local representatives did not support the proposal, little progress would be made.

Mr. Randolph suggested that Mr. McLendon should first speak to Mr. LaFace to determine what the prognosis might be.

Mr. McLendon requested that Mr. Randolph supply him with Mr. LaFace's number.

(See page 16 for continuation of discussion.)

(The following item was heard after item IV.C.)

VII. CONSIDERATION OF OFFERING PURCHASE OF DISTRIBUTION SYSTEM:

Mr. McLendon reported the Town had proposed a methodology for determining the cost of the distribution system: Reproduction Cost - less depreciation

Data from the Engineering News Record - Construction Cost Index and the Handy-Whitman Index that covered many years was used to arrive at an estimated cost of slightly over $5 million. Mr. McLendon suggested that estimate could be offered to the City of West Palm Beach for the distribution system.

Mr. Wyett questioned the viability of some segments of the water distribution system in certain Town areas and the replacement of the potable water system if a dual system were contemplated.

Mr. McLendon replied his suggestion for buying the distribution system was an attempt to have the Town control its own destiny, because the Town has not been happy with the City of West Palm Beach's commitment to replace the components in the distribution system. Additionally, the dual system, including the potable water system, would not be financially feasible unless the Town could own and replace the system based on the Town's schedule. Mr. McLendon recalled either the Department of Environmental Protection or the Health Department had made commitments to allow two pipes in the same trench with certain conditions at a great cost savings.

Mr. Wyett commented that buying the distribution system is related to buying water wholesale. Mr. Wyett questioned if Mayor Graham had promised the Town it could buy water wholesale.

Mr. McLendon replied that was one of the questions the Town has been waiting for an answer for since May, 1995. Mr. McLendon recalled the City of West Palm Beach expected to have a negotiated rate with the Village of Royal Palm Beach by December, 1995, and Mayor Graham indicated in April, 1996, that this rate was still being negotiated. Mr. McLendon reported the County Utilities Department provided a wholesale water rate of $0.75/1,000 gallons; however, the Town would have to buy into the system. The rate was negotiable with the up side being $1.50 per gallon per day to buy into the system.

Mr. Wyett clarified that a 10 million gallon capacity would require a $15 million buy-in, and the water would be purchased for approximately $0.75/1,000 gallons plus the distribution, maintenance, and administrative costs.

Mr. McLendon responded those were the figures he remembered, and the Town would have to assume the cost of operating a water system plus the cost of transmission mains from the supply to the Town of Palm Beach would have to be included. Mr. McLendon said the Town's dual system relies on obtaining an acceptable wholesale water rate. Mr. McLendon suggested a methodology for the wholesale water rate would start with the $0.74/ per 100 cubic foot rate and discount the cost of meter reading and other costs not associated with supply. Mr. McLendon added that whatever the rate was, it would be subject to the surcharge.

Mr. Wyett asked Staff why the Town used a 10 million gallon estimate for re-use water for irrigation purposes when the irrigation use has been determined to be approximately 4 million gallons?

Mr. Dusey responded that the Town would be required to produce the number of gallons used at a peak period and not on an average daily basis.

Mr. Wyett asked, since the Town Council adopted the every other day watering schedule, three day maximum, if the 10 million gallons was a realistic figure?

Mr. Dusey replied the figure could probably be reduced slightly. He cited a 15% reduction in water usage five or six years ago during a drought period when substantial water restrictions were in place. Responding to questions from Mr. Wyett, Mr. Dusey confirmed stricter water restrictions than the present ones would have to be adopted if a drought occurred in the future. Mr. Dusey said the Town would probably use more than 5 million gallons for irrigation in his opinion; however, the cost of treatment is $1 per gallon per day. Savings would be generated if less than 10 million gallons were used, and the total savings were estimated by Mr. Dusey to be within the $2 to $3 million range. Mr. Dusey pointed out the advantage of using re-use water is that no restrictions apply.

Mr. Wyett said that Mayor Graham mentioned the City of West Palm Beach has water re-use capacity that has never been used, but is available to them because of prior planning. Mr. Wyett questioned West Palm Beach's cost structure.

Mr. Bowser explained the City of West Palm Beach constructed an advanced wetlands treatment facility as a demonstration project with a goal to clean up the effluent from the plant and store the water in a piece of land (2 square miles) west of the Turnpike. That stored water would overflow into the water catchment area which would augment the potable water supply. Mr. Bowser reported the City of West Palm Beach has proceeded with plans to build an 11 million gallon/day module for re-use to service some orange groves to the west and golf courses within a reasonable distance of the regional plant. The consumptive use permits from South Florida Water Management District allow these users to receive free water, and the question is why should they pay for water? Mr. Bowser said that the City of West Palm Beach is not actively pursuing these plans presently.

Mr. McLendon said the treatment facility removes the nutrients, phosphorus and nitrogen, from the re-use water, and the Town would prefer these nutrients not be removed from water used for irrigation. Mr. McLendon suggested a joint, re-use system, without nutrient removal, may be a future topic to explore with the City of West Palm Beach.

Mr. Dusey, responding to a question from Mr. McLendon concerning the intent of Mayor Graham's comments regarding cooperative efforts for the additional treatment in the catchment area of re-use water, said his impression was that the City of West Palm Beach has charged the water users for the treatment process in the past.

Mr. Bowser noted that the Department of Environmental Protection is always looking at the problem of the disposal of sewage effluent and is concerned with the problems related to deep injection wells. Mr. Bowser said DEP may be considering alternative disposal methods for sewage effluent, and the City of West Palm Beach may be attempting to involve the Town of Palm Beach in its efforts to resolve the problem by eliminating the expensive injection wells and lessen the costs involved with the catchment area project or a wet weather disposal method. Mr. Bowser suggested the City of West Palm Beach may be asking the Town for monetary participation to reduce the capital costs. Mr. Bowser said the logical connection between the Town and the City of West Palm Beach, because the residents of the Town pay water bills that may have already paid for capital costs. Mr. Bowser suggested the Town may want to question if additional funds should be provided for capital costs for additional projects.

Mr. McLendon stated the Town of Palm Beach pays 10% of the overall entities plant operation for the research project.

Mr. Bowser replied that the Entities Board has clearly separated re-use as a "City Project" and the City of West Palm Beach is paying 100% of the costs; however, when the City collects water and sewer revenues, if funds are taken from water revenues, the residents of Town Beach are financially participating in the project.

Mr. Wyett said that one of the frustrations for the Committee was the knowledge that the C-51 Canal is questionable as a long-term source of water for irrigation purposes, and investing $20 - $30 million to utilize the C-51 Canal at this stage may not be logical. Mr. Wyett said that the South Florida Water Management District may realize that allowing the Town to use canal water for irrigation may be one of the best water conservation methods; however, the Federal requirement to divert water to the Everglades and the continuing waste of dumping canal water into the Ocean may be a gray area.

Mr. Wyett said the re-use of water may be a premature idea, and the basis is the value of a gallon of water. Presently, water is cheap in this area by comparison; however, the cheap water will rapidly disappear. Mr. Wyett suggested a new approach and read the following:

> "For over one year, we have been negotiating with West Palm Beach in regard to the proposed water contract. We have worked hard and with due diligence making offers and proposing solutions.
>
> Due to conditions beyond our control, we have made little progress. Our options, while feasible, are expensive and long range.
>
> Today, I suggest a new approach, one which both sides can possibly accept. It is a political and financial solution. Both

Palm Beach and its sister community, West Palm Beach, can both win.

I propose that we agree to pay the current surcharge, providing that West Palm Beach agrees to freeze the surcharge in terms of dollars. By that, I mean, if your water bill is currently $100 plus the 25% surcharge, you are now paying $125. Your surcharge will be frozen at $25. As inflation and water costs rise, the $25 remains constant, yet as percentage, the surcharge declines.

For example - as your water bill rises to $150 plus the constant surcharge of $25, the surcharge percentage drops to 16%. Eventually, your water bill will rise to $200 plus the $25 surcharge of 12.5%. You may think that water rates will not double. You are mistaken to believe that cheap water rates will continue. The costs of water will rise dramatically. I calculate this could happen within the next ten years.

Thus, Mayor Graham gets to keep a windfall of $1,200,000 per year. West Palm Beach avoids losing the daily revenue of 4,000,000 gallons of water that we would have replaced with a non-potable system. The value to West Palm Beach is $2,500,000 per year at current rates. We both avoid a lengthy and uncertain law suit. We save the cost and inconvenience of operating a dual water system and assure ourselves of a good water source. Together, when appropriate, in partnership, we can develop a dual system using waste water, sea water, or the investment in some future technology. Two sister communities can demonstrate an ability to compromise and work together to solve common problems. This can be a win-win situation.

I submit to this Committee this new approach. I ask that the Town Council at its next scheduled meeting authorize our Mayor to meet with Mayor Graham to consider this new approach. I ask that our Water Committee meet with the appointed water committee of West Palm Beach in an open meeting to work out the details. I trust that West Palm Beach will realize this may be our final effort to reach a mutual, acceptable agreement."

Mr. Wyett explained that the Town would agree to the water surcharge, but over a period of approximately ten years, the surcharge will drop drastically as a percentage. Mr. Wyett said the size of the surcharge has be a concern of the Town, the Town Council, and the Water Committee. Mr. Wyett said that if water rates go up 10% a year, the surcharge percentage results in a net increase of 12.5%, and that is a problem. Mr. Wyett recalled that water rates increased 40% three or four years ago resulting in a net increase of 90% after the surcharge and other charges were added. Mr. Wyett said that his plan avoids the runaway escalation, in terms of dollars, of the surcharge and provides the City of West Palm Beach an opportunity to compromise.

Mr. Wyett said his research indicated water rates will drastically increase in the decade after the year 2000. Mr. McLendon concurred with that statement and cited increased water regulations as one of the reasons.

Harry Chauncey, a member of the firm of Foley and Lardner, 777 S. Flagler Drive, West Palm Beach, addressed the Committee. Mr. Chauncey said he wrote a letter to Mayor Graham approximately 4 years ago on behalf of the Caithness Corporation. The letter suggested the privatization of the West Palm Beach Water Company. Mr. Chauncey explained he spoke to several of the City Commissioners in West Palm Beach who thought the idea had merit and would free up money to be used in areas of great need. Mr. Chauncey said he did not receive a reply to that letter.

Mr. Chauncy said he suggested Caithness could be a resource for the Town of Palm Beach, because the company develops water systems and advises communities on water supply use. Mr. Chauncey said he wanted to introduce the company and the idea to the Committee and suggested that they may be able to help the Town.

Mr. Dusey said the Town addressed a number of alternative suggestions with a consulting engineer several years ago including desalinization and partnership with the City of West Palm Beach. Mr. Dusey said the operation of the plant, either privatized or public sector, is not the issue. The issues are the cost of the plant, the source of water, reverse osmosis, and other considerations. Mr. Dusey said at the time (1990), this approach did not appear to be feasible because of the per 1,000 gallon cost, and the question would be if the Town would like to investigate that approach at this time.

Mr. Wyett said the question was if West Palm Beach would be interested in privatizing its system and receiving a lump sum payment with Palm Beach as one of the investors. Mr. Wyett added that he was not convinced that privatization of a water system would reduce costs. The primary water source is west and the piping from that source to the Town of Palm Beach would appear to be expensive. Mr. Wyett said many of the ideas are viable but cost is the determining factor.

Mr. Wyett stated that if the Town cannot reach an amicable agreement with the City of West Palm Beach, then the status quo--paying the surcharge with no contract--is the best solution because new technologies will supply some answers in the next few years. The Town may eventually be able to do something else if it is not bound by a long term contract.

Mr. McLendon said he would welcome a letter from Mr. Chauncey, stating his experience elsewhere and including suggestions.

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(The following discussion took place after item VI., page 5)

Mr. McLendon said he did not think the Water Committee was prepared to make any substantial recommendations to the Town Council. Mr. McLendon requested time to review the proposal submitted by Mr. Wyett at the meeting.

VIII. ANY OTHER MATTERS: Mr. Doney said that one of the key issues is to receive a response from Mayor

Graham after she appeared before the Mayor and Town Council approximately one month ago, and this would help the Committee further consider all of the issues.

Mr. Wyett said that Mayor Graham's appearance opened up the opportunity for dialogue between the two municipalities. Mr. Wyett said that his proposal included a meeting between Mayor Ilyinsky and Mayor Graham, and his proposal was practical, face-saving, and acceptable.

Mr. McLendon questioned if a meeting between Mayor Graham and Mr. Wyett could provide some new ground that had not previously been discovered?

Mr. Wyett replied that his suggestion was a meeting between the Mayors and should they reach a basic understanding, then water committees from both municipalities could meet in open session to work out all of the details. Mr. Wyett emphasized this was a diplomatic approach to see if there was room for West Palm Beach and the Town of Palm Beach to come together. If this approach is not successful, then the Town has to seek alternatives and leave all of the options open. Mr. Wyett said he did not want to sign a long-term water contract given the present, imposed conditions.

Mr. McLendon asked if the South Florida Water Management District had self-imposed time constraints to approve requests for the grant money and/or the consumptive permit?

Mr. Dusey replied that the grant money is part of SFWMD's budget process which is either a State or Municipality schedule (July or October). Mr. Dusey said that once a complete permit is submitted, a response must be made within a certain amount of time.

After Mr. McLendon asked for any further comments, Mr. Wyett requested his plan (see attached copy of Mr. Wyett's memorandum dated May 20, 1996 or page 8 of this report) be submitted to the Town Council.

Mr. McLendon concluded that the environmental concerns seem to be of greater concern to the State than the needs of the people, and this affects the possibility of using water from the C-51 Canal.

IX. ADJOURNMENT: There being no further discussion, the meeting was adjourned at 11:40 a.m.

WATER COMMITTEE

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Samuel C. McLendon, Committee Chairman

____

Allen S. Wyett, Committee Member

Mr. McLendon reported that the Water Committee had met on May 21, 1996 in order to summarize the status of events with regard to the negotiations for public water supply. The alternatives for potable water were summarized, and they included proposals from Riviera Beach, Lake Worth, and previous studies using the Floridan Aquifer with desalting. There had been an informal proposal from Palm Beach County for supply, and the continuing West Palm Beach option. He noted that on irrigation and nonpotable use, the C-51 Canal with treatment had been addressed. A Consumptive Use Permit would be filed. (Jim Bowser, Town Engineer confirmed that he was completing the date and would submit the permit today). Mr. McLendon noted that aquifer storage and recovery had been looked at from both the C-51 Canal use and the re-use water, and there was an application filed to the South Florida Water Management District (SFWMD) for a 50% cost sharing on more research and preliminary development of an ASR system which would be usable in the future.

With regard to the legal questions, Mr. McLendon advised that two approaches had been discussed: one was to challenge the existing statute, and a memorandum of law had been prepared in that respect; further outside assistance had also been discussed--getting special help to try and modify the existing statute. Mr. LaFace, the lobbyist in Tallahassee, was looking into the matter for the Town.

Mr. McLendon noted that the Mayor of West Palm Beach had suggested that the Town may want to make an offer for the value of the cost of the distribution system, and a preliminary number had been developed. A fair wholesale rate would have to be negotiated.

Mr. Wyett reported that SFWMD would not commit water to the Town until their commitment to the Everglades was established. In an attempt to compromise, he suggested that Mayor Ilyinsky be authorized to approach Mayor Graham with the proposal that the Town would accept a 25% surcharge, as was now being imposed, providing that it was frozen in terms of dollars. He explained that would mean as water rates went up, the surcharge would come down--so that over a period of time when water rates had risen by 50%, the surcharge would be dropped to 12-1/2%. This would allow some consideration to West Palm Beach, and would assure that the surcharge would not continue to escalate. If Mayor Graham found the proposal acceptable, it would be a step forward.

Mr. McLendon added that the Water Committee would not make a formal recommendation to the Town, however the recommendation was for pursual on a Mayor-to-Mayor basis.

Mayor Ilyinsky stated that there was great merit in the suggestion of Mr. Wyett, and asked for a synopsis of his report.

Mr. Doney asked if the offer would be extended verbally, or in letter form?

Mayor Ilyinsky replied that a letter would be appropriate.

Mr. Shaw mentioned that Mayor Graham had indicated interest in pursuing some joint ventures regarding water re-use, and that this should be kept in mind during any discussions.

Mr. Wyett explained that his proposal could be a potential basis of agreement, and all other subjects could be brought up as part of a contract.

Mr. McLendon commented that he planned on speaking with Mayor Graham regarding the distribution system and possible alternatives as to control.

Mr. Shaw suggested that a presentation be made to the City of West Palm Beach Commission.

Mr. Clint Vescillius, Chairman of the Water Committee for the Civic Association, addressed the Town Council, stating that recommendations were being prepared on the water issue, which would be ready during the week. He reported that each Council Member would be furnished a copy. He suggested that a contract with the City of West Palm Beach would be helpful.

Mrs. Smith recalled that negotiations for a contract with the City of West Palm Beach in 1993 had been interrupted as a result of a political roadblock when a new City Attorney had been hired.

Mr. Wyett stated that Mr. McLendon had done a tremendous amount of work as Chairman of the Water Committee, and every avenue had been investigated. He urged that the Town Council authorize the Mayor to open negotiations with the City of West Palm Beach.

Mr. McLendon commented that he could confer with Mayor Graham regarding a presentation by the Town of Palm Beach to the City Commission.

Mayor Ilyinsky suggested that such a presentation would be fruitless, and that progress had been made to a point where Mayor Graham should be approached.

The Committee Report was accepted. The Town Council approved the recommendation that Mayor Ilyinsky write a letter to Mayor Graham for the purpose of arranging a meeting where Mr. Wyett's proposal to freeze the surcharge (at approximately $1.2 million) would be discussed.

Mrs. Smith remarked that Mayor Graham was a strong Mayor and had great input and control of the City Commission, suggesting that Mayor Ilyinsky speak with Mayor Graham to establish a common meeting ground; that a letter should be written advancing the proposal of Mr. Wyett.

Mr. Wyett advised that his proposal had some advantages for West Palm Beach--it would avoid a potential lawsuit, it would avoid a cloud over any future West Palm Beach/Palm Beach water bond issue, it would assure the City of West Palm Beach of revenue, and it would also assure cooperation on future water issues. If the proposal was rejected by Mayor Graham other necessary actions could be taken.

Mr. McLendon made a motion recommending that Mayor Ilyinsky send a letter to Mayor Graham suggesting negotiations on the proposal of Mr. Wyett to fix the surcharge; seconded by Mr. Shaw.

Mr. Doney mentioned that the Mayor would need to know a specific intent.

Mr. McLendon stated that the approximate figure would $1.2 million.

On roll call, the motion carried unanimously.

XI. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 10-96 - Amendments to Chapter 24, Article III, "Water Conservation," of the Town Code of Ordinances

Mr. Randolph read Ordinance 10-96:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 24 OF THE TOWN CODE OF ORDINANCES, ARTICLE III, "WATER CONSERVATION," AT SECTION 24-74 "RESTRICTIONS," AND SECTION 24-75 "EXEMPTIONS," PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Dusey explained that after the Town Council had passed the Ordinance on first reading, the South Florida Water Management District (SFWMD) had contacted the Town, asking that the no-irrigation day be changed from Sunday to Friday, which was the day designated by them during drought restrictions. Mr. Dusey requested that the ordinance be passed to include this stipulation. Mr. Dusey noted that the odd numbered addresses could water on Sunday, Tuesday, and Thursday, and even numbered addresses on Saturday, Monday, and Wednesday.

Mr. McLendon made a motion to approve the second reading of Ordinance 10-96; seconded by Mr. Shaw. On roll call, the motion carried unanimously. (The third and final reading of Ordinance 10-96 will take place at the July 9, 1996 Town Council Meeting).

B. Resolutions

1. Resolution No. 28-96 - Amend Legal Description in Resolution No. 26-79, Regarding Landmark Designation of Property in Chapel Hill Subdivision (Deferred from May 14, 1996 Meeting)

Mr. Randolph read Resolution 28-96:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION NO. 26-79, TO CORRECT THE LEGAL DESCRIPTION OF THE FLAGLER MUSEUM PROPERTY, PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that this was a result of a request from an attorney representing a client in Chapel Hill Subdivision who had been trying to sell property, and found that the property had been encumbered as a result of the earlier resolution adopted by the Town Council in 1979. The correct legal description for the Flagler Museum property had now been obtained, and a copy of the document had been provided to the Flagler Museum.

Mr. Shaw made a motion to approve Resolution 28-96; seconded by Mr. McLendon. On roll call the motion carried unanimously.

C. Other

1. Consideration of Request by BellSouth to Review Town's Permitting Process and Related Issues - Update by Mayor and Town Staff (Deferred from March 12, 1996 Meeting) (See Item XII.C.1.)

Mayor Ilyinsky reported that he, Al Dusey, and Peter Elwell had met with Don Mathis, and Paul Davis of BellSouth. From his memorandum of June 4, 1996, the Mayor read the following recommendations: The Director of Public Works (Al Dusey) was being given more responsibility so that decisions could be more easily made regarding BellSouth requests. BellSouth be allowed, as needed, to block a single lane of traffic on streets in the Town to work in manholes during the winter season. This would allow BellSouth to provide additional services by rerouting lines where they are most needed. BellSouth would also be allowed, as needed, to excavate residential streets in Town during the winter season. These excavations would be permitted on east/west streets between Royal Palm Way and Royal Poinciana Way, on east/west streets north of Sunrise Avenue, and on east/west streets south of Worth Avenue *only* for the purposes of providing additional service. Routine maintenance, other than emergencies, would be scheduled in the summer construction months. In addition Bell South would be allowed, as needed, to excavate within the rights of way of major streets in Town during the winter season *only* for the purpose of providing additional service lines, *provided* such excavation did not block vehicular or pedestrian traffic. BellSouth vehicles would be parked off the street wherever possible. For maintenance of lines during the winter season, BellSouth and Town Staff would consult, and if there was disagreement on whether the work must proceed immediately, BellSouth could request permission from the Town Council at the next regularly scheduled meeting. The type of work envisioned under this provision would include a problem, such as static on phone lines.

Mayor Ilyinsky recommended that Town Staff be given the authority to use its discretion and best judgment in issuing permits for any duration during the winter season. The only time a right- of-way permit issue would be heard by the Town Council would be as provided for in Item 4, or when BellSouth was appealing a decision of Town Staff.

Mayor Ilyinsky discussed agreement on overhead versus underground installation-- BellSouth would be allowed to utilize *existing* pole lines for the installation of new cables, or the replacement of existing underground cables with the following provisions: if the Town Council agreed to pay the additional costs to install the cable underground, BellSouth would do so under any conditions. If the Town Council did not select that option, BellSouth would execute an agreement requiring that overhead facilities be re-installed underground at the expense of BellSouth if the owner of the pole line ever relocated its facilities underground. Regarding the pole line running from Wells Road to the north, Mayor Ilyinsky recommended that BellSouth be allowed to run their new telephone lines, which would supply a new subdivision, from the existing overhead pole lines.

Mrs. Smith asked if any restrictions had been put on the holiday season. She stated that she objected to having any work done in the Town between December 15 and the New Year Holiday. She expressed concerns about streets being torn up in the peak tourist season, as well as a time frame for BellSouth applying to the Town for a permit.

Mr. Elwell responded that all of the items discussed by Mayor Ilyinsky referred to changes from the current policy to make the system more flexible throughout the winter season (December 1-May 1). At this point there were no additional conditions other than what was included in the Mayor's memorandum.

Mrs. Smith stated that she would like to see a condition imposed that work not be done during the holiday season. She remarked that BellSouth provided very good service, and had done work in her home.

Mr. Shaw mentioned that the majority of phone and power accesses were in alleyways behind the homes and questioned the excavation of residential streets. In addition, he commented that many poles were actually owned by Southern Bell and it was his understanding that utilities pay each other pole fees for use of poles, and he questioned costs of underground facilities. Mr. Shaw also asked if the developers of the Phipps Estates had been asked to partake in the cost of underground facilities?

Mr. Don Mathis, of BellSouth, responded that the pole fees were a balancing act between BellSouth and FPL. In terms of conduit, or in terms of burying underground, BellSouth would pay the fees, and the franchising equated that to use utilities in Palm Beach. There was really no need to have the Town place conduit for the use of BellSouth, because conduit was already in place built by BellSouth. The pole line addressed by the Mayor was a pole line along the right of way. It was advantages for BellSouth to put the fiber optic cable in the pole line, as it was about double the cost to bury it.

Mr. Shaw responded that was the logic used every time, and he did not see where that logic would disappear and underground facilities created.

Mr. Mathis replied that if there were any options, BellSouth would go underground. In this case, there was already some conduit in some sections where underground facilities would be placed, however, the pole line being discussed was already there, and it made sense to use it. He added that he had reviewed records, and could not find the last time a pole had been placed in the Town of Palm Beach. It was not the desire of BellSouth to place poles, as the preference was to place underground. Mr. Mathis noted that aside from the costs of going underground, it was not as attractive as one might think when the location of easements was taken into consideration. The requirements of a utility easement were not clear, and gardening and landscaping could be affected.

Mr. Shaw asked if BellSouth had contacted the Phipps Estate developers to ask if they would be willing to partake in some of the costs of going underground?

Mr. Mathis replied negatively.

Mr. Shaw proposed that the developers be approached.

Mr. Mathis stated that he doubted if a developer would consider paying for services from BellSouth.

In response to Mr. McLendon, Mr. Mathis stated that if lines were underground already, they would stay underground, unless there was a case of a backyard easement loaded with many lines, and there was already a pole line.

Mr. McLendon clarified that replacement of underground lines would be at the cost of BellSouth.

Mr. Mathis agreed.

Mr. Wyett stated that it was a disgrace to ride along north/south streets and see the maize of telephone, power, and cable wires in the Town. He suggested that cable in the north/south accesses of the town be converted from overhead to underground, and that the costs were not double. He added that wires should not be installed at Thanksgiving, Christmas, Easter, Washington's Birthday, or any three-day weekend on the calendar.

Mr. Mathis responded that fiber optic cable was run for 133 miles from Homestead to Key West in 1984, replacing two aerial cables and a microwave system, and another cable had not been installed until 1994. The reason for installing another cable was not because of volume, but because the Florida Aqueduct Authorities had cut the cable, cutting the services to the point where adequate service could not be provided. Cable then had to be placed on the other side of the road. The smaller cables were almost invisible, and the problem was clearly the power company. It was very difficult for power to go underground for a number of reasons. BellSouth would not go in a joint trench with power, because of safety concerns. He added that cost was definitely an issue in underground cable.

Mr. McLendon asked if BellSouth or FPL facilities installed in the Town of Palm Beach were taxed as real property?

Mr. Doney replied affirmatively, if the property was owned by them.

Mr. McLendon explained that he was not talking about land or buildings, but conduit poles, etc.

Mr. Doney replied negatively.

Mrs. Hermine Wiener, 324 Garden Road, addressed the Town Council, suggesting that there should be a time limit on the amount of time needed for certain jobs with the use of a formula. She added that costs were a problem with going underground, and the real fact of the matter was that public utilities derived revenue based on what had been spent the proceeding year. If storms, lawsuits, etc. were removed from the budget, the entire structure of cost would be entirely different. That was the reason why going underground was not possible. It was not a matter of only coming up with the money.

Mr. Wyett suggested that a certificate of need be established regarding the number of phone lines going into private homes.

Mrs. Smith disagreed, stating that in larger homes it was not necessary to justify how many telephone lines were in place. She suggested that a more reasonable approach could be taken.

Mrs. Smith suggested that the items in the memorandum of the Mayor be taken one by one:

She addressed the question of time frames during holiday seasons. She suggested December 15 until after the New Year be restricted, as well as Thanksgiving and the month of March. She added that notice of scheduled work should be addressed.

Mr. Wyett suggested leaving these items to the discretion of the Town Manager's office.

Mr. Shaw added that there was a very busy period in February also.

Mr. Dusey stated that other utility companies should not be involved, as BellSouth had a unique problem regarding provision of services. He suggested that certain periods be defined when restrictions would be in place.

Mrs. Smith stated that it was important to avoid a situation where BellSouth would disagree with the Public Works Department on whether work was an emergency, and suggested that December 15 - January 2 be a period that was excluded. The rest of the time would be left up to staff.

Mr. Dusey suggested that a list of time period be prepared and presented at the next Town Council meeting.

Mr. Wyett made a motion to have Mr. Dusey return to the next Council meeting with a list of dates on which Bell South would not work; seconded by Mr. McLendon.

Mr. Bowser stated that a section could be added to the Rights-of-Way Manual, specifically for Bell South, which would be a written document that could be modified by resolution of the Town Council.

Mr. Mathis stated that the focus was on BellSouth not being on the major thoroughfares during the season at all, but that when a problem occurred, BellSouth could get into some of the side streets to service homes. He mentioned that about 95% of all work, including maintenance, was done in the summer in Palm Beach.

On roll call, the motion carried unanimously.

Mr. Shaw recommended that consideration be given to getting major phone lines secured, and requested that before the Wells Road project be undertaken, that the Phipps Subdivision be asked for participation.

Mr. McLendon asked if differential rates were permitted by the Public Service Commission in the Town of Palm Beach?

Mr. Mathis responded negatively; rates were set on the value of service--the amount of customers one could call from a local phone, and on a local basis. The Town of Palm Beach was included in the West Palm Beach Exchange, which ran from Juno Beach to Boynton Beach. The Public Service Commission would look at two things: one, the cost; secondly, whether the costs would be justified. He mentioned that two towns in northern Florida had attempted to go all underground, and it had been battled out in court. The final issue had been that the two costs would be presented, and the towns could pick up the additional cost of going underground. The preference of BellSouth was practicality.

Mr. McLendon asked if revenue based fees were passed on to the customer?

Mr. Mathis replied that it was mixed under the franchising policy.

Mr. Mathis mentioned that the problem in servicing the Phipps Estate was the fact that customers were ready for service, and underground placement would be an interruption in service to them.

Mr. Elwell suggested that it would be helpful if each enumerated item was gone through, and a decision made on whether to take action or defer action until the July meeting.

Mr. Elwell addressed the first item: BellSouth be allowed, as needed, to block a single lane of traffic on streets in Town to work in manholes during the season, allowing BellSouth to provide additional services by re-routing lines to where they were needed.

Mr. McLendon made a motion that this be a revision to the Right of Way Manual; seconded by Mr. Shaw. On roll call, the motion carried 4/1, with Mrs. Smith casting a negative vote.

Mrs. Smith observed that if one lane of traffic was blocked on a two-lane street, a five-day notice should be given.

Mr. McDonald made a motion to reconsider the motion made by Mr. McLendon; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Mathis remarked that the notification issue would have to be made clear, and recommended that 5 business days be the target.

Mr. McLendon made a motion to approve that 5 business days be the required amount of time for BellSouth to provide notice of traffic being blocked when work was being conducted; seconded by Mr. Wyett.

Mr. Elwell confirmed that the advance notice period be 5 business days, and that there be some type of notification required, which would be subject to further discussion at the next Town Council meeting; that BellSouth would describe exactly what would constitute that notification next month.

On roll call, the motion carried unanimously.

Mr. Elwell then addressed the point that BellSouth be allowed, as needed, to excavate residential streets in the Town during the winter season. These excavations would be permitted on east/west streets between Royal Palm Way and Royal Poinciana Way. Mr. Elwell added that alleys were also included, and that word could be inserted.

Mr. Wyett asked how Northlake would be handled?

Mr. Elwell replied that would fall under the major street item, although there would be a small handful of streets that would be included in the east/west category, i.e., North Ocean Way. There would be a few streets that would be north/south, but clearly not the major streets addressed in the section being discussed.

Mr. Shaw made a motion to approve Item 2, as read, with the insertion of the words "alleys and easements." The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Elwell addressed Item 3: the major streets in the Town. Bell South would be allowed, as needed, to excavate within the rights of way of major streets in Town during the winter season, provided such excavation would not block vehicular or pedestrian traffic, *only* for the purpose of providing additional service lines.

Mr. Shaw commented that any utility would know service project expectations far in advance of implementation, and that homes requiring great increases in service had the responsibility to notify the Town of future needs.

Mr. Mathis remarked that over 90% of BellSouth work was done in off season periods, and planning for major projects was done with the Public Works Department. This item was addressing the case where someone would need eight lines in a home that had two.

Mr. McLendon suggested combining Items 3 and 4, commenting that new lines should not have preference over needed maintenance work.

Mr. Shaw made a motion that Items 3 and 4 be combined; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Elwell addressed the paragraph referring to time limits; the decisions relating to the duration of work permitted during the season would be at the discretion of the Town Staff.

Mr. McLendon made a motion to approve the Town Staff making decisions relating to duration of projects; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Elwell addressed the underground/overhead issue: where there was an existing pole line, BellSouth would have the ability to go overhead with two provisions--one option would be that the Town Council could make the decision that the differential cost for underground would be paid by the Town; if that option was not selected, then BellSouth would automatically sign an agreement saying that if the pole line was eliminated, and the rest of the utilities went underground, then BellSouth would go underground at that location at BellSouth's cost.

Mr. Wyett asked BellSouth to give an estimate of costs to go underground from Worth Avenue to the tip of the Inlet on north/south streets.

Mr. Mathis replied he would do that. He added that it was very expensive, and the restoration costs were very high, as the right of ways were brought back to exactly the same state they had been in before the project had started.

Mr. Shaw asked if BellSouth would credit the Town for pole fees should the Town agree to pay the additional costs of going underground?

Mr. Mathis replied that the pole fee was minimal--about $15.00 per year.

Mrs. Smith asked Mr. Mathis if it would cost approximately $60 million to bury the telephone lines for the Town of Palm Beach?

Mr. Mathis replied that figure would not surprise him.

Mr. Doney recalled that figure had been associated with FPL.

Mr. Shaw made a motion to combine Items 1 and 2; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Item XII.C.1. was now heard by the Town Council;

Consideration of Request by BellSouth Telecommunications, Inc. To install cables, overhead on the existing pole line to complete the connection between Wells Road and the new Phipps Estate Subdivision

Mr. Mathis, of BellSouth requested approval of cables being installed overhead on the existing pole line to complete the connection between Wells Road and the new Phipps Estate Subdivision.

Mr. McLendon asked the point of origin for service in this location?

Mr. Mathis replied the corner of North County and Wells Road.

Mr. Mathis explained that the fiber on the pole line would be an extension of a major backbone extending all the way up the island, so more than the Phipps development was involved. This route would be extended all the way up North County Road in the future.

Mr. McLendon asked how many existing poles would be used?

Mr. Mathis replied there was 1,800 ft., so there would be approximately 6 poles.

Mr. McLendon asked if the cable was already in the Phipps Estate itself?

Mr. Mathis replied affirmatively, however, the distribution and the backbone networks were designed quite differently.

Mr. Shaw suggested that an underground line could go from Wells Road, to the main entrance off of County Road into the Phipps Estate, and that the developer should be involved with costs.

Mr. Mathis replied that the cost differential would have to be explained, and in this case there was an inconvenience, because digging would involve the bike path, and crossing four streets. He explained that it was a cost issue, and testing had indicated that the right thing to do on this project was to put the cable overhead, when there was an existing pole line.

Mr. McLendon asked how much underground equipment was on the west side of County Road, north of Wells Road?

Mr. Bowser replied that generally the west side was relatively unencumbered.

Mr. Mathis explained that if BellSouth went underground in the designated area, the pole line would still exist, and nothing would be solved. In regard to the permit, he advised that BellSouth and Town Staff had been discussing it for a very long time.

Mr. Shaw made a motion that BellSouth put the cables underground from Wells Road to Phipps Estate Subdivision; seconded by Mr. McLendon.

Mr. Paul Davis, Director of Engineering Network Construction, addressed the Town Council, stating that work had been done on the project for two years, and the latest technology was being implemented. One of the key issues involved in burying the cable was the major tree damage that would occur, major pits would have to be dug. The cable could be put up in three hours, however, it would take three weeks to replace landscaping, etc. The area involved 1,800 ft. that was needed to serve a major beautiful subdivision. He explained that he had just finished bringing Palm Beach into the 20th century with telephone service, and there was fiber to every customer, other than the north end. He had worked very closely with Mr. Dusey, who knew exactly what was being accomplished. BellSouth had the capacity to give any kind of service needed, and was trying to also give redundant service in Palm Beach--if one cable was cut, another would take over for the City, Fire Department, and Police Department. He established that this particular project was not the one to put underground.

Mrs. Smith asked what made BellSouth decide to go underground in the Phipps Subdivision?

Mr. Davis replied that BellSouth served many people underground, and every major subdivision in the County was served underground. Burying cable was always first choice, but there were also customer problems when property was torn up. He advised that this case was not the place to bury cable.

Mr. McLendon asked if consideration had been given to using horizontal drilling in order to avoid ripping up the trees?

Mr. Davis replied that directional boring was used where possible, but there were still tree problems.

Mr. McLendon asked if it was possible to do a horizontal bore pulling the cable behind the gopher?

Mr. Davis replied that would not be conducive for the area. In addition, the soil was not of the texture to use that type of equipment.

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

Mrs. Smith asked who was now going to tell BellSouth what they could do?

Mr. Shaw stated that BellSouth could continue underground from the Wells Road terminus into the Phipps Estate Development.

Mrs. Smith asked how BellSouth could protect the trees, covered under the Historic and Specimen Tree Survey, from damage during the process?

Mr. Shaw stated that there was a public right of way in the location; there were utilities adjacent.

Mayor Ilyinsky remarked that this was a matter of principle, and underground cable in this small area would not help.

Mr. McLendon asked if overhead lines would be put in further north?

Mr. Mathis replied that the only piece that would go in the air was along North County Road up to El Dorado on the existing pole line. It was strictly an issue of what would be disturbed and what it would cost. There was a variety of ways to go in, all with an attached price tag.

Mr. McLendon clarified that the 1800 ft. segment was the only overhead going in?

Mr. Mathis explained that the next piece would go to El Dorado, then it would go in conduit, then underground. The section along North County Road would be from Wells Road to El Dorado on the pole line, which totaled about 5,000 ft.

Mr. Wyett asked if the safety and preservation of major trees was a major consideration?

Mr. Dusey replied that the root structure on the trees was extensive, and some would have to be cut.

Mrs. Smith stated that it would hurt the trees as they were all the way under the road.

Mr. Wyett made a motion to reconsider the previous motion; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Wyett made a motion to approve the overhead lines; seconded by Mr. McDonald.

Mr. Shaw stated that underground was preferred, but was impractical in this situation. The key issue was damage to the environment of the town, not the cost.

Mr. McLendon stated that he believed there were methods of construction that would not damage root structures of trees, and recommended that the Town should go underground wherever feasible.

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

In summary, the motion included the following:

Bell South will be allowed, as needed, to block a single land of traffic on streets in Town to work in manholes during the winter season with five (5) business days notification. Mr. Dusey was directed to prepare a notification procedure and a list of dates that BellSouth will not be allowed to work. BellSouth will not be allowed to work from December 15 until after the New Year's holiday and Thanksgiving weekend. The rest of the dates will be determined by Staff. This information will be presented at the July 9, 1996, Town Council meeting.

Bell South will be allowed, as needed, to excavate residential streets, easements, and alleys in Town during the winter season. These excavations would be permitted on east-west streets north of Sunrise Avenue, and on east-west streets south of Worth Avenue only for the purpose of providing additional service. Routine maintenance, other than emergencies, will be scheduled in the summer construction season.

BellSouth will be allowed, as needed, to excavate within the rights-of-way of major streets in Town during the winter season, provided such excavation does not block vehicular or pedestrian traffic, only for the purpose of providing additional service lines.

For maintenance of lines during the winter season, BellSouth and Town staff will consult. If there is disagreement regarding whether or not the work must proceed immediately, BellSouth may request permission from the Town Council at its next regularly scheduled meeting. The type of work envisioned under this provision would include a problem such as static on the phone lines. (The work would be done subject to Staff's discretion and direction.)

Current time limits would be removed and work will be at the Staff's discretion.

The Town Council also approved the following:

If the Town Council agrees to pay the additional cost to install the cables underground, BellSouth will do so.

If the Town Council does not accept the previous option, then Bell South will execute an agreement requiring that the overhead facility be reinstalled underground at BellSouth's expense if the owner of the pole line ever relocates its facilities underground.

Mr. Wyett requested Staff provide a cost or dollar figure for lines to be located underground.

2. Reconsideration of Previous Town Council Action Regarding Variance No. 58-94, U.S. Trust Company of Florida, at 334 North Woods Road, With Regards to Property Wall Within Storm Drainage Easement (Deferred from May 14, 1996 Meeting)

(This item was heard after XI.C.3)

Mr. Dusey summarized that in June, 1994 the Town Council had decided to abandon a number of drainage easements that had existed on the Matthews property, and in its place were dedications of easements for a 10-ft. Walkway, and a 15 ft. Storm drainage easement, both measured from the north property line. The property owner also had agreed to relocate the storm sewer in that 15 ft. easement. On November 9, 1994, at the Town Council Meeting, a variance request was heard to have a perimeter wall installed. The wall was proposed to be placed on the north property line, and at that meeting some negotiations occurred and it was decided to move the wall back 10 ft. from the north property line, placing it over a drainage pipe. The Council had not been aware of the drainage easement at the time. The property owner was now asking for permission to construct that wall, and the Public Works Department disagreed with the request because Town facilities were served through the easement. Mr. Dusey asked that the Town Council revisit the request, and agree with the Public Works Department that the permit should not be issued for construction of the wall over the drainage pipe.

Mr. Ron Kolins, representing Mr. and Mrs. Fisher, addressed the Town Council, stating that both legal and equitable questions were involved in this matter. Legally, the Town would be estopped from withdrawing the previously granted variance because it had been two years since the variance had been granted, and the Fishers had built their home in reliance on that variance. Equitably, the drainage pipe had been relocated onto the property, and the Fishers had paid $60,000 for that relocation. Mr. Kolins stated that it was important to understand that the pipe was brand new and the likelihood of anyone having a problem was very remote. In addition, Mr. Kolins pointed out that the setback from the north property line to the home was 22 ft. The easement was 15 ft., the first 10 of which was a pedestrian easement, and the next 5 ft. were the utility easement. If the wall was placed at the end of the easement, as suggested by Town staff, it would only be 7 ft from the house. The wall was being built for security and privacy purposes, and had been agreed to by the Town Council. Mr. Kolins reported that the Fishers would be willing to enter into a "Removal Agreement," and if it became necessary for the Town to tear down the wall to access the drainage pipe the Fishers would bear the cost of putting the wall back.

Mr. Kolins questioned the fact that it had taken staff almost two years to come back to the Town Council with the easement information. He suggested that the paperwork filed with the variance had shown exactly where the easements and pipes were located, and staff had known that information. He maintained that the request of the Public Works Department should be denied, because the Town could not be injured by the wall going in the proposed location because the Fishers would pay for reconstruction if it became necessary to tear the wall down.

Mr. Dusey responded that the variance had been given for the height of the wall, not the location. He agreed that a new pipe should not be a problem, however, new pipes would eventually become old and thinking about the future was necessary. If the pipe collapsed in the future and flooded the roadway, it would be difficult to address the problem. A verbal arrangement had been made with the attorney at the time of granting the variance that no structure would be placed in the easement.

Mrs. Smith asked if the easement had been shown on the plans submitted for the variance?

Mr. Bowser stated that the drawing submitted by the applicant at the time of the variance request showed no easement or drainage pipe.

Mrs. Smith asked if anyone had pointed out the easement to the Town Council at the time the variance was heard?

Mr. Bowser replied that there was knowledge by the applicant of the drainage easement, however, they chose to mention only the walkway easement. In addition, Mr. Bowser pointed out that staff consistently notes on any wall in development plans that it not be in the drainage easement, but should be located outside of the easement.

Mr. Kolins noted that Mr. Dusey had reported that the variance had been for the height only. He clarified that a November 17, 1994 letter from the Town to Mr. Prosperi (then attorney for the Fishers) made it clear that the Town approved relocating the north and south walls to the inside of the trail access easements approximately 10 ft. from the property lines. In a letter dated April 9, 1996, Mr. McCabe had written to Mr. Bowser, bringing out that the variance had been granted by the Town. Mr. Kolins declared that it was not the applicant's burden to bring information about sewer lines to the Town Council, as it was the obligation of the staff. In addition, if staff had a problem, Mr. Kolins questioned that it took them 18 months to come before the Town Council. He urged that the request by staff not be approved.

Mr. Dusey responded that staff knew the easement was there, and that there had been a rededication in 1994 to unencumber other parts of the property that had drainage easements on it.

Mr. Wyett remarked that there was no prohibition of a metal fence, backed up by dense vegetation, and suggested that this type of fence be installed.

Mr. Bowser stated that easements should be kept free and clear, allowing nothing to obstruct them.

Mr. Dusey agreed that Mr. Wyett's suggestion would be an acceptable compromise.

Mr. Wyett suggested that if a masonry fence was agreed to, that the "Removal Agreement" go with the land, and that it be very clear that removal and re-erection be at the expense of the petitioner.

Mr. Kolins stated that it was clearly the preference of his clients to have a masonry wall, and if the Town Council allowed that, the agreement would run with the land. If that was not possible, the chain line fence with hedge material would be acceptable.

Mr. McDonald asked the width of the easement?

Mr. Kolins replied 15 ft.

Mr. McDonald asked if a masonry wall could have an opening of some kind?

Mr. Kolins responded that would not solve the problem, as the pipe and the wall would run in the same direction.

Mr. Bowser explained that when the property was sold there were a number of easements and drainage lines on the property that would conflict with the full utilization of the property, so the applicants had abandoned everything on the property, rededicating certain things. The drainage line went diagonally across the property and would have gone underneath the house, therefore, it was abandoned and relocated. In the construction sequencing, the applicants had chosen to go ahead and dig the trench for the new pipe, but it had not yet been installed. He explained that Public Works had been telling the applicant that a wall would not be allowed.

Mr. McLendon asked if the pipe could be installed north of the wall location?

Mr. Bowser replied that it could be installed there at an additional cost to the applicant, and because of the rock involved it would be a considerable expense to the applicant.

Mr. Kolins remarked that staff knew all along that a variance had been granted to put the wall up. He commented that he had inquired about bonds from insurance companies, and none would give a bond. He offered two options to the Town Council: to put up the wall with a Removal Agreement; or to put in a chain link fence with shrubbery material.

Mr. Shaw recommended that the pipe go further north, and the wall go further south, so that the Town would have easier access to the pipe.

Mr. Kolins replied that it was not acceptable to move the wall further south. He suggested that the chain link fence with shrubbery be approved.

Mr. McDonald asked for clarification of the easement.

Mr. Dusey explained that the easement had not been shown on the drawings that had been originally submitted to the Town Council, and the original proposal had been to put the wall on the north property line, which was not a problem. During the course of the meeting, Mr. Prosperi offered to move it 10 ft. to the south, which put it in the drainage easement.

Mr. Randolph commented that the granting of a variance was not necessarily permission to do anything else except grant a variance from a provision of the zoning code. If a person received a variance from a setback, he/she would still have to get a building permit, and if the building restrictions could not be adhered to, then the person simply could not complete the project. In the same vein, the Public Works Department had certain regulations relating to the placement of structures in easements, and even though a variance had been granted, the property owner was subject to any rules and regulations that the Public Works Department had in place. Mr. Randolph did not believe that it was necessary to reconsider the variance. He also pointed out that there was a responsibility of the property owner to know the restrictions and regulations related to the property. Mr. Randolph explained that if the Public Works Department agreed to go along with the chain link fence and Removal Agreement, no action would be needed today.

Mr. Kolins stated that if nothing was accomplished today a legal battle would ensue, which he was trying to avoid.

Mr. Dusey agreed that the compromise of a chain link fence with shrubbery was reasonable, and that this be considered a special situation.

Mr. McDonald directed staff to proceed if the applicant agreed to install a chain link fence with appropriate landscaping; that this would be a condition running with the land, and there would be a Removal Agreement executed between the Fishers and the Town.

(A motion was not included).

Mr. Kolins agreed.

3. Consideration of Personal Communications Services (PCS) Wireless Technology - Request for Towers Siting and Related Issues (Deferred from March 12, 1996, April 9, 1996, and May 14, 1996 Meetings)

> Approved the scheduling of a workshop on August 1, 1996, immediately following the Special Town Council meeting that was moved back to 9:30 a.m. The companies mentioned to be invited to the workshop were: Primeco, BellSouth Mobility, AT&T Wireless, and WirelessCo.

(This item was heard immediately after lunch)

Mr. Jakubiak addressed the Town Council, stating that this issue related to CityTel, and when it was initially brought forward the Florida League of Cities had represented that CityTel was the only company that would be able to co-locate antennas on one tower, sharing that revenue with the municipality. He remarked that according to a conversation with Unisite, that information was not true. Some ordinances dealing with regulating towers and antenna sites had been obtained (one from Montgomery County and one from Orange County), and other municipal ordinances were being sought out. He suggested that policy directives were needed regarding the Town installing its own antennas or tower sites, or pursuing a contract/partnership basis with a wireless technical company. A partnership basis would involve a company installing the towers, provide the maintenance, guide the companies that would co-locate on the towers, and the Town would share a portion of the revenue from that. The revenue would be based on a negotiable percentage between the Town and the company involved. If the Town installed its own towers, sites would have to be found, and contracts with an engineering firm for technical expertise and installation would have to be made. In this situation, the Town would be able to recuperate 100% of the revenue, paying a portion for maintenance of the facility. Technical information and cost estimates could be provided through an independent party. Mr. Jakubiak recommended that engineering assistance be provided to the Town in order to provide specifications.

Mr. Wyett asked if professional engineering assistance would be needed if a partnership was created with a professional firm?

Mr. Jakubiak replied that if a company such as CityTel was chosen, there would be no need for it.

Mr. McLendon mentioned that specifications would have to be provided in order to have companies make proposals to the Town.

Mr. Jakubiak explained that companies would submit letters of interest with their proposals, and the Town Council would make a decision.

Mr. McLendon replied that the Town Council did not have the expertise to make that decision.

Mr. Doney stated that one of the key ingredients was timing, as municipalities would be approached by many companies. The Town Council had instituted zoning in progress, because time was needed so that the whole issue could be sorted out. At this point, Mr. Horowitz had provided some very good information on the issue. The Town Council would need to authorize that a Comprehensive Plan on Telecommunications be prepared. He suggested that technical and legal assistance necessary to produce a master plan would be necessary.

Mr. Wyett suggested that competitive bids be obtained from carriers who would service the area before specialists and consultants were used; private enterprise would be more equipped to provide information and costs.

Mr. Doney stated that private companies could fully address the issue, but requests for proposals fully addressing the issue would be another alternative available for the Town Council.

Mr. Shaw commented that the best way to approach the issue was to create a franchising structure, or some licensing agreement, and determine how to reap some financial reward.

Mr. Doney added that it was a matter of controlling zoning and the entire issue. There was information that was still emerging throughout the industry.

Mr. Jakubiak explained that it was important that the Town Council recognize that AT & T, as well as 6 or 7 other vendors owned the licenses to broadcast in the area, and had a big investment in those licenses. When attempting to gain technical information, Mr. Jakubiak suggested that it was important to realize that an independent party without a financial interest should be used. He remarked that one of the key issues was co-location.

Mr. Randolph stated that there were too many unanswered questions at this point for the Town Council to be able to make a decision in regard to the issue. He suggested that staff could come back to the Town Council with a Moratorium Ordinance, which would have a moratorium in effect for a certain length of time during which the issues could be studied.

Mr. McLendon asked what would be required to find someone having the expertise needed?

Mr. Jakubiak responded that CityTel had been recommended by the Florida League of Cities because they did not own the licenses to provide services in municipalities, but were an independent party. CityTel was not the only answer, however.

Mr. Randolph stated that staff could select an independent party to look at the whole issue, because if CityTel, or some other company, was contacted it could result in a tainted response.

Mr. Wyett expressed the opinion that there was no expert in the field as yet. He added that he would like to listen to all people who were licensed in the area.

Mr. McLendon stated that there were units being designed presently, therefore, there had to be some expertise available.

Mr. Doney stated that piecemeal expertise was available, and that there was no clear definition of what was required by the Town.

Mr. Robert Deziel representing AT & T Wireless Services, introduced the representatives--Jim Randall of AT & T, and Richard Vogaten of M.J. Communications (an affiliate and related company to M.J. Anderson Construction Company). He explained that M.J. Communications built communication facilities for AT & T Wireless. He noted that AT & T would want to work with the Town only on the basis that all other carriers were also invited to work with the Town, so that decisions could be made based on all information. He suggested that a study should be implemented immediately; that a workshop be scheduled inviting all carriers. Mr. Deziel warned of the pitfalls in having a citizen advising the Town in such a complicated issue in lieu of an independent consultant.

Mr. Moore stated that a moratorium would be an appropriate tool for the antennas. He distinguished between antennas and radio towers--towers were zoning issues, however, antenna locations were better looked at under moratorium. He advised that Mr. Horowitz had approached the Town as a citizen with no particular financial interest in the matter, and had not offered advice, but had offered to put the Town in touch with professionals in the business. Mr. Horowitz would then look over proposals and offer his advice.

Mr. McDonald made a motion that a workshop be set for the first week in August and have all interested vendors make presentations at that time; seconded by Mr. Shaw.

Mr. Jakubiak suggested that a workshop include as many participants as possible.

Mr. Jim Randall, of AT & T Wireless Services, addressed the Town Council, stating that there were currently four carriers available to the Town: Primeco, Wirelessco, AT & T Wireless, and BellSouth Mobility. There soon would be five carriers available.

Mr. Doney suggested having a workshop meeting at the August 1 Special Town Council Meeting in order to be prepared for the Florida League of Cities meeting on August 8, 9, and 10.

Mr. Wyett stated that the goal was to have the minimum number of towers, plus revenue.

On roll call, the motion to conduct a workshop at the Special Town Council Meeting of August 1, 1996, carried 4/1, with Mr. Wyett casting a negative vote.

Mr. McLendon stated that he would like to have an expert adviser to the Town available at the workshop in order to be assured of accurately digesting the information.

Mr. Moore stated that an expert should be obtained for advice to staff and the Town Council.

Mr. Wyett stated that it was futile for the Town to pay the full price for an expert, as there were many municipalities needing the same information--expertise could be shared. He suggested that all that was needed was to know where common antennas should be, and how much revenue the Town could expect.

Mr. McLendon stated that different vendors may have individual requirements, and the determination of validity would have to be made by an expert.

Mr. Doney recommended that there be no expert hired as yet; the Town could learn from the process of other municipalities.

Mr. McLendon asked if competitive bidding was a necessity in obtaining professional services?

Mr. Randolph stated that was correct, however, Mr. Doney had referred to the Consultants Competitive Negotiations Act, which was a specific statute relating to engineers, architects, etc., which said that a certain process had to be followed. He did not see that as an impediment to getting a contract.

Mr. Doney clarified that the workshop would be scheduled for Thursday, August 1, 1996 at 10:00 A.M. immediately following the Special Town Council Meeting.

Mrs. Smith clarified that Mr. Doney had recommended that an expert not be on board before the scheduled workshop or the Florida League of Cities Meeting, since it was possible that an expert could be found at those meetings.

Mr. Jakubiak clarified that there were up to seven vendors in the area who were licensed, and according to the Telecommunications Act, franchising wireless was very questionable. If sites were on private property it could be questionable as far as Town revenue was concerned.

Mrs. Smith pointed out that at the Beach Erosion Control Workshop letters had been sent to every company that had shown interest in beach erosion control, and every company expressing interest had been heard. She suggested that letters should be sent to all wireless service vendors so that the greatest amount of information could be gained.

Mr. McLendon asked if it was intended to have all vendors in one room at the same time?

Mrs. Smith stated that in the past each vendor made a separate presentation. By law, the meeting was public and no vendor could be barred, however, they had elected to make their presentations separately.

Mr. Doney stated that vendors would be advised in the initial letter of notification that presentations would be limited to a certain amount of time.

Mr. Wyett suggested that the competitors of CityTel be invited to the Workshop.

4. Consideration of Beach Issues

a. Status Report on Restoration of the Lake Worth Inlet Sand Transfer Plant - Alternative Recommendation Regarding Contract for Discharge Piping

Mr. Dusey reported that the contractor, Counties Corporation, had filed a claim, and until that was received and processed there was no recommendation. Mr. Dusey added that the project had not been finalized yet from the standpoint of paying--a bill had been submitted, and the Town had held back the equivalent of what liquidated damages would be, which was $175,000.

Mr. Dusey summarized that the Sand Transfer Plant was working well, and that the hole was filling up daily.

b. Status Report on Lake Worth Inlet Management Plan - Proposed Public Meeting on Tuesday, July 16, 1996, at 5:30 P.M.

Mr. Bowser reported that word had been received from the Department of Environmental Protection that the Lake Worth Inlet Management Plan could be finalized, and staff recommended that a Public Meeting be held on Tuesday, July 16, 1996 at 5:30 P.M. The Public Meeting would be conducted by Town Staff, but would also be attended by Department of Environmental Protection staff. The purpose of the meeting was to explain the purpose and development process, as well as a presentation of the study findings. Comments and questions from the public would be taken. Mr. Bowser indicated that staff had proceeded to send the final draft report to the Corps of Engineers, Palm Beach County, Riviera Beach, Palm Beach Shores, and the Port of Palm Beach for review. They would be invited to the meeting. Although not required, public notice would be in the newspapers.

Mr. Bowser stated that he had received word that the Governor had signed the budget, and there were no deletions, therefore, the Town had been included. The implementation of the Lake Worth Inlet Management Plan ($507,375) was now in the State budget. There had also been good progress in cooperation with the Port of Palm Beach, Palm Beach County, and the Corps of Engineers.

Mrs. Smith asked if the Port of Palm Beach and the County would be notified of the July 16 meeting.

Mr. Bowser agreed that they would be sent a copy of the notice.

Mr. McLendon asked if there had been any commitment indicated by the Corps of Engineers.

Mr. Bowser replied there had not been, however, they were aware of the value of the plan.

Mr. McLendon asked what options for modification were available on the final draft report?

Mr. Bowser replied that it was technically the State's plan, and they had indicated they were continuing the staff review of the plan, and that it was a draft that could be changed.

5. Monthly Status Report from Finance Department Regarding Enforcement Procedure for Collection of Fines, Fees, and Other Monies Due to the Town

Mr. Doney referred to the memorandum dated June 7, 1996 from Mrs. Crozier, identifying the current status of all unpaid assessments, solid waste fees, and code enforcement fines.

Mr. McDonald commented that the report was looking much better, and requested an explanation from Mr. Randolph at the next Town Council Meeting as to the status of items that had been turned over to him.

Mr. Shaw questioned the Solid Waste Assessment section, wherein the same dates had been used.

Mrs. Crozier stated that the dates were received from the Public Works Department, and that she would research the documentation to ascertain why they were issued separately.

6. Consideration of Voting Procedure/Tabulation for Appointments to Boards and Commissions (Deferred from May 14, 1996 Meeting)

Mr. Shaw had created a sample ballot, and comments were taken regarding this from the other Council Members.

Mr. McLendon stated that he objected to Mr. Shaw's recommendation because it threw out votes. He noted that if there were more than twice as many nominations as there were positions, that a preliminary vote be taken to screen it down to twice the number, and then vote from there.

Mr. McDonald agreed that the votes should not be thrown out. He suggested that perhaps it would be better to vote for all of the candidates, with the top number winning.

Mr. Wyett commented that he found Mr. Shaw's recommendations a little too complicated, and suggested voting on reappointments for the second term first (yes or no); then voting on alternates to move them up to full time positions (yes or no) (if it was "yes" for two candidates and one opening, then preference would be indicated); then fresh appointments be considered, with requirements listed on the ballot. All candidates backgrounds would be listed.

Mrs. Smith noted that the candidate backgrounds would be for the Code Enforcement Board, for example, because there was no need to know the occupations of those on other boards.

Mr. McLendon asked if expired term candidates, or alternates, were to be put in the pool or not?

Mr. Shaw said that he would agree with a sample ballot were votes were not thrown out.

Mrs. Smith asked if the reappointment of a regular member should be handled differently? (Should they be automatically reappointed or should they be on the ballot like everyone else?)

Mr. Shaw replied negatively.

Mr. McDonald replied negatively.

Mr. McLendon replied that they should be on the ballot like everyone else.

Mr. Wyett replied that he had an in-between opinion--there should be a choice (yes or no) for reappointments.

Mrs. Smith established that the consensus of the Town Council was that regular members up for reappointment should be on the ballot, like everyone else. It would also be very clear that alternate members could be moved up to regular positions if there was an opening.

Mr. Elwell passed out the ballot form prepared for the Code Enforcement Board for review by the Town Council.

Mr. Shaw objected that the form did not state requirements that needed to be filled, as well as which requirement each individual met.

Mr. Moore stated that it was preferable to have an architect, realtor, or general contractor; if not, then general members of the public could be used.

Mrs. Smith remarked that the Code Enforcement Board was very important in carrying out rules and laws of the Town, and it had functioned very well. The categories for applicants were not included in an ordinance.

Mr. Wyett made a motion to move Irving Wolfe and Leon Schwartz from alternate positions to full time positions in order to fill the two vacancies, and to elect Eileen Curran as an alternate.

The motion died for lack of a second.

Mr. McDonald commented that there were not enough candidates for the positions, and suggested that a short term solution would be to have enough people to serve on the board in order to form a quorum, and moved that the two alternates be moved up to regular positions. He noted that this was in a singular instance, and would not be a precedent for any other meeting or board.

Mr. Wyett seconded the motion for purposes of discussion.

Mr. Wyett suggested that Eileen Curran, a realtor, be appointed.

Mr. McDonald remarked that Mrs. Curran was already sitting on a board, and that he would like to have more candidates by the meeting next month.

On roll call the motion of Mr. McDonald carried 4/1, with Mr. Shaw casting a negative vote.

Mrs. Smith noted that the Council had jumped from Item XI. Old Business, to XII. New Business B. She suggested that the voting procedure and tabulation regarding boards and commissions be discussed.

Mr. McLendon made a motion that all of the names appear on the ballots, incorporating the occupation or speciality of the candidate (if that information is required for a particular board or commission); seconded by Mr. McDonald.

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

XII. NEW BUSINESS

A. Ordinances (First Reading)

1. Ordinance No. 11-96 - Amendment to Chapter 4 of the Town Code of Ordinances Relating to Animals and Fowl, Providing for a Permit Application Fee and Waiver Procedure

Mr. Randolph read Ordinance 11-96:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 9-96, RELATING TO ANIMALS AND FOWL, SO AS TO PROVIDE FOR AN APPLICATION FEE FOR TEMPORARY PERMITS AND TO PROVIDE FOR A WAIVER OF THE TIME REQUIREMENTS FOR FILING FOR SAID PERMITS; PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 11-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Appointments

1. Code Enforcement Board - Two Three-Year Terms to Expire April 1999 and Two Alternate Two-Year Terms to Expire April 1998 (Deferred from April 9, 1996 Meeting)

Dr. Leon Schwartz and Mr. Irving Wolfe were moved from alternate members to full time members. The two alternate two-year appointments were deferred to the July 9, 1996, Town Council meeting.

C. Other

1. Consideration of Request by BellSouth Telecommunications, Inc. to install cables overhead on the existing pole line to complete the connection between Wells Road and the new Phipps Estate Subdivision (See Item XI.C.1.) *This item was heard after XI.C.1.)*

2. Consideration of Palm Tran's New Bus Service Signs Located in the Town of Palm Beach

Mr. Cliff Hayden, Assistant Director of Palm Tran, addressed the Town Council, stating that he had received correspondence from Mrs. Smith regarding some problems with some of the bus stop signs being installed for implementation of new service beginning on August 5, 1996. He had corresponded with Mrs. Smith, acknowledging that an individual on his staff had been responsible for providing the Town with a listing of all bus stops, but had neglected to do so. Since the contractor had started the installation of the signs, a few phone calls had been received, and had been rectified. Mr. Hayden offered assistance with any other signs that posed a problem.

Mr. Doney commented the number of bus stop signs was a concern to staff, as well as some residents. The intent was to have a minimal number of signs, while still meeting the demands for service.

Mr. Hayden responded that there were about 45 signs in each direction (north bound and south bound), and that generally there was a sign posted about every other city block, or approximately 1,000 ft. between bus stops. He remarked that a brand new service was being started, and that many requests for service had been received. He apologized that the Town Council had not been kept up to date.

Mrs. Smith asked how the bus stops had been determined?

Mr. Hayden replied that the buses would run every hour, as well as reduced hours on Saturdays and Sundays. The bus stops were determined by using the guidelines of every 1,000 ft. or every major intersection. A list of the stops had now been transmitted to the Town, with about six of them having been moved.

Chief Terlizzese addressed the Town Council, stating that some of the stops were on very narrow portions of the roadway and he was concerned with loading and unloading people at those locations, having an adequate number of riders on the buses, and the number of stops. He asked if the buses would stop on demand, regardless of safety, or designate actual places where the bus could stop safely?

Mr. Hayden responded that there were several buses on the route, with adequate time to maintain the schedule in a safe manner. There were some places on the island where there had not been bus service before, and at this point it was not known exactly where people would want to get on and get off. The drivers would not stop and let people on or off unless it was at a designated bus stop. If there were areas that Chief Terlizzese deemed unsafe for buses to stop, Mr. Hayden offered the opportunity for discussion.

Mr. Shaw remarked that the Citizens Association South of Sloanes Curve had indicated that there was an interest in a reliable bus service, however, he requested that a north/south route be established with transfer points on the island.

Mr. Hayden replied that if the Town Council wished to do that, he could agree.

Mrs. Smith asked if there would be a trial period?

Mr. Hayden responded that the bus would operate at no charge for the first two weeks, and that it had been somewhat determined that nothing would be done for 3-4 months, until ridership and routes could be specifically determined.

Mrs. Smith suggested the Mr. Hayden come back before the Town Council if the routes were changed. The majority of the homes in Palm Beach would be closed in August, September, and October, so that a determination regarding the bus routes would be difficult.

Mr. Hayden replied that there would not be changes regarding routes until the first of the year, and if the Town Council was interested in developing a transfer location, where the bus on the island stayed on the island, he was receptive to that suggestion.

Mr. Wyett stated that there was a sign up on every other block in the north end of the Town, and suggested that every third or fourth block be used.

Mr. Hayden responded that people would not be getting on and off at every one of the stops.

Mr. Shaw made a motion that Palm Tran coordinate an on-island transfer point; seconded by Mr. McLendon.

Mrs. Smith requested that Mr. Hayden report back to the Town Council in January

Mr. Hayden replied that would be done, as well as work would be started immediately on a transfer location on the island.

On roll call, the motion carried unanimously.

3. Consideration of Proposed Official Town Comments on Proposed Changes to State Rules and Procedures Regarding Coastal Construction and Excavation

Mr. Elwell reported that Staff's recommendation was that President Smith be authorized to send a letter to the Department of Environmental Protection (DEP) submitting the official comments of the Town.

Mr. McDonald made a motion to authorize President Smith to submit the official comments of the Town to the DEP; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Elwell requested that the Town Council authorize Applied Technology and Management, Inc. To perform services as outlined in his memorandum of June 10, 1996, at a cost not to exceed $1,000.

Mr. Shaw made a motion to authorize Applied Technology and Management, Inc. To perform the necessary services, at a cost not to exceed $1,000; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mr. Elwell requested a recommendation be made authorizing the Town Attorney to contact the DEP Attorney, and take whatever actions he would deem necessary on behalf of the Town related to an Administrative Hearing that may be held prior to the next Town Council Meeting.

Mr. McLendon made a motion to authorize the Town Attorney to contact the DEP Attorney, taking any actions he deemed necessary on behalf of the Town; seconded by Mr. McDonald.

On roll call, the motion carried unanimously.

4. Consideration of Nowlen, Holt and Miner Reports Regarding the Finance Department - Progress Report on Implementation of Work Program

Mr. Doney stated that he did not yet have a written report available, due to current staffing levels in the Finance Department, as well as the requirement of action by other Department Heads. There were 37 implementation items addressed in the Nowlen, Holt and Miner Report, and as of this time there was technical clarification needed from the CPA. So far, Mrs. Crozier, Mrs. Somers, and Mr. Elwell had met with Mr. Veil of the current auditing firm, going over all 37 items; now staff would need to meet with Nowlen, Holt and Miner. He recommended that staff continue to work on this, and that the auditing firms be invited to the Finance & Taxation Committee Meeting on June 28, or July 1, 1996.

Mr. Wyett made a motion to defer this item to be heard at the Finance & Taxation Committee Meeting of June 28 or July 1, 1996; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

5. Consideration of Designation of Voting and Alternate Delegate for the Florida League of Cities Annual Convention in Boca Raton on August 8-10, 1996

Mr. Shaw made a motion designating Mayor Ilyinsky as the voting delegate, and President Smith as the alternate voting delegate; seconded by Mr. McLendon. On roll call, the motion carried 4/1 with Mrs. Smith casting a negative vote.

(To be considered Agenda Item 8)

Mr. McLendon proposed that he fill the vacancy on the Impact Fee Committee of the Treasure Coast Regional Planning Council.

Mr. Wyett made a motion to approve the membership of Mr. McLendon on the Impact Fee Committee; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

6. Consideration of Department Management Qualifications as Part of an Annual Review Process

Mr. Shaw made a motion to consider qualifications of Department Managers at the July 9, 1996 Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

7. Consideration of Traffic Flow and Passenger Unloading in Commercial Locations.

Mr. Shaw explained that he was requesting that the Town Council address the traffic problems in passenger loading/unloading.

Mr. Wyett made a motion to add this item to the July 9, 1996 Town Council Meeting Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XIII. APPROVAL OF THE WARRANT LIST AND FUND EXPENDITURES FOR MAY 1996

Mr. McLendon made a motion to approve the Warrant List and Fund Expenditures for May, 1996; seconded by Mr. Shaw.

Mr. Shaw asked if all corrections to the Warrant List and Fund Expenditures for May, 1996 had been put into the computer, so that the audit trail was maintained?

Mr. Doney responded affirmatively.

Mrs. Crozier added that the Expenditure Approval Report for the month had all voided checks listed on it, which was a crosscheck procedure.

On roll call, the motion carried unanimously.

XIV. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Brian Cooke, 278 LaPuerta Way, addressed the Town Council, commenting that there were three areas of concern to residents: the lack of respect shown to residents of LaPuerta Way by the Town Council, and by certain staff members; the lack of access to the public beach right-of-way on LaPuerta Way; and beach erosion at the north end. Mr. Cooke reviewed his reasons for appearing at the meeting: in January of 1996, one of the residents of LaPuerta Way advised the Department of Public Works that there was a five foot drop between the public steps and the beach itself--a safety concern. The resident had contacted the Department of Public Works three times in January, and never once had a reply. In February, the resident once again contacted the Public Works Department, with no reply. In March, the steps disappeared, and rather than someone coming to replace the steps, or seal off the wall, it was left bare. He explained that there were children residing in the area, and the Public Works Department had not taken care of the situation. In April, the residents of LaPuerta Way were alarmed and concerned by the lack of concern of the Town, and a petition had been circulated, which every resident on LaPuerta Way signed. The petition was sent to the Department of Public Works and to the Town Council, with no response.

Mr. Cooke reported that he had attending a meeting which had been arranged in May, which Councilman Shaw, Mr. Dusey, and two neighbors attended. A verbal understanding had been entered into whereby the cost of replacement of the steps would be shared by the residents of LaPuerta Way. They had been told that they would be advised of the cost in two days, and the steps would be replaced by May 24th. There had been no further communication on this matter, and the residents of LaPuerta Way were disappointed in the Town Council, and the Department of Public Works.

Mrs. Smith asked Mr. Cooke whom he had notified after the May meeting? She noted that she had not seen the petition, nor the agreement.

Mr. Cooke responded that the agreement had been a verbal understanding, and that Councilman Shaw and Mr. Dusey had attended the May meeting.

Mrs. Smith asked why Mr. Cooke had not asked to be on the Agenda, so that the question could be addressed at the meeting today?

Mr. Cooke replied that one of his neighbors had communicated with the Department of Public Works since January, and the petition had been given to the Town in April.

Mrs. Smith explained that Mr. Shaw was prohibited from communicating with other council members, unless it was at a public meeting, and unless the item was on the Agenda today, it was difficult to remedy.

Mr. Cooke assured Mrs. Smith that he was not criticizing Mr. Shaw.

Mr. Shaw apologized for not following up on this matter. He had been under the impression that a cost of the steps would be furnished to Mr. Cooke, after which an agreement would be drafted between the residents and the Town. He recalled that the issue had been simply to alleviate the Town of the responsibility if the steps were to wash out.

Ms. Stacy Mandell, a resident of LaPuerta Way, addressed the Town Council, stating that the meeting with Councilman Shaw and Mr. Dusey had taken place in order to get the steps replaced immediately. They had been told that the Town would take a number of months to accomplish the task, so the residents entered into an agreement whereby the residents would assume part of the cost if the steps were replaced immediately and were washed away within a two month period of time. She noted that beach access, as well as safety were the issues involved, and that the Public Works Department had not barricaded the drop-off from the wall to the sand properly. She urged that the Town replace the steps immediately.

Mr. McLendon commented that he did not remember receiving a copy of the petition, pointing out that the access was private, and Town funds would not be expendable. He deferred to the opinion of the Town Attorney.

Mr. Cooke stated that the petition had been dropped off at the Town Clerk's office for dissemination.

Mr. Wyett apologized that the matter had not been taken care of, and offered that Mr. Dusey would be taking care of the situation immediately.

Mr. Doney suggested that Mr. Dusey comment on this matter.

Mrs. Smith clarified that the cost of the steps, if they were washed away in a two month period of time, would be shared 50/50 by the residents, but that some type of written agreement would have to be made, with input by the Town Attorney.

Mr. Wyett suggested that the Town should pay the entire cost, if the access was a public way.

Mr. Cooke replied that because of the severity of beach erosion the Town was concerned with expending any monies to replace the stairs, and that the residents suggested that a portion of the liability be assumed for the first two months, during the hurricane season. After that period of time, the Town would be entirely responsible. He noted that the Department of Public Works had been asked to notify the residents of the expected cost.

Mr. Dusey explained that when the stairs had been washed out in March, the Public Works Department had sealed off the entryways. One had been broken, and a maintenance man was sent to make repairs. The beach in that location was in very poor condition, with a March storm taking out a large amount of sand, which has not been recovered. There was reluctance to repair stairs because the first storm would wash the stairs back out. Mr. Dusey reported that he had received the petition, and had replied to the contact persons in the petition, indicating the lack of sand and estimating the stairs to cost about $4,000, as well as the reluctance to expend monies with the probability of storms causing the stairs to be lost again. The process of getting quotations on replacing the stairs had turned out to be more complicated than expected, and presently the low bid was $3,700 per stair. Mr. Dusey summarized that because of his reluctance in replacing the stairs, jeopardizing public monies, residents had agreed to immediate replacement with assurances that costs of loss within the next two months would be insured. Mr. Dusey apologized for the lack of communication with the residents of LaPuerta Way.

Mr. Cooke stated that as he understood it, the agreement was that the Town would replace the steps; that if the steps were washed out at any time during the initial two months from date of installation due to a storm, then the residents would share 50% of the replacement cost of the steps; that the steps would be replaced within two weeks of the date of the May 8 meeting.

Mrs. Smith suggested that Mr. Cooke put his proposal in writing.

Mr. Shaw interjected that he did not understand the agreement as related by Mr. Cooke--he understood that the Town would pay 100% of the cost of putting the steps in at the point where the beach was safe, however, in the event they were wiped out by anything <u>except</u> a severe storm or hurricane the residents would pay 100% of the costs within the two month period. Mr. Shaw noted that this had been an offer made by the residents to the Town.

Mrs. Smith clarified that Mr. Cooke would submit the terms in writing, and Mr. Dusey would obtain the figure for step replacement. Mr. Dusey would then follow up with Mr. Cooke.

Mr. Wyett suggested that concrete steps be constructed, so that if the sand came back the lower portion of the concrete steps would be buried in the sand.

Mr. Dusey replied that would require extensive permitting.

Mr. Wyett then suggested that the steps be built in wood, do the necessary permitting for concrete, and when the wooden steps washed out, the permit would be available to build in concrete.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of May 22, 1996 - Minutes Available in Town Manager's Office

The Major Matters were:

B39-96 Application by Alan L. Shulman, at 377 North Lake Way to add a one story addition at the rear of an existing two-story residence - approved.

B13-96 Application by Dr. and Mrs. Marvin Rosenberg at 1204 North Ocean Blvd. to demolish existing residence and construct new single family home - denied.

B17-96 and C60-95 Application by Sid H. Eibl, at 286 Jamaica Lane to demolish existing residence and construct new residence - approved.

B25-96 Application by Thomas and Silvia Hirschmann, at 102 Flagler Drive, for one and two story additions - no action taken.

B30-96 Application by Sandsong Investments, Inc., at 206 North Ocean Blvd, for demolition of existing residence and construction of a new, two story Mediterranean residence - approved.

B31-96 Application by Jonathan F. Rapaport at 233 Miraflores Drive for demolition of existing residence and construction of a new one story single family residence - approved.

B32-96 Application by Lois Mills, at 570 North Lake Way for new master bathroom addition - approved.

B33-96 Application by Lucy Berkstorm, at 151 Atlantic Avenue for new two story residence - deferred.

B35-96 Application by Mr. an Mrs. JohnRakolta, Jr., at 537 Island Drive for new, two story, Mediterranean Revival residence - deferred.

B36-96 Application by Nasser Kazeminy, at 760 Island Drive for entry hall addition, entry gate system and landscape - approved.

B37-96 Application by Mr. and Mrs. Mispah Ahdab, at Lot 1.2 Primavera Estates (Via Sunny) for new two story single family residence - approved.

B38-96 Application by Northwood University, at 167 Dolphin Road for new two story single family residence - deferred.

B27-96 Application by Mr. and Mrs. Richard E. Smith, at 1100 North Ocean Blvd., for new single family residence - approved.

B40-96 Application by James C. Gavigan, at 396 Royal Palm Way for new two story commercial bank building - deferred.

B41-96 Application by Douglas Mattson, at 241 La Puerta Way for garage addition - approved.

B42-96 Application by Addison Development, at 217 Via Tortuga for new two story residence - deferred.

B43-96 Application by Mr. and Mrs. Appelbaum, at 325 Via Linda for new carport, gardens and terraces - deferred.

B44-96 Application by Mr. and Mrs. Koontz, at 232 La Puerta Way for entry addition - deferred.

B45-96 Application by Mr. and Mrs. Wallace, at 1472 SouthOcean Blvd. for new two story guest house - approved.

B46-96 Application by Mrs. Arnold Miller, at 1415 South Ocean Blvd. for new single family residence - deferred.

Mr. Shaw made a motion to approve the Major Matters previously considered by the Architectural commission at the May 22, 1996 meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Time Extensions

1. Site Plan Review No. 1-95 with Special Exception and Variances - 230 and 232 Brazilian Avenue; request by Mr. Peter S. Broberg for a one year extension

Mr. Peter Broberg addressed the Town Council, stating that he was requesting a one year extension for Site Plan Review No. 1-95.

Mr. Moore stated that Mr. Broberg would need to address the reasons for requesting the extension.

Mr. Broberg stated that the property was being sold, and the new owners needed time to evaluate the approvals.

Mr. Moore explained that Special Exception & Site Plan Review with Variances had a life of 12-months, and requests for extensions were determined by the Town Council. One issue usually looked at by the Council in an unfavorable light was the purpose of marketing the property.

Mr. Wyett commented that the original application included underground parking; if an extension was now granted, the extension of units would also be included, with no assurances that the new developer would put the parking under the building. He suggested that underground parking be required if five units were incorporated.

Mrs. Smith asked if underground parking had been a condition of approval?

Mr. Moore explained that the building shown on the Site Plan Review had shown that the majority of parking was underground.

Mr. Randolph commented that the question was whether or not the underground parking had been a condition of the approval; if it was a condition, then it would be included in any extension granted.

Mr. Moore noted that the Variances that were granted along with the Site Plan Review reflected that some of the parking would be under the building, and that would be one of the conditions included in an extension.

Mr. McLendon made a motion to approve a six-month time extension on Site Plan Review No. 1-95 with Special Exception and Variances; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. Agreement between Dr. George Kantor and the Town of Palm Beach to Refurbish the "Octagon" Structure at 765 Hi-Mount Road; request by Mr. Peter S. Broberg for a time extension

Mr. Peter Broberg, on behalf of Dr. George Kantor, addressed the Town Council, recalling that the property contained an 800 sq. ft. octagon wooden structure that had been landmarked by the Town in 1990, with the conditions that the four appendages that extended from the structure could be removed, and that the structure could be moved anyplace on the property, or anyplace in the Town. There was a further variance request to move the structure to a portion of the property requiring a setback variance. The agreement with the Town required the plans to be submitted and the structure to be refurbished within one year of the agreement which expired in August. Mr. Broberg was requesting an extension until November because Dr. Kantor was contemplating the donation of the structure in ongoing discussions. As an alternative, the applicant wanted the flexibility to consider all options whether it be moving the structure, or seeking a de-designation.

Mr. Moore stated that the applicant had the option to seek de-designation at any time.

Mrs. Smith remarked that Dr. Kantor had professed that he loved the octagon structure, and wanted to save it, and the Town had worked with him toward his goal.

Mr. Ron Kolins, representing Mrs. Cascells, whose home was immediately to the east of Dr. Kantor's home, addressed the Town Council, recalling that many of the variances and considerations given to Dr. Kantor worked to the detriment of Mrs. Cascells. He stated that the structure was quite an eyesore (he passed out pictures of the property), remarking that in the five or six ensuing years since the agreement, there had been plenty of time for Dr. Kantor to make arrangements for the structure. He added that if Dr. Kantor could move or demolish the house, his client would support that, but the time was long overdue for the house to be refurbished. He urged that the Town Council deny the request.

Ms. Isabel Furlaud, 745 Hi Mount road, which was directly south of Dr. Kantor, addressed the Town Council, stating that the structure was an eyesore, and she would love to see it removed, however, Dr. Kantor had been told that it could not leave the Town of Palm Beach. She declare that Dr. Kantor deserved a chance to look into the removal of the structure.

Mr. Moore explained that according to the agreement, the structure could be moved anywhere within the Town of Palm Beach.

Mr. Wyett recommended that a short extension be given, until December 1, 1996, with sufficient landscaping being provided, and the issue being referred to the Landmarks Commission; seconded by Mr. Shaw.

Mr. Kolins suggested an addition to the motion: Dr. Kantor would fully landscape and screen the building from Mrs. Cascells if an extension was granted.

Mr. Broberg commented that some landscaping in the area would be reasonable.

On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

Mrs. Pollitt swore in all those who would be speaking to any of the issues addressed in the meeting.

Old Business

1. Revised Variance No. 12-96 with Site Plan Review - Nancy DeMoss, 185 Woodbridge Road; to allow installations of gates setback 6'8" from the street in lieu of 18' as required; to allow said gates at a height of 14'2" in lieu of 8' maximum; and Site Plan approval of a house on a lot with 30' street frontage in lieu of 125' as required. R-A District (Deferred from May 14, 1996 Meeting)

Mr. Frank Lynch, on behalf of Nancy DeMoss, addressed the Town Council, stating that mechanical gates attached to existing pillars was being requested because the existing pillars were located only 6'8" from the property line. The basis for the variance was that the gates would be attached to existing pillars with no additional construction required. Woodbridge Road was a dead end street, with no cul de sac, and the gates were requested as a security issue, and as a reduction in speed of vehicular traffic. The reduced setback would not create a traffic hazard because of the dead end. The variance request was minimal.

Mr. Lynch addressed the height of the gates, commenting that they match the architectural style and height of the gate post, as well as the vegetation in the area.

Mr. Moore relayed the following staff comments: Police Department - no comment; Fire Department - recommends a T-Head turn around; ARCOM - should provide right-of-way for turn around at end of street for safety and emergency egress purposes; Public Works - no comment; Building Department - no hardship, other than existing gate posts; Town Manager - further information on hardship needed.

Mr. Lynch replied that the hardship was the fact that the street formed a dead end at the property, and there was no cul-de-sac. The concern was that individuals using Woodbridge Road would turn down the street, entering the DeMoss property to turn around.

Mr. Shaw commented that the property had been purchased with the knowledge that the street was a dead end with no cul-de-sac, and suggested that a T-Head turn around be arranged. He added that he saw no hardship with the property.

Mr. Lynch responded that there was equipment located behind the gates, and an easement in front of the gates, as well as mature vegetation in the area.

Mr. Wyett commented that the proposed gates would block an adjacent driveway, and that he saw no hardship.

Mr. Lynch responded that there was a potential problem on entrance, however, two things were accomplished by leaving the gates where they were: if the gates were recessed more, when backing out of the driveway, the owner of the property to the east would not see the gates swinging open into the property. A vehicle coming out would be invisible to the property owner backing out, creating a safety hazard.

Mrs. Smith asked if a possible relocation for the gates had been investigated?

Mayor Ilyinsky commented that the property always had gates on it since the home had originally been built, and the amount of traffic on the street was practically nonexistent.

Mr. Wyett remarked that he was not addressing the safety factor, but the inconvenience of a neighbor having his driveway blocked. He noted that the gates could be moved back to conform with zoning.

Mr. Lynch noted that the vehicle turn around situation had been the same since 1936, with no provision ever made, and that he was concerned about the loss of property without compensation to the owner. The T-turn arounds would put the house closer to the street, with traffic closer to the front door. If an emergency situation came about, he was sure that Mrs. DeMoss would give authority to use the gates.

Mr. Wyett made a motion to defer this item; seconded by Mr. McLendon.

Mr. Lynch stated that a deferral was acceptable, and suggested the August Town Council Meeting.

On roll call, the motion carried unanimously.

Regarding the Site Plan Review, Mr. Moore stated that this was an after-the-fact approval for the Site Plan, as when the original house was demolished, a variance on new construction would have been required due to the lack of frontage. Unfortunately staff had not recognized the problem when the permit was issued, however, it had now been identified.

Mr. Wyett made a motion for approval; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. Variance No. 14-96 - Little Island Corp. & Euro Homes, Inc., 232 and 242/246 Everglade Avenue; to allow construction of two duplexes, each duplex structure to be built on 11,944 sq. ft. in lieu of 13,333 as required. R-C District (Deferred from May 14, 1996 Meeting)

Mr. Dean Vegosen, on behalf of Little Island Corporation, addressed the Town Council, stating that there was a six unit apartment project located on the site. Euro Homes, Inc. was the contract purchaser of the property, and owned the adjoining property. He commented that it was important to view the variance request in the context of the neighborhood. The property was in the R-C Zoning District, with a tennis club and an office building on the corner. The rest of the street was virtually all multi-family, with all duplexes on lots less than 13,333 sq. ft. as required by code. He requested permission to combine two properties, which would allow 3.58 units to be constructed, with a variance to build 4 units. Mr. Vegosen emphasized that this would be a reasonable use for the property in this instance.

Mrs. Smith, Mr. McLendon, and Mr. Shaw declared ex-parte communication regarding this variance.

Mr. Moore provided staff comments, which were to adjust the size of the structures to meet the variance requests, if approved. Mr. Vegosen had amended his application to ask for 4 units, when 3.58 units were permitted.

Mr. Shaw commented that the street was becoming massive, and requested that the height be reduced to 22'.

Mr. Wyett asked whether there would be more mass with two duplexes?

Mr. Moore replied that from an appearance point there would be less mass with two buildings than with one building.

Mr. Wyett suggested that the Site Plan Review be restricted to the garages not facing the street.

Mr. Vegosen stated that the units would be in two duplexes.

Mr. Shaw commented that the present beam height allowed was 25', and requested that it be brought down 3', as well as improving the driveway/garage appearance.

Mr. Vegosen replied that there would be a reduction in the duplex if the variance was approved, and that the suggested 3' reduction in beam height be split in half. Putting all of the garages off the street would be a very difficult design, and Mr. Vegosen proposed that there be only one garage for each building.

Mr. Tim O'Hara, 222 Everglades Avenue, addressed the Town Council, stating that he had no problem with the Variance.

Mr. Vegosen asked if architectural aspects above the beam line would be considered?

Mr. Shaw responded not as long as it would meet ARCOM approval and followed the building guidelines.

Mr. Shaw made a motion to approve Variance 14-96, as modified, for four units (two duplexes) with the understanding that the beam height would be reduced to 23.5', and that the two independent duplexes be designed in such a way that each duplex would have only one garage facing the street, and the other garage facing off street. The hardship was the fact that the combined lots were less than the required zoning, and the Variance was creating a reduction in density by the removal of existing multi-family homes, and a reduction of on-street parking. The motion was seconded by Mr. Wyett.

Mr. Moore suggested that the provision be added that no other variances be sought in the construction of this project.

Mr. Shaw agreed with this addition.

On roll call, the motion carried unanimously.

3. Variance No. 16-96 - Saks Fifth Avenue Petite Shop, 150 Worth Avenue, The Esplanade, #201; to allow Saks to locate a new occupancy within 210' of the Saks Men's store and adjacent to the Saks main store, in lieu of 1,500' minimum separation required. C-WA District (Deferred from May 14, 1996 Meeting)

Mr. Jim Brindell, on behalf of Saks Fifth Avenue, addressed the Town Council, stating that there was one slight correction in that the Variance would be for a ladies intimate apparel shop, as there was very little space for that in the store now, and approval of the Variance would allow them to better service customers. He noted that Saks Fifth Avenue fulfilled the Town-serving obligation.

Mr. Shaw made a motion to approve Variance 16-96; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

4. Variance No. 18-96 - Richard Furlaud, 745 Hi-Mount Road; to allow installation of gates setback 5' from the street, in lieu of 18' as required. R-B District

Mr. Peter Broberg, on behalf of Mr. and Mrs. Furlaud, addressed the Town Council, stating that a gate variance had been partially granted two months ago, with the north entryway allowed at 5', with the south entryway allowed to be 9' from the pavement of the road. The Furlauds had attempted to implement these approvals, and found that it was not possible. Mr. Broberg displayed graphics of the property, demonstrating the physical impossibilities of putting the gate in the proposed location. Mr. Broberg commented that the request was not contrary to the public interest, and due to special conditions, literal enforcement of the code resulted in an immediate and unnecessary hardship to the applicant. Granting the variance would not confer any special condition or privilege upon the Furlauds, they would be denied a privilege that other neighbors had, and the hardship ran with the land.

Exparte communication with Mr. Broberg was declared by Mr.Wyett, Mr. McLendon, and Mr. McDonald.

Mr. Moore stated that staff had reviewed the second application, and comments had not changed since the April application. Comments were: the gates could be set back further from the street--there was a low volume traffic street, so the south gate could be set back further, or a swinging could be put in.

Mr. Gene Pandula, architect, addressed the Town Council, stating that the driveway behind the existing gate posts veered immediately to the south, with a 10' clearance between the gate posts, making the turn off the street impossible. If the gate swung to the south, it would infringe on neighboring property--if the gate swung to the north it would be impossible to drive around the gate.

Mr. Castro, of the Building & Zoning Department, pointed out that information in the April Town Council Meeting minutes was incorrect: approval had been for the gates on the north side of the property to be at 5', and on the south drive at 9', which was not consistent with information contained in the minutes.

Mr. Broberg noted that the code was designed to get cars off of busy roads, and in this instance a cul-de-sac with nine houses existed, which was not a busy road.

Mrs. Furlaud addressed the Town Council, explaining the purpose for the gates. A three story house with pool and tennis court was being erected across the street, and pick-up trucks were going through the Furlaud driveway ten/twelve times per day, and the gate posts were chipped and battered. The curb around the driveway was covered with tire marks, and she requested that gates be allowed.

Mr. McLendon made a motion to approve the 5' gate location because of the terrain; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

New Business

5. Variance No. 19-96 - Catalina and Thomas Miller, 1440 North Lake Way; to allow construction of a one-story addition onto an existing two-story house with a 10.8" side yard setback on the north side in lieu of 15' as required. R-A District

Ms. Wendy Pierce, architect representing Mr. and Mrs. Miller, addressed the Town Council, stating that the current floor plan of the home lacked an area to provide a breakfast nook or family room, and it was being requested that a one story addition be added to the existing two story home, which would include a breakfast nook and family room. Ms. Pierce displayed graphics of the property, stating that the existing north wall of the property currently encroached into the setback, with the building footprint being about 10.8' from the property line, as opposed to the 15' sideyard setback required. It was desired to keep certain architectural features intact, such as an existing bay window, which affected the proposed design.

Mrs. Smith asked if there had been any ex-parte communication on this project?

There had been none.

Mr. Castro explained that the hardship was that the width of the property did not meet the minimum requirements of the Zoning Code, and the proposed addition did line up--therefore, staff had no objections to the request of the applicant.

Mr. Wyett made a motion to approve Variance 19-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

6. Variance No. 20-96 - William Flaherty, 315 Chapel Hill Road; to allow installation of gates setback 10'8" from the street in lieu of 18' as required. R-A District

Ms. Jacquie Alberran, architect representing Mr. and Mrs. Flaherty, addressed the Town Council, requesting a variance to locate a gate at the existing gate posts, because of a problem with security and privacy. The hardships were the existing gate posts at the location; the existing port was very shallow; and the shape of the cul-de-sac, which protruded into the property.

Mr. Shaw, Mr. McLendon, and Mrs. Smith declared ex-parte communication with Ms. Alberran.

Mr. Moore expressed staff comments: ARCOM - it could be modified to conform to the Code; Town Engineer - it should meet the 18' setback; Police - no comment; Fire - no comment; Building Department - cul-de-sac location, low traffic, unusual design in that area, one post almost met Code; no objection.

Mr. Wyett made a motion to approve Variance 20-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

7. Variance No. 21-96 - Solcon 3000, Inc., 1332 North Ocean Blvd.; to allow a non-conforming perimeter wall located in the vision triangle of Ocean Terrace and Ocean Boulevard to continue, and further, to allow the addition of a 6" cap thereby permitting a 4'6" wall in lieu of 2'6" maximum allowed per Section 5.16 of the Town Zoning Code. R-B District

Mr. Kent Huffman, representing the owner of the property, addressed the Town Council, stating plans had been submitted for a new residence which incorporated the existing perimeter wall. Construction of the residence had been substantially completed, along with improvements to the perimeter wall. Mr. Huffman displayed photographs of the property. He requested permission to install a 4-inch cap on the existing non-conforming perimeter wall. The impact of the existing wall on visibility was minimal, the spatial relationship, as well as the slope of the area all constituted conditions which were unique to the property. The precise hardship issues had been addressed in the application.

Mr. Wyett declared ex-parte communication with Mr. Huffman.

Mr. Moore explained that this was a unique situation, and noted staff comments: Police Department - deferred to Town Engineer; ARCOM - for safety reasons code should be strictly adhered to; Town Engineer - wall must be lowered to maximum of 30" or eliminated entirely from the Code requirement site vision triangle; Building Department - no hardship; Town Manager - would like to hear additional information on the hardship. Mr. Moore commented that the wall was indeed existing, although there was an application to add some additional height to it, however, the wall was not an "accessory" structure as specified in the Zoning Ordinance. Therefore, because of the Zoning Ordinance, and the Town Ordinance dealing with right-of-ways, the 30" must be maintained, and it would be a dangerous precedence to declare this hardship in granting the variance.

Mr. Shaw asked if the wall had been on the original building plans as conforming?

Mr. Huffman replied that it was on the original building plans as it was presently constructed.

Mr. Moore stated that there was a note on the plans that specified the wall would conform to the sight triangle.

Mr. Huffman commented that staff had indicated that he should come before the Town Council and make an application for a variance.

Mr. Shaw pointed out that was after the fact that the building permits indicated that the wall had to comply.

Mr. Huffman replied that it was his understanding that the builder understood that the wall needed to be in compliance, however, no one was aware that it was not in compliance until very recently.

Mr. Moore explained that they had been told to comply, or apply for a variance.

Mr. McLendon asked if the wall could be considered to be "grandfathered"?

Mr. Moore established that there was no question that the wall existed, but under new construction a sight triangle scenario was governed by two ordinances, there was a condition that the structure must comply--therefore, because one house was torn down and another one built, a wall that interfered in the site triangle must comply.

Mr. Wyett commented that he was concerned with public safety.

Mr. Shaw made a motion to deny Variance 21-96--the wall would have to be cut down to compliance of 30" or be removed completely out of the sight triangle; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

8. Variance No. 22-96 - Robert Fessler, 151 Via Bellaria; to allow construction of an addition providing a 30' front yard setback in lieu of 35' as required. R-A District

Mr. Robert Deziel, representing Robert Fessler, addressed the Town Council stating that the variance request was to allow modifications and additions to a one-story entry facade, with a 30' front yard setback to match the existing front yard setback, in lieu of the 35' required. He exhibited photographs of the property, and explained that the objective was to return the home to the way it looked in the photographs. The owner was proposing to change the architectural style, and reduce the mass in the appearance of the home from the street, through replacing the roof, roof height, and add a Mediterranean style to the home. The change that needed a variance was the existing flat roof in the entry way. The owner would like to add a 4/12 pitched roof, with a hip--thus requiring a variance to pour and install the tie beam going across the top.

Mr. Wyett declared ex-parte communication with Mr. Deziel.

Mr. Moore expressed staff comments: ARCOM - does not meet criteria for hardship; Building Department - asked Mr. Deziel to address hardship in greater detail; no comment from other departments.

Mr. Wyett made a motion to approve Variance 22-96; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

9. Variance No. 23-96 - Sydel Miller, 1415 South Ocean Blvd.; to allow construction of an accessory building using an elevation of 14.5" as a point of measurement in lieu of 7.5' as required per Section 2.10(11.3), to establish building height. R-AA District

Mr. Peter Broberg, representing Sydel Miller, addressed the Town Council, stating that in 1992 the then owner of the property came before the Town Council to ask for a point of measurement variance to construct a home on the property, and the point of variance was at 23' instead of the 7.5' as required by the Code. The Town Council had granted the variance because of the great slope in the property from the street. The variance had not been acted upon, and in 1995 the owner asked for the same variance again. At that time, the Town Council chose not to grant the variance, but to grant a 20' point of measurement, with a building structure that would be no higher than 52.4'. Mr. Broberg exhibited photographs of the pool pavilion, which was the subject of the variance, requesting a point of measurement of 14.5' instead of 7.5' in order to allow the building to be placed at the site, staying in conformity with the main house. Mr. Broberg explained that the hardship was the dramatic rise from the street level to the crown.

Mr. McLendon declared ex-parte communication with Mr. Broberg.

Mr. Moore expressed staff comments: staff comments were unanimous in that the area needed for a variance was the second story of the pool pavilion, rather than the structure itself, and the hardship was definitely self-imposed.

Mr. John Gosman, architect of the residence, stated that the pool compound housed activities that could not be accommodated by the main house. To provide for these, a second floor was needed. The pool pavilion would be compatible with the main house. Mr. Gosman addressed the displayed photographs of the property as he explained the desire for modifications to the Town Council.

Mr. Ron Kolins addressed the Town Council, stating that he was representing Mr. and Mrs. Jeffrey Picower, who owned the home immediately adjacent to the subject property, and strenuously objected to the variance for reasons of privacy, aesthetics, and property values. Mr. Kolins argued that six standards of the Code must be met in order for a variance to be granted, and submitted that those standards had not been met, as well as the fact that the Code required that a variance must be found to be in the public welfare, consistent with the public interest, and not injurious to the area around it--this Variance could not meet those standards. Mr. Kolins specified that the applicant had suggested that the lay of the land was a special condition and circumstance. He noted that if the applicant was not seeking a two-story pool house, there would be no need for a variance. Mr. Kolins went on to suggest that the applicant had caused the special conditions, as a result of the proposed two story poolhouse, and that this was a self-contained hardship. Mr. Kolins addressed Standard G, which read "that the grant of the variance will be in harmony with the general intent and purpose of this ordinance, and that such variance will not be injurious to the area involved, or otherwise detrimental to the pubic welfare." He asserted that the applicant had not responded to that criteria at all, therefore, the application must be denied.

Mr. Broberg reminded the Council that criticisms and dislikes of neighbors were not grounds to grant or deny variances or special exceptions, which should stand on their own merit. He suggested that the property had withstood the scrutiny of a variance twice before, and requested approval.

Mrs. Smith pointed out that if the request was for a one-story pool house, there would be no variance required.

Mr. Shaw made a motion to deny Variance 23-96, as there was no hardship and the request was excessive; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

10. Special Exception No. 15-96 - The Everglades Club, the Everglades Golf Course; to allow construction of two (2) single family residences. R-A District

Mr. David Shaw, representing The Everglades Club, addressed the Town Council, stating that the project was two single family homes to replace an existing non-conforming duplex. The homes were designed to house the golf course maintenance supervisor, and the club maintenance supervisor. A Special Exception was required, even though it was a residential zoning district, because the golf course itself was a Special Exception to the district. Mr. Shaw explained that the application set forth all the technical requirements for a Special Exception, and invited any questions on the project.

Councilman Shaw expressed concern about the idea of the concept of calling recreational facilities single family homes, and suggested that the application should indicate that these were not single family homes, but part of a recreational facility.

Mr. David Shaw replied that a Declaration of Restrictive Covenants to that effect could be recorded as part of the approval of this Special Exception, stating limitations to staff use, and that the project was not designed for use as single family homes, as it was clearly not the intent to construct anything for sale or re-use, except for a very limited purpose (to provide staff housing onsite).

Mr. Moore established that the use of the structures would be for employees, and as an accessory to the club itself, therefore, there were no objections to the application.

Councilman Shaw reiterated that he objected to the terminology, not the use--his concern was that it was implied that the property was better used as single family homes on property that should not be used as single family homes.

Mr. Moore explained that replacement of a duplex was prohibited, as the property was in single family zoning.

Mr. Ken Brower, architect for the project, addressed the Town Council, stating that the residences would be approximately 2,000 sq. ft., including a garage.

Mr. Wyett made a motion to approve Special Exception 15-96; seconded by Mr. McLendon.

Mr. Randolph suggested that a Deed Restriction be recorded, stating that the single family residences will be used by Everglades Club staff only.

Mr. Wyett agreed to incorporate that into his motion.

On roll call, the motion carried 4/0, with Mrs. Smith recusing herself, declaring a conflict of interest.

11. Special Exception No. 16-96 - The Goodman Company, The Esplanade, Space 227, 150 Worth Avenue; to allow expansion of Saks Men's Store by adding 1,140 sq.ft. to the present 7,794 sq.ft., totaling 8,934 sq.ft. C-WA District

Mr. Jim Brindell, on behalf of the Goodman Company and Saks Men's Store, addressed the Town Council, stating that all criteria had been addressed in the application, and the purpose was to provide adequate clothing lines to the male customers of Saks Fifth Avenue. Approximately 80% of the customers met the Town-serving definition, and Mr. Brindell requested approval.

Mr. Moore expressed that staff comments concerned the Town-serving aspect, which Mr. Brindell had addressed.

Mr. Wyett made a motion to approve Special Exception 16-96; seconded by Shaw. On roll call, the motion carried 4/0, as Mrs. Smith was not present in the room.

12. Special Exception No. 17-96 with Variances - Fred Kriz, 910 South Ocean Blvd.; to allow construction of a residence (Lots 1 & 2, R-A District) using a point of measurement at the highest elevation of the building envelope at 24'11" NGVD in lieu of 19' NGVD as required. To allow construction of a beach house (Tracts A & B, Beach Area District). To allow an existing 4' high masonry wall to remain (Beach Area District) in lieu of the maximum 30" high wall presently permitted.

Mr. Moore identified that the issue of the 4' high masonry wall remaining in the beach area district in lieu of the 30" high wall presently permitted was a grandfathered wall, and could stay with no variance necessary.

Mr. Frank Lynch, on behalf of Mr. and Mrs. Kriz, addressed the Town Council, stating that the variance was being requested to transfer the point of measurement from the crown of South Ocean Blvd. to a point on the lot, with the hardship being the topography, or the lay of the land. This land went from a high point of approximately 25', and Mr. Lynch displayed photographs of the property indicating the grade. It was being requested to transfer the grade from the average height of the adjacent roadways (approximately 19') to a point on the property of 25' (located about 55' from the property line). Mr. Lynch distributed material showing the various elevations of the site within the building envelope. He noted that the topography created the hardship, as well as the site drainage, and that the condition did not result from any actions of the applicant. Granting the variance would not confer any special privilege denied to other property owners upon Mr. and Mrs. Kriz. He summarized that the variance was the minimum variance that would allow use of the property to build a two-story home, to avail Mr. and Mrs. Kriz of an ocean view, and requested that the variance be granted.

With regard to the Special Exception concerning the beach house, Mr. Lynch displayed graphics of the project. He stated that the application met with all requirements, and concluded that Mr. and Mrs. Kriz intended to make the property their home and asked for approval to be granted.

Mr. Moore again informed the Town Council that the wall variance was not necessary, and addressed the Special Exception. There was no problem, other than the sanitary sewer to be connected through the main structure to the Town facility. Public Works also would require that the seawall be upgraded to meet the minimal State DEP standards; a special wall section would be required in the area of the beach house, due to existing deadmen and tie-back systems for the seawall. Mr. Doney had concurred with the comments.

In regard to the point of measurement variance, Mr. Moore remarked that the drawings indicated a very large differential between the heights of adjacent properties to the north and south, appearing that the variance request was way above what the adjoining structures would be. Mr. Moore commented that this was an extreme variance request for the elevation.

Mr. Lynch responded that the closest house had a height of approximately 47', and the requested elevation of 25' would put the proposed home at 50', or 3' above the adjoining house.

Mr. Castro stated that the previous house was somewhat of a split level house, with the two story portion being at 17.8', and part of the house being at the 24' elevation in the one story section of the house. He explained that constructing the proposed house on this property would involve 25 additional feet from the finished floor to the top of the beam, so the house would be much taller than the previous house. The finished floor grades of the neighboring houses were much lower than the proposed house, therefore, the proposed house would be much larger and imposing than what was there before.

Mr. Jeff Smith, architect on the project, addressed the Town Council, stating that if the starting point was at 25', and went to the maximum of 25', the top of the tie beam would be 50', and the house next door was just under 47', so there would be 3' difference. The site had always been high, and to build at the height of the house next door, excavation would have to be done in order to get down to the slab. Living room windows would have to be furnished with light wells, such as would be found in a basement. The hardship was with the land.

Mr. Moore asked Mr. Smith if the figures submitted on the plan were correct?

Mr. Smith replied that a survey of elevations had been done by an engineer.

Discussion ensued regarding the figures relating to elevations of neighboring houses in relation to the proposed project.

Mr. McDonald made a motion to defer Special Exception 17-96 to the July Town Council Meeting; seconded by Mr. Wyett.

On roll call, the motion carried unanimously.

13. Special Exception No. 19-96 with Site Plan Review - Nations Bank of Florida, 396 Royal Palm Way; to allow construction of a 6,200 sq.ft. building for bank and financial use in a C-OPI District. Applicant proposes to move from 4,600 sq.ft. at 324 Royal Palm Way.

Mr. James Wearn, representing Nations Bank, addressed the Town Council, stating that there were no variances with the Special Exception Application, which was consistent with the Town Comprehensive Plan, and with the Zoning Code. Nations Bank had been a good corporate citizen of the Town for many years, and was the recipient of two prior Special Exceptions (8-89 & 31-92) involving a reduction of its square footage and a reduction of its need for parking. Nations Bank had demonstrated that it was Town-serving. Mr. Wearn asked Mr. Helmly of Nations Bank to address the Town Council.

Mr. Bill Helmly, Market Executive and Senior Vice President for Nations Bank Private Client Group, addressed the Town Council, which concerned private banking and trust services. The bank was not a full service branch operation, as other Nations Banks, but the facilities were designed to specifically cater to the needs of clients.

Mr. Eugene Lawrence described the site plan and offered to answer any questions.

Mr. Moore expressed staff comments: Public Works - no trees, walls, hedges allowed over the 2.5' utility easement on south side of the property; must meet the first one-inch of drainage retention for the parking lot; Building Department - demonstration of Town-serving required (which had been demonstrated).

Mr. McDonald made a motion to approve Special Exception 19-96; seconded by Mr. Wyett.

Mr. Shaw expressed concern about a parking lot that was massive, and suggested that the parking be put underground.

Mr. Lawrence responded that the parking represented was the amount of space needed, designed in the most optimal way. Landscaping and screening would be provided. The building was at a first floor elevation of 7.5', and the street was at about 4'; therefore, that was the differential that was necessary to come up from the street.

Mr. Wyett commented that there were two curb cuts, and if the parking lot was full, backing out onto a busy street would be necessary. He suggested that the north lot be connected to the south lot, so that cars could come around without having to go back onto the street.

Mr. Lawrence suggested that the south lot would be used almost totally by employees of the bank, so there would not be a problem. If the lots were connected there would not be a loss of parking spaces, however.

Mr. Wyett remarked that the dumpster could be seen from the street, and refuse would have to be carried from the building over to the dumpster. He suggested that the dumpster be moved closer to the building, as well as making it less obvious.

Mr. Lawrence replied affirmatively.

Mr. McDonald accepted the two additions to his motion (connecting the two parking lots, relocating the dumpster, and providing site screening for the dumpster, adhering to the Public Works recommendations that no trees, walls, or hedges be on the utility easement, and the parking lot must meet the drainage retention requirement). On roll call, the motion carried 4/1, with Mr. Shaw casting a negative vote.

14. Special Exception No. 20-96 with Variances - Worth Avenue Restaurant, Inc., Taboo, 221 Worth Avenue; to allow restaurant to expand from 5,100 sq.ft. to 6,100 sq.ft. A parking variance is required to increase the seating capacity from 151 to 207 seats, thereby requiring 14 additional parking spaces that are not available. C-WA District

Mr. Robert Deziel, representing Worth Avenue Restaurant, Inc., addressed the Town Council, stating that the request was to allow a restaurant facility currently occupying 5,100 sq. ft. to be expanded to occupy 6,100 sq. ft., and to increase the seating capacity from 151 seats to 207 seats, which would increase the parking requirement by 13.6 parking spaces, rounded off to 14. These parking spaces were not available on site. Mr. Deziel expressed the following reasons for approval of the Special Exception:

1. The space had existed before, and actually had been part of the Taboo Restaurant in the past.

2. Demand by Town persons, as defined by the Code.

3. The facilities were available to accommodate the additional requested space (kitchen and bathroom facilities.

4. Items A-H of the application.

Mr. Deziel expressed the following reasons for variance approval:

Items delineated in the variance request, and the hardship that parking spaces were not available on site, and the applicant had been unable to secure nearby parking from the Apollo lot. Mr. Deziel added that daytime parking was not a problem, valet parking was not offered during the daytime, and the availability of parking spaces at night was not a problem. The paid parking lots were not opened at night because there was no demand. He acknowledged that there had been some problems with the operation of the current valet parking system, and proposed that the Taboo restaurant provide additional valet parkers as needed, and that the Town designate additional valet drop-off spaces, so that cars would not stand in the thoroughfare lanes of Worth Avenue, the cars could pull up alongside the curb.

Ex-parte communication with Mr. Deziel was declared by Mr. Shaw, Mr. McDonald, Mrs. Smith, Mr. McLendon, and Mr. Wyett.

Mr. Moore clarified that the number of additional seats was a total of 56. He expressed the following comments: Police Department - must show 14 additional parking spaces and how they would be used; ARCOM - does not meet criteria for granting variances; Building Department - demonstration of Town-serving must be made (this had been done); Town Manager - Mr. Doney concurred with Police Department and Building Department comments. There had been some discussion with Chief Terlizzese regarding the valet operation.

Chief Terlizzese addressed the Town Council, stating that he had spoken with Mr. Deziel, and offered that the additional parking spaces should be provided and identified. The parking problem was intense in the area, and there had been numerous complaints from Town residents. Chief Terlizzese asked that the additional parking be required.

Mrs. Smith mentioned that there was not a large enough area in front of Taboo to pull in and pick someone up, forcing cars to stop in the traffic lane. She asked if there could be a larger loading zone area in front of the restaurant?

Chief Terlizzese replied that there was a parking lot right behind the restaurant with about 400 parking spaces, with a connecting alleyway, as well as an entrance from the restaurant into the parking area.

Mrs. Smith pointed out that the parking lot may not allow patrons to drive in only to pick up an elderly person, and suggested that a loading zone be created in front of the restaurant.

Chief Terlizzese replied that the valet system in the area must be made efficient and effective.

Mr. McLendon suggested that the use of the public parking lots could be increased.

Mr. Shaw suggested that the issue was passenger loading and unloading, and questioned how cars could be parked in the Apollo lot if it was closed at night?

Mr. Moore established that currently Jo's Restaurant had 25 parking spaces in the Apollo lot, Renato's had 14, and the Mushroom Cap had 55. There was a signed agreement with the Town saying that these restaurants would provide parking at that location. If they were being shut out of that parking, the owners of the restaurants would have to investigate the problem, as they were risking their occupational licenses if the parking could not be provided. He assured the Town Council that an administrative position would be taken before the licenses could be renewed.

Mr. Wyett mentioned that Worth Avenue was heavily congested between the hours of 7 p.m. to 9:00 p.m., and that Taboo had been one of the biggest offenders of the parking situation in the Town, and urged that the valet parking system be made more efficient by Mr. DeMarco, the owner of the restaurant.

Mr. Franklin DeMarco addressed the Town Council, stating that the valet parking was contracted out to another company that he had no control over, and information about problems with the valet parking had come to him only recently. He had not had any direct information from the Police Department concerning parking. He urged that the loading zone be made larger as a solution to the problem, with the 3-4 spaces provided along the curb in order to park cars temporarily until the valet could take the car to another space. He stated that he was willing to add valets, if the Town would give the curb space, and that an additional red space would be wonderful.

Mr. Wyett pointed out that valets often double parked on Worth Avenue, and that Mr. DeMarco would have to assume responsibility for the management of the valets. The same requirements would have to be asked of all restaurants in the Town. He added that the Town Council would like to see the restaurant expanded, however, the parking situation must be addressed.

Mr. Moore stated that the Town-serving aspect had been demonstrated for the additional 1,000 sq.ft., however, the ordinance did require parking, and he believed that the parking problem was a contractual problem with Mr. DeMarco and the Apollo lot.

Mr. Deziel stated that there was no demand to park cars at night, and there was no need for spaces.

Mr. Wyett stated that there were many ways that the situation could be solved, allowing the restaurant to prosper.

Mr. DeMarco commented that even though the additional parking spaces were required, practically they were not needed, as the parking lot was open, and anyone could park there.

Mr. Shaw made a motion to defer this matter to the July Town Council Meeting; seconded by Mr. McLendon.

Chief Terlizzese agreed to work on re-arranging the red space on Worth Avenue.

On roll call, the motion carried unanimously.

D. Other

1. Consideration of Proposed 1996-97 Zoning Calendar

Mr. Moore explained that last month the Town Council had received the study items and the Zoning Calendar, and a motion was now needed to approve the Calendar.

Mr. Wyett made a motion to approve the 1996-97 Zoning Calendar; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

2. Consideration of Special Exception No. 16-95 - Jo's Restaurant, 375 South County Road, regarding whether the restaurant has met all the previous conditions of approval six months after issuance of the Certificate of Occupancy for the new 600 sq.ft. dining area

Mr. Moore reported that most of the problems with the restaurant and its neighbors had been resolved prior to a meeting held in the Building Department recently where the remaining issues had been discussed. An agreement had been formulated and sent to Mr. Broberg on June 7, 1996, covering the following items:

The conditions that were agreed to by the Town Building Department, Jo's Restaurant, Everglades Plaza Condominium Association and by Mr. Handelsman were as follows:

1. Mr. Handelsman agreed to install some type of covering over the three arches in the west portion of the parking garage, which abutted the Everglades Plaza Condominium property. The specific manner in which these arches would be covered had not been determined, but one option could be for some light lattice work with associated landscaping. As agreed, the covering would remove the view of the parking lot from the residents of Everglades Plaza Condominium, and would reduce the sounds permeating from the rear of Jo's Restaurant, their employees, and the garage.

2. Jo's Restaurant would obtain updated receptacles for storage of liquid waste. These receptacles would be the type that would not leak, and sealed so that the liquid waste would not be released on the property either at the time of storage or removal. (Mr. Moore commented that this had been accomplished).

3. Efforts would be made to remove the recycling receptacles from their present location. This would be addressed by the Town Department of Public Works, which would improve the area aesthetically, and hopefully stop pedestrian traffic from using these receptacles for public garbage disposal. (Mr. Moore commented that these had been removed from their original location, and Mr. House was asking Public Works to consider additional site location options. This was not something that Jo's Restaurants or Mr. Handelsman had any control over.)

4. Jo's Restaurant agreed to use a deodorized dumpster cleaner at all times to clean their dumpster, and sweep out the dumpster on a steadier basis, every day or so. (Mr. Moore commented this had been done--granules had been left which would dissolve in water).

5. Mr. Handelsman agreed to a two-sided trellis, which would be installed and maintained around the fan on the roof. (Mr. Moore commented this had been designed, but had not had a permit issued on it as of yet).

6. Mr. Handelsman agreed the light on the tower would be reduced, changed to yellow, in order to reduce bright light which had apparently affected several residents in Everglades Plaza Condominium. (Mr. Moore commented that this had been done).

Mr. Moore stated that it was staff recommendation that the Town Council instruct staff that if any of the conditions were not met, necessary Code enforcement action be taken.

Mrs. Smith asked Mr. Broberg if he had any additions to the remarks of Mr. Moore.

Mr. Broberg had nothing to add, and presented the Certificate of Town-Serving to Mr. Moore.

Mr. Lou Caplan, on behalf of Everglades Plaza Condominium, clarified that the lattice work was not "light", but "tight" lattice work.

Mr. McLendon made a motion that these conditions be part of the approval of Special Exception 16-95; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

3. Consideration of Request by Mr. Robert E. Deziel for a Waiver to Zoning in Progress to permit AT&T Wireless Services to install a wireless communications panel at First National Bank Building, N.E. Corner of Royal Palm Way and South County Road - WITHDRAWN.

XVI. ANY OTHER MATTERS

There were none.

XVII. ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

Mary A. Pollitt
Town Clerk

S.E. 15-96

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

LAST NAME—FIRST NAME—MIDDLE NAME Smith, Lesly S.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Palm Beach Town Council
MAILING ADDRESS N. Ocean Blvd.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☑ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach, FL COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED June 11, 1996	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- **You must disclose orally the nature of your conflict in the measure before participating.**
- **You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.**

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I,____________________, hereby disclose that on ____________________, 19____:

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

____ inured to my special private gain or loss;

____ inured to the special gain or loss of my business associate,____________________;

____ inured to the special gain or loss of my relative,____________________;

____ inured to the special gain or loss of ____________________, by whom I am retained; or

____ inured to the special gain or loss of ____________________, which is the parent organization or subsidiary of a principal which has retained me.

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

I am a shareholder of the Everglades Club.

June 11, 1996
Date Filed

Issy S. Smith
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.