

ALSO TOWN COUNCIL MINUTES OF
MAY 14, 1991

references of those people who are being recommended. He felt the only way they could attempt to get the Federal assistance is by having the direct Washington representative and pointed out this was brought up at the end of the April Council meeting when he told the Council they were checking with firms they felt could adequately represent the Town's interest to secure the funds. Mayor Marix felt they should have had a special meeting scheduled for this subject. Mr. Doney advised he has spent a lot of time as did his staff attempting to pull this together as they knew there was a special Council meeting and he did mention this would be discussed at the last Council meeting.

Mr. Heeke stated he was not unsympathetic with the Mayor's feelings on this matter, but believe they were caught by a set of circumstances and now they need to move forward.

Mr. Doney felt staff wise they would have been remiss if they hadn't attempted to pull together what they have and he has done the best he could. He indicated they would be in contact with the liaison on this on a weekly basis and if it appears that based upon their best judgment the opportunity is remote to secure this Federal funding, he would recommend that their services cease and will only continue with their services if it is thought they had a reasonable chance of success.

Mr. Heeke noted the agreement was modified so there is no thirty day waiting period and they can opt out of the agreement at any time.

Mr. Weinberg felt it was necessary they move forward at this time in order to try and get what they seek with regards to Federal funds and he moved that they arrange for a contractual relationship with Holland and Knight as indicated in the memorandum from Mr. Doney dated April 19, 1991. Seconded by Mrs. Wiener. Mr. Heeke asked if the Town Attorney would supervise the final draft of the Agreement to which Mr. Doney stated he will coordinate with the Town Attorney. On roll call, the motion carried unanimously.

Motion was made by Mr. Weinberg that an amount not to exceed \$20,000 be authorized from the Town's Undesignated General Fund Balance to be expended for this purpose. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Heeke believed that if it is noted this to be a losing situation, the services will be terminated. Mayor Marix commented she felt there was no reason that this could not have been handled in such a way that the public would know about this as it could have been publicized further and she didn't believe it belongs here at this meeting.

VII. ADJOURNMENT: Meeting was adjourned at 6 PM.

Grace T. Peters.
Town Clerk

TOWN COUNCIL MINUTES OF
MAY 14, 1991

I. CALL TO ORDER AND ROLL CALL: President Heeke called the meeting to order at 9:30 AM in the Town Hall Council Chambers. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilwoman Douthit, Councilman Ilyinsky and Councilwoman Wiener. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Moore, Mr. Frank, Mr. Zimmerman, Chief Terlizzese, Chief Elmore, Mr. Elwell, Mr. Jakubiak, Mr. McPhail, Mr. Dusey, Mr. Bowser, Mr. Bitzer, Mr. Crouse and Mrs. Reedy.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by the Assistant Rabbi at Temple Emanuel, Brian Gossman. Pledge of Allegiance was let by President Pro Tem Weinberg.

III. APPROVAL OF MINUTES OF JANUARY 3, FEBRUARY 12, MARCH 12, APRIL 9 (9:00 AM, 9:30 AM and 5:01 PM) and APRIL 23, 1991. On motion of Mr. Weinberg, seconded by Mr. Ilyinsky, the minutes were approved with corrections.

IV. APPROVAL OF AGENDA: Motion was made by Mr. Ilyinsky, seconded by Mr. Weinberg to defer Item XIII. B. 10 the Peter Stanley Variance NO. 32-91 to the June 11, 1991 Town Council Meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. On motion of Mr. Ilyinsky, seconded by Mrs. Wiener, the agenda was approved with the addition of XI. D. 8. - Donation of Gertrude Maxwell of the steps of the Anthony home which were connected to the porch on which the Town's original Charter was signed; and XI. D. 9. Donation of electric leaf blower and generator by Dr. Sten Lilja. On roll call, the motion carried unanimously.

V. PRESENTATIONS:

A. Recognition of the Preservation Foundation of Palm Beach, Inc. for its Outstanding Leadership and Sponsorship of the Very Successful Palm Tree Sale Held on February 24, 1991.

B. Recognition of Hollis F. Russell - Seaview Park Commission.

Mayor Marix presented plaques of recognition to Mr. John Mashek, President of the Preservation Foundation and to Mr. Russell in recognition of his service on the Seaview Park Commission from 1986 to 1991.

VI. COMMENTS OF THE MAYOR: Mayor Marix indicated she had several people contact her requesting the name "Lake Trail" be restored to the sign as opposed to "Bike Trail". She stated the problem is there are many cyclists using the Trail with their high speed bicycles and don't use their bells and are rude to those who are walking. Mrs. Wiener agreed with the Mayor, noting this Trail is also used by roller skaters and skateboarders. Mrs. Douthit indicated she would like to see the pedestrians have the priority. Mr. Heeke suggested signs be installed which state the cyclists should proceed with caution, which would shift the emphasis to pedestrian traffic. Mrs. Wiener felt the change in the name would take away the emphasis.

Mr. Doney explained the signs that state "Bike Trail" are informational signs to try and keep the cyclists off the street. Mayor Marix felt that would indicate to people who have not lived here long that it is for bicyclists and the pedestrians should not use it, and she believed there should be some notice put up about speed limits as some of the higher speed bicycles go at a very fast clip.

Mr. Heeke requested Mr. Doney to revert the signs to "Lake Trail" as they once were and primarily for the protection of the pedestrian public and not exclusively for cyclists and pedestrians would have the same rights and entitled to walk the Trail Safely.

VII. PUBLIC HEARING

A. Landmark Designation for 134 El Vedado Road - Consideration of Resolution No. 11-91. Mrs. Peters confirmed the proof of publication was received. Mrs. Peters gave the oath to those who will be making comments during this portion of the hearing.

Adjournment

Roll Call

Invocation

Approval of
Minutes

Approval of
Agenda

Presentations

Comments of
the Mayor

Public
Hearing

Res.11-91

Res. 11-91

Mr. Frank advised the property meets the following criteria for designation: A - Exemplifies and reflects the broad cultural, political, economic or social history of the nation, state, county or town; B - It is identified with historic personages or with important events in national, state or local history; C - Embodies distinguishing characteristics of a architectural type or is a specimen inherently valuable for a period, style, method of construction or use of indigenous materials or craftsmanship; D - Is representative of the notable works of one or more master builders, designers or architects, whose individual ability has been recognized to have influenced their age.

Mr. Frank read a letter from the owner:

"I will be unable to attend the Town Council meeting on Tuesday, May 14, 1992, where the Council will act on the Landmark Commission's recommendation regarding 134 El Vedado. In view of this fact, I would appreciate it if you would see that this letter is inserted into the agenda of the meeting to attempt to clarify certain errors and misstatements in the various reports.

1. Architectural Information:

- a. The large, covered carport stated as being covered with aluminum is actually wood.
- b. The one-story building behind the pool does not have a screened porch as stated, but is totally enclosed.
- c. The window description is in error due to the fact that the majority of the windows in the building were replaced three to four years ago.

2. Historical Information:

- a. Previous ownership is listed as Kimberly. I fail to understand what is historical about the short time residence of an elderly playboy and his various playmates who were able to penetrate the scandal sheets.

This is a fine old home, and of course, in many respects, it shows its age. I hope the fact that the architect -- the husband of one of the members of the Landmarks Preservation Commission -- did not affect this decision.

Personally, I remain neutral on the matter, not having determine whether being declared a landmark is an asset or a liability.

.....

Signed Fred Brunner"

Mr. James Sved addressed the Council reporting this residence was designed in 1935 by John Volk. He read from the records of Mr. Volk: "This residence is on El Vedado built for Mr. & Mrs. John Noble in 1936 and styled in the character of a French farmhouse. This style I selected due to the property being densely wooded with native growth, including Live Oaks. The swimming pool that I built was the first free-form type of pool in Palm Beach, planned in the form of a natural lagoon, rather than the usual rectangular shape."

Mr. Sved exhibited slides of this property noting that by virtue of it being so densely wooded, they were not able to get shots of the swimming pool and pool house. He stated the house is a French Norman farmhouse style and is typified by English half-tudoring which are large wooden members, which accentuate the second floor. He noted there is also heavy timbered woodwork around the entrance-way. He stated a typical element of this style is a high pitched roof line which is indicative of the colder climate and allows the snow to fall off and not build up on the roof. He stated the brick base and the case of windows on the first floor which have been replaced but done extremely tastefully. He stated it is very heavily wooded lot and has large trees in this area. He advised a very interesting feature is while most of the brick work is laid in English Tudor bond in a natural horizontal position, there are some laid on the diagonal and that is a very interesting feature.

Mr. Sved pointed out the western portion of the lot is laid with paver stones, which is being used for parking. He believed it was a very nicely laid out house and the landscaping is extraordinary and very worthy of consideration as a fine example of Mr. Volk's architecture.

Mr. Frank indicated the corrections as noted in the letter are contained on Page 4 of the Designation Report. Mr. Weinberg stated he has no objection to the house but was disturbed by the historical criteria employed, as he can understand landmarking a house of great historical significance, but he was not overjoyed by the fact that King Hussein stayed there or that the Kleenex heir had parties there, as he didn't believe that was historical nor should that be a criteria used.

President Heeke fully agreed, believing that was frivolity at its highest level as they were trying to do serious work of landmarking and meet significant criteria. He stated he has no problem with the architect and believed this particular style was unique to Palm Beach at that time.

Mrs. Jane Volk, Chairman of the Landmarks Preservation Commission, addressed the Council indicating she was not involved in the preparation of this report but if they had better photographs they could see the extent of the Estate. She reported it was built for Mr. & Mrs. John H. Noble and Mr. Noble was an early President of General Motors. She recalled the house was owned by John Perry, who was a member of one of the earlier families in Palm Beach and whose family owned the local newspaper for many years. She recalled another person who lived in this home was Col. Robert Morse's daughter, who was a prominent citizen.

Mr. Heeke told Mr. Sved of his disappointment in the quality of this report as Mrs. Volk has given the Council information which was available and all they had to do was ask her, during the period the report was being prepared. Mrs. Wiener stated her concern about the fact the owner has pointed out a number of errors in the actual architectural description and she wondered how many other owners did not go to that trouble. She stated she could see one item but was concerned about there being three and wondered how much more there was missed in other reports.

Mr. Heeke asked they give these matters closer attention. Mr. Sved responded in defense of the intern who compiled the report, Mr. Brunner's letter addresses the carport and the one story building behind the pool which are very hard to see from the road and since they are not allowed to walk on the property, that was all they could see. Mrs. Wiener believed they should stick to the things they could see rather than manufacture something.

Mrs. Douthit asked if they asked for permission to come onto the property? Mr. Sved responded most of these reports were done by a student intern during the summer months and most of the residents are not here in the summer time.

Mayor Marix recalled there was a report done a few years ago done by an intern and at that time, it was

discussed these are exceedingly important designations and needed more attention and she thought it was agreed that these reports would be done by someone fully qualified. Mrs. Wiener agreed the supervision should be such that after a report is written there would be someone perusing very carefully what has been presented, and making sure it is not frivolous information.

Mrs. Wiener believed the historical information on this report is not needed to landmark this home. Mr. Heeke agreed especially since Mrs. Volk has testified as to who the other owners were which are part of the record. Mrs. Wiener agreed, pointing out that even if there were no historical personage, there were other criteria which have been met in order to landmark the residence. Mr. Frank indicated they could delete paragraph three which would remove the reference to Mr. Kimberly. Mr. Heeke noted paragraph five should also be eliminated to which Mr. Frank agreed, noting the rest of the information could remain intact.

Mrs. Douthit moved this matter be deferred one month as she wanted to see it in a proper package. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously to defer.

Mr. Ilyinsky asked to make one comment as he has known Mr. Kimberly for a long time and he knew he had received some bad publicity, but Mr. Ilyinsky was very much aware that a lot of good things have been done by Mr. Kimberly in his life. Mr. Heeke agreed he knew of Mr. Kimberly's civicworks, such as the Boy Scouts. Mrs. Wiener pointed out the person who lives or has lived in a landmark house is not always of great significance. Mayor Marix believed the fact that King Hussein stayed there should be left in along with other important facts.

VIII. LICENSES AND PERMITS:

A. Charitable Solicitations:

1. Animal Rescue League of the Palm Beaches, Inc., No. 7-92.
2. Edna Hibel Art Foundation, No. 292-92.

Mrs. Peters reported the two charities are recommended for approval by the staff. Motion was made by Mr. Ilyinsky to approve. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Beverage Licenses:

1. Application for a new 2 COP Alcoholic Beverage License for Asset Management Group of American, Inc., John Cameron Metz, President, d/b/a Howard Johnson's Restaurant, 2880 South Ocean Blvd. Mr. Doney explained this application has been reviewed by all departments and has been found to be in order and is recommended for approval. Mr. Weinberg stated his dissatisfaction with the new name they have selected which is Palm Beach Diner. Mr. Doney indicated the Town has no control over what name they wish to call themselves. Mr. Heeke asked Mr. Moore to pass the comments of Mr. Weinberg onto the management, expressing the concern with the image this name attempts to create. Motion was made by Mrs. Wiener to approve the application for a new 2 COP Alcoholic Beverage License. Seconded by Mr. Ilyinsky. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

2. Application for Change of Name for a 4 COP Alcoholic Beverage License from Thomas Campaniello d/b/a Doherty's Bar and Restaurant, Inc., to Thomas Campaniello/Doherty's Restaurant and Bar, Inc., d/b/a La Tavernette at 288 South County Road. Mr. Doney advised the application has been reviewed by all departments and has been found to be in order and is recommended for approval. Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit to approve the application for change of name for a 4 COP Alcoholic Beverage License be approved. On roll call the motion carried unanimously.

IX. COMMITTEE REPORTS:

A. Administrative and Personnel Committee - April 23 and May 7, 1991.

REPORT OF THE ADMINISTRATIVE & PERSONNEL COMMITTEE MEETING HELD ON APRIL 23, 1991

1. CALL TO ORDER AND ROLL CALL: Meeting called to order by Chairwoman Wiener at 1PM. Attending the meeting were Chairwoman Wiener, Committee member Weinberg, Mayor Marix, Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Personnel Director Crouse, Director of Public Works Dusey, Mr. Jakubiak, Mr. McCoy, Mr. Sharpe, Mr. Walker, Mr. Kyzar, Mr. Pitschman, Chief Terlizzese, Cpt. Roche, Cpt. Croft and Lt. Farrier.

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

III. CONSIDERATION OF APPEAL BY WILLIAM PITSCHMAN OF DISCHARGE FROM EMPLOYMENT. After hearing the testimony of Mr. Dusey, Mr. Crouse, Mr. Pitschman, Mr. Walker, and Mr. Kyzar, the COMMITTEE RECOMMENDS the appeal be denied.

IV. CONSIDERATION OF GRIEVANCE BY LIEUTENANT JAMES FARRIER, POLICE DEPARTMENT. Lt. Farrier testified that he did not know he could bring witnesses to this hearing and this matter was postponed to May 7, 1991 at 11 AM to allow Lt. Farrier that opportunity.

V. ANY OTHER MATTERS. None.

VI. ADJOURNMENT. Meeting was adjourned at 2:05 PM.

Signed Hermine L. Wiener, Chairperson and M. William Weinberg, Committee member.

REPORT OF THE ADMINISTRATIVE & PERSONNEL COMMITTEE MEETING HELD ON MAY 7, 1991

I. CALL TO ORDER AND ROLL CALL: Meeting called to order by Chairwoman Wiener at 11 AM on May 7, 1991 in the Town Hall Council Chambers. In attendance were Committee member Weinberg, Mayor Marix, Chief Terlizzese, Lt. Farrier, Mr. Doney, Attorney Randolph, Mr. Crouse, Cpt. Croft, Cpt. Roche, Mr. Jakubiak, Lt. Price, Sgt. Sallenbach, Patrolmen Ladd and Pradines.

II. APPROVAL OF AGENDA: Approved as pringed.

III. CONSIDERATION OF GRIEVANCE BY LIEUTENANT JAMES FARRIER, POLICE DEPARTMENT: After hearing testimony from Lt. Farrier, Cpt. Croft, Chief Terlizzese, Sgt. Sallenbach, Patrolman Pradines, Patrolman Ladd and Lt. Price, and in consideration of all documentation filed relating to the grievances, it is the RECOMMENDATION OF THE ADMINISTRATIVE AND PERSONNEL COMMITTEE, noting that some of the grievances listed have been rectified and the other

Licenses &
Permits

Committee
Reports

Report of
the Admin.
& Personnel
Committee
Meeting 4/23

Roll Call

Approval of
Agenda

Adjournment

Report of the
Admin. &
Pers.

Comm.
Mtg. 5-7

Approval of
Agenda

Any Other
Matters

Adjournment

Old Business

Ord. 4-91

complaints do not appear to be justified, in that the actions complained of further the efficiency, discipline and goals of the Police Department and that the grievances are without merit and should be dismissed.

IV. ANY OTHER MATTERS: None

V. ADJOURNMENT: Meeting adjourned at 1:07 PM.

Signed Hermine L. Wiener, Chairperson and M. William Weinberg, Committee member.

Mrs. Wieier indicated her Committee recommends the decision to terminate Mr. Pitschman be upheld and that Lt. Farrier continue to attempt to seek satisfaction in his job in relating to the rest of the department and his superiors in an appropriate manner.

Mr. Heeke asked that each report be addressed individually.

Motion was made by Mr. Ilyinsky that the recommendations of the Administrative and Personnel Committee of April 23, 1991 be approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Motion was made by Mr. Ilyinsky that the recommendations of the Administrative and Personnel Committee of May 7, 1991 be approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky to accept the reports of the Administrative and Personnel Committee of April 23, and May 7, 1991.

X. OLD BUSINESS:

A. Ordinances, Second Reading

1. Ordinance No. 4-91 - Amendments to Noise Ordinance. Mr. Randolph read the Ordinance No. 4-91 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ARTICLE IV, NOISE OF THE CODE OF ORDINANCES OF THE TOWN, AT SECTION 12-48 AND SECTION 12-49, PROVIDING FOR THE PROHIBITION OF CERTAIN NOISES DEFINED HEREIN, PROVIDING SAME SHALL BE UNLAWFUL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit to approve the Ordinance No. 4-91.

Mrs. Frances Kassanof addressed the Council stating she resided at the Winthrop House and speaks as a member of the Board of Directors and other owners whose apartments face the west. She reported they have three areas of problems with noise, one is the Esplanade, the next is cats in the neighborhood and the third is the air conditioner at the Colony Hotel which has been placed at the outer limits of the Colony properties so that it abuts the Esplanade property. She reported they have lost the use of their terraces as this is a very loud noise which never stops and at night, it is very prevalent. She has tried to work with the manager of the Colony and the Colony has made an effort to contain the noise by enclosing the air conditioning unit and they thought that would help eliminate the noise but it didn't. She stated they then enclosed it totally, but that has been ineffective and now the noise simply goes up into the air and she and her neighbors are a direct recipient of this noise.

Mrs. Wiener believed that Item H in the Ordinance would address that problem. Mr. Randolph stated they still have the decibel reading in the Ordinance and these are the types of things that the Code Enforcement Officer goes out and looks at and then makes a determination as to whether or not it is a violation of that section of the Code. Mrs. Wiener felt if people continue to be disturbed and they have been to Council before and the problem is not solved, it may not be a decibel situation, but since it is going twenty-four hours per day, it should be looked at. Mrs. Kassanof reported that Mr. Leone of the Colony Hotel indicated the decibel level was reduced but he did not know by how much, and she strongly felt if this Council concerns itself about leaf blowers for an hour or so, they should listen to noise from three sources every single day.

Mayor Marix asked if this enclosure was enclosed on the top? Mrs. Kassanof responded it was enclosed on all four sides but not on the top. Mayor Marix recalled they have heard this before and she recalled the man from the Colony stating they would work with it to quiet ti down, so it seems they have every right to insist something be done about this. Mrs. Moore advised they have taken a noise reading and the decibels did exceed the allowable, however, Mr. House has been working with them and has ordered them, through their engineer, to come up with an improved system to try to contain the noise, so it is still with the Code Enforcement Board.

Mr. Heeke suggested they bring it before the Code Enforcement Board and they should set a time within which to bring it into compliance. Mr. Moore indicated he will check with Mr. House as to what stage this matter is in with the Code Enforcement Board. Mrs. Wiener felt that enough time had been allotted and something should be done.

Susan Polan addressed the Council, noting she and her family also live with noise twenty-four hours a day but it is a different type of noise. She was wondering how this will be enforced as at the moment, as if someone violates Section 12-49 L or H, the Police verbally warn them, and then a written warning and then maybe, a citation. She felt the problem is still how it is being enforced as the Ordinance is well-drafted and the hours are fair. Mr. Heeke responded her remedy would also be through the Code Enforcement Board and asked Mr. Moore to follow up on that and ensure the procedures are properly followed by Mr. House.

William Polan addressed the Council indicating it is not just a matter of enforcement and the way it is written, but the problem is the policy that the Police Department has as the first time there is a complaint, the offender is given an oral warning, second time, they are issued a written warning and the third time, they are cited. He felt that could work in theory, but not in pracicality as what someone can do is go outside with a set of cymbals and wake them up and if they would call the Police and complain about it, the Police Department will come out and warn them not to do that again. He felt there was nothing that could be done until a seocnd or third warning is given. He stated he has a stack of complaints he has made, approximately thirty, and every time a complaint is lodged, they have to catch them three times on the same day before this can be enforced and he felt there may be something lacking in the way the Ordinance is written.

Mr. Heeke stated one thing they do have is an amendment to the Code Enforcement Code which went into effect last year, which allows for multiple offense punishments, however, the difficulty is the Code Enforcement Board has to make a determination initially there is an offense and once that occurs, the multiple offense provisions kick into place and they can be rigorous. He asked Mr. Moore to call in the Code Enforcement people and not the Police Department. Mr. Polan stated the Police Department is cooeprative, but in a violation of this type, they do not witness this themselves and therefore, they can't do a thing about it.

this themselves and there fore, they can't do a thing about it.

Mr. Randolph was asked if it was possible to look forward to the Code Enforcement procedure as he suggested? Mr. Randolph stated they could do that, but there is a problem with that as the Code Enforcement Board usually deals with continuing types of violations, rather than a one time violation and the Police Department is correct in that on a misdemeanor, they have to have witnessed it. He knows there are problems as this Ordinance was drafted to attempt to address most of the problems and that is why the Ordinance was drawn in order to deal with noises which can be heard within one's dwelling within certain hours. He stated he will take a look at the Code Enforcement procedures and see whether or not they can be tightened up to deal with the isolated types of instances.

Mayor Marix asked if something was changed so that either the Police or the Code Enforcement people could help out on this program, to try and help out these people who have the problems with noise? Mr. Randolph stated that one way to deal with those who have continuing type of violations, and this was based upon the amendments which were made to the State Statutes.

Mr. Heeke recalled this was a citation type procedure and he knew several communities have been meeting with a great deal of success on this. Mr. Moore indicated he would try and resolve this within the both departments.

Mayor Marix stated she has had complaints from residents about the dreadful noise it makes when the Town is unloading the dumpsters and wondered if anything could be done about that. Mr. Doney indicated he knew of some of these problems, for instance at the Town's docks and they are working on developing something that will make it less noisy.

Mr. Robert M. Grace asked if there was a conflict in the Ordinance between Section F of 12.47 and Section H of Section 12.49.

Mr. Randolph did not believe the blower section of the Ordinance was meant to deal with leaf blowers, but with power fans in garages and service stations and has been in the Ordinance for years and he did not believe that leaf blowers were in existence when this Ordinance was drafted, however, to some extent it could be used when the noises fit within 12.48 and if it is done to such an extent and for such a length of time that it falls within sections 1, 2, or 3 of Section 12.48.

Mr. Grace asked if what they were doing here now basically had nothing to do with leaf blowers to which Mr. Heeke responded that was true, at least not directly.

Mr. Erik Gilbertson addressed the Council stating that the noise from leaf blowers is devastating.

On roll call, the motion carried unanimously to approve Ord. 4-91 on second reading.

Ten Minute Break was taken.

President Heeke called the meeting back to order.

B. Bid Awards

1. Sealed Bid No. 013A-90/91 - Underground Street Light Wiring and Conduit - Consideration of Resolution No. 24-91. Mr. Randolph read the resolution by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDED A CONTRACT TO D & L TELECOMMUNICATIONS, INC. FOR 1991 UNDERGROUND STREET LIGHT WIRING AND CONDUIT.

Motion was made by Mr. Weinberg to approve the Resolution No. 24-91 to award the bid to D & L Telecommunications, Inc. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

XI. NEW BUSINESS

A. ORDINANCES - First Reading

1. Ordinance No. 5-91 - Proposed Amendments to Retirement Systems Ordinance.

Mr. Randolph read Ordinance No. 5-91 by caption:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES AT SECTION 15-11 SO AS TO EXCLUDE CERTAIN PART TIME EMPLOYEES FROM PARTICIPATION IN THE TOWN'S RETIREMENT SYSTEM; AMENDING SECTION 15-18 AND 15-19 SO AS TO CLARIFY THE DESIGNATION OF THE STANDARD PENSION BENEFIT; AMENDING SECTION 15-23 SO AS TO INCREASE THE MINIMUM DUTY DISABILITY BENEFIT; AMENDING SECTION 15-43 SO AS TO AUTHORIZE THE BOARD OF TRUSTEES FOR THE TOWN OF PALM BEACH RETIREMENT SYSTEM TO MAKE CERTAIN INVESTMENTS IN U. S. GOVERNMENT OBLIGATIONS AND IN REPURCHASE AGREEMENTS COLLATERALIZED BY U. S. GOVERNMENT OBLIGATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING AN EFFECT DATE.

Motion was made to approve Ordinance No. 5-91 on first reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

2. Ordinance No. 6-91 - Proposed Amendments to Charitable Solicitation Ordinance. Mr. Randolph read the Ordinance No. 6-91 by caption:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10, ARTICLE V, OF THE TOWN CODE OF ORDINANCES RELATING TO CHARITABLE SOLICITATIONS SO AS TO DELETE THEREFROM REGULATIONS RELATING TO TELEPHONE SOLICITATIONS AND TO DELETE THEREFROM THE REQUIREMENTS OF A STATE SOLICITATION PERMIT PRIOR TO THE GRANTING OF A TOWN SOLICITATION PERMIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made to approve on first reading Ordinance No. 6-91. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Resolutions

1. Resolution No. 23-91 - Renaming of Laurie Road to Laurie Lane. Mr. Randolph read the Resolution No. 23-91 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, RE-
NAMING LAURIE ROAD BETWEEN ONANDAGA AVENUE AND DEBRA LANE AS LAURIE LANE.

Mr. Heeke asked if there was consent of the property owners on that street to which Mr. Doney responded affirmatively.

Mr. Ilyinsky moved for approval of Resolution No. 23-92. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Res. 26-91

2. Resolution No. 26-91 - Commending Police Department for Investigation of the Alleged Criminal Matter on March 30, 1991. Mr. Randolph read the Resolution No. 26-91 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, EXPRESSING APPRECIATION TO THE ENTIRE TOWN OF PALM BEACH POLICE DEPARTMENT, HEADED BY CHIEF JOSEPH L. TERLIZZESE, FOR THE PROFESSIONAL AND CAREFUL MANNER WITH WHICH IT HAS INVESTIGATED THE ALLEGED CRIMINAL MATTER OF MARCH 30, 1991, SO AS NOT TO JEOPARDIZE EITHER THE INVESTIGATION NOR THE RIGHTS OF INDIVIDUALS WHO MAY BE INVOLVED.

Mrs. Wiener moved for the adoption of Resolution No. 26-91. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

C. Bid Awards

Bid Awards
Sealed Bid
No.012-90/91

1. Sealed Bid No. 012-90/91 - Seaview Park Tennis Court and Walkway Lighting - Consideration of Resolution No. 18-91.

Mr. Randolph read the Resolution No. 18-91 by title:

Res. 18-91

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDED A CONTRACT TO SIGNAL CONSTRUCTION COMPANY, INC., FOR SEAVIEW PARK TENNIS COURT AND WALKWAY LIGHTING.

Mayor Marix asked for a clarification on the walkway lighting bid which was \$17,900, which is in excess of the funds available; and the tennis court lighting was budgeted at \$68,000 with \$34,000 coming from donated funds. She noted there were insufficient funds available to award the base bid for Courts 1 and 2 and an additional \$23,000 needs to be allocated.

Mr. Dusey explained the additional \$23,000 would light two courts. He recalled last year this was discussed and it was estimated the construction costs would be \$68,000 to do four courts, and after discussion by the Mayor and Town Council, it was decided to proceed with two courts and try to obtain funding from private sources for the additional two courts. He stated based on that, the amount of monies from the General Fund Capital Improvement Program was \$34,000 and not \$68,000. He indicated the design monies must be put up front for the four courts and the electrical work that would be necessary to light everything in the future months, so it did come out to more than half and that is why they were short. Mr. Heeke recalled there was a concern about these courts being lit. Mr. Dusey stated that was so, but these are two lights with no glare or spill-over of the lighting. Mr. Heeke recalled there was some discussion at a Town Council meeting and Council was concerned about the interference this may have on the residents in the neighborhood, both with regards to the lighting and the hours they would be using the courts, and believed it was just for two courts.

Mr. Dusey indicated the original plan was to do two courts and evaluate and they could do that, if an additional \$23,190 could be allocated from the Capital Improvement Fund. Mayor Marix pointed out this was an additional amount to which Mr. Dusey agreed.

Mr. Dusey explained there is a contingency of \$7000, which he hoped would not be spent, so there would be an additional \$16,000, which he hoped would not be expended.

Mayor Marix asked what kind of design there would be. Mr. Heeke noted there was a resolution for four tennis courts. Mr. Doney explained there were two resolutions prepared, one for the two courts and one for the four.

Mr. Dusey advised the contractor is willing to do the four courts and keep his bid quite low. Mayor Marix asked how much would it cost to do two courts? Mr. Dusey responded it would cost \$43,890 for two courts. Mayor Marix noted they could do the two additional courts for 7,000, to which Mr. Dusey responded affirmatively. Mr. Dusey indicated there would be hardware and electrical lighting there for the future, if the Council wanted to do that. Mayor Marix noted \$7000 would do two courts and a walkway. Mayor Marix advised for an extra \$3500, there could be two additional courts to which Mr. Dusey agreed, noting there would still be a contingency fee.

Mrs. Wiener noted the \$3500 for each court has no contingency on it and the contractor is providing the two courts without any extras.

Attorney Randolph wanted to know if the bid award was contingent upon the granting of a variance? Mr. Dusey did not know. Mr. Randolph understood there would be an application to move ahead with this, there would have to be a variance obtained for the lighting of these courts. Mr. Doney indicated the Town Attorney was researching this matter as to whether or not there would have to be a zoning consideration if the courts were lit and Mr. Randolph believes there should be a variance procedure. He believed the replacement lighting would not require a variance. Mr. Randolph indicated he has been researching this and that was correct as to the replacement lighting, but the question was whether or not it was appropriate to grant a variance when there is prohibition. He doesn't want them to get into a bid situation where they have accepted a contract and then find out the Council cannot grant the variance. Mayor Marix asked how long the bid was good for? Mr. Doney responded it is good for ninety days, and he felt this would be good until after the June meeting.

Mrs. Wiener recalled there was lighting there now and wondered why they need to have a variance for anything that is going in there now.

Mrs. Wiener did not believe this required a variance as if there is a public facility which has lighting and had lighting there historically and there are a few more being added, she does not know why they needed to have a variance.

Mr. Randolph explained as a municipality, they do not have to grant a variance to themselves, and historically, the Council has taken the position that where variances are required, they do not want to treat themselves differently than other applicants. Mrs. Wiener indicated this did not answer her question and she has a concern about creating a variance situation, as perhaps it is not a variance after all.

Mr. Heeke recalled the concern the Council had was not just the lighting, but the activity which tennis

creates and the extended hours in residential zones as we have received complaints on these in the past. Mrs. Wiener indicated she believed they did arrange to light the courts. Mr. Ilyinsky believed they had given themselves some time to see if there were going to be any major complaints from the existing lights before they installed additional lighting? Mr. Heeke agreed this was for the changed lighting. Mr. Ilyinsky asked if there are any complaints? Mr. Doney responded the changed lighting has not been installed as yet as this was supposed to be an improvement. Mayor Marix recalled there were complaints from some of the people who live in Phipp's Plaza, not only about the lights but the noise also, and with the lights on, people would be staying later.

Res. 18-91

Mr. Ilyinsky believed there should be a restriction on the hours in which tennis could be played.

Mr. Heeke did not believe he heard unanimity with adding the extra lights, and has no trouble with approving the two on a test basis. Mrs. Wiener asked if perhaps the bidder would be willing to extend the time limit on the offer of building the additional courts for the \$7000. Mr. Dusey stated he will ask them, but he didn't believe they would.

Mr. Doney advised this lighting will be further west than the existing lighting which is nearer to Phipp's Plaza and there is demand for night time play by the users of this facility and they wanted to get a feeling on what it would cost. He stated the bidder made an error and is willing to honor the error in his bid, however, he does recognize the complexity of the various issue and that is why he brought this whole package to the Mayor and Council.

Mrs. Wiener moved the Sealed Bid No. 012/90-91 be accepted which pertains to the lighting of the walkway of two courts. Mr. Heeke passed the gavel to Mr. Weinberg and seconded the motion. On roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion.

Mr. Randolph again read the Resolution No. 18-91 by title indicating this bid was in the amount of \$62,690.00.

2. Sealed Bid No. 019-90/91 - Palm Tree Trimming - Mr. Dusey indicated this bid is recommended to be awarded to Willie Starling Tree Trimming at the rate of \$8.00 per tree for an estimated total of \$13,600. Motion was made by Mr. Ilyinsky to accept the bid as recommended by Mr. Dusey. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Sealed Bid
No. 019-90/91

3. Sealed Bid No. 022-90/91 - Park Avenue Reconstruction - Consideration of Resolution No. 25-91. Mr. Randolph read the Resolution No. 25-91 by title:

Sealed Bid
022-90/91

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA,
AWARDING A CONTRACT TO JOHNSON-DAVIS, INC. FOR PARK AVENUE RECONSTRUCTION.

Res. 25-91

Mr. Dusey explained this area has been in a somewhat deteriorated condition and it was found the reason being it is underlined by muck and the roadway is unstable and they have budgeted for this in this year's budget and added replacement lighting and the City of West Palm Beach will be replacing the water mains. He indicated this will be major repair so they will be doing two hundred foot sections at one time and once this is completed, this roadway will be in excellent shape.

Mrs. Wiener moved that Sealed Bid 022/90/91 Park Avenue reconstruction be accepted as will be adopted in Resolution No. 25-91. Seconded by Mrs. Douthit.

Mrs. Weiner suggested the Park Avenue Association be advised of this proposed project and what the relative time frame will be until the work is completed.

Mr. Heeke asked Mr. Doney to prepare a letter for his signature to the President of the association.

Mayor Marix wanted to know if there would be a penalty imposed if the contractor didn't meet the deadlines? Mr. Bowser responded the penalty is nominal but he is sure the contractor wishes to finish the work on a timely basis. Mayor Marix thought if he wanted to get in and out, he wouldn't mind a heavier penalty being imposed. Mr. Heeke stated if that was imposed, they would have to rebid and he called the discussion at an end.

D. Other

Other

1. Audit Proposal for Fiscal Year Ending September 30, 1991 (FY91) from Coopers and Lybrand. Mr. Heeke noted the proposed fee is \$1000 more than last year, and he asked Mr. McPhail if he would submit this again to see if we can get another award to which Mr. McPhail agreed.

Audit Pro-
posal for
FY91

Mrs. Wiener asked if this firm was one of those firms which has not been involved in any peculiar reports that have caused some of the banking disasters to which Mr. McPhail stated as far as he knows, they have not.

Mr. Heeke noted Mr. McPhail is recommending the Town continue with these auditors and unless there is a dramatic reason, the stream of knowledge and experience is not interrupted. Mr. Ilyinsky moved the recommendation of the Director of Finance be approved, as per the memorandum dated May 1, 1991 memorandum with the \$1000 increase in fee. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

2. Consideration of Request for the Town to Pave the South Woods Road Access Easement to Lake Trail - Letters dated March 20 and 26, 1991 from S. Perry Jackson.

Paving
of South
Woods Road
Access Easemen

Mrs. Douthit asked if it was appropriate to consider this matter as she knows there was litigation now in progress on the property and if that is so, she moved the matter be deferred. Seconded by Mr. Weinberg. Mr. Randolph responded the litigation is on the subject of whether or not the Town had the right to move the pipe that had existed on the Matthews property into the easement; and secondly, whether or not the Town was appropriate in using Town money to move that line and this would be a new issue but it could parallel what is going on in court right now.

Mr. Morris Levinson addressed the Council indicating he does not object to the paving requested today, but wants to make it clear it is a walkway for people and bicycles and not a roadway for cars.

Mr. Randolph indicated he appreciates the fact there is no objection to the paving of the ten foot walkway but in order to reach that, at some point something will have to happen from the termination point of South Woods Road to get to that point, and although there is no objection to the paving, something will have to be done in order to allow people to get to that point. Mr. Dusey agreed but he didn't know if Town Council could give up the rights in the Plat for a future driveway of access to those properties, as a contingency for paving of the accessway. Mr. Randolph stated it couldn't, stating if the paving of the walkway was contingent upon nothing being done in regard to a driveway, he would not recommend the Town Council do that, because he didn't think that could be barred as the Plat allows for it, but if a subsequent property owner appeared before Council stating he wanted to put a driveway there, the Council could not preclude it and he would not want the Council to enter into an agreement that what is done today is contingent upon the driveway not going in. Mr. Heeke asked if the Council authorized a pedestrian bike

Paving of
South Woods
Road Access
Easement

access, without any contingency, was there still a problem? Mr. Randolph stated there would not be, and if it is strictly the paving of that portion of the easement that is shown as a ten foot easement for walkway for public utilities and nothing else, then he has no problem, but he doesn't know what the position of the person they are in litigation with would be with regards to that.

Mr. Heeke viewed this request as an access for the walkway and he thought they could await final determination of the pending litigation. Mayor Marix pointed out the attorney stated there is no problem to pave the seven foot walkway but there is no way to get to it. Mr. Randolph responded there would be no way to get to it if they made it contingent upon the fact there was not going to be a driveway put in.

Mrs. Douthit felt the matter should be deferred and she so moved. Seconded by Mr. Weinberg. Mr. Ilyinsky believed he heard it said that these two issues are not in conflict with each other. Mr. Randolph clarified that this issue is not in court now but if Mr. Levinson did have objections to it, in the event that it be passed with the contingency that a driveway not go in, then it could become a part of the litigation.

Mr. Randolph clarified that the paved walkway will be on the Matthews property and does not go onto the Levinson property. Mr. Dusey agreed that the portion of the Plat that is dedicated to access paths is through the Matthews property. Mr. Randolph asked if the way the request has come to them, do they contemplate it means paving also over the Levinson property in order to get to it? Mr. Dusey responded affirmatively noting it would be adjacent to the Levinson's concrete driveway go westward and would be within the 20' easement for access and utilities and then into a ten foot easement for access and utilities. Mr. Randolph noted it would go across the twenty foot easement for access, and ultimately could be used in the future as a driveway.

Mrs. Wiener believed it was obvious the residents of South Woods Road are very anxious to have this paved at this time and she believed the Council is trying to proceed cautiously because as lawsuits progress, one never knows what will happen. She asked if there was any special reason why the residents could not wait for the completion of the litigation? Mrs. Susan Polan indicated they have waited 15 years for Mr. Matthews to allow them to use the easement which was a part of the Plat since 1924. She pointed out there are 13 children on the street who have to go to other access points. She felt there was no reason to wait any longer as Mr. Matthews basically said when he received the \$77,000 allotment, he would give us back which is ours, which was very nice of him but it always has been the street's easement. She didn't believe there was any reason to wait as the Levinsons have been gracious enough to say they have no problem with the Bike Trail being a pedestrian path. She has two little kids which she has been walking over the property. She felt if the Council could spend \$70,000 or more moving a pipeline, surely they could expend six or seven thousand dollars to pave this. Mrs. Wiener stated that wasn't the question. Mrs. Polan responded the question is safety, as there are 13 kids who deserve the right of that easement. Mrs. Wiener pointed out this was not the question she asked as what she wants to know, as everyone has been concerned about this for a long period of time and she is sure within the next six months or so this would be settled in the courts. Mrs. Polan asked why she was sure it would be? Mrs. Wiener asked why Mrs. Polan was sure this would not cause the Town any further problem and the Town would be paying a large bill if they lose, as that was the whole thing in her mind. Mr. Heeke felt they had to recognize the legal ramifications and they needed to clarify if there is an overlap of the path of what may be the driveway, as that could be a future safety hazard, and also there is a question as to whether they would be foreclosing the rights of either the party litigants by putting in the party now and he asked the Town Attorney for his opinion.

Mr. Randolph responded with regards to the overlap, if they would install just the walkway now to which there appears to be no objection as stated by Mr. Levinson, then in the future, the next question would be if an applicant were to come in to pave the 20' easement, which would overlap the walkway, whether or not there would be a safety hazard. He pointed out it would not necessarily be in conflict and certainly it could be used by residents and could be used for access to the dwelling, but they would be faced with the question as to whether or not it was a safety hazard. He stated another question would be whether or not the Council would allow a person to use it as a drive when it was previously granted as a walkway and as far as the litigation itself, he did not believe there was an overlap between this issue and the issues currently in the court, and the only threat he saw to grant this at this time from the standpoint of this litigation was if the property owners affected had an objection and if so, this might become another point in the litigation. Mr. Heeke reported there is no objection from Mr. Levinson provided that it will be accepted only for the use of a pedestrian or bicycle path, which is what the request is. Mr. Heeke asked if there was a representative of the other two properties in the room? There was no response.

Mr. William Polan addressed the Council stating he didn't believe their focus was on the issue which was whether they had the right to have that path, as he could not see any conflict in any way or form. He felt they had the right, they want it and if the Council didn't want to give it to them, they should so state. Mr. Randolph responded the Plat does show the easement and he thought there may be a right to use the easement, but there is not necessarily the right to have the Town pave it. He knew there were similar types of easements existing and people do have the right to use them, but there is no requirement that the Town pave all of the easements. Mr. Polan indicated they are not saying they have to do it. Mr. Heeke stated the easement exists and is available and the other issue is the issue of safety if the Town paved it now, are they at some future point going to have to install a barrier to keep it safe in the event it should ever become a driveway.

Mayor Marix noted the driveway would be 20' wide and asked if driveways were normally that width or would there be room for a path also. Mr. Randolph referred to the Plat, noting it is 10' and it bisects a driveway that would be 20'. Mrs. Wiener asked what the court timing was on this matter? Mr. Randolph reported recently there has been an amended complaint filed which he had filed a motion to dismiss on, and he is awaiting an answer to his motion, and it is probably not likely to be resolved within a six month period.

Mr. Ilyinsky felt they should go ahead and pave it. Mr. Polan suggested they pave the walkway and not pave the 20' section they are concerned with.

Mr. Heeke reported the Town Attorney has pointed out the Plat also shows a similar ten foot easement on North Woods Road, which may not ever interfere with the driveway. The people who lived on North Woods Road who were not identified stated they were not in agreement with this.

Mrs. Douthit withdrew her motion to which the seconder agreed.

Mr. Ilyinsky moved the request be granted for the Town to pave the South Woods Road Access easement to the Lake Trail. Seconded by Mrs. Wiener. On roll call, the motion carried 3-2 with a negative vote cast by Mrs. Douthit and Mr. Weinberg.

Luncheon break was taken.

President Heeke called the meeting back to order at 1:40PM.

3. Consideration of Request by Bergmann's Lawn Service, Inc., for the Town to Sign an Application for

Sloan's Curve
plantings

the Town to Sign an Application for a Florida Department of Transportation Right-of-Way Landscape Permit for Plantings by the Sloan's Curve Homeowners' Association on the West Side of State Road A-1-A. Mr. Randolph explained the Homeowners' Association will state in the Agreement that they will maintain the plantings and he would like to see a more formal agreement which would provide that it not only be maintained but in the event it is not, the Town could do so and then lien the Homeowners' Association and the property owners for the cost. Motion was made by Mr. Ilyinsky to approve the request to have the Town execute an application with the DOT for a landscape permit for plantings by the Sloan's Curve Homeowners' Association, with the provision an agreement be furnished by the Homeowners' Association that they would maintain the plantings and if there is a default, the Town would come in and do so, then lien the Homeowners' Association and the property owners for the cost involved. Mrs. Wiener wanted to know if this type of agreement was entered into by the other property owners? Mr. Doney explained this has not been done before as the DOT has changed their policy on the way these matters are now handled and they no longer will accept the signature of the property owners but want to have the Town's consent and signature. Seconded by Mrs. Wiener.

On roll call, the motion carried unanimously.

4. Consideration of Proposed Amendments to Town's Tuition Reimbursement Program. Mayor Marix asked if this matter should be deferred until after the Council has had an opportunity to review the next year's budget although she knows this is not a large amount of money that has been requested. Mr. Doney noted in the backup it shows the tuition refund for 1989 was \$5,381 and for 1990, \$5,847 and the last time the program was changed was in 1983. Mr. Heeke recalled the Town does have a policy encouraging employees to obtain the AB Degree. Mayor Marix felt they should wait as they have a difficult financial year coming up and she thought this should be deferred until they have a clearer idea of where they are going financially. Mrs. Wiener felt an expenditure of this sort, which is not major is coming back to them with more knowledgeable, efficient employees, which will save money. Mr. Heeke believed they should be consistent with their overall philosophy in this matter, when they were moving forward. Mrs. Wiener moved that the Town Council approve the tuition reimbursement program as outlined in the memo of April 18, 1991 from Mr. Doney. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Town's
Tuition
Reimbursement
Program

5. Consideration of Actuarial Study on Group Health Insurance Plan - Proposed Medical Plan Premium Rates. Mr. Doney indicated he sent a memorandum dated 5-8-91 which shows the Town has, through the participation of the employees and their dependents and the retirees and their dependents had some unfortunate claim experience and the recommendation is to have 50% of the increase for the actuarial premium amount paid for by the employee and 50 be paid for by the Town. He reported for the retirees, the recommended procedure is the Town split the total actuarially determined premium on a 50-50 basis and the details are set forth in the memo. He reported the staff will be looking at different ways to bring further controls on this issue. He stated last year they made some changes to the program which helped in certain ways, but the unpredictable factor are the major claims which have been paid and it is hoped this will level out. Mr. Heeke was sure all were aware that health medical costs have increased as have insurance premiums increasing.

Group Health
Ins. Plan

Mayor Marix believed they are looking at approximately one million dollars extra for this year, to which Mr. Doney agreed, noting for FY 92, the recommendations would bring in an additional \$50,000 in premium rates but the other factor that is being made up by the one million dollars is whether the Town will be budgeting to replenish the reserves, which are projected to have a deficit of \$420,000 at the end of this fiscal year. He stated the Actuary recommends the entire health insurance program maintain a reserve balance of 35% of the estimated claims. He indicated these figures are for the experience to date and he would like to hope that this will level out, but if it doesn't, they would have to update the figures again to coincide with the actual claims experience.

Mrs. Wiener indicated she had discussed this with Mr. Crouse and asked the question as to whether or not they would be better off by going with an actual insurance company and was advised that was not feasible.

Motion was made by Mr. Ilyinsky to approve the recommendations of Mr. Doney as contained in his May 8, 1991 memorandum. Seconded by Mrs. Wiener.

Mr. Adrian Winterfield addressed the Council asking if the memorandum indicates the approximate cost per employee, as another way to approach this would be for the Council to allocate whatever is necessary and rather than charging the individual, diminish the pool available for wage increases and he viewed this as more beneficial in the long run for the active employees. He asked if the Town had undertaken to provide something and if so, is it now waffling on its position? Mr. Doney did not believe that was true as for the last four years, the Actuary determines the proper premium rates by class of employee to fund the program with the 35% reserves and 50% of the increased amount has been passed on to the employee and 50% paid by the Town. He noted there was one change this year in order to try and get a better control on the overall program costs is to pass on 50% of the total premium cost for the retiree and their dependents and then 50% of that to the Town.

Mr. Doney indicated it is difficult and it will not be well received, but the employees and the retirees are well aware that health insurance is something everyone has to have and from the survey that Mr. Crouse has prepared, the Town offers a very competitive program based upon the policy and the particulars involved and offer it at a competitive premium rate.

Mr. Heeke recognized that many of the Town's employees have spouses who also work and have health plans available to them and have the option of choosing which plan they wish and the Town still offers the best plan available. Mayor Marix stated the Town offers an unbelievably generous arrangement for items to be covered and there are a certain number of people who will come to work quickly for the Town especially if they know they may be facing some heavy medical expense. She believed that they should look at some ways the Town can protect itself and the good employees we have against the erosion of general funds. Mr. Doney explained they will be looking at that, but the employees who have had heavy claims, approximately twenty, didn't want to have them but nevertheless they greatly impacted the system.

On roll call, the motion carried unanimously.

6. Consideration of Proposed Water Conservation and Water Resources Study by James M. Montgomery, Consulting Engineers, Inc. Mr. Heeke explained this is part of the requirements of the Comprehensive Plan. Mr. Doney reported Mr. Dusey sent a memorandum dated May 6, 1991 and the additional proposal defining the scope of work and the cost services was revised and they have attempted to meet the minimum requirement and still get the product we need. Mr. Heeke wondered if a follow-up should be sent, if this is enacted, to the Governor, DCA stating this illustrates one more cost which has been foisted upon us and we question the need of it. Mrs. Douthit reluctantly made the motion to approve the expenditure of \$63,967 from Undesignated General Fund Balance for this purpose. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Water Study

Mr. Weinberg suggested they explain why this has to be done. Mr. Heeke reported this is a state mandated procedure and our original Plan was not approved and finally after great negotiation, we finally got the Plan approved and this is one of the elements we had to give on to obtain the approval. Mr. Weinberg explained they have no alternative and must do this.

7. Consideration of Request by Southern Bell for Telephone Services Easement at Recreation Center.

Telephone
Services
Easement at
Recreation
Center

Mr. Doney explained Mr. Dusey has sent a memorandum on this subject dated May 8, 1991. He stated Southern Bell installed last summer a sub-aqueous crossing at Primavera and Southern Bell is asking for an additional easement and Mr. Dusey has recommended we require Southern Bell to fully landscape the cabinets they would be installing.

Mr. Heeke recalled one of the residents asked why we can't exact a toll from Southern Bell for this easement. Mrs. Wiener noted in the back-up material it states in the past Southern Bell has not paid for this type of an easement and she too wondered why they were not paying some sort of a fee. She didn't recall hearing any major complaints about the telephone service on this Island and they stated they would be improving same, so she believed this was something that would accrue to the telephone company's best interest and she would like to see the Town getting something in return.

Mr. Larry Mernick of Southern Bell addressed the Council indicating they replaced the fiber optic cable about a year ago and much of the service to the Island and through the Island is old lead sheet cabling and they feel it is coming to the end of its life without causing any problems to date, and they are trying to replace it with the fiber optic cable and gradually doing a cut-over to it before there are failures. He stated this fiber optic cable requires an electronic cabinet and that is why they are requesting the easement. He felt it would be to the benefit of the Town.

Mr. Heeke noted this will be under the area where the parking lot is located. Mrs. Wiener noted the prices are going up on everything and when we have partners, they should understand that and she would like to see something forthcoming, if possible and she thought there should be discussion going on between the Town's staff and the Telephone Company to see what accommodations can be made and she moved they consider the request of Southern Bell for an easement at the Recreation Center next month giving the Town staff and the Telephone Company an opportunity to talk to each other with regards to what the Town may be able to have as an accommodation from the Telephone Company in return for the granting of the easement. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Donation by
Gertrude
Maxwell of
steps from
Anthony
Home

8. Consideration of a donation by Gertrude Maxwell of the steps from the Anthony Home at 8 South Lake Trail (now demolished). Mr. Heeke reported these are two steps approximately 15 to 24 inches with a length of approximately ten feet and he believed these should be placed in Town Hall. He indicated Mrs. Maxwell is donating the cost of placement also so there can be a permanent reminder of the reported location at which the Town Charter was signed. Mr. Weinberg felt this was something that should be considered by the Preservation Foundation. Mr. Heeke advised Mrs. Maxwell has talked to them and it was decided there was more space available at the Town Hall which would accommodate these steps, such as by the wall in the stairwell or under the bronze plaque locations right outside of the Council Chambers on the west wall. Mayor Marix believed that history starts somewhere and it is her understanding these steps led to the place where the Town Charter was signed and she thought they should accept the donation. Mr. Heeke felt it was ingenious of Mrs. Maxwell to latch onto these steps as the building has been demolished. Mrs. Douthit agreed. Mrs. Wiener stated this is the first she has heard about it and asked what happened on these steps as she doesn't think this makes a bit of sense, and she believes they can get carried away with things like this and she sees no value whatsoever. Mrs. Douthit indicated this was purely sentimental. Mr. Heeke believed it was a part of the Town's history and called for a motion. Mrs. Douthit moved the Town Council accept the steps from the Anthony House which led to the porch where the Town Charter was originally signed on April 17, 1911. Mrs. Wiener indicated she had problems with that. Mr. Ilyinsky seconded the motion. On roll call, the motion carried 3-2 with Mr. Weinberg and Mrs. Wiener voting against the motion.

Dona-
tion by
Dr. Lilja of
Elec. Leaf
Blower

9. Consideration of donation by Dr. Sten Lilja of Electric Leaf Blower with Generator to be used and evaluated by the Public Works Department. Mr. Heeke explained Dr. Lilja wishes to donate an Electric Leaf Blower with Generator. He recalled studies are now underway about alternate methods to gas powered leaf blowers. He indicated Dr. Lilja has found these electric leaf blowers which have great power and Dr. Lilja has suggested these be tested by the Public Works Department and recognizing there is not always a source of electricity being available, a generator was also acquired which can be used with the leaf blower and Dr. Lilja has donated these items which should be tested along with the battery operated leaf blowers now being evaluated and these evaluations will probably be considered by our Public Works Committee, after the studies are complete. He asked there be added to the minutes Dr. Lilja's letter:

"MAY 11, 1991
MAYOR AND TOWN COUNCIL

LADIES AND GENTLEMEN: AT THE LAST COUNCIL MEETING, I DID NOT FEEL THAT THE EVALUATION BY THE PUBLIC WORKS DEPARTMENT OF A LIGHT BATTERY POWERED LEAF BLOWER WOULD PROVIDE THE COUNCIL WITH A SATISFACTORY BASIS FOR COMPARISON WITH GAS BLOWERS. MR. DONEY HAS SINCE INFORMED ME THAT THE PWD IS NOW EVALUATING A NEW-ON-THE-MARKET BETTER GRADE BATTERY POWERED BLOWER, AS WELL.

I FEEL THAT THE PWD OUGHT TO EVALUATE A REGULAR 120 VOLTS ELECTRIC BLOWER AS WELL, TO GIVE THE COUNCIL AN ADDITIONAL ALTERNATIVE, IF NOT, TO SAY A MORE DEFENSIBLE COMPARISON. GARDENERS CAN, IN MOST CASES, OBTAIN HOUSE CURRENT ON THE PREMISES. FOR THE TOWN CREWS, THE SITUATION MAY BE DIFFERENT. AT JOB SITES WHERE ELECTRIC POWER IS NOT AVAILABLE, A GENERATOR WOULD BE NEEDED TO SUPPLY ELECTRIC POWER, HOWEVER, SINCE ONE OBJECTIVE OF THE COUNCIL IS TO FIND A QUIETER ALTERNATIVE TO THE GAS BLOWER NOISE PROBLEM, THE GENERATOR ITSELF MAY NOT BE TOO NOISY EITHER.

TO HELP THE TOWN EVALUATE THE FORCE AND THE NOISE LEVEL OF A REGULAR ELECTRIC BLOWER, I WOULD LIKE TO GIVE TO THE TOWN SUCH A "1 HORSEPOWER" BLOWER, A 100' EXTENSION CORD AND A QUIET TYPE GENERATOR SET. MR. DONEY HAS TOLD ME THAT THE TOWN HAS GENERATORS, HOWEVER, IF BELIEVE THAT THIS GENERATOR SET WHICH I HAVE JUST GIVEN, MAY BE QUIETER AND COULD DEMONSTRATE THE BEST POSSIBLE NOISE LEVEL.

WITHOUT GOING INTO THE MANY TECHNICAL ASPECTS OF DIFFERENT BLOWERS, WHICH I WOULD BE GLAD TO PRESENT TO INTERESTED PARTIES, I SHALL MENTION ONLY THE FOLLOWING ROUGH CAPACITY COMPARISON, WHICH CAN BE DERIVED FROM ADVERTISED SPECIFICATIONS WHICH, FRANKLY, MAY BE MISLEADING:

1. A typical gas blower's max. force is approximately eight times higher than the force of the first of the aforementioned battery powered blowers.

II. The same gas blower is approximately 1.6 times more powerful than the regular 120 volts electric blower, which I have given to the Town.

I HAVE SEVERAL VIEWPOINTS AND INTERESTING TECHNICAL INFORMATION PERTAINING TO LEAF BLOWERS AND OTHER NOISY EQUIPMENT, WHICH I WISH TO PRESENT WHEN THE SUBJECT COMES UP ON A COUNCIL AGENDA.

signed Sten Lilja"

Mrs. Wiener asked if the Public Works Department had any electrical leaf blowers? Mr. Heeke responded they have none of this particular type, although they do have one which is not quite as powerful.

Mrs. Douthit moved that the Town Council accept the donation with vast gratitude for this generous opportunity to increase our knowledge and eventually will allow us to come up the proper decision towards our leaf blower problems and complaints. Mayor Marix felt if this worked well, it might be something that a great many citizens might consider buying for their own gardeners. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

XII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR APRIL 1991. On motion of Ilyinsky/Weinberg, the warrant List and Fund Expenditures for April was approved. On roll call, the motion carried unanimously.

XIII. DEVELOPMENT REVIEWS:

A. Major Matters Previously Considered by the Architectural Commission at their Meeting of April 24, 1991. On motion of Ilyinsky/Weinberg, these major matters were approved. On roll call, the motion carried unanimously.

The major matters were:

B112-90 Boat House Renovation: Mr. & Mrs. Stephen Levin, 446 N. Lake Way. Deferred.

B3-91 (A) Facade Renovation for Tiffany's, 259 Worth Ave., Deferred.

B3-91 (B) Facade Renovation for Hermes, 259 Worth Ave., Approved.

B31-88 - Landscape Plan for Villa Plati, Bradley Place. Deferred.

B29-90 - Landscape Plan for Mr. & Mrs. John Cunningham, 353 El Brillo Way. Approved.

B39-99 - Pool Pavilion - Gates for Trust Estate, 601 N. County Rd. Deferred.

B11-91 - New Duplex for Euro-Homes, Inc., 252 Atlantic Avenue. Approved conditionally.

B27-89 - Fountain for Mr. & Mrs. Nelson Peltz, 542 N. County Rd., Approved.

B19-91 - Addition and Renovation to residence of Mr. & Mrs. Norman Hascoe, 345 Polmer Park. Approved.

B20-91 - Addition for Solkin Group, 254 Plantation Rd. Approved conditionally.

B22-91 - New Residence for Robert Eigelberger, 240 N. Ocean Blvd., Conceptually approved with conditions.

B23-91 - Garage Addition for Michael Picotte, 434 Seaspray Ave. Deferred.

B24-91 - Awning Carport for Mrs. Albert Berne, Jr., 304 Plantation Rd. Approved.

B. Variances, Special Exceptions and Site Plan Reviews

OLD BUSINESS

1. Special Exception No. 5-89 with Variances - Renato Desiderio, #7 Via Mizner - Request for one year extension to permit outdoor dining at Renato's Restaurant for 24 additional seats, subject to parking conditions imposed. C-TS District. Mr. Desiderio addressed the Council requesting this be for a two year term. Mrs. Douthit moved the request be granted for a two year extension to permit outdoor dining at Renato's Restaurant for 24 additional seats, with the parking conditions as originally imposed. Seconded by Mrs. Wiener. Mr. Heeke felt they should be consistent as there are other people who have one year restrictions and they must come back to the Council for approval every year. On roll call, the motion carried 4-1 with Mr. Heeke voting against the motion.

2. Variance No. 22-91 - Robert Gordon, 980 N. Lake Way; to allow erection of a flagpole west of Lake Trail, over Lake Worth, on an existing dock; said structure placement is prohibited by Sections 5.43 and 5.44 of the Town Zoning Ordinance. R-B District. Deferred from April meeting. Mr. Heeke recalled there were some legal questions on this matter. Attorney Randolph recalled the reason this was deferred was he became alarmed when this was on the agenda and had talked to the Building Department about it and prior to going on with it, he saw the words "prohibited" in the application and his concern was the Council was being asked to grant a variance from something that was prohibited and the language states that under no circumstances except as permitted above, shall the Town Council grant a variance to permit a use not generally or by Special Exception permitted in the Zoning District involved or any use expressly or by implication prohibited by the terms of this Ordinance in the Zoning District.

He has looked at the language in conjunction with the Ordinance and he believes there is a concern for granting variances to something which is outright prohibited as opposed to granting a variance for setbacks or building regulations. He felt that despite his alarm, he came up with the conclusion that if they were to apply the strict reading of the Code, it appears the provision that prohibits the Council from granting a variance is to use considerations and not to other prohibitions within the Ordinance. He believed this was so the Council could not grant a commercial use variance in a residential district; or for a duplex in a single family district and things such as that. He thought if this was applied on a strict basis, that would be the case. He also gave consideration to the fact that if he were to rule they could not grant a variance to this type of prohibition, it would lead to a Pandora's Box as in talking with the Building Department, he has found these variances have been granted in the past to similar types of prohibition and he believed it was the kind of thing they can grant a variance. He believed the question as to whether or not it needed to come to the Council by way of a variance or if it was accessory use to a dock and he leaves that question to the Building Department.

Mr. Moore felt that under the definition of "structures", this did need a variance as it would be installed on the dock, however, he has conducted a survey of docks in existence in the Town and find that prevalent on docks are light poles, flag poles and lockers for marine equipment and he believed if the intent is to fly American and Nautical Flags, he believed the flagpole could be considered an accessory to the dock itself and would not need a variance. He interpreted this from the long-term discussions that were held with the Town Attorney, there would be no variance required. Mr. Heeke asked if it would then be subject to the formal requirements of the type of flag, etc? Mr. Moore indicated it would be considered accessory in that it would fly flags and the question would then come up as to what type of flags could be flown. Mrs. Wiener did not believe that pertained to this matter. Mr. Moore responded it would be removed from the necessity of having a variance.

Mayor Marix asked if a refund was in order to which Mr. Moore responded a request of that type would be considered by them. Mrs. Wiener believed when they approved the agenda earlier, they intended to consider this as a variance and she would move for approval of Variance No. 22-91. Mr. Heeke did not believe that was so as they just approved it as an item on the agenda and they are now at a point where they have an opinion that a variance is not required, and he did not believe they should be granting a variance as it is to be treated as an accessory use.

Approval of
Warrant List

Development
Reviews

Major
Matters

Arch.Comm.

Old Bus.

Spec.Excep.
5-89

Var. 22-91

Mr. Moore agreed it was being handled as an accessory structure and Council need not act on the Variance.

Mr. Randolph informed the Mayor and Council it is his opinion that it was appropriate to have it heard as a Variance since he last said that because it was prohibited, they could not grant a variance, but the Building Official has examined other docks and has researched it and has made a determination whether or not this can be considered as an accessory to a dock. He has not given an opinion on that. Mrs. Douthit noticed there is a flag at Duck's Nest, which is the oldest building in Town and she has no problem with this. Mr. Heeke advised Attorney Gustav Broberg, it looks like the building permit will be issued.

Mrs. Wiener withdrew her motion asking if this would be granted administratively to which Mr. Moore responded affirmatively.

Mr. Adrian Winterfield addressed the Council on this matter noting they have been treated to a thorough ballet of different opinions and he found it astounding. He asked if Council had given any consideration as to what structures will be permitted on the docks as there has been no limitation and anything that has been done before can be done again. He felt if the argument is dependent on the fact that a dock is analogous to a boat and boats fly flags. He suggested the Council should listen more closely to the reasoning that has been offered.

Var. 24-91

3. Variance No. 24-91 - Helen Bertles, 201 Angler Avenue - to allow construction of a swimming pool in the required street side yard providing a five foot setback in lieu of twenty-five feet required. R-B District. Deferred from April meeting. Mr. Moore recalled the side yard setback was extremely close to North Ocean Way and the staff felt the request was too close to the roadway and asked the applicant to move the pool further to the west and the applicant has revised the request to show the pool no further east than the existing wall, or east elevation of the house which is 11.8', therefore, the staff has no objection to the request as long as the wall of the pool is no further east than the wall of the existing house and site screening is provided on the east property line.

Mr. Moore indicated the hardship is the fact that this is a double fronted lot, and uniquely the street dead ends there. Mrs. Wiener made a motion that the Variance No. 24-91 be granted, provided that the pool wall is no further east than the existing wall of the house which has a setback of 11.8' in lieu of 25', and the sight screening be provided, as required. Seconded by Mr. Weinberg.

Mr. Moore pointed out there was an objection received from the neighbor, Mrs. Roddy. On roll call, the motion carried 3-2 with Mr. Ilyinsky and Mrs. Douthit voting against the motion.

New Business

NEW BUSINESS

Var. 26-91

4. Variance No. 26-91 - H. Stokes Lott, 1342 N. Lake Way; to allow construction of a second floor addition providing a side yard setback of 10.5' in lieu of 15' required. R-B District. Mr. Moore explained the staff's comments are: Mr. Frank advises it could be designed to conform to the Code. Mr. Doney has requested an additional explanation on the hardship, but overall there is no objection. Mr. Heeke indicated this is a second story addition and they are not changing the footprint of the house and the lot width is slightly irregular.

Mr. Lott explained the hardship is when the home was purchased, they had no indication that his 80 year old parents would be moving in with him and that his motivation for the addition.

Mr. Moore indicated the second story area could be constructed further to the south, but it would cause some major structural problems. Mr. Lott agreed noting that what is proposed does line up with the existing foundation. Mrs. Wiener recalled as they tighten up the regulations, it causes people to have these problems, and the Council has granted these in the past. Mr. Heeke pointed out they have been granted but he voted against them. Mrs. Wiener moved for the granting of Variance No. 26-91. Seconded by Mr. Ilyinsky. On roll call, the motion carried 4-1 with Mr. Heeke voting against the motion since he could find no hardship.

Var. 27-91

5. Variance No. 27-91 - Mrs. Richard Himmel, 311 Dunbar Road; to allow installation of a satellite dish on roof of a dwelling, prohibited by 5.51 (f) of the Town Zoning Ordinance. R-B District. Mr. Andrew Adams with Turnkey Communications of North Miami Beach addressed the Council on behalf of Mrs. Himmel. Mr. Moore advised one of the staff comments was to find out the reasons why it could not be installed on the ground, and the staff has no great objections, as long as it is completely sight-screened. He recalled the reason for the drafting of this ordinance was aesthetics. Mr. Adams advised that all satellites need to have a clear view in order to receive the reception signals necessary and they have done a great deal of research to adhere to the regulations, and have reduced the size to 5 1/2 feet wide and six feet tall, however, if they installed it on the ground, there would be a great deal of landscaping which would affect the signal and it would be very visible from the Bike Path and the Intercoastal Waterway. He advised the roof area where they are proposing to put this is enclosed by three walls. He did visit the neighbors and they have no objections.

Mrs. Wiener asked Mr. Zimmerman if he had made a site inspection to which Mr. Zimmerman responded affirmatively and it cannot be seen from anywhere.

Mrs. Douthit asked if it could be granted but only for the applicant and if she sells the house, the new owner would have to remove it or the new owners would have to come back for a new application. Mr. Heeke asked if there was ever granted a satellite in the residential district to be installed on a roof? Mr. Moore recalled one was granted in a commercial area with restrictions and with the proviso that it be screened from the neighbors. Mr. Heeke recalled the Paramount Theatre had requested one to be installed on their roof but that was denied.

Mayor Marix noted this will be protected on three sides by the roof and on the fourth side by the landscaping and would it be possible to have a restriction that in the event the landscaping was cut down, it would have to be removed? Mr. Moore advised they could place conditions on the granting of the variance.

Mr. Heeke felt the major concern was the safety aspect. Mr. Moore advised the engineering must be designed to adhere to the wind loadings. Mr. Adams advised this is made out of fiber glass and it does adhere to the 125 Mile per hour winds. Mr. Moore stated it would have to be engineered properly and submit the engineered drawings with the application for the permit. Mr. Adams advised it could act as a sail if it is turned in the wrong position, but it can be easily removed as it is very light weight. Mr. Ilyinsky moved the Variance 27-91 be granted. Seconded by Mrs. Douthit with the provision that the wind velocity is thoroughly checked out and approved by an engineer and the Building Department and also the proviso that if the applicant sells the house, the satellite be removed. Mr. Moore recalled this is done with kitchen agreements but this type of variance would run with the structure because of the unusual shape of the structure and the concept of it being sight-screened is part of the reason they are considering this, and he doesn't see the benefit of limiting it to the present owner.

Mr. Heeke asked what the hardship is on this variance? Mr. Moore advised that was the purpose of his staff asking the question why it could not be mounted on the ground rather than the roof.

After discussion, Mr. Heeke advised the motion is to grant the variance with the proper engineering and sight screening. On roll call, the motion carried 4-1 with Mr. Heeke voting against the motion.

6. Variance No. 28-92 - Edward Watkins, 1067 S. Ocean Blvd.; to allow a variance to Section 5.36 (c) of the Town Zoning Ordinance by permitting a 6' tempered glass shield to reach a maximum height of 20' above grade in lieu of 6' maximum allowed. R-A District. Attorney Doyle Rogers representing Mr. Watkins addressed the Council indicating the reason for this is the home is directly on the oceanfront and the lot is not deep and his client has discovered it is difficult to maintain the plantings because of the wind and salt spray and they wish to install this glass shield to protect the plantings. He noted this shield could be seen from the two adjacent property owners until the plantings grew high enough to sight screen the shield. He reported a letter of objection has been received from one of these property owners which is owned by an Estate who is trying to sell the property.

Var.28-91

Mr. Weinberg wondered how it would hold up to the winds? Mr. Rogers believed it would have to be installed according to the Code. Mr. Moore recalled this was before the Town Council several years ago, however, Mr. Rogers was not the presenter. He didn't believe there was a hardship presented. Mrs. Douthit moved on the grounds of safety to deny Variance No. 28-91. Seconded by Mrs. Wiener.

Mr. Rogers asked if he was to satisfy the questions asked by the objector, would that be of any help? Mr. Moore advised the letter was from Robert E. Miller, Personal Representative of Judith H. Miller.

On roll call, the motion carried for denial.

7. Variance No. 29-92 - Robert, Leo and Joe Bustani, 240 Australian Ave.; to allow construction of a two-family dwelling on a lot of 12,500 sq. ft. in lieu of minimum lot area of 13,333 sq ft per Section 4.20, Footnote 26, of the Town Zoning Ordinance. Attorney Robert Deziel addressed the Council for the applicant. Mr. Moore indicated the staff has no objection, provided the applicant agrees there will be no future variances sought in any construction of the two units installed on the property. Mr. Deziel stated that would be agreeable with his clients.

Var. 29-91

Motion was made by Mrs. Wiener to approve Variance No. 29-91. Seconded by Mr. Ilyinsky with the provision there will be further variances requested to which the maker of the motion agreed. Mr. Moore advised there is an objection from Gerald B. Connick who represents Boston Trust.

On roll call, the motion carried unanimously.

8. Variance No. 30-91 - John Jackson, 210 Ocean Terrace, to allow construction of a garage providing a building angle of vision of 128.5 degrees in lieu of 100 degrees maximum allowed. R-B District. Robert Bell, Architect for the applicant addressed the Council indicating they wish to add a master bedroom and bath wing and take the existing garage and move it form the center of the property to the western portion of the lot, thereby being able to screen this from the street. He indicated the lot is 30% wider than it is deep and the existing field of vision is 125 degrees and they would like to increase it to 128.5' and this 3 1/2 degree increase in the field of vision represents an increase of less than one per cent of the overall scheme of things. He indicated there isn't enough room to create a side entry garage and it is being reduced from a three car garage to a two car garage. He noted there are no other variances requested. Mr. Moore stated this is a three degree increase which is one per cent of 125', but the degree is a minimal variance request, since this is a large lot. Mrs. Wiener asked if the large lot would be the hardship factor? Mr. Heeke recalled Mr. Randolph has told them this could be a factor in their consideration of these requests.

Var.30-91

Mr. Ilyinsky moved that Variance No. 30-91 be granted. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

9. Variance No. 31-91 - Buchanan Underwood Travel Associates, 361 S. County Rd.; to allow a professional service to occupy space on the first floor prohibited by Section 4.20 of the Town Zoning Ordinance. District. Mr. Moore advised office and professional uses are restricted to the second floor in the C-TS Zoning District and the applicant wishes to occupy a space through a via without an exterior entrance and the Town has reviewed these applications in the past, such as at the Paramount Theatre and on Brazilian Avenue and staff has no objection provided that the applicant agrees there would be no entrance from County Road applied for at a later date. Mr. Heeke asked if the nature of the business was congenial? Mr. Moore responded it is classified as a professional use. Mr. Gerry Buchanan, President of Buchanan Underwood Travel Associates addressed the Council requesting the variance. Mr. Heeke recalled these have been granted in the past. Mrs. Douthit moved for approval of Variance No. 21-81. Seconded by Mr. Ilyinsky.

Var. 31-91

Mr. Adrian Winterfield addressed the Council suggesting they grant the application but consideration be given to a change in the Ordinance and either this be taken out completely or made a Special Exception. He didn't believe there was a hardship demonstrated however, in this case.

Mr. Heeke suggested to Mr. Moore that he consider some of these comments and the Zoning Commission might like to review these suggestions as we have done this at Via Testa and on Brazilian and at the Paramount building, so perhaps the Zoning Code needs to be reviewed.

On roll call, the motion carried unanimously for approval.

10. Variance No. 21-91 - Peter Stanley, 1332 N. Ocean Blvd., to allow construction of a basement as prohibited in Definition No. 6, "Basement" and to allow construction of a swimming pool at a street side yard setback of 15' in lieu of 30' required. R-B District. This matter was deferred.

Var. 21-91

WAIVER REQUESTED:

Waiver to story height limitation permitting the ocnstruction of a two story single family dwelling no prohibited under Town Council enacted zoning in progress.

11. Variance No. 33-91 - Lillian Hajjar, 1356 N. Ocean Blvd.; to allow construction of a partial second floor addition over a one story portion of a split level, thereby creating a third story height. R-B District.

Var. 33-91

WAIVER REQUESTED:

Waiver to story height limitation permitting the construction of a two story single family dwelling now prohibited under Town Council enacted zoning in progress.

Ames Bennett, Architect addressed the Council on behalf of Mrs. Hajjar requested the variance to put a second floor over the main part of the builidng which is now one story. Mr. Moore advised Zoning is in Progress on the issue of the waiver and the variance request is for a third story and the contour of the land does run down here, however the domestic employees are housed over the garage area and this addition will be a third story. He stated

they would have to show the Council something that would be unique to the property or to the application with regards to the waiver which would allow the Council to consider it, however, the zoning variance is the issue.

Mr. Bennett advised there is not a third floor request as no part of the building is three stories high as it is now in effect a split level. Mrs. Wiener asked how high the building will be. Mr. Zimmerman stated it is a few inches short of 27'. Mayor Marix realized there is a moratorium and there is a waiver process they can go through and she wanted to know how these conditions apply to this lot as they should be consistent and it should be a very compelling reason why they grant these waivers.

Mr. Bennett responded this is 40' from the property lines, so they are quite a way from their neighbors. Dr. Sten Lilja addressed the Council indicating this is a direct challenge to the recent zoning decisions which the Council has made with strong support from the Zoning Commission and from the residents. He noted the applicant has said without this addition, he could not enjoy his companion beach property and this is a justification which could be claimed by all who live in this stretch along North Ocean Boulevard and he is in opposition as it does create a two story or three story type building which the new Ordinance is intending to prevent. He felt if this was viewed from Seagate, it would be viewed as a three story and the granting of this application would set a precedent. He stated the street set backs are 25 and 24 feet rather than the required 30' and the sideyard setbacks are 5' and 10' rather than the required 15'.

Mr. Moore indicated the staff finds no hardship directly related to the third story to which Mr. Heeke agreed. Mrs. Douthit made a motion to deny Variance No. 33-91 for lack of a hardship being demonstrated. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

C. Other

1. Request for Exception to Section 12-51 "Hours of Construction Work" of Town Code of Ordinances by Mr. William E. Stivers, III for Work at 255 South County Road. Mr. Doney reported the applicant has contracted to remove the asbestos from the Southeast Bank building. Mr. Heeke advised he had a conflict on this matter and would not be participating in the discussion or the vote and turned the gavel over to President Pro Tem Weinberg. Mr. Stivers addressed the Council stating he is scheduled to begin on May 18th and the reason for the request is they would like to accommodate the employees and the customers of the bank, they would like to have the asbestos removal take place after hours from 7 PM to 6 AM and on weekends and holidays when there are no banking activities. After discussion, a motion was made by Mrs. Wiener, seconded by Mrs. Douthit that the request for exception to Section 12-51 by the Bank be granted as to the removal of the asbestos but once the asbestos has been removed, normal construction hours will apply. On roll call, the motion carried with Mr. Heeke abstaining. President Heeke resumed the chair.

2. Request by Mr. Doyle Rogers for Waiver of Fine for Completion of Construction at 1482 South Ocean Boulevard. Mr. Moore reported Mr. Robers has written a letter on this matter and his client has diligently worked towards finishing this project, but there have been some delays and he is requesting an extension of the time allotted for the completion of the construction. Mr. Rogers addressed the Council on behalf of his client. Motion was made by Mrs. Wiener that the request for waiver of fine for the completion of construction at 1482 South Ocean Blvd. be granted. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

3. Request for Approval of 1991/92 Zoning Draft Calendar and Tentative Study Items to Date. Motion was made by Mr. Ilyinsky to approve the Zoning Draft Calendar and Tentative Study Items for the 1991/92 Zoning Season. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

4. Grant from State Historic Preservation Office for Archeological Study Required by Comprehensive Plan - Request for Authorization for Mayor to Execute Agreement. Mr. Frank reported this is a study item in the Comprehensive Plan which requires the Town to come up with a plan for investigation of archeological resources in the Town and catalogue them. Mrs. Wiener asked if there was any way the expenses for this project could be held to the monies received from the grant? Mayor Marix responded the Town has to match the funds. Motion was made by Mrs. Wiener to authorize the Mayor to execute the agreement to receive the grant from the State Historic Preservation Office for Archeological Study as required by the Comprehensive Plan. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

XIV. COMMUNICATIONS FROM CITIZENS - None.

XV. ANY OTHER MATTERS:

A. Dr. Robert Bouclas addressed the Council, indicating he was appealing an administrative decision regarding filming. Mr. Doney explained Dr. Bouchlas has submitted several letters to the staff and the Mayor and Town Council regarding a proposal to conduct off-shore exploration to locate a sunken ship, the Santa Margarita, and associated with this is a request to do some filming on land and in reviewing this, there are commercial related aspects to the filming. Mr. Doney indicated he has discussed this with the Town Attorney and Mrs. Peters and was led to believe the Commercial Filming Ordinance should apply, rather than a Special Event Permit and Dr. Bouchlas did not agree and is here to appeal the decision.

Dr. Bouchlas addressed the Council stating he felt the issue was he enjoyed First Amendment protection as they represent themselves as "Press". He has published periodicals and has appeared on television on current affairs and works with the School System in showing documentaries on a prior project in which his church was involved. He stated he enjoys IRS status as a church and the church owns as a subsidiary a press publishing company. He has permission from Mr. Simmons of the Flagler Museum to display the artifacts and they want to do this documentary and show it in the public domain. He did not feel he should have to file any type of permit as he should enjoy the same status as the Press does. He stated the filming is extremely important as their contract with the Historical Resources of the State of Florida requires them to keep accurate records and since the cost of commercial filming would be prohibitive and that is why they are inviting investors but the investors would have no control over the project or the directing or the plan laid out by the church. He stated he is in a dilemma as this is news as it will be a piece of history and will make a marvelous documentary and will give a good image of the Town of Palm Beach. He believed Mr. Doney was concerned that they were going to commercialize this project and actually wishes he could, but they have managed to carry the project forward with their own limited resources without bringing in the investment types. He will not be doing a Hollywood style type filming but merely a video. He stated he wanted to film what the Preservation Foundation will be doing at the Little Red School House this week and would use this as part of the documentary. He didn't believe they needed permission to film on the ocean, however, the story could not be brought forward in this century if they couldn't go to the locations as this is a series of events which are happening. He felt his First Amendment rights were being violated as all of the proceeds will go to his church. He stated this would be the only Spanish galleon ever recovered off of Palm Beach. He would be in total control of this project. He doesn't have the funds to pay for the fifty million insurance policy necessary for boats for the Commercial Movie Making Permit and he urged the Council to allow this to happen.

Mrs. Wiener felt there were things that are news in this Town and things that are not news and she knows staff

has worked on this, but it is clear that if it is news, anyone can come in and film it but above and beyond that, she would move that the decision of the Town Clerk, the Town Attorney and the Town Manager of the Town be upheld that a filming permit would be required except at such times when it's normal news. Seconded by Mr. Ilyinsky. Mrs. Douthit asked if this means he would be allowed to film at the Little Red School House?

Mr. Tandolph explained the Town doesn't need to become involved when it is a news item and if they are filming legitimate news events, they need not come and ask permission. Mr. Heeke stated if Dr. Bouchlas feels this is a news event and he is comfortable with that, he could act accordingly.

Dr. Bouchlas felt there may be a precedent being established which would violate his First Amendment rights as he is telling them it is news. He felt the whole spectrum of what he would be working on is an historical fact and news, past, present and future.

He felt it is needed to be established if he is violating the law or not and if he perceives something as news that he will not be stopped. Mr. Heeke stated the Ordinance is very clear and if it is legitimate news and other news media will be there, that is one issue, however, at the present time, what he proposes is to develop a documentary the Town Manager and staff have deemed it as commercial and he has heard nothing that would make him want to vote differently on that so he would have to apply for a permit and list the dates and times and locations he wishes to film and after review of staff, this would come back to Council for their consideration.

Dr. Bouchlas indicated he does consider this project a documentary and he feels he is protected by the First Amendment Rights in its entirety and he views it as news and will be filmed as news. He intends to have his rights protected by the ACLU, and he thought this was being wrongly interpreted and he will not let his crew violate the rules of going into residential districts, but will go to public areas where the project has factual, historical need for filming. Mrs. Douthit asked if he planned to take as long as he liked to film all of this? Dr. Bouchlas responded he will not interfere with traffic as it will be one or two cameras and they will be hand-held cameras, and he doesn't intend to do anything that would cause traffic congestion or anything that might cause the Chief of Police Terlizzese to exercise his enforcement authority.

On roll call, the motion carried unanimously.

B. Francine Bernard, President of the Park Avenue Neighborhood Association informed the Mayor and Town Council of the fact that the Palm Beach Hotel Annex, at 240 Park Avenue is now representing itself as the Park Avenue Inn and is renting rooms, which is clearly in violation of the agreement entered into with the Town and the Palm Beach Hotel. Mr. Heeke requested this be considered by the Code Enforcement Board directly, so they can make a determination so they can go into the multiple offense category the next time this may occur.

Park Avenue
Inn

C. DOT Right-of-Way Permit for Sloan's Curve. Mr. Doney reported this was approved by the Council earlier but there was a second item in the back-up material and asked if the Council wished these matters to continue to come before them as the DOT has indicated they would be requiring this procedure. Mr. Heeke felt the Council should take a look at each on an individual basis, particularly with the easements and the permanent maintenance questions.

DOT Right-of-
Way Permit
for Sloan's
Curve

D. UPCOMING MEETINGS: Mr. Doney asked the Mayor and Council to be aware of the upcoming meetings scheduled.

E. LANDMARK PRESERVATION WEEK. Mr. Moore advised this celebration will be held tomorrow between 5 and 7 PM at the Four Arts.

XVI. ADJOURNMENT. Meeting was adjourned at 4:50 PM.

Adjournment

Grace T. Peters
Town Clerk

TOWN COUNCIL MINUTES OF MEETING
HELD ON JUNE 11, 1991

I. CALL TO ORDER AND ROLL CALL: A meeting of the Town Council of the Town of Palm Beach was called to order by President Heeke on June 11, 1991 at 9:30AM in the Town Hall Council Chambers. In attendance on roll call were: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilman Ilyinsky, and Councilwomen Douthit and Wiener. Also in attendance were: Town Manager Doney, Town Attorney Randolph, Ms. Reedy, Mr. Bizter, Mr. Elwell, Mr. Moore, Mr. Dusey, Mr. Zimmerman, Mr. Frank and Mr. McPhail.

Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Msng. McGrehan of St. Edwards Church. Pledge of allegiance was let by President Pro Tem Weinberg.

Invocation

III. APPROVAL OF MINUTES OF MARCH 20TH AND MAY 14, 1991: Motion was made by Mrs. Wiener to approve the minutes as corrected. Seconded by Mrs. Douthit, motion carried.

Approval of
Minutes

IV. APPROVAL OF AGENDA: Motion was made by Mrs. Wiener to approve the agenda with the addition of recognition of Mrs. Maxwell and her donation of the Anthony house replacement steps to the Town, and the letters of withdrawal of Variance Applications N. 37-91 and No. 39-91 from consideration. Seconded by Mr. Ilyinsky, motion carried.

Appr. of
Agenda

V. COMMENTS OF THE MAYOR: Mayor Marix read a portion of an article which appeared in the Daily News on March 11, 1971, which stated that the last Council meeting lasted four hours and forty minutes and was one of the longest meetings in Town history.

Comments of
the Mayor

VI. PUBLIC HEARINGS

Public Hearing

Landmark Designations

A. Landmark Designation for 134 El Vedado Road - Consideration of Resolution 22-91 which was deferred from the May Council meeting. Ms. Reedy confirmed the proof of publication has been received for all public hearing items. Mr. Randolph administered the oath to all who would testify during this public hearing.

Res. 22-91

Mr. Sved said the house at 134 El Vedado Road was built in 1935 by John Volk for Mr. and Mrs. John Noble, and is French Eclectic style which is very rare for Palm Beach. He said when the house was originally designed it was known as "Reflections". The pool which was added to the property in 1936 by John Volk is designed to resemble a natural lagoon, and the property is very heavily wooded. Mr. Sved said the western portion of the property was added in 1965 by Mr. Volk. The carport was a point of concern when the property was submitted for designation last month because it was reported that the carport was covered with aluminum but is actually covered with wood. Mr. Sved said that later residents of 134 El Vedado Road included Mr. and Mrs. Gustave Toth and James Kimberly of the Kimberly-Clarke

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

LAST NAME—FIRST NAME—MIDDLE NAME <i>HEEKE BERNARD ALLEN</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Town Council</i>	
MAILING ADDRESS <i>124 Seabreeze Ave</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
CITY <i>Palm Beach</i>	COUNTY <i>Palm Beach</i>	NAME OF POLITICAL SUBDIVISION: <i>PALM BEACH</i>	
DATE ON WHICH VOTE OCCURRED <i>May 14, 1991</i>		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. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with 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

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should 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:

A person holding appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

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

- You should 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 should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

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

- You should disclose orally the nature of your conflict in the measure before participating.
- You should 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 should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Bernard Heeke, hereby disclose that on May 14, 19 91:

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

☐ inured to my special private gain; or

☒ inured to the special gain of South East Bank, by whom I am retained.

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

~~There is~~ a member of my law firm represents the applicant in a pending matter

Item - XIII C - Other

1 - Request for exception to work hours at 255 So. County Road.

5-14-91
Date Filed

Bernard Heeke
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), 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 \$5,000.