MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 12, 1992

Roll Call

I. CALL TO ORDER AND ROLL CALL - The May 12, 1992 Town Council meeting was called to order by President Heeke. 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 part of the meeting were: Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Bowser, Mr. Dytrych, Mr. Bitzer, Mr. Dusey, Mr. Boggs, Chief Terlizzese, Mr. Moore, Mr. Frank, Fire/Rescue Assistant Chief Koelz, and Mr. Elwell.

Invocation

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

III. PRESENTATIONS

Presentations

A. Recognition of the Preservation Foundation of Palm Beach, Inc. for its Outstanding Leadership and Sponsorship of the Very Successful Second Palm Tree Sale Held on March 29, 1992

Mayor Marix presented Mr. Machek, President of the Preservation Foundation of Palm Beach, Inc. with a plaque in recognition of the Palm Tree sale the Preservation Foundation held on March 29, 1992 to benefit all the residents of the Town.

Comments of the Mayor

IV. COMMENTS OF THE MAYOR - Mayor Marix read her comments: "Since our last meeting in April, I have had many many serious complaints on the subject of the Florida Power and Light Plant.

"When I say I have had complaints, I also have personally heard what is the subject matter of the complaints.

"Some two or three weeks ago in the middle of the night there was a very long and continuous, exceedingly loud, what I would call blowing their stacks. I understand that this is done at certain times for maintenance purposes. I have no problem with the fact that certain things have to be done, but for the well being of not only our community, but also of our surrounding neighbors, I must wonder, why in the middle of the night? Is it that they are sending up material, which if seen would cause ecological complaints? If not, then why wake hundreds of people for extended periods of time at night? Whilst we are rightly concerned about aircraft noise, this was similar but for a very extended time.

"This is not our only problem in this direction. What I often thought was a boat leaving for a very, very early fishing trip, similar to a heavy diesel noise with very strong, low frequency vibrations, turns out to be from that same plant. It is indeed unfortunate that this particular plant is so close to so many residential areas. Surely there is something that can be done to time and/or control these ecological matters. I would request that the appropriate steps be taken to bring these to a resolution."

Mr. Doney indicated he will write a letter as to their procedure and a written explanation will be requested. Mr. Heeke requested the letter be signed either by himself or the Mayor. Mrs. Douthit told of the complaints she has had from boat owners who have to wash down their boats constantly.

Approval of Agenda

V. APPROVAL OF AGENDA

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

Mr. Moore advised Item XV.B.1. Var. 3-92 has been withdrawn; XV.B.4, Spec. Exc. 5-82 postponed to June 8, 1992 Town Council Meeting; XV.B.10 Spec. Exc. No. 10-82 postponed to June 8, 1992 Town Council Meeting; XV.B.13, Spec. Exc. 13-92 postpone to June 8, 1992 Town Council Meeting; XV.C.2-Flagler System cost apportionment, postponed to June 8, 1992 Town Council Meeting. Mrs. Wiener asked for discussion on cable construction delay of traffic as yesterday she was delayed over ten minutes. Mr. Heeke indicated this will be discussed as Item XII.B. Mayor Marix requested Item VII.A.2 the charitable solicitation for Choice, No. 336-92 be removed from the Approved Agenda. Motion was made by Mrs. Wiener to approve the "Approved Agenda" as amended and approve the Regular Agenda with the modifications made. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

<u>APPROVED AGENDA</u> (ITEMS VI THROUGH IX)

VI. APPROVAL OF MINUTES OF MARCH 10, 1992

Licenses & Permits

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Boy Scouts of America, Gulfstream Council; No. 304-93

New Business

VIII. NEW BUSINESS

A. Other

1. Consideration of Revised Interlocal Agreement Between Palm Beach County and Town of Palm Beach for E 9-1-1 Emergency Telephone Number System for FY93 - Recommend Authorization for Mayor to Execute Agreement and Chief of Police to Follow-Up with Related Actions as Required

Approval of Warrant List

IX. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR APRIL 1992

Motion was made by Mrs. Douthit to approve the Approved Agenda as amended. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

REGULAR AGENDA

Regular Agenda

LICENSES AND PERMITS:

Licenses & Permits

A. Charitable Solicitation:

2. Choice; No. 336-92 - Mrs. Peters explained this organization is a Political Action Committee and they wish to raise monies to contribute to the candidates who are in favor of the Freedom of Choice. Mayor Marix asked if it was charitable or political? Attorney Randolph recalled when they look at the Ordinance, it appears this type of request would be included under the Charitable Solicitation Ordinance and in the past the Town has considered a political campaign for a candidate need not receive a Charitable Solicitation Permit, however he had a question on this on this as it was a group organized to collect money for a specific purpose, rather than a candidate, and he felt it would come under the Charitable Solicitation Ordinance.

Mrs. Wiener asked if it was within the Council's purview to go into this in great detail if they have already met the requirements of the Ordinance and can the Council pick and choose who should be able to raise funds in this Town? Mr. Randolph responded they cannot be denied on the basis of what they do as long as they comply with the Ordinance. Mrs. Wiener asked if they have complied with the Ordinance, to which Mrs. Peters responded affirmatively. Mrs. Wiener moved the organization be granted permission to have their charitable solicitation. Seconded by Mr. Weinberg. Mayor Marix wondered if this was a tax deductible organization and are they a charity? Mr. Randolph explained they are either exempt and the Council has nothing to say about it or they come under the Ordinance, and if they are in order, they may proceed.

Mayor Marix could not see if it was a charity that it is being called a charitable organization. Mr. Randolph stated this determination was made from the staff level, recalling the Council in the past has determined Political candidates do not have to go through the charitable solicitation permitting procedure. He is not aware that that has occurred in a situation such as this, but if the Council wants to make the determination that because of the policy for political candidates, the same thing should apply to Political Action Committees, they can make that determination. Mayor Marix asked if other PACS have applied for the charitable permit to which Mrs. Peters responded no other PACS have applied for a charitable solicitation permit. Mr. Heeke felt there was a question on this and it was brought to the attention of the Town Attorney who thought out of an abundance of caution it should be before the Council under the Charitable Solicitation Permit regulation. Mr. Randolph read from the Ordinance the definition of a charity. Mrs. Douthit stated she would vote for it but perhaps this needed to be looked at by the Ordinance, Rules and Standards Committee. On roll call, the motion carried unanimously.

X. PUBLIC HEARINGS

Public Hearing

A. Landmark Designation for 133 Banyan Road - Consideration of Resolution No. 20-92 - Mrs.Peters verified the notices were published for these public hearings. Mrs. Peters gave the oath to all who were going to make comment on the applications.

Resolution No. 20-92 was read by caption by the Town Attorney:

Res. 20-92

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER XVI ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER XVI, ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Frank explained 133 Banyan Road meets the Criterion A, B and C, as stated in the Ordinance. He noted this structure was known as Junglewood, designed by Julius Jacobs, architect, who did not do a lot of work in the Town but was the architect for 850 and 860 South Ocean Blvd., which are landmarked. He advised the house has Gothic details and details recognized in French Regency and what later developed into the English Tudor style. He stated the rounded arches are Romansque in nature and barrel tile roof as seen in Mediterranean Revival motif. He noted there is a request to increase the size of the structure and Council has seen this through a variance application for a cabana and the present architect, Gene Pandula, has taken careful and painful steps working with the Landmark Commission to add ornamentation and detailing which matches the existing structure. He advised there are some deteriorating details on the structure which the owner has committed to repair.

Motion was made by Mrs. Wiener, seconded by Mr. Ilyinsky to receive the Designation Report into the record. On roll call, the motion carried unanimously.

Mr. Weinberg felt the house was worthy of landmarking but he didn't agree Criterion B should be a part of it, although he agrees with Criterion A and C. He felt when they get the history of the original owner, he isn't impressed by the fact that the owner was the one who created a shopping district and the first night club and a dance festival in the Town. Mr. Heeke believed there were some other aspects in the report. Mrs. Wiener thought the original owner was a "developer".

Mrs. Volk, Chairman of the Landmarks Preservation Commission pointed out the Mozart Plaza was not a shopping plaza in the normal sense of the word and was important in the Town's history, although it was quite modest. She stated this was near the Biltmore and was there during the Col. Bradley Casino time and that was the center of the Town, before Worth Avenue, and is a way of remembering a man who had a great deal of foresight and imagination and was the beginning of the social commercial Palm Beach. She advised the owners of the house do wish to be cooperative with the landmark program.

Motion was made by Mrs. Douthit to approve the designation for 133 Banyan Road and the approval of Resolution No. 20-92 and with thanks to the present owners for their voluntary designation, on the grounds it meets Criterion A, B and C. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously for approval with Mr. Weinberg stating his approval is contingent on Criterion A and C and not B.

B. Landmark Designation for 736 Slope Trail - Consideration of Resolution No. 21-92

Res. 21-92

Attorney Randolph read Resolution No. 21-92 by title:

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

Mr. Frank reported 746 Slope Trail is owned by the City of West Palm Beach as part of their Water District and it meets Criterion A and C. He advised this looks like a modern type house and it really is not as the structure conceals a very large water storage facility directly behind the house. He advised the characteristics of the style of house are very plain and is usually characterized by a geometric shape. He advised the purpose of the design was to conceal the use and the entire large water facility and the streamlined Modern design is a derivation of Art Deco and has its place and this is an excellent example of the design itself. He stated the fact that the style and design of the building was used to conceal another use, is not unusual for the Town of Palm Beach. He advised the City Manager of the City of West Palm Beach, Ronald Schutta has written a letter in support of the designation.

Motion was made by Mrs. Wiener to accept the Designation Report as part of the record. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Mr. Erik Olsen, Director of the City of West Palm Beach Water Department addressed the Council, indicating they appreciate the Town looking at this in a landmark status, as it is unique in the South Florida area and probably in the country. He thought it was something that needs to be preserved and his City Manager, Mayor and City Council support this wholeheartedly and he congratulated the Mayor and Council on the landmarking of this building.

Motion was made by Mrs. Wiener to adopt Resolution No. 21-92 landmarking 736 Slope Trail as it meets Criterion A and C of the Ordinance. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Licenses & Permits

XI. LICENSES AND PERMITS

A. Charitable Solicitation

Charitable Solicitation

1. Palm Beach County Council of the Arts, Inc.; No. 335-92 - Mrs. Peters explained this application for charitable solicitation needs a waiver of the advertising rule as the event is scheduled for May 23, 1992. Motion was made to approve the Charitable Solicitation Permit with a waiver to the advertising rule. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

XII. COMMITTEE REPORT

Public Works Committee Report

A. Public Works Committee of April 29, 1992

REPORT OF THE PUBLIC WORKS COMMITTEE MEETING HELD ON

APRIL 29, 1992

Roll Call

I. CALL TO ORDER AND ROLL CALL: Meeting called to order by Chairman Weinberg at 3 PM. In attendance were Chairman Weinberg, Committee member Ilyinsky, Mayor Marix, Town Manager Doney, Town Attorney Randolph, Director of Public Works Dusey, Town Engineer Bowser, Transportation Division Manager McCoy, and Town Clerk Peters.

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

Interlocal Agreement - Regional Sewage Plant

III. CONSIDERATION OF INTERLOCAL AGREEMENT FOR EAST CENTRAL REGIONAL SEWAGE TREATMENT PLANT. After hearing comments from Mr. Dusey, Mr. Bowser and Mr. Doney,and discussing this issue, the COMMITTEE RECOMMENDS that authorization be granted to enter into this Interlocal Agreement with the City of West Palm Beach, subject to minor revisions, which will establish duties and responsibilities among the entities for the operation of the East Central Regional Wastewater Treatment Facilities, with the condition that the Town Attorney approves of the legal form and sufficiency of this proposed Agreement.

Solid Waste Billing

IV. CONSIDERATION OF PROPOSED CHANGE IN COMMERCIAL SOLID WASTE BILLING. After receiving comments from Mr. Dusey, the COMMITTEE RECOMMENDS that authorization be granted to Mr. Dusey to proceed with the study and development of a new billing system with regards to the commercial solid waste to make the determination of its feasibility and to identify any potential pitfalls which are unforeseen at this point. Additionally, Mr. Dusey will consult with the Town Attorney on this matter and offer any proposed Ordinance amendments, as needed.

Contract Street Sweeping

V. CONSIDERATION OF REQUEST FOR CONTRACT STREET SWEEPING. After hearing the input from Mr. Dusey and Mr. McCoy with regards to the estimated costs savings that can be realized due to the elimination of the position of Equipment Operator I in the Streets Bureau and since the Town would not need to purchase a new Street Sweeper, it is the COMMITTEE'S RECOMMENDATION that Mr. Dusey be authorized to proceed with a sealed bid and specifications including a contract for street sweeping services commencing in July of 1992. (Note: The elimination of the position will be offset by the cost for this service for July, August and September and this matter will be budgeted for FY 93.)

VI. ANY OTHER MATTERS:

Public Works Report: Dredging Project Town Dock

A. POTENTIAL GRANT FOR DREDGING PROJECT AT TOWN DOCKS FROM FLORIDA INLAND NAVIGATION DISTRICT. COMMITTEE RECOMMENDS a Resolution be prepared for the May 12, 1992 Council meeting, as requested by the Florida Inland Navigation District in order to order to apply for these grant funds.

Resurfacing Roads

B. RESURFACING OF STATE ROADS IN THE TOWN OF PALM BEACH. Mr. Dusey advised the Committee they will be approaching the Department of Transportation with regards to resurfacing Royal Palm Way and A-1-A in the south end of the Town, which are roadways under the jurisdiction of the DOT.

Comcast

C. COMCAST. Heard the comments about Comcast commencing work on May 4, 1992 on South Ocean Boulevard between Sloan's and Widener's Curve, at which time the Town will also be installing a new street lighting cable in the same excavated trench.

D. RESURFACING TOWN ROADS. Comments were heard from Mr. Dusey that the resurfacing of the Town roads are done based on need, not on scheduling.

Adjournment

VIII. ADJOURNMENT. There being no further business, the meeting was adjourned at 4 PM.

M. William Weinberg, Chairman and Paul R. Ilyinsky, Committee Member

Interlocal Agreement with WPB

Mr. Weinberg asked if the items of recommendation should be considered on an individual basis to which Mr. Heeke agreed. Mr. Weinberg stated authorization is being requested to execute the Interlocal Agreement with the City of West Palm Beach on the East Central Regional Sewage Treatment Plant with modifications. Mr. Doney advised the issue continues to evolve as far as the detailed contents of the Interlocal Agreement and the Sanitary Sewage requirements and staff requests the Town Council authorize the Mayor to execute the Agreement, after staff and the Town attorney are satisfied as to content, legal form and sufficiency. Mr. Doney advised the issue is there are five participants in the treatment plant and the City of West Palm Beach as the lead agent has had more unilateral control and this Agreement is intended to give each of the five participants more direct control to protect each governmental entity's interests.

Motion was made to approve the Interlocal Agreement, subject to the staff and attorney's satisfaction by Mr. Ilyinsky. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Weinberg stated a recommendation is that authorization be granted to Mr. Dusey to proceed with the study and development of a new billing system with regards to the commercial solid waste billing to make the determination of its feasibility and to identify any potential pitfalls, which are unforeseen and Mr. Dusey will consult with the Town Attorney on this matter and offer any proposed ordinance amendments. Mr. Doney advised there is no direct action required, however, if the Mayor and Town Council believe there should be an alternate action, they should so advise, otherwise, Mr. Dusey will proceed as outlined by Mr. Weinberg. Mayor Marix suggested this matter be explained in detail. Mr. Doney reported the issue has arisen as Mr. Dusey is on the Task Force of the Solid Waste Authority about potential changes to their billing system and as part of their study procedure, certain data has been generated which will be helpful in better defining users and generators of the solid waste. He advised the problem now with the commercial billing system is they bill individual tenants of buildings and often tenants change and they cannot be found and they believe the proposal to bill the owner would be more appropriate. Mr. Heeke asked if anyone on the Council had any difficulties with proceeding on this matter and the Council indicated they did not.

Mr. Weinberg advised the next item is consideration of the request for Contract Street Sweeping and it is the Committee's recommendation that Mr. Dusey be authorized to proceed with a sealed bid and specifications including a contract for street sweeping services commencing in July of 1992. Motion was made by Mr. Ilyinsky to approve the recommendation to contract the street sweeping operation, thereby eliminating a position and the equipment for this function. Seconded by Mrs. Douthit.

Mrs. Wiener asked how much would be saved on this change? Mr. Dusey responded compared to not having this as an in-house service and going to a five year lease for the street sweeping equipment, he estimated it would be a saving of $12,000 in the first year. Mrs. Wiener asked if Mr. Dusey believed he would have as good control on this service with an outside contractor doing the job compared to an employee doing it? Mr. Dusey responded this does depend on the quality of the contractor and they have experimented with one contractor who did fairly well. He advised they are also retaining their old sweeper and an operator would be available if needed. He advised they have spent a lot of time on the street sweeping program in-house and have not been satisfied with it, so they would have to gamble on it. Mrs. Wiener asked if the Town is not satisfied with the services rendered by the independent contractor, can the contract be easily cancelled? Mr. Dusey responded they can cancel. Mr. Heeke asked what amount of time they are bidding for? Mr. Dusey responded he is looking for a three or four year contract with the option to renew on an annual basis. Mr. Weinberg asked if they would now be functioning with superior equipment and quite different from what the Town now owns? Mr. Dusey responded this is true and they did look at the cost of leasing superior equipment compared to contracting for it and the contracting seems to be the way to go. Mayor Marix thought if the Town is not happy with the independent contractor, the contract can be cancelled and if they would not be happy with a piece of equipment that the Town had bought, we can't send it back, and the same would go with the employee who is doing the job, so she believed it was good to proceed with the privatization. On roll call, the motion carried unanimously.

Mr. Weinberg noted the next item is the potential grant for the dredging project at Town Docks from the Florida Inland Navigation District. Mr. Doney advised this will be done by Resolution which is on the agenda to be considered later in the meeting.

Mr. Weinberg stated the next item is the resurfacing of State Roads in the Town of Palm Beach, primarily along Royal Palm Way and A-1-A in the South end of Town.

Mrs. Wiener addressed the matter of Comcast, recalling she was on A-1-A yesterday and had to wait approximately ten minutes, which means the roadway was closed for that period of time. Mayor Marix asked if the Chief of Police had anything to add to this as if the road was closed for ten minutes, that meant no emergency vehicles could get through. Mrs. Wiener stated she finally got out of her car and walked up to the flagman and asked what was the problem. She believed these are problems the Comcast people have to contend with as this roadway is the only way to get through along that area and she believed it was their problem when these things happen.

Chief Terlizzese advised whenever one side of the roadway is closed, it causes delays in traffic and it is disruptive. He advised as far as the Emergency equipment is concerned, the roadway was passable in the event of an extreme emergency. Mrs. Wiener did not think it was possible as they had a huge concrete truck backing up and it would have been difficult to get through as both lanes of traffic were closed. Chief Terlizzese felt there may have been some delay, however, when a roadway is cut, there will be disruption. Mrs. Wiener thought they had to do better. Chief Terlizzese stated it wasn't for a long period of time. Mr. Doney advised there are weekly meetings held with Comcast on the work they are doing in the Town and this will be a matter of discussion at the next meeting. Mr. Heeke asked Mr. Doney to let them know members of the Council are concerned over events of this nature and this should not happen again in the future.

Mr. Weinberg reported the Committee heard the comments of Mr. Dusey that the roadways in the Town are resurfaced on the basis of need, not scheduling, so any emergency can be handled that may arise.

A motion was made by Mrs. Douthit to accept the Report of the Public Works Committee. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Old Business

XIII. OLD BUSINESS

A. Ordinance - First Reading

Ord. 4-92

1. Ordinance No. 4-92 - Amendments to Noise Ordinance - Attorney Randolph read the Ordinance by caption:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ARTICLE IV OF THE TOWN CODE OF ORDINANCE RELATING TO NOISE, PROVIDING AN AMENDMENT TO SECTION 12.47 (E) TO PROVIDE THAT THE USE OF LAWN MAINTENANCE EQUIPMENT SHALL NOT BE PROHIBITED ON SUNDAYS OR LEGAL HOLIDAYS; FURTHER PROVIDING AN EXEMPTION FOR GOLF COURSE MAINTENANCE EQUIPMENT, PROVIDING AN EXEMPTION FOR LAWN MAINTENANCE EQUIPMENT USED ON PROPERTIES OF MORE THAN THREE ACRES IN SIZE; PROVIDING AN AMENDMENT TO SECTION 12-50 SO AS TO PROHIBIT DURING CERTAIN TIMES AND DAYS OF THE YEAR HAMMER DRIVEN PILE DRIVING; AND TO PROHIBIT DURING CERTAIN TIMES AND DAYS OF THE YEAR DRY SAND BLASTING MACHINES AND JACKHAMMERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Weinberg to adopt Ordinance No. 4-92. Seconded by Mrs. Wiener.

Mayor Marix stated that where a golf course abuts a residential area, she had a concern about those people being awakened early in the morning. Mr. Heeke believed there were nuisance provisions in the Code which could address matters even though permitted, and get beyond the realm of acceptability for neighbors. Mayor Marix commented she didn't think they should be allowed to start early on a Sunday. Mrs. Douthit stated she was also opposed to mowing on Sundays. Mr. Ilyinsky wondered how long they have been allowed to mow the grass on Sundays? Mr. Moore responded Mr. Dytrych is here and there is a representative from the Palm Beach Country Club but it was his understanding this was done on a daily basis and this was a part of maintaining a golf facility. Mayor Marix stated she had no problem with them doing it in the middle of the golf course, but she was concerned about the residences which abut the golf courses.

Mr. Moore pointed out all golf courses do abut residential properties.

Mrs. Wiener stated she doesn't reside next to a golf course because she knows the beautiful greens take a lot of maintenance and work, but there are any people who do reside next to the golf courses for the view, for instance, and she felt if one elected to move into a home where there already is a golf course, they have made that decision. She believed most of the golf courses were already in place before the residences were built. She asked last month about complaints that have been received and was told there was one complaint at the Par 3 Golf Course and in the north end, there was one person who complained. She believed the reason the Noise Ordinance is being rewritten is to make themselves legal as this kind of an operation has been going on for years.

Mr. Dytrych addressed the Council indicating he always tries to be a good neighbor and have the least amount of complaints possible. He advised his people start a little bit before seven but they do start in the middle of the course and the complaint they had was from a resident of the 2500 Building. After the complaint was received, he talked to the resident and agreed not to go into the area near that building before 7:45 AM and this does cause inconvenience for the staff and the golfers as this is the second and third green, however they have worked out the problem by doing it that way. He doesn't wish to inconvenience anyone and further, when they do something special in the area such as spraying, their motors do conform to the decibel level. He calls upon the Manager of the surrounding buildings and alerts them to the fact there will be spraying early in the morning and this is done approximately two or three times a year. He reported spraying has to be done early in the morning and before the golfers get on the course as the chemicals are restrictive and dangerous.

He advised the greens are the most expensive part of a golf course and is quite an investment and no more than one third of the grass can be cut off at one time, and the best time to mow a green is the early morning hours, between 7 to 8 AM, before the heat comes in and puts the greens under stress. On roll call, the motion carried unanimously.

B. Sealed Bid

Res. 19-92

1. Resolution No. 19-92 - Sealed Bid No. 014-91/92 - E-6 and S-2 Pumping Station Wetwell Rehabilitation - Confirmation of Motion of Approval at April 14, 1992 Town Council Meeting

Attorney Randolph read the Resolution No. 19-92 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO CEM ENTERPRISES FOR E-6 AND S-2 PUMPING STATION WETWELL REHABILITATION.

Mr. Ilyinsky moved Res. No. 19-92 be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

C. Other

1. Consideration of Future Water Supply Study by James M. Montgomery, Consulting Engineers, Inc. - Progress Report on Negotiations with the City of West Palm Beach and Related Matters by William Sundstrom.

Future Water Supply Study

Mr. Doney reported that Mr. Sundstrom was not able to be here today, however, he has information to relate to the Mayor and Town Council. Mr. Doney indicated Mr. Sundstrom wished them to know the Town Council authorized study on the Aquifer Storage and Recovery, which was authorized at the March Town Council Meeting, is scheduled to be completed by May 31/June 1, and due to the complexity of the study and the need to discuss it at length with the consultants in attendance to offer the results, it is suggested a Workshop Town Council Meeting be held. Mr. Doney suggested that Monday, June 15, 1992 at 9:30 AM at which time the issue of the report could be presented and questions can be asked. He recalled a lengthy letter from the Palm Beach Civic Association has been received relative to a number of questions they had with regards to this issue and it is staff policy that before any individual of the public or the Civic Associations is considered, staff needed to report to the Mayor and Town Council , as that is who authorized doing the study. He hoped the report would be received June 1st and it will be provided to the Mayor and Town Council immediately and then the Workshop meeting will be held at which the Mayor and Town Council and the public may all ask questions. He advised action on the report would be anticipated to be on the agenda at the July 14, 1992 Town Council Meeting.

Mayor Marix commented on the fact they are dealing with a great amount of money and she is sure there has been already spent at least one hundred thousand dollars and it will be costly to have the meeting. She believed lots of questions would be asked and then it would go onto the July meeting and then they would be facing the fact that they might have to put in a test well which is another million dollars. She believed they were all fairly intelligent but she did not believe any of them knew anything about ASR, except what they would be told at the Workshop Meeting. She stated they will not be in any kind of a position, in spite of the expenses, of being able to evaluate the project from the one side. She knew they've got to move in some direction and believed that is why they were spending the money. She knew a decision would have to be made. She stated it was her thought that it would be very worthwhile to have also at that meeting, an alternate point of view, either from people who don't like ASR as those people on that side of the fence would be able to ask intelligent questions and the Council then would be better able to evaluate. She stated she could sit here and listen to one point of view for five minutes and then agree with them or five hours and agree with them, but she didn't know what the other side of the coin might look like. She felt quite strongly that they must have, even if the meeting is not held that soon, she believed they had to have some people at that meeting who could tell them the drawbacks. She knows her water bill has gone up a lot and they knew they would have to settle on a new contract. She thought they needed more help than just being told about ASR.

Mr. Gerry Goldsmith, a resident of Palm Beach, addressed the Council, indicating some of them do know something about the South Florida Water Management District and suggested that the information be placed in the newspaper so they could all read it and have an opinion, as the general public really doesn't know what these studies reveal and if they have that information, comments can be made at the meeting or the public could call various members of the Council with the ideas and questions they may have.

Mayor Marix felt they needed more input than from the people who are proposing something. Mrs. Wiener recalled there was a great frenzy two years ago on the subject of a desalinization plant here in the Town and it was agreed that the experts would be hired who would proceed to give the possibilities that there were out there. She stated as they all know being an expert is keeping the meter running as long as it possibly can and she doesn't blame anyone for doing that. She knew they were now approaching the amount of $300,000 and she wished to tell them that there was no question in her mind that they don't have to be the great experimenters on everything that comes down the road, because they are supposed to be very wealthy. She felt they could do well with the negotiations going on with the City of West Palm Beach who have been providing the water to this Town from the beginning and since desalinization was not able to sell itself, they now find themselves in this position. She stated she thought it was time they stopped spending all this money and they start getting down to the serious fact of making sure the water supply from the City of West Palm Beach is appropriately priced and is appropriate. She stated they are now listening to this talk of an ASR and she thought they could get along very well without it and she didn't believe they needed fifty people to tell them what are the bad points.

Mr. Heeke stated he hasn't yet seen the report and can't prejudge it but thought that the commission that was given the consultants was flexibility, quality of water, quantity of water, and we pointed them in several directions to investigate several opportunities. He stated obviously one of those would have been the Reverse Osmosis Plant, but that clearly is a very expensive option and that option is still available for consideration, however, the consultants did come across with something less expensive that might answer the problems of quantity and quality and until the report is studied and he agreed with the Mayor and Mr. Goldsmith that experts are needed to give us input on all of this when they look at the report. He believed the report will be here in about 15 days before the Workshop and that meeting is not a decision making process but an information gathering type of a meeting. He believed within that period of time they should be able to have suggested to them people to invite, to look at the report and questions to be asked or they could even ask them themselves at the Workshop. He has no idea where this is going to go. He has seen publications where it has worked in other communities and whether it will work here or not, is not known. He stated he thought they needed to cross-examine very carefully what is being presented to them. Mayor Marix agreed entirely and that is why she stated they should have someone who could be knowledgeable on the other side at the Workshop Meeting. She didn't want to be told all about the ASR all though the Workshop and then at the decision making meeting, someone else shows up and she thought before setting the date for the Workshop, they should find out who it is that they would like to invite and find out when they can come because she doesn't know what questions to ask, even if she read the report, since the report is going to be heavily favoring the ASR project. She really thought they should have specialists or someone who would come for free or maybe we would have to pay them but they would be able to discuss the Reverse Osmosis again or have an idea of what West Palm will charge for the straight water and she thought they should probably try if they possibly can to get the people back from DuPont to tell us more about what is happening on the Desalinization issue, which is a field that is moving very fast.

Mr. Weinberg wondered if they could get some intelligent experts from the South Florida Water Management District. Mr. Heeke believed there would be no problem there as they are local and are

Future Water Supply Study (cont'd)

readily available. Mr. Heeke stated he would rather not delay the workshop date. Mrs. Wiener agreed. Mr. Heeke noted there is an intervening Town Council meeting and if they needed to they could approve expenditures of some people who have had experience with the system to fly down. Mayor Marix agreed the South Florida Water Management District would represent one point of view and the ASR people would represent another point of view and she would like to see some other points of view represented.

Mrs. Wiener believed it really boils down to everyone trying to sell their product and we are spending money to have people come to us and sell us what they wish that we would buy and she doesn't go along with that. She believed the South Florida Water Management District people are ones that they should be hearing from and also, if it is determined they are going to have this Workshop on the 15th, which she is accord with, then the Civic Associations should be advised and when a copy of the report comes out, they ought to be one of the recipients. Mr. Heeke asked if there was anyone in objection to having the workshop on the 15th day of June and there was no objection. Mr. Heeke asked Mr. Doney to schedule the workshop and in the meantime, through Mr. Doney's office, listen to the recommendations of the people who might be invited to attend. Mr. Doney advised he will invite anyone the Mayor and Town Council so directs, but he wanted to be sure he didn't invite someone they didn't want to come and he needed that direction. Mr. Heeke suggested a representative from the South Florida Water Management District should be invited, to which Mrs. Wiener agreed. Mayor Marix stated she couldn't think of anyone that she wouldn't want to have. Mr. Doney pointed out there are varied opinions on that and his concern that the Town Council authorized the study be performed and it has been done and it is an evolution of the water supply study and they continue to negotiate with Mr. Olsen and the City of West Palm Beach.

Mr. Heeke stated the report was commissioned and there is no reason to believe it hasn't been done in a professional manner and the recommendations coming to us are not biased in any respect. He believed that what the Mayor and Mrs. Wiener are asking about, is let's be in a position to discuss what might be perceived as drawbacks or they may be answers to it. He stated it is just not known at this time as they haven't seen the report and they don't know sitting here as they haven't seen the questions asked or the answers given. Mayor Marix stated she really didn't know what questions to ask, and that was her point. She would like to have people who would be able to ask a question and the others respond to it and she is not saying in any way that it is a biased report but is saying the people who are going to be deciding on that report and that is all of us, absolutely don't know anything about the subject to speak of, except what they are going to read from the report and that is what is troubling her.

Mr. Heeke responded the purpose of the Workshop is to discuss the report and not go into details or depth with respect to other approaches, otherwise they would be on all kinds of tangents. He believed the idea was the consultants are trying to keep them on an orderly process of decision-making and if they reject something, they can go to the next thing, but they have to go through one at a time with some degree of patience and it is not a chance for DuPont to come in and say they can do better, but if they have questions about it, they can raise the questions. Mayor Marix stated that is true, if they know about the meeting. Mr. Heeke stated he had no problem about notifying the world about the meeting. Mayor Marix indicated she wanted everyone who wants to be able to come, to give their input. Mr. Doney asked if he should invite the DuPont people. Mr. Heeke responded it was his suggestion that Mr. Doney advise the DuPont people of the meeting and the purpose of the workshop and advise them the Council has discussed it would be nice if others who were experienced in the field would like to come and address questions concerning the ASR proposal.

Mr. Weinberg asked that a representative be asked to attend from the South Florida Water Management District, to which the Council agreed. Mrs. Wiener indicated she just didn't want to go through a sales pitch, as the original report they received rejected the RO in this present time period - over the next ten or fifteen years and she didn't want to go back and rebuild the costs. Mr. Heeke stated he did not know that they have rejected RO but put it aside to look at this ASR as a less expensive alternative. Mrs. Douthit didn't want to invite a bunch of salesmen.

Mr. Doney stated his concern was in December of 1990 after the Water Supply Study Workshop was held where Montgomery completed their alternatives for the future water supply for the Town of Palm Beach, those were identified and after they were identified and the costs known, to get from Point A to Point B for the future, one of the alternatives which they have been negotiating with Mr. Olsen and the City of West Palm Beach and in order that they meet what the Town Council and Mayor's enunciated goals and objectives about the improved pressure, quality, and quantity and the potential freedom from water restrictions and in order to get to that goal, where they are now are is everyone of these steps have considerable costs and likewise, the Town Council's direction to staff at the Dec. 19, 1990 Meeting was through the consultants, Mr. Sundstrom and Mr. Ostermann, there should be negotiated with the City of West Palm Beach a potential contract and at the same time concurrently evaluate independence. He stated they were still on that approach and the City of West Palm Beach is also, for certain reasons, looking into Aquifer Storage and Recovery as it has certain benefits but it has certain costs. He believed when they got to the dollars and cents of this for the Mayor and Town Council's benefits, the achievement of the objectives at what cost is where the policy decision needs to be made. He reported they will confirm this with the consultants and will invite DuPont and the Civic Associations.

Mr. Ilyinsky and Mrs. Douthit were dead set against inviting DuPont as they were trying to sell their system. Mrs. Douthit stated she did not want any salesmen. Mr. Ilyinsky wondered why they would hire consultants if at the twenty-fourth hour they would be bringing in people to take them apart? Mr. Ilyinsky believed they should have the Workshop and invite anyone who wishes to attend as there are a lot of people in this community who are knowledgeable about water. He stated DuPont is not going to agree with any of this and will say "buy my plant".

Mayor Marix responded DuPont was the one who offered to come down the first time and explain, but she was sure there were others out there who deal with desalinization and could give us update on it. Mr. Heeke commented the purpose of the Workshop is ASR, not RO and there is a specific report they are going to be discussing and analyzing.

Attorney Randolph wished to comment on Mr. Doney's remarks as he added something that he would write DuPont and Mr. Randolph viewed this as singling out one company as they don't know who all the companies are and he thought through publicity or through word of mouth, they may become aware of this meeting but he didn't believe Mr. Doney should be inviting one company to come to this meeting to which Mr. Heeke and Mr. Ilyinsky and Mrs. Wiener agreed.

Mr. Heeke announced the Workshop will be on June 15, 1992 at 9:30 AM to receive and discuss the Desk Top Study and Report and invited will be representatives of the South Florida Water Management District and any others who wish to appear may do so as this is a public meeting.

Mayor Marix asked if they expected to have the overall costs of this at that Workshop Meeting to which Mr. Heeke responded he did not know as he had not seen the report. Mr. Doney advised it was his understanding when Mr. Sundstrom and Mr. Wodraska gave their report at the March Town Council meeting, one of the reports will be the feasibility study and they have the scope of work as regards permitting requirements and one of the results is to come up with a potential demonstration project, if the Desk Top Study indicates that in the consultant's determination it is feasible, it would have to be determined feasible at what cost and one of the potential results would be to request the Town Council to consider authorizing the placement of a test well and that is an expensive item. Mayor Marix stated they said it would be about one million dollars and assuming that they wanted to do all that, are the consultants going to give us an idea that if that worked a ballpark figure on what this program will cost. Mr. Heeke believed they were trying to anticipate a report which is not yet on hand and he didn't think they should speculate unless someone knew what the report was going to say. Future Water Supply Study (cont'd)

Mr. Doney read from a draft report on the scope of work: "Prepare and submit a draft letter report to the Town of Palm Beach consisting of approximately ten pages of written text addressing all major issues generated as a result of the Study. Address the major hydrogeologic engineering regulatory and financial aspects of the feasibility of ASR as it applies to the Town of Palm Beach."

XIV. NEW BUSINESS New Business

A. Ordinances - First Reading

1. Ordinance No. 5-92 - Amendment to Code Enforcement Board Ordinance to Provide for Two Additional Alternate Appointees - Mr. Randolph read the Ordinance No. 5-92 by caption: Ord. 5-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN AT ARTICLE X, RELATING TO CODE ENFORCEMENT BOARD, AT SECTION 2-177 THEREOF, RELATING TO ORGANIZATION, SO AS TO PROVIDE FOR THE APPOINTMENT OF TWO ALTERNATE MEMBERS OF THE CODE ENFORCEMENT BOARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mayor Marix noted the alternate members would be appointed for a two year period and would serve in the absence of the regular members. She noted they may be appointed from the general public and need not be selected from a specific category but they must be a resident. She noted the Code Enforcement Board is made of specific type of people and the alternate could take their place when one of the regular members is absent, but the alternate could not then become a regular member, unless they were in a specific category. Attorney Randolph explained if the vacancy would occur in one of the specific categories, the Council would have the obligation to search out someone who was in that particular category, rather than appoint an alternate. Mr. Heeke noted it is stated in the Ordinance that the category appointments should be for "whenever possible" so it isn't an outdate mandate, but a direction.

Mr. Randolph called to the attention of the Council, there was some alternate language and he needed direction as to which the Council wished to adopt. Mr. Weinberg moved to adopt the alternate language of Ordinance No. 5-92 on first reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously for approval.

2. Ordinance No. 6-92 - Amendments to Historic and Specimen Tree Ordinance - Mr. Randolph read Ordinance No. 6-92 by title: Ord. 6-92

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 12 OF ARTICLE II OF THE TOWN CODE OF ORDINANCES AT SECTION 23-16 SO AS TO PROHIBIT THE UNAUTHORIZED TRIMMING OF ANY HISTORIC OR SPECIMEN TREE WITHOUT FIRST RECEIVING THE WRITTEN PERMISSION OF THE TOWN MANAGER; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made to adopt on first reading Ordinance No. 6-92 by Mrs. Douthit. Seconded by Mr. Ilyinsky. On roll call, the motion carried 4-1 with Mrs. Wiener voting against the Ordinance.

B. Resolutions

1. Resolution No. 26-92 - Authorization to Apply for Financial Assistance for Florida Inland Navigation District Waterways Assistance Program and Authorization for Town Manager to Execute Related Documents - Mr. Randolph read the Resolution No. 26-92 by caption: Res. 26-92

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AUTHORIZING THE APPLICATION FOR FINANCIAL ASSISTANCE UNDER THE FLORIDA INLAND NAVIGATION DISTRICT WATERWAYS ASSISTANCE PROGRAM FOR THE PURPOSE OF FUNDING MAINTENANCE DREDGING FOR THE PALM BEACH PUBLIC MARINA.

Motion was made by Mr. Ilyinsky to adopt Res. 26-91. Seconded by Mr. Weinberg. Mrs. Douthit asked what will be done with the sand that is being dredged? Mr. Doney explained it is not beach quality sand and is silt and bottom dredging. Mr. Bowser addressed the Council advising a decision has not been made as to what will be done with it, but there is one option to put it on a spoil site on 45th Street. He advised if they take it to a private site, they would have to pay DNR to leave it on a private site, but if it is hauled to Town-owned property, it would not cost the Town anything. He did not think it would be beach quality sand and will be in the neighborhood of seven thousand cubic yards.

On roll call, the motion carried unanimously for adoption.

C. Sealed Bids

1. Sealed Bid No. 012-91/92 - Palm Beach Golf Course Irrigation Pumping Station - Consideration of Resolution No. 22-92 - Attorney Randolph read the Resolution No. 22-92. Sealed Bid No. 012-91/92

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO HECTOR TURF FOR PALM BEACH PAR 3 GOLF COURSE IRRIGATION PUMPING STATION.

A motion was made by Mrs. Wiener, seconded by Mrs. Douthit to adopt Resolution No. 22-92. Motion carried unanimously for approval.

Sealed Bid No. 013A-91/92

2. Sealed Bid No. 013A-91/92 - 1992 Underground Storage Tank Removal - Consideration of Resolution No. 23-92 - Mr. Randolph read the Resolution No. 23-92:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO SLATER CORPORATION FOR 1992 UNDERGROUND STORAGE TANK REMOVAL.

Motion was made by Mrs. Wiener to adopt the Resolution No. 23-91. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Sealed Bid No. 015-91/92

3. Sealed Bid No. 015-91/92 - Seaview Park Tennis and Basketball Courts Resurfacing - Consideration of Resolution No. 24-92 Attorney Randolph read the Resolution by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO TENNIS SUPPLY FOR SEAVIEW PARK TENNIS AND BASKETBALL COURT RESURFACING.

A motion was made by Mr. Ilyinsky to adopt Resolution No. 24-92. Seconded by Mrs. Wiener. Mayor Marix asked how often these courts are resurfaced? Mr. Bitzer stated approximately every five to six years. Mayor Marix asked if this came out of tax monies. Mr. Doney advised there is a partial recovery. Mayor Marix noted all of the tennis court monies go to the Town professional. Mr. Bitzer responded it does, however the retainer is reduced. Mayor Marix asked if basically the Town makes a bit less each year on the tennis lessons to which Mr. Bitzer responded. On roll call, the motion carried unanimously.

Sealed Bid No. 016-91/92

4. Sealed Bid No. 016-91/92 - Palm Beach Golf Course Radio Irrigation Control System - Consideration of Resolution No. 25-92 - Attorney Randolph read Res. No. 25-92 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO D & K SPRINKLER SYSTEMS, INC., FOR PALM BEACH GOLF CLUB RADIO IRRIGATION CONTROL SERVICES.

Motion was made by Mr. Weinberg to adopt Res. 25-91. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously for approval.

D. Other

Consideration of Selection of Coastal /Marine Structural Eng. Firms

1. Consideration of Selection of Coastal/Marine Structural Engineering Firms and Authorization for Town Manager to Execute Contracts Regarding Same -

Mr. Heeke noted the firms were ranked in order. Mr. Doney explained the recommendation should be to authorize the Town Manager to enter into a continuing services contract with the Top two firms, with a termination clause expiring July 1, 1996. Mrs. Wiener asked if the Town has had good experience with the two firms recommended? Mr. Bowser stated Construction Technology is currently under contract to complete improvements started last summer at the Town Docks, and their engineering group has made this bid and they are hoping their expertise as construction contractors will help the engineers design long-lived rehabilitation projects. He advised the Town has had other projects with Gee & Jensen and they have performed well. Motion was made by Mrs. Wiener that Construction Technology, Inc. and Gee and Jenson Engineers be awarded the contract recommended by Mr. Dusey. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Funds from Estate of Muriel M. Boettcher

2. Consideration of Designated Use of Funds from the Estate of Muriel M. Boettcher for Fire-Rescue Department Emergency Medical Services Purposes -

Mr. Heeke noted there was a memorandum from Chief Elmore and there is a clear indication in the gift that the funds be used for the Mobile Intensive Care Unit. Mr. Ilyinsky moved the gift be accepted with great pleasure. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Beach Renourishment Council - Proposed Feasibility Study

3. Consideration of Request by Beach Renourishment Council for Financial Participation in Proposed Feasibility Study -

Mayor Marix stated her concern that the Town would be spending additional monies on this item, which is obviously connected with more sand pumping. She thought it would be a shame to be going off in the direction this Council is going when the Town has recently authorized the installation of the PEP Reef. Mr. Heeke believed it could be very expensive as they start off with a preliminary study and then it gets more and more expensive as they are also looking at the approach of a Taxing District. Mrs. Wiener believed these studies have been completed as far as the Town of Palm Baech is concerned, and they moved forward in a certain direction and she didn't think this would make a lot of sense as far as money is concerned or the general approach is concerned. Mrs. Douthit believed all they are doing has already been done here in the Town recalling they didn't come to the financial aid of the Town when it was doing its' studies.

Mr. Ilyinsky stated he is a member of the Council on behalf of the Town and called for Mr. Elwell's comments. Mr. Peter Elwell addressed the Council, noting it is a Beach Nourishment project and would run from Phipp's Ocean Park in the Town through the Lantana Public Beach. He felt the question on it is purely a policy question as to whether the Council wishes to financially participate or not. Mayor Marix commented that if we start paying for this research on this project, it is a sand pumping project and it will be for hundreds of thousands of dollars and we have already spent a million dollars in Palm Beach looking for the right sand grain. She stated the Town has gone to a lot of trouble and expense with the help of the Governor and others to try the experimental reef, and the results of this reef will show up very soon. She recalled one of the reasons the permits were issued is because the government is getting fed up with the sand-pumping and she thought it would be almost dishonest to participate in this particular program if they had no intention of going ahead with the PEP project but if they do go ahead with the Reef project, and if the Reef does a good job, she thought the fact that this would be good will for the surrounding municipalities is deceitful.

Beach Renourishment Council - Proposed Feasibility Study (cont'd)

Mrs. Wiener stated she has another concern as she is not a great believer in the Reef, so that is not the reason she believes they should not be contributing. She felt to take a part of our Town and put it in a different jurisdiction, we could get involved in very peculiar intra-jurisdictional matters and she didn't think that that was a good idea. She thought perhaps if it were the entire Town, her reaction would be different, but she didn't think they could have a third party who would be making decisions for a part of the Town of Palm Beach.

Mrs. Douthit stated she thought it was a poor idea and she moved that the request be denied.

Mr. Weinberg noted 78% of the land involved in this project is in the Town of Palm Beach and it should be recognized the people who live south of Sloan's Curve are quite enthusiastic about the project. He advised there was a meeting last week and $1200 was voted for participation in this project by the Citizens Association South of Sloan's Curve. He didn't believe there would be anything happening on this project for quite a long time, but on a public relations basis, there is a tremendous amount of feeling in the south end on this project.

Mayor Marix asked if those people were aware of why the Town Council went for the Reef rather than sand? Mr. Weinberg stated they are aware of it and wanted something for their portion of the Town. Mayor Marix stated they would love to put an artificial reef there but they have to see what happens with the one at Mid-Town. Mr. Weinberg stated their feeling is they have the beach problem and nothing is helping them and they wish to do something for themselves. Mayor Marix stated they still have a little beach as at Mid-Town, there is no beach.

Mrs. Wiener asked what would the legal implications of having another group involve itself and making decisions as far as the Town of Palm Beach is concerned? Mr. Randolph explained it would be appropriate if it was done by way of an Inter-local Agreement. Mayor Marix asked who would get the permitting and the monies out of the State? Mr. Weinberg advised they would be involved in that also. Mr. Heeke indicated a preliminary study usually leads to another study and then another study and they were all aware of what the studies cost this Town. He didn't believe the $1200 was the issue.

Mr. Heeke passed the gavel to President Pro Tem Weinberg and seconded the motion. Mr. Ilyinsky indicated he has been involved in this matter from the other side and he is not suggesting any monies be given to this group, however, he is suggesting that perhaps he and Mr. Elwell should talk to these people and explain to them we are not bottomless pockets in Palm Beach and the bottom line is the sand transfer plant and he asked this item be postponed until he and Mr. Elwell had an opportunity to explain the situation to this group. Mr. Heeke withdrew his second of the motion.

Mr. Ilyinsky moved that consideration of the request by the Beach Renourishment Council for financial participation of this proposed feasibility study be postponed until an opportunity is had to explain the position of the Town to the Beach Nourishment Council.

Mrs. Douthit asked if the Council was aware of the permitting agencies' stand on this? Mr. Ilyinsky responded they did know it. Mayor Marix asked if it could be explained what an artificial reef has done at the DuPont place? Mr. Weinberg believed they would look at that but as to whether or not they will buy it, he had his doubts. Mayor Marix asked how large an area are they talking about? Mr. Weinberg responded it would be from Phipp's Park in Palm Beach, South Palm Beach, Lantana and a piece of Delray Beach. Mayor Marix didn't believe they had any idea of the amount of money they are talking about as this would probably be in the millions.

On roll call, the motion carried 4-1, with Mrs. Douthit voting against the motion.

4. Consideration of Proposed Ordinance Amendment Regarding Vacancy in Candidacy -

Consideration of Proposed Ord. Amendment re: Vacancy in Candidacy

Mr. Randolph explained there was an election held in a Florida community wherein a popular candidate and a lesser known candidate were running for office and during the campaign, the popular candidate died and the lesser known candidate was the only candidate on the ballot and got the seat on the Council. He reported there were complaints about this as the citizenry stated if it had been known that the popular candidate would not remain in the race, there may have been other filings for that particular seat. He stated the Florida Legislature looked at it and passed a Statute which states a municipality should provide for what shall happen in the event of those circumstances he has just outlined. He stated the Statute does not direct what should be done, but they indicated there should be a procedure in place and if the procedure intends the remaining candidate should fill the slot, it should be so stated or if it is the intent that there should be nominations reopened for that slot, that should be stated. He stated the Statute does mandate a procedure be adopted to take care of such a situation. He advised he has indicated to the Mayor and Council in a memorandum that if they wished to leave it status quo, they would have to provide that provision but if they did not want it to remain status quo, nominations will be reopened, and that must be so stated and he believed this would take an amendment to the Charter as the Charter sets forth what is the election procedure.

Mr. Heeke noted there is an election coming up in November, so there would be no extra cost to put this on the ballot and address this matter and an Ordinance would have to be enacted to do that. Mayor Marix believed it was important that the electorate be properly informed. Mr. Randolph stated he needed direction as to whether they wished to have this on the ballot for the November election or the Town Council election. Mr. Heeke stated it was his feeling that in the event a candidate did pass away and there were two people running for a particular seat, he felt the slot should be opened up for other candidates to have the opportunity to have their name on the ballot to which the Council agreed. Mr. Randolph asked if they would have another Caucus for that renomination? Mr. Heeke believed they would have to and asked if there were any other suggestions as how the candidate could be nominated? Mrs. Wiener believed there should be a time limit so everything could move along. Mr. Heeke didn't know how that could be done as the candidate should have some campaigning time. Mr. Randolph pointed out this would require a Special Election and he will prepare a draft ordinance for the Council's consideration.

5. Mid-Town PEP Reef Project - Consideration of Request by American Coastal Engineering, Inc. Regarding DNR Test Plan and Related Issues,Including Status Report on Project.

Mid-Town PEP Reef Project

Attorney Lickle addressed the Council relating that the fabrication of the models is on schedule and by the end of the month there would be over 100 units fabricated and ready for installation.

Mid-Town PEP Reef Project (cont'd)

He indicated he was here to address the Test Plan, which was not included in the scope of the contract and they are dealing with DNR and they need to move this along a little faster in order to meet the timing schedule. He advised he is here for two things, one is to request the Town to appoint a staff representative on behalf of the Town to work with American Coastal and DNR and the University of Florida. He reported the University is reviewing the Test Plan, but there are issues which need to be addressed, such as the Base Line Survey. He indicated there are two points of view between DNR and American Coastal as to how many lines of survey are required, which results in expense ultimately to the Town and if DNR and the University of Florida should prevail in their opinion, it would be more expensive and if the Town and American Coastal prevail, it would be less expensive. Mr. Heeke asked if Mr. Elwell would be a good selection to which Mr. Lickle responded Mr. Elwell has been working with them and he would have no objection to Mr. Elwell being the contact person. Mr. Randolph advised the Council it would be unusual for Council to appoint the liaison as the Town Manager should be the one to appoint the staff member. Mr. Doney reported on 2-12-92 he wrote a memo stating Mr. Dusey was the one designated to be the contact person and contract administrator inasmuch as this is an engineering and construction project. Mr. Heeke felt it was the Town Manager's decision.

Mr. Lickle stated it is important to get a staff member actively involved as up to this point, American Coastal has been the agent and the Town has monitored it but now they need someone to be actively involved. Mayor Marix understood what Mr. Lickle was asking was that they needed someone to be involved now or DNR would be proposing a broader base survey which would cost additional monies. Mr. Lickle responded it is anticipated there will be an application to the DNR for the State to pay 75% of the cost for these studies and his concern is that now the University of Florida is involved, there is a lot of theory that needs to be honed down from a cost standpoint.

Mayor Marix recalled dealing with Dr. Robert Dean, who has a reputation of being a "sand" man and asked if he was the one who was in charge for the University of Florida to which Mr. Lickle responded affirmatively stating there are difference of opinions as to what will be the parameters of the testing and there is a wish list which could be expanded to more testing and more monitoring, which will cost more money. He felt there needs to be more focus on the timing and this needs to be moved along as the Test Plan is contingent upon DNR issuing the Notice to Proceed, so the Test Plan has to be developed or have a waiver prior to the installation of the Reef and could be developed as the installation is occurring. Mayor Marix asked if the staff person was to be looking at the engineering aspects or deal with the permitting process? Mr. Lickle responded there is a separate engineer involved, Harvey Sasso, who has developed the Test Plan and is the engineer involved and an engineering background would be helpful, but the request is for someone to get more involved with American Coastal to go to the DNR and University of Florida and have the Town's representation there as he thought that would carry some weight. He advised if this is not pushed along, the installation of the units will fall behind. He stated June 15 is the promised date by DNR for the Notice to Proceed to be issued.

Mr. Heeke recalled it is the Town's test too, to which Mr. Lickle agreed stating that is why a Town's staff person should be involved in it. He advised the second part of this consideration is the Test Plan is part of the contract but the costs were not a part of the original contract and American Coastal told the Council previously they would be back before the Council with the numbers and now they are at a point where they know in general approximately what it will cost to get the Test Plan in place prior to construction. He suggested the Council appropriate funds which could be reviewed by Mr. Dusey with American Coastal as this moves forward. He advised DNR is requesting a Base Line Study prior to the installation, which will be a measurement of the beaches and the sand currently. He reported University of Florida wants 63 survey lines whereas American Coastal's engineers feel that 38 are sufficient and these are the type of issues which need to be addressed and kept in check.

Mr. Lickle advised that once it is agreed upon as to how many survey lines are appropriate, that expense needs to be paid for quickly and they don't wish to keep coming back to the Town for additional monies that DNR is requesting. He suggested there be a fund in anticipation recalling the original projections were the Test Plan would run $100,000 per year for five years and the minimum testing period would be three years. Mayor Marix recalled the State was to pick up 75% of that cost to which Mr. Lickle agreed. Mrs. Douthit asked if the beach measurements were not done within the last six months? Mr. Lickle responded he believed there was a feasibility study for the sand renourishment program. Mrs. Douthit commented it looks like more and more road blocks. Mayor Marix stated her concern about Dr. Dean being in charge as his reputation is for sand.

Mr. Lickle announced because of the experimental nature, it is appropriate to have the Base Line Study so there is a measuring point to start with and later it can be gauged if there is accretion or non-accretion. He believed renourishment studies run into several hundreds of thousands of dollars before anything takes place, and so far the expense to the Town is concerned, it has been $8000 with regards to the American Coastal's proposal. He commented that as DNR is requiring these items to be put in place, American Coastal is sensitive to the cost and that is why he has suggested there be a staff member directly involved to contain these items as DNR and University of Florida are putting them forth as suggestions and it should eventually save the Town a fair amount of money.

Mrs. Wiener asked if during the application process there have been no Base Line Studies made? Mr. Lickle recalled the studies of Tom Campbell were being used and American Coastal used those studies in the original proposal. Mrs. Wiener wondered why they would not still be applicable as she didn't believe that would change drastically. Mr. Lickle recalled that was done two years ago and DNR takes the position that even six months to one year studies would be stale.

Mr. Doney indicated staff will do anything they can to help DNR in getting the scope of work defined for the Test Plan, however, the responsibilities for same need to be discussed as there are two separate points in which Town funds should be required and that needs to be discussed. Mayor Marix asked if Mr. Dusey, as a Department Head, would have the time to devote to this problem? Mr. Doney responded there are budget hearings coming up, however, Mr. Dusey is an engineer and more appropriately qualified than Mr. Elwell, and in his mind on this type of an issue, he believed that Mr. Dusey was in a better position engineering wise to handle it appropriately.

Mrs. Douthit suggested there be letters sent to Tallahassee to which Mr. Lickle responded he didn't think they were at that point as yet. He reported there is a meeting on May 28, 1992 with the University of Florida and DNR and that is when he would like to have a Town representative attend. Mrs. Wiener believed this was within the purview of Mr. Doney and suggested they go to the next item.

Mr. Lickle stated the next item is Mr. Doney's concern about what portion of the Test Plan is included under the base contract versus the supplemental contract. He recalled the section referring to this in the contract reads: "The scope of the work under this contract and the contract price do not include any Test Plan testing or monitoring of the PEP Reef, which is to be established by the Florida Department of Natural Resources or any other Federal, State or Local agency, subsequent to the execution hereof. A separate addendum may be added once the scope and cost of the Test Plan can be determined to the mutual satisfaction of the Town and the Contractor." Mr. Lickle stated it was in good faith that American Coastal has proceeded and has engaged engineers to develop the Test Plan and the reason the cost factor was not included in the original contract was because the scope of the Test Plan was impossible to determine, given DNR's initial position. He thought the scope is still indeterminable, however, as they move forward costs are being expended which American Coastal is not being reimbursed for at the current time, and they will pass those costs through with no mark-ups, but these are outside costs which have to be presented to the Town and that is why they are suggesting a fund be established to be monitored by the Town Staff to pay these costs and once the final scope of the entire plan is determined by DNR, American Coastal will be in a position to come back and present a finite dollar figure of exactly how much this should cost.

Mid-Town PEP Reef Project (cont'd)

Mr. Heeke asked Attorney Randolph his opinion on this contract language to which Mr. Randolph responded there was no question that under the provision that Mr. Lickle read that the Test Plan would be the responsibility of the Town. He thought they should recall what the intent of the contract is in that regard as there is also a provision in the contract under "Scope of Work" which indicates "the contractor agrees to furnish all materials, equipment, and labor necessary for design, fabrication, construction and installation and to perform all of the work shown on the drawing, including compliance with all additional permit requirements and permit conditions or changes to plans and specifications incurred prior to the final notice to proceed issued by the DNR." He advised the question is if the Council intended that the Test Plan meant that once the Reef was in place and once there was a Test Plan in place, that the Town would be responsible for the monitoring of it but did the Council also intend to be responsible for any of the costs involved in the preparation of this Plan prior to the receipt of the permit.

Mr. Randolph recalled this matter came to his attention today and he doesn't know if a determination can be made by looking at the face of the contract without further study as to how the contract would be read by an independent person, however, it is important to give consideration as to what Council intended in drafting the contract, as there is good argument to state that any work that was to be done, prior to the receipt of the Permit, was going to be the responsibility of the contractor and that is the issue.

Mr. Heeke believed Council was always aware that there had to be a Test Plan which had to be developed which was pointed out at the January meeting by Kirby Green, who made the commitment to work with American Coastal and the Town to develop the Test Plan without any delay, and Mr. Green put a time limit of sixty to ninety days to develop the Test Plan. Mr. Heeke recalled the language Mr. Lickle just quoted and they were talking about the contract. Mayor Marix remembered there was a lot of talking about the fact that the price of the Reef had not increased in the two years we have been talking about it and a couple of other things were agreed on to be paid for by the Town, because it did not actually involve the construction of the units. She did not believe American Coastal ever assumed in the cost of the reef the time delays that the University of Florida would need to develop the Test Plan and thought everyone knew it would cost an extra amount and the Town would pay for it. She thought if anyone didn't like the wording that Mr. Lickle just read, they would have stated their objection at that time.

Mrs. Wiener recalled there was a lot said about a lot of things about what they didn't like about this contract and the Reef and the experiment, etc., and this is another step in that direction. She understood that throughout the monitoring of the Reef for the five years, the Town would be a participant, but she did not recall the discussion on the pre-testing situation and perhaps that was not discussed thoroughly. She felt they were getting deeper and deeper into this and it is an experiment and we don't know what the actual cost of the Reef will be as the company refuses to tell us, and it is her belief that as a municipality, they need to know what the profit margin is as we are not dealing with private individuals and she would like to get some indication as this is being sold to a municipality. Mayor Marix pointed out the Town isn't aware of what the profit margin is on anything that is bid. Mrs. Wiener stated that is exactly the point - this item has not been bid as here we have one party supplying the Town something at a cost of two million dollars and we don't know what the cost is. Mayor Marix asked if Mr. Campbell was asked to furnish a profit margin on the million dollars the Town paid him? Mrs. Wiener stated Mr. Campbell did not receive the contract and she had a real concern about the unusual contract that has been executed with American Coastal.

Mrs. Douthit agreed that Council never asks what the profit margin is on the items the Town puts out to bid. Mrs. Wiener responded these items were bid according to the law. Mr. Lickle recalled there was a law suit filed by Mr. Crater on this matter and during the course of the litigation, Mr. Crater threw out a figure which was $100 per linear feet and in excess of what had been offered by American Coastal. Mrs. Wiener stated that Mr. Crater is not involved now and this is the Town's money involved now and she is getting no satisfaction. Mrs. Douthit did not believe that was what they were discussing at the moment. Mrs. Wiener disagreed, stating they are talking about more money being requested. Mrs. Douthit stated this additional money is for the testing and is being demanded by the DNR. Mr. Ilyinsky asked how much money they were talking about? Mr. Lickle responded it probably would be between $30,000 to $40,000 in engineering fees and the survey fees could be from $10,000 to $20,000. Mayor Marix asked if these fees would be reimbursed at the 75% figure by the State to which Mr. Lickle agreed noting these items are part of the sharing and if they are not included, then American Coastal would have to pay for it at one hundred per cent and that was never contemplated originally. Mayor Marix noted if this has to be paid by American Coastal, it would have to be paid at 100%, but if the Town paid it, they should be reimbursed the 75% and the Town's share would be only 25%. Mr. Weinberg asked if it was guaranteed the Town would be refunded the money? Mr. Lickle did not believe there were any guarantees on anything from DNR and all he can go by is the representation made by Kirby Green when he stated the Test Plan would qualify for the State reimbursement. Mr. Weinberg made the comment that when the Town is spending money, he would like to know where the end of the line is? Mr. Lickle stated he understands that concern as that does come up in many of the projects where State or Federal approvals are being requested. Mayor Marix asked if the monies they were requesting now was between $50,000 and $70,000 to which Mr. Lickle agreed, noting those are the expenses that would be incurred within the next week or two and as this goes forward and the studies are in, there will be monitoring and it is not known how extensive the monitoring will be and that is why it is important to have a Town

Mid-Town PEP Reef Project (cont'd)

representative with American Coastal to try and keep the monitoring at a reasonable level as there are indications now there is a Wish List for a lot of people who would like to study this Reef, however, he did not think it was appropriate for everyone to study it at the taxpayer's expense. Mr. Weinberg asked if there may be additional monies needed in the event there are other testing requirements? Mr. Lickle responded there is a balance from DNR as the monies expended for monitoring will be State monies, however, at this time, all of this is an unknown. Mr. Weinberg believed that until they know exactly what monies are needed, they are all floating in mid-air. Mr. Lickle believed it was a matter of negotiations more than anything else to get to a reasonable level. Mr. Weinberg asked Mr. Lickle why he didn't negotiate to which Mr. Heeke responded it was his thinking that was why Mr. Lickle wanted someone from the Town staff stating we are side-by-side on this project and that would be part of the negotiation at the upcoming meeting, to which Mr. Lickle agreed. Mr. Heeke assumed it could then be clarified by Mr. Green if there are any unusual requests thrown in that the State will reimburse the Town. Mr. Lickle believed that within the scope of this particular project, it would have to be defined exactly what the State or University of Florida or anyone else adding on additional monitoring, that would be part of the negotiation to explain that was the State's expense and not the Town's or American Coastal's.

Mrs. Douthit asked if Mr. Lickle was looking for a dollar amount prior to the meeting of May 28th? Mr. Lickle responded what he is asking is that the Council set aside some funds that would be used to pay costs of surveys, the engineers, etc. which would be approved by Town Staff in conjunction with American Coastal. Mayor Marix stated these amounts would be split and then paid back to the Town. Mr. Weinberg asked if they would put a ceiling on the requested funds? Mr. Lickle stated whatever the Town Council wanted to appropriate, that would be the ceiling and if more funding was necessary, American Coastal would come back with another presentation at the appropriate time. He believed American Coastal felt comfortable with $70,000 to get them through to the installation phase and at that point, the Test Plan should be in place and the monitoring costs can be estimated and they would project what would be needed on a yearly basis.

Mr. Doney asked for a clarification that the dollar amounts requested today are for the plan development? Mr. Lickle stated that was not correct as also included are the hard costs for the survey. Mr. Doney viewed this as partial costs as no-one knows what the final scope of work that will be approved by DNR. Mr. Lickle stated it was conceivable, although they hoped to contain DNR, but the issue before the Council today is the scope of the Base Line Survey and what needs to be negotiated is how big a survey is needed, and how many lines are needed. He advised the high side would be $20,000 and the low side is $9,000 and if they are successful in negotiating 38 survey lines need to be done, it will be in the area of $10,000, but if DNR wants 68 survey lines, then the cost will be more.

Mr. Weinberg asked if they could not have the meeting and then come back to the Council with what has been negotiated? Mr. Lickle stated they could do that, but the problem is the timing. Mr. Heeke asked Mr. Doney if he had a problem with approving the disbursements to which Mr. Doney responded he had no problem but needed to point out the rational of the contract, but from the contract administration perspective, he interprets the contract that is the paragraph that Mr. Lickle read - did not include any test plan or monitoring of the PEP Reef and he believed that American Coastal had the responsibility to complete whatever work was required, that would be engineering, administrative, or otherwise to secure a Test Plan that was approved by DNR in order that the Town would receive the Notice to Proceed. He felt after the Plan was approved by DNR, it was anticipated American Coastal would come back to the Town Council to inform them of the costs that would be involved with the implementation of the Plan. He stated as a result of Article One in the contract, American Coastal was to be responsible for securing approval of the Test Plan and the criteria of that plan was set forth in the Permit and Paragraph 4.3 states "A data collection plan including a Base Line Survey Plan designed to obtain the data needed to evaluate test effectiveness." He knows this is very general but now that they are getting into specifics, and it is being defined, it was his understanding that after the Plan is approved by DNR, American Coastal had the responsibility to secure the Test Plan at their cost and then come back to the Council.

Mr. Lickle clarified there was a provision on the first page of the contract that if there were material changes, the Town would participate 50% in those changes, because they were unsure so even in a worse case scenario, it would be a 50% participation. He assured them that when the "Test Plan" language was put in, he thought the intention was Test Plan Monitoring.

Mr. Heeke believed the language was specific and deliberate with regards to excluding the Test Plan as it doesn't say "monitoring" alone. He stated in the Permit application, there is language that the Test Plan was anticipated and American Coastal carefully carved out that it would be everything but the Test Plan. He recalled when they were talking about the earlier portion, they were concerned about additional requirements which DNR would add on as a result of developing the Test Plan and not the Test Plan itself. He stated if the last part of the contract didn't specifically exclude the Test Plan, he wouldn't have any trouble with it being American Coastal's expense, but he didn't believe it was intended to be a part of the contract, at least by one of the parties. He commented that the monitoring costs and the Test Plan costs, if they are reimbursable, was something that was coming along in addition to basically constructing and placing the Reef in the water.

Mrs. Wiener thought part of the problem was because it was the desire of the majority of the Council to move this along as rapidly as possible, it was stated that this would be discussed at a later time, but they needed to get started on the project and DNR agreed but indicated the tests would have to be done before the Notice to Proceed would be issued and the fact that they put the cart before the horse is putting them in this situation today. She believed there are two things being considered, one is the pre-installation study and the other is the post-installation monitoring and she understands Mr. Doney's concern about the pre-installation study. Mayor Marix thought if there was any confusion in anyone's mind about the paragraph in the contract, she thought it would have been brought out as they went through it quite thoroughly and if it wasn't known what that paragraph meant or if there was doubt in their minds as to what it meant, she was sure they would have brought it up. Mr. Doney explained it has now been realized that there will be a considerable amount of engineering, legal, administrative and other issues, it has been brought back to the Council. He, as the Town Manager, thought the intent was that after the Test Plan was approved by DNR and that scope of work was defined, American Coastal Engineering and the Town would have certain costs and those would have to be brought to the Council for consideration.

Mayor Marix asked if American Coastal couldn't negotiate with the State on this matter, then the Town would end up paying more as it would be paying 25% of a more expensive monitoring. She understood what they were saying today was they were spending more money because of further

Mid-Town PEP Reef Project (cont'd)

restrictions being imposed by DNR and the University of Florida. Attorney Lickle stated that was why they were here to get the Town more involved because of American Coastal's concern about the cost to the Town. He assured the Council that but for DNR's requirement to continue to test this reef or come up with a Test Plan, there would be no requirement for expenditures for a Test Plan, development or continuing monitoring. He stated they can install the reef for the contract price with no more testing or monitoring, but that is not the case, as DNR requires testing and monitoring and development of the Test Plan and that was carved out as an exception as American Coastal had no idea what would be required by DNR. Mr. Heeke stated he had viewed that as a separate step that is, the development of a Test Plan as this was discussed with Mr. Green of DNR and Mr. Green himself mentioned the time period which would be required which was sixty to ninety days and indicated he would try and work with us on this. He recalled Mr. Green referring to this as the Town's Test Plan. He didn't know how American Coastal could have expressed themselves more clearly than they did as he recalled if DNR required changes as to how the units would be locked together or configured, that's when they would be getting into a different situation as DNR was not anticipating any extra costs at this point which would be important, and that included post-installation changes. Mr. Lickle agreed noting they were moving ahead. Mr. Heeke asked if the Town didn't pay these costs, American Coastal would have to pay them and asked Mr. Lickle what kind of a position they would be in to get DNR to reimburse a certain percentage and asked if that would influence them one way or another. Mr. Lickle did not believe DNR cares about economic situations of the Town or themselves, however, he stated that up until a few weeks ago, before the first submission of the fabrication bill went to the Town, the total sum paid to American Coastal was $8000.

Mayor Marix believed the question by Mr. Heeke was if American Coastal paid the bill, would they get back 75% from the DNR? Mr. Lickle responded they would not as they would be obligated for the total 100%. He thought that Mr. Green indicated if the Town authorized this, he would authorize the Town and American Coastal to contract for the surveyor or the engineer and consider that as part of the request by DNR and then would fall within the Test Plan, but if American Coastal did it on their own, they would state that American Coastal was not authorized. Mr. Heeke thought they had to be fair to the contractor.

Mrs. Douthit moved that out of the Undesignated Funds in the Capital Improvement Account, monies be transferred to the Capital Improvement Fund with a cap of $60,000. Mayor Marix asked if the funds are appropriated, we would be reimbursed on a 75% basis pointing out it would not be spending the total amount but putting it up front and it will be repaid hopefully at 75% and that is what they need to keep in their minds.

Mr. Doney asked if DNR indicated that the cost involved prior to the Test Plan being developed would be State-shared at 75%? Beth Mitchell responded the Base Line Study has been discussed with DNR and one of the reasons they were discussing it is to expedite the process, so they could get the reef installed. She stated the arrangement was discussed in this manner so as to expedite as they did talk about the University being involved , they also talked about it being put out to bid and other options, and she was told by Mr. Green to come back to the Town Council and ask them for an agreement in concept that they would sub-contract for the survey. She stated they did not discuss the other costs, but she knows they are aware of the costs that will be incurred. Mr. Doney stated they are aware of the costs but it needs to be clarified. Mr. Heeke asked if they could clarify the costs with DNR at the upcoming meeting? Ms. Mitchell responded the Base Line Survey has been clarified but in terms of the other expenses, they will follow through.

Mr. Dusey advised the Council that they can call Mr. Green and find out if the Notice to Proceed costs are eligible for reimbursement but he doubts if they will be. He stated his concern is there are monies being expended without staff's knowledge or consent. He didn't believe any contractor should come before Council telling them they have expended monies and they want the Council to now reimburse them as that just is not done and he hoped if expenditures like this occur in the future, staff should have an idea of what it is being spent for, with some concurrence that it is needed for the project. Mayor Marix thought the contract stated that after the monies are spent, there would be an addendum to the contract. Mr. Doney responded that is not the case. Mr. Dusey stated that was after the Plan was developed. He hoped that in the future there would be some coordination with the staff so the staff can assure the Council the monies are being spent in the Town's best interest. Mr. Heeke requested the question be put to Mr. Green in the context of developing the Test Plan, not other aspects which have nothing to do with the issue of the Test Plan. Mayor Marix suggested Mr. Heeke call up Mr. Green and discuss this. Mrs. Wiener suggested it be Mr. Dusey. Mayor Marix did not agree. She thought they needed to be practical about this as if Mr. Green refuses to reimburse the Town, then what will the Town do? She thinks DNR will reimburse but if they didn't, and American Coastal doesn't, there is a very serious emergency here and that is why the permit has been put through, that is why the court case with Mr. Crater was instituted, because the Town has an emergency and if the Town has to spend an additional $60,000, they should do so as they have to look at the time frame, the possibility there may be another storm, the whole thing they are doing.

Mr. Lickle appreciated Mr. Dusey's comments about American Coastal spending the Town's money, it is American Coastal who has stuck their necks out to keep on the time schedule, as far as expenses are concerned. He is not asking for sympathy but wishes to clarify the record. He stated in theory there is no contract with the Town on these additional expenditures as there was a paragraph put into the contract which states that an addendum will be added as may be agreed upon. He advised that American Coastal has spent this money and in the initial stages when the fabrication and construction was initiated, they expended their monies to build the forms and did this prior to any contract being in place.

Mrs. Wiener commented in her mind it is clear that every single unit that is manufactured, the Town will pay American Coastal for it. Mr. Lickle stated what he was saying was before the contract was signed, American Coastal was fabricating the forms. Mrs. Wiener stated that is behind us as the contract is now signed but the fact of the matter is if DNR does not give the OK, the Town is liable and the Town is the one on the hook.

Mr. Heeke suggested that a conference call be placed to Mr. Green and Mr. Lickle and Attorney Randolph be a part of that call. Mr. Lickle suggested if the Town wishes to appropriate the funds for the expenses thus far and it is determined that the DNR will not reimburse and if the expenses have been paid by American Coastal, they will simply deduct it off the next invoice and if it is eligible for refunding, it would be paid by the Town. Mayor Marix did not think it was fair if DNR turned it down, to leave American Coastal with the total bill without further discussion with the Council at a later date.

Mid-Town PEP Reef Project (cont'd)

Mr. Heeke asked the Town Attorney if the $60,000 could be put into a fund without knowing if there will be reimbursement by the State. Attorney Randolph responded that was has been said is regardless of what the answer will be from DNR, American Coastal wants to move forward and if it is not reimbursable, American Coastal will deduct it from their next bill to the Town. Mayor Marix wanted it to be understood that if DNR does refuse to reimburse, this should be rediscussed. Mr. Randolph stated it could be made conditional and if any member of the Council wishes to readdress this, it can be done.

Mrs. Wiener believed since the vendor came forward with this on his own accord, this Council as representatives of the taxpayers of the Town should say thank you very much and move on to other business of the day. Mayor Marix responded that as representatives of the taxpayers of this Town, the fact should be appreciated that American Coastal has spent a lot of their money to keep our monitoring bills down and when somebody does something good or helpful, he shouldn't be hit across the face and she viewed American Coastal as trying to keep our 25% of the monitoring bills down in the future. Mrs. Wiener responded she didn't believe the vendor was hit across the face but still states that as representatives of the taxpayers and having paid more than they expected to for the Surety Bond, and other items, it was time they started to think about the taxpayers.

Mrs. Douthit moved again that the monies capped at $60,000 be authorized and this be addressed again at an appropriate time and presumably after the meeting on the 28th of May when more will be known at that time as right now there are no answers to these questions. Mr. Heeke asked if an amendment could be made to the motion that the offer of American Coastal be accepted to which Mrs. Douthit agreed. Mr. Lickle clarified if they could come back if American Coastal so desires, once the position of DNR is known and further address the Council for that reimbursement, but in the interim the authorization is needed in conjunction with Mr. Dusey and Mr. Doney to expend those funds and have them reimbursed later. Mrs. Douthit stated those funds are expendable in the motion. Mr. Randolph asked if this is going to be addressed at a future time, that would not delay the contract as what is being done today is binding and whatever happens at a later time will be up to the Council. Mr. Lickle agreed. Mr. Heeke called for a second to the motion. Mayor Marix asked Mr. Ilyinsky if he wanted to fall into the ocean to which Mr. Ilyinsky responded he never signed an open ended contract in his life. Mrs. Wiener believed there were pushes and shoves and political whatever and this is definitely an open ended check and when the Town Attorney and Town Manager indicate they see something in the contract that the vendor sees, she has a problem with that. Mrs. Douthit pointed out there is a hurricane season coming up and we are trying to protect ourselves from it and future ones.

Mr. Ilyinsky indicated he was not against the PEP Reef, but there is something terrifying about an open-ended contract such as this with two department heads being responsible for $70,000 of taxpayer's money and no-one will know what it has been spent for. Mrs. Douthit disagreed noting it was for the Base Line Survey information. Mr. Ilyinsky responded if he could be guaranteed this would be the last check that would be written, then he might be of a different opinion. Mayor Marix did not think it was open-ended as Mr. Lickle told what he thought the cost would be, but besides that, he is not hiding what he is going to do with it and American Coastal has asked for Mr. Dusey and Mr. Doney to come and monitor it, so it is a given amount of money with two staff members going to monitor what they do with it and after which, if we are lucky, we will be reimbursed 75% by DNR, but if they don't reimburse, American Coastal will absorb it if they had to, or they will readdress it.

Mr. Ilyinsky felt it was open to the extent that they could come back in another sixty days and ask for an additional $70,000. Mayor Marix stated he might not get it next time. Mrs. Douthit reminded none of this is anything we want to do but we don't know what DNR is going to do - it is the permitting agency. Mayor Marix commented Dr. Dean is a died-in-the-wool sandman and he and the others at the University of Florida are the ones who are designing this great Test and all American Coastal is trying to do is to be sure that the Test Plan is fair and not too expensive.

She didn't believe that the Council understood that American Coastal is on the Town's side as they put up their monies to build the forms for the fabrication of the units and haven't charged us interest on the money they spent but they just did it with absolute trust. Mrs. Wiener commented they don't really know if that is what they did. Mayor Marix stated she has no stock in this company in spite of the rumors that she does, but the Town has spent millions of dollars in this Town with regards to the sand and now that a decision has been made to move forward on the Reef, which may be a solution, they are now arguing whether or not it is open-ended to try and stop the DNR from making us have an impossible contract. Mr. Heeke asked Mr. Ilyinsky if he seconded the motion? Mr. Ilyinsky responded negatively.

Mr. Lickle clarified that it has always been contemplated that the Test Plan was an eventuality and was going to be at the cost of the Town. He recalled the original estimate was for up to five years at $100,000 per year. He advised when they are talking about this $60,000 now, this is just the beginning of the Test Plan and that money was already contemplated as having been spent and the Town would apply to the State for the 75% refund. He thought the only thing at issue is $30,000 or $40,000 as to whether it is American Coastal's obligation or whether it is part of the Test Plan which is the Town's obligation and perhaps reimbursable at 75% and that is the only discussion problem that is going on here. Mr. Ilyinsky asked if he was now saying $30,000? Mr. Lickle responded he is guessing as this is a combination of engineers and surveyors. Mr. Ilyinsky stated that was what was troubling him as everyone is guessing. Mayor Marix pointed out Ms. Mitchell stated Mr. Green agreed that one section that is there already is DNR's responsibility, so out of this $60,000 there already has been parts which were agreed would be reimbursed. Mrs. Wiener asked if that was in writing? Mr. Lickle stated what they are discussing is the size of the survey and that will be determined at the meeting on May 28th or perhaps before with Mr. Dusey's input and the DNR and the University of Florida.

Mr. Weinberg asked why didn't American Coastal pay for it and then come back to the Council? Mr. Lickle believed that was the position they were in at this time. Mr. Weinberg didn't hear him state he would pay for it and then present a bill to the Town and be as economical as possible with the Town funds. Mayor Marix asked why didn't they treat the Water problem like that then as bills come in every month on that subject.

Mr. Ilyinsky asked Mr. Randolph if he could second the motion for discussion? Mr. Randolph agreed. Mr. Ilyinsky then seconded the motion.

Mr. Heeke summarized the motion is for a cap of $60,000 be authorized from the undesignated fund balance in the Capital Improvement Fund to be applied, subject to the review of the Town

Mid-Town PEP Reef Project (cont'd)

Manager and Mr. Dusey, that representations have been made that $30,000 to $40,000 of these monies would probably be engineering costs which Kirby Green at the DNR has indicated was subject to reimbursement by the State and this would be survey costs and engineering costs. Mr. Lickle clarified that the survey costs would be included but he are uncertain about the engineering costs. Mr. Weinberg asked if there could be other costs? Mr. Lickle stated there could be as this is all part of the test plan and monitoring, but once the Test Plan is approved, the cost projections can be contained at that point, hopefully, and good estimates can be given as to the yearly costs.

Mr. Weinberg stated he doesn't have the same hope as others have and he wished to specify that they wouldn't have a new thing to concern themselves with next month. Mr. Randolph explained that is a little bit of the problem with the clarity of the contract because the last paragraph states a separate addendum may be added once the scope and costs of the Test Plan can be determined to the mutual satisfaction of the Town and the contractor, and obviously it has been contemplated that once the Test Plan is developed, there was going to be a specific figure in mind so they could know what they are talking about when they discussed the addendum. He thought what was being discussed now was the unknown costs which may not have been contemplated as although it was contemplated there would be a Test Plan, what was unclear on the face of the contract as to what was the intent of the parties in regards to development of the Test Plan. He thought in looking at this it was obvious there would be fixed cost on the Test Plan and the State was going to tell us to monitor the Reef it would cost $100,000 per year and at that time we were going to look at the addendum to the contract because there was a possibility that they might not need to amend the contract and they might go to someone else for monitoring the test plan, however, there is nothing in the contract which talks about the unknown costs and they are not here for the addendum to the contract but are here talking about costs contemplated in the development of the Test Plan. Mr. Lickle added which would be included in the Addendum.

Mr. Randolph advised the Mayor and Council that the motion sets up a fund and makes a transfer from the undesignated fund balance of the Capital Improvement Fund up to $60,000 with the condition that it be reimbursable from the State by a certain percentage and in the event it is not, that the contractor has agreed to deduct that amount from his next bill to the Town, with the opportunity of coming back and revisiting the Council in that regard sometime in the future. Mr. Lickle asked if they could come back to the Council to discuss it and then if the Council did not agree to pay, American Coastal would deduct it from their next bill but they would appreciate the opportunity of coming to the Council before the deduction. Mr. Heeke did not agree. Mr. Randolph believed if they are going to come back and discuss it before the deduction, perhaps they should make the call to the State and see if a position can be received. Mayor Marix stated all they want to do is to discuss it before they deduct it and if she were them, she wouldn't try any more to save the Town money on the monitoring, as if they are going to negotiate with the State and Dr. Dean, she would like them to negotiate from a motivated point of view and what they are going to do is to try and keep the monitoring cost down as they cannot stand to lose an awful lot. Mr. Lickle felt from American Coastal's standpoint, these were not costs they expected to expend on their own behalf and what they are willing to do is to move on and if it is determined the monies are not covered by the 75% reimbursement, the Town should hear them out before it is deducted from the next invoice.

Mr. Randolph asked if he was willing to be bound by whatever the Council determines on a subsequent date? Mr. Hans Rauch addressed the Council noting the contract does state: "other expenses incurred" and the first portion of the expenses prior to the Notice to Proceed have been born by American Coastal and in January they stated if there were any changes to be made to the forms, they would have to be split between the Town and American Coastal Engineering. He stated Ms. Mitchell wrote a letter to the Town informing them there were no additional costs since the DNR accepted their methodology and procedure of the construction of the units. He stated they have expended a tremendous amount of time in engineering work to convince the technical staff of DNR but this has been done one month ago and they have paid for it. He stated now the cost comes from this unknown factor of the Test Plan and they have incurred some cost and they wish to have the monitoring and testing held to a sensible level as if graduate students get into the picture, they will add hours and hours to the project which will cost the Town a tremendous amount. He suggested that instead of making 38 survey lines, they will want 62 or 64 survey lines. He felt instead of making it 16 or 17 times a year, they do it in the summer, spring and fall, and that should present a good package and they would hire an independent firm with good experience, capable of doing excellent base line surveys, which are important to have before installation. He advised they have expended approximately $40,000 so he doesn't believe his budget will enable them to guarantee $60,000 or something that the DNR may or may not pay back at 75% and if he has to come back four or six weeks asking for reimbursement of 75% which the DNR won't reimburse, it will halt their construction and their timetable to find new monies and keep on schedule. He stated they are not running on a profitable margin but working on a schedule whereby they get paid by the Town so they can order new units. He stated if the Town wishes American Coastal to be a watch-dog, there would be some expenses but it will be much less than might be charged by others. He stated they cannot continue to give the Town service and take the risk of halting construction. He knew they had already saved the Town money as there is a good product being constructed. Mayor Marix believed what he said was they could afford to eat the $40,000 but they can't eat anymore and they would then just let Dr. Dean do his own thing and the Town would have to pay the freight at the other end.

Mr. Randolph commented the motion is not correct as summarized by himself and Mr. Heeke. Mr. Lickle stated it is his understanding that $60,000 is being appropriated to be spent with the approval of Mr. Dusey and Mr. Doney, with proper support documentation, and in the event that DNR refuses, for whatever reason, to reimburse this portion in question, the $30,000 to $40,000 worth of engineering work, American Coastal would have the ability to come back before the Council and address that issue as to whether the Town wished to participate in paying that sum on behalf of American Coastal or American Coastal reimbursing the Town for that portion but not have it as an automatic deduction.

Mr. Doney asked if it was fair to assume they should schedule this at the June 9, 1992 Town Council meeting, recognizing the meeting with DNR will be held on May 28, and that planned installation is desired to commence in mid-June and at that time American Coastal report back with information. Mayor Marix saw their problem on cash flow and that could cost two or three weeks and if that time is lost, they couldn't meet their time schedule.

Mr. Heeke asked Mrs. Douthit if her motion was amended to reflect that before there was an automatic deduction, that American Coastal would have the opportunity to discuss the matter again with the Council to which Mrs. Douthit responded she thought that was already in her motion and agreed.

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

Mr. Lickle stated he had one more item that American Coastal is the agent in conjunction with Mr. Dusey with regard to the Test Plan which he viewed as helping the reimbursement issue. Mrs. Douthit so moved. Seconded by Mr. Ilyinsky. On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion.

Mid-Town PEP Reef Project (cont'd)

6. Consideration of Actuarial Study on Group Health Insurance Plan - Proposed Medical Plan Premium Rates -

Actuarial Study on Group Health Ins.

Mr. Heeke advised there is a memorandum dated May 11, 1992 from Mr. Doney to the Town Council concerning the increase in rates to be charged to the Town employees and the retirees. Mr. Doney stated by State Law, the actuary has to identify actuarially what the premiums will be for each class of individuals who participate in the Town's Health Insurance Plan. He has reviewed this with Mr. Crouse and Gallagher-Bassett, the Town's insurance administrators, he recommends the premium rates for employee's dependents be increased by ten per cent and for the retirees, the rate of participation be increased from fifty per cent to sixty per cent. He noted the new rates will go into effect on the payroll immediately following June 1, 1992.

Mayor Marix noted there are approximately one thousand employees, retirees and their dependents and wondered what the total cost would be, including the fees of Gallagher-Basset? Mr. Doney advised the current year's budget is $3,299,550. Mayor Marix asked how much is paid for premiums out of that figure as she wants to know what the total out-of-pocket expenses are to which Mr. Doney responded the total annual premium with the increase would be approximately $650,000 for both retirees and employees. Mayor Marix asked if at the end of this fiscal year the Town would have spent the $3,299,550? Mr. Doney responded that was not so as they do not have the claims experience for this year. Mayor Marix asked what was spent last year as she would like to have that figure? Mr. Doney stated what is anticipated for expenditures for this year for claims is $2,360,000; fixed costs - $506,000. He stated last year $2,600,000 and this year's estimation is $2,866,000.

Mayor Marix noted from the memo, the retirees basically pay $58 a month for their own insurance and the Town pays $58 a month so there is a total of $116 per month premium for the retirees on Medicare. She wondered if there was a figure available as to the claims that have been paid out for the retirees? Mr. Doney responded he doesn't have that figure available. Mayor Marix stated the reason she brought up this is there is a supplement by Blue Cross which costs approximately $106 per month and she thought if the Blue Cross Plan was adopted, the premium would be paid but, more importantly, the Town would not have to pay the Gallagher-Basset fee, nor would the Town have to pay the claims as Blue Cross would be picking up the claim portion. She noted rates are put into effect by the various areas in the State of Florida, recalling she read recently that Palm Beach County has one of the highest medical expenses per person and she thought perhaps they should go back to a group insurance plan where the entire percentage would not be figured in that way as the Town is fairly small and she thought it quite important that perhaps they should go back to the system they had before, rather than being self-insured.

She thought the retirees program she suggested should be looked into quite intensely. Mr. Heeke pointed out they are in the middle of a fiscal year and there has been a little bit of experience with the PPO system which was adopted last year. He felt they were trying to study and go out to bid and that may be at the end of the year, and in the meantime, they may fall a little further behind in their projection for expenses and he thought the issue had to be addressed before them on the suggested increases in premium and as a corollary to the move forward, they can make a decision as to whether or not they wish to look at other methods of providing health insurance. Mayor Marix agreed and would like to see it done at the beginning of October, as every May they have these figures and they try and adjust them accordingly. She believed the dependent insurance has gone up between five and seven dollars and the Town would be spending about $40 to $50 extra for each employee.

Mr. Heeke believed they should address the memorandum items first. Motion was made by Mrs. Wiener, seconded by Mr. Ilyinsky to accept the recommendations of the Town Manager concerning the employee and retiree health insurance program for the time being, with the program being implemented by June 1, 1992.

Mayor Marix asked if they wished to add to the motion that they will look into the other possibilities she discussed prior to the budget being adopted as she was sure they would save money on all the retirees who are on Medicare. Mr. Heeke thought this was a separate issue. Mrs. Wiener did not agree to include the Mayor's suggestion in her motion, stating they could discuss this further and then take action on the Mayor's comments.

On roll call, the motion carried unanimously to approve the Town Manager's recommendations.

Mr. Heeke recalled last year a long, hard look was taken at this issue, to which Mr Doney commented that in September, with Gallagher Bassett, there was a review of the pros and cons of continuing with the Town's protected self-insured health program versus the conventional programs, such as Metropolitan Life, Blue Cross and others.

He recalled there were several issues that stood out in his mind and he knows they pay out the cost for claims, but in the meantime, interest is gained on that money and for the current year they anticipate receiving $80,000 in interest. He indicated that any health insurance carrier is in the business for profit and if there is a major catastrophic experience, they will reserve the right to increase the premiums and there is a major risk factor for either a municipal or private risk factor by cancelling your insurance with a current carrier and going out to shop it again, the insurance carriers are all in the business for a profit. He advised in the program the Town now has, there is a three to five per cent administrative costs whereas there could be a five to eight per cent administrative cost. He stated the Town has the ability to control the type and design of the Plan. He advised in the insurance industry, over sixty per cent of the employer health plans are self-insured plans and that number continues to rise. He advised the monies held are collecting interest and if we would be paying this amount out through premiums, they would pay it up front and the actual cost for experience exceeds the premium costs, they will reserve the right to come back and raise the premiums for the subsequent year and if they go to the well too often, there is a risk factor.

Mayor Marix agreed but thought they should always look at the other side of the matter and she knows they are losing out especially on the retirees who are on Medicare. She knew it was true interest collected on the unexpended amounts, but this year alone the Town will be spending an additional $100,000 on the dependent's premiums so that she thought this needed to be looked at once again as she doesn't want the Town not to be getting the best thing it possibly could, either for the dependents or for the taxpayers and she would like representatives from the other side to come and address the Council on this subject.

Actuarial Study on Group Health Ins. (cont'd)

Mr. Heeke believed they may not be able to single out one segment of the insured population, such as the people who are on Medicare. He stated the issue in examining whether they should remain self-insured or look toward a private company providing the insurance, he didn't know how they would go about that as he believed that was seeking out proposals. Mayor Marix stated they can at least ask.

Mr. Crouse reported letters were sent to all of the retirees regarding supplemental plans which were offered through the State of Florida and they were lower rates, but they also had lower benefits and there was not very much interest. He stated the fact is the Town has a protected self-insurance plan, which means the Town buys excess insurance at certain levels and $114,000 in premium was paid for that insurance, and the insurance company paid out $314,376 in claims. He stated if it was a carrier, they would recoup that cost, but these excess carriers do not recoup those costs, noting the premium did go up $48,000 and they have reinsured the Town with the same plan.

Mrs. Wiener recalled there are many insurance carriers leaving the State of Florida and new insurers have a pre-existing condition clause. Mr. Crouse confirmed that was the case. He advised he wished he could do what the Mayor has requested, but you cannot have a different plan for the general employees outside of the Medicare Supplement. He stated they cannot go out and buy a Plan based upon the rates or experience of a bigger group. He stated they have to pay the premiums based upon the experience here in the Town of Palm Beach and not a group of others. He advised he is looking into a consortium plan for the municipalities in Palm Beach County, which would give the power to negotiate better deals with the local health industry, however, even with the consortium,the individual plans would be rated by their own experience.

Mr. Heeke stated he had asked Mr. Crouse if they could get three municipalities nearby and take advantage of the combined experience. Mr. Crouse stated there are some advantages to that but the disadvantages would be we would be losing control over monitoring the Town's costs.

Mr. Heeke noted the motion to adopt the Town Manager's recommendations did pass and the Mayor and Council are exploring this question about Blue Cross. Mayor Marix stated she felt they owed it to the taxpayers to see if there was anything better out there which would improve the program. Mr. Heeke stated they heard Mr. Crouse state he is looking at a consortium. Mayor Marix believed the consortium would be based on Palm Beach County expenditures, and she thought with the escalating costs of health insurance, they need to have this very well checked out.

Mr. Doney recalled another item that was discussed was asking for a proposal and the PPO and the prescription card changes, they gave the quote and that is a risk factor. Mayor Marix recalled the excess carrier fee went up $48,000, so this is a problem. Mr. Heeke pointed out if it was with a carrier, the premium would have increased much more.

Mr. Weinberg asked to make a comment stating that Council members receive no salaries but several members are covered by the Town's health insurance plan. He stated inasmuch as Council members do grow older and find it impossible to procure health insurance after five years of service, he wished to suggest that those Council members be able to continue their health insurance after retirement from the Council and this should be with Medicare, whenever it is feasible. Mrs. Douthit thought it may effect the rates as there may be some younger people sitting on the Council and they could be on the program for a very long time. Mr. Weinberg stated he would like to be covered when he retires from public service. Mayor Marix asked why he couldn't be protected under the Medicare Supplement. Mr. Weinberg did not believe that could happen. Mr. Heeke stated it was his personal opinion that the insurance should be available for those who want it and he doesn't know how many would take it, but the rate paid should be the rate that is paid by the retiree.

Mrs. Wiener asked to make a statement indicating that she has not accepted the insurance from the Town as she personally doesn't believe it is in order. Mr. Weinberg stated he was speaking for himself. Mr. Heeke noted there should be a certain amount of time that a Council member should serve in order to be eligible to which Mr. Weinberg responded he would think it should be five years.

Mrs. Wiener pointed out they are supposed to be non-paid employees and until the Town Charter changes, she doesn't believe the Council members are entitled to it.

Mr. Weinberg responded if they are paid one dollar a year, they are paid employees. Mr. Heeke recalled a memorandum has been prepared on this subject by the Town Attorney and he suggested this be discussed at a later date.

XV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of April 22, 1992 - Excerpt Available in Town Manager's Office.

Motion was made by Mr. Ilyinsky, seconded by Mrs. Wiener to approve the Major Matters discussed at the Architectural Commission meeting of April 22, 1992. On roll call, the motion carried unanimously.

Major Matters Architectural Commission

The major matters were:

B5-92 - Addition to residence of David Mack, 958 N. Lake Way. Deferred.

B16-92 - Entrance addition to residence of Luis and Lillian Fernandez. Deferred.

B73-90 - Landscape Plan for Mr. & Mrs. David Mahoney, 1296 S. Ocean Blvd. Deferred.

B105-90 - Landscape Plan for Mr. & Mrs. Gerard Haryman, 112 Woodbridge Rd. Approved conditionally.

B17-92 - Drs,. John & Daisy Merey, 295 Bahama Lane - Addition. Approved conditionally.

B18-92 - Demolition and new two story residence of Agnes Rosenthal, 272 Fairview Ave. - Deferred,

B19-92 - Demolition - Rebuild - Mr. & Mrs. Christopher Asplundh, 1334 North Lake Way. Approved.

B20-91 - New Residence for Martin Cannon-Mochorowski, 240 El Vedada. Approved conditionally.

B21-91 - Landscaping and additions to residence of Fred Adler, 1520 S. Ocean Blvd. Approved conditionally.

B22-92 - New residence for Mr. & Mrs. Francis Guyott, 4 La Costa Way - Approved conditionally.

B23-92 - Administration Building for Sloan's Curve Homeowners' Association, Sloan's Curve. Approved.

B24-92 - Demolition of residence of Nelson Peltz at 216 South Woods Road. Also landscaping and driveway gates installed. Approved conditionally.

B25-92 - New residence for Alice Meerwarth, 243 Merrain Rd. - Deferred.

B. Variances, Special Exceptions and Site Plan Reviews

Old Business

<u>Old Business</u>

Var. 3-92

1. Variance No. 3-92 - John Switzer, 10 South Lake Trail; to allow construction of a garage at the NE corner of the property providing a front yard setback of 5' in lieu of 35' required. R-A District. Deferred from April meeting. This item was withdrawn.

Var. 13-92

2. Variance No. 13-92 - Joel Martino, 109 Ocean Terrace; to allow an addition to a nonconforming residence; said addition would include a third story not permitted per Section 4.20 of the Town Zoning Ordinance - R-B District. Deferred from April meeting. -

Mr. Robert Bell, Architect, addressed the Council requesting the variance noting that existing structural conditions require a portion of the structure be replaced rather than repaired. He pointed out the third floor area already exists and the new structure will be only an expansion of the existing facility and will be compatible with the accepted footages of the use; new structure would present no more visible mass than currently exists; all the zoning requirements, such as landscaped areas, FAR, angle of visions, floor and building heights will be met.

Mr. Bell recalled at the last meeting, they showed their original intention was to demolish certain portions of the building and they have reduced the second floor mass by 127 square feet. Mrs. Douthit noted that will make the FAR remain the same. Mr. Bell stated that has been reduced slightly also.

Mrs. Douthit stated she had questions about the split level as if it does exist, how high will the ceilings be? Mr. Bell responded the master bedroom has a 8'2" ceiling height which matches the existing.

Mrs. Douthit asked about the easterly wing where they are demolishing. Mr. Bell responded the whole site has a lot of things built into it with a lot of different levels. Mrs. Douthit believed the east wing will be 90% new and asked if there was a deck over part of this? Mr. Bell responded that portion could be a deck or it could be a planted area.

Mrs. Wiener believed the discussion was last month that the Council didn't want to go along with the total addition and were open to the applicant reducing the area to what they really needed. Mrs. Douthit believed the increase was the nonconformity but it has been removed. Mrs. Wiener noted it was put elsewhere. Mr. Bell agreed noting it was added downstairs but it is still within the Zoning Ordinance they are required to follow. Mrs. Douthit believed they were increasing a nonconformity with the Max for the FAR buildout. Mr. Bell stated the applicant wished to add closet space and add onto the master bedroom. Mr. Heeke recalled they asked him to come back and show the minimum amount needed but they weren't thinking about placing that space elsewhere. Mr. Bell advised in working the actual footages, the plan presented is what they came up with. Mrs. Wiener asked if they were within the FAR requirement to which Mr. Bell responded affirmatively. Mrs. Douthit believed they were right at it. Mrs. Wiener noted the house is structurally unsound. Mr. Heeke pointed out they are still seeking a variance. Mrs. Wiener recalled it was discussed at some length last month and certain assurances were given that if the request was reduced, it would not be a problem. Mrs. Douthit stated she had a problem with increasing a nonconformity and an absolute Max buildout.

Mr. Moore reported this is an expansion of a three story building and the third story is being expanded and the FAR is now just below what would be allowed. Mr. Moore stated the additional comments of the staff were that the hardship should be addressed. Mr. Moore stated the first level of the building is being used as a cabana and it will be returned to what would be closer to a nonconforming use for storage and bathroom and garage, to which they agreed last month.

Mr. Ilyinsky asked if the structural damage was a hardship? Mr. Martino explained the house was stuccoed a few years before he bought the house, without a permit and an inspection and now the house is crumbling down and he has to spend a lot of money to repair it and because the house was designed in a very odd way with the kitchen upstairs and the living room upstairs and to try to make it into a viable house, they felt they had to come up with a plan where most of the living area is in the middle area and shouldn't be at the highest area, so they struggled with ways the middle level could be used. He stated the problem comes in if the middle area is reduced to an amount that would be satisfactory or under 40%, they would have cut off the dining room and half of the family room. Mr. Bell advised the Martinos have been long time residents in the Town and this is not a situation where they would be fixing up the house and then selling it, as they intend to redo it and live there. Mrs. Wiener recalled after great discussion on this last month, the basic instruction was to redo the bedroom area, which they have done and she will move that Variance No. 13-92 be granted. Seconded by Mr. Ilyinsky. Var. 13-92

Dr. Sten Lilja addressed the Council, indicating he was a neighbor of Mr. Martino and they have met and talked about this matter and agreed the elevation and bulk of the west and south elevations are acceptable, but there is also the question of the total floor area.

Dr. Lilja stated the new second floor addition which faces Ocean Terrace, although the drawings do not show it properly, he has been assured by Mr. Martino that the floor level of the new addition which will house the dining room will be the same as that of the present terrace in front of the house. He stated this means the new floor will be 14 to 16 inches below the existing floor in the present east wing. He stated the importance of this is the bulk of the second floor dining area and the lower roof on top of it will be less overwhelming. He had told Mr. Martino that he would not object to the six foot increase in height of the roof line or the rest of the new wing that will be built.

Dr. Lilja stated that Mr. Martino is in favor of lowering the floor level a couple of steps, for easier entrance into the house through the main entrance and for lowering the bulk impression of the width elevation, and fewer steps to go down from the north wing to the pool area.

Dr. Lilja stated the second point is the desire of the Martinos to combine the already expansion of a nonconforming use with an overall increase of forty per cent over the present floor area. He wishes to build to the very limit of the presently allowed FAR of .45. Dr. Lilja stated his objection to the FAR is not based on any visible detriment to him as a neighbor, as he would hardly be able to see it but his concern is strictly on the lines of the extensive efforts over the past year or two by staff and others to formulate zoning laws to protect and conserve the character of their established neighborhood.

Dr. Lilja stated his concern that the approval of the request could severely affect the Council's ability in the future to sufficiently regulate FAR and defend zoning laws in court, as to allow a FAR of .45 could be disastrous as most of the residences in the area are at .23 to .24 which is about half of what Mr. Martino is requesting.

Dr. Lilja referred to the comment made by Mr. Bell on the cabana as Dr. Lilja's opinion that forcing Mr. Martino to convert it to nonhabitable space is not fair to Mr. Martino as it in no way changes the compliance or noncompliance in the Ordinance, particularly since he understood the cabana was fully legal at the time it was built.

Mr. Bell stated the actual floor level of the dining room will be where Dr. Lilja thought it was going to be and that was the original proposal.

Mr. Heeke agreed with Dr. Lilja's statement about the conversion of the cabana space as that will be difficult to enforce. He felt it was built out to the maximum allowed and it does expand a nonconforming use. He knew Mr. Martino was in a difficult situation because of the structural difficulties and he is sympathetic with that.

Mayor Marix asked if they could cut down the FAR slightly? Mr. Martino stated he has been struggling with this for many months but the problem is if you cut back on the third floor 150', it will eliminate the closet and if it cut out of the dining room, they will end up with a small dining area and if it is taken out of the family room, that will make that room smaller also, and they will still be at .40. Mayor Marix agreed but thought he should see to what extent it could be brought down somewhat.

Mr. Bell stated the situation is there is 700 square feet on the first floor area which they just can't do anything about.

Mr. Heeke called for the vote and on roll call, the motion carried 4-1 with Mrs. Douthit voting against the motion because of the FAR.

3. Variance No. 23-92 - Timothy & June Rooney, 160 Wells Road; to allow an increase in height of 6' gate posts to 8'5"; maximum permitted is 6'. To allow construction of 7'9" screen wall thereby exceeding the 6' maximum allowed. R-B District. Deferred from April meeting. Var. 23-92

Mary Richards of Prescott Construction addressed the Council noting there are two gates on the north property line and one is 8.5' and the other is 6.5 and Mrs. Rooney would like to have them match by increasing the 6.5' gate to 8.5'. She advised there are other entrances to the property at the corner of Wells and North County and one on North County and they are all 8.5' or more. She has put in a shower and would like to have the east wall at 7.9'.

Motion was made by Mr. Ilyinsky to approve Variance No. 23-91, seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

4. Special Exception No. 5-92 - Salvatore Ferragamo, 200 and 202 Worth Avenue; to allow applicant to exceed the 2,000 square foot limitation on retail space permitting Salvatore Ferragamo Men's and Women's Shops to occupy 5,645 square feet. Total space of 5,645 square feet is obtained by joining the men's and women's shop by interior passage way. C-WA District. Deferred from April meeting. Letter Dated May 6, 1992 from Doyle Rogers Requesting Postponement to June Meeting. - This matter was postponed to the June Town Council meeting. Spec.Excep. 5-92

<u>New Business</u> New Business

5. Variance No. 26-92 - Albert Beriro, 1226 N. Lake Way; to allow construction of a residence on a lot providing 83' frontage in lieu of 100' required. R-B District. - Var. 26-92

Attorney Robert Deziel addressed the Council on behalf of the applicant, who is a contract purchaser for this property and his client would like to demolish the existing structure and build a new residence which will be within the zoning and building requirements, except for the lot

Var. 26-92 (cont'd)

frontage. Mr. Moore explained they have no objection and the construction will have to comply with all new zoning regulations. Mayor Marix asked why this house looks like a three story house on the plans. Attorney Deziel responded there is a tower room, but it will comply with the zoning regulations. Mr. Moore advised this is an architectural detail which is permitted in the Zoning Ordinance. Mayor Marix asked how tall was it? Mr. Deziel responded it would have to be 35' plus 10' would be the maximum allowable height. Mayor Marix noted it was a narrow lot and this will be quite high and that is why there is an objection. Mr. Deziel reported he has spoken to the neighbor and his main objection was the height and the hedge that is on the north and southern boundaries of the property. Mr. Deziel stated the hedge will remain so that is a non-issue, however as far as the height, it is difficult to address at this preliminary stage. Mr. Moore pointed out this height matter is not the substance of the variance. Mr. Deziel agreed, noting the variance is for the lot.

Mrs. Wiener noted this is a deep lot and they are keeping the hedge so she would move the Variance No. 26-92 be approved. Seconded by Mr. Weinberg.

Mr. Moore stated the staff recommendation included that all construction must meet today's zoning regulations. Mrs. Wiener thought the variance request was quite clear as it was asking to build a home on a lot that does not have sufficient frontage and they have granted these over and over again. Mr. Heeke recalled this condition has also been put on the variances granted that the construction will comply with the zoning to which Mrs. Wiener agreed and made it a part of her motion.

Mayor Marix believed that when one came before the Council, it was within the Council's right to put on conditions.

Mr. Kirby Koolaris addressed the Council, indicating he was the neighbor to the south and he just wanted to be sure there would be no problem and believed they had the assurances the hedge will remain. He advised when he bought his property, he installed a fence on the side of the hedge and when he built the dock, he put the pilings closer onto his property so there was room for his neighbor to dock their yacht. He hoped his neighbor would be considerate of him so the house would be placed on the property so they help each other in not abusing each other's privacy.

Mayor Marix asked if they would have to build up the lot to build the house? Mr. Moore responded he did not know the elevation but they would have to be at 7.5 to meet the flooding requirements. Mrs. Wiener believed what Mr. Koolaris was saying, he would appreciate if they would not have the houses adjoining each other at the same frontage, but rather since there is 190' in depth on that property, the house be placed back a little more than usual and asked Mr. Deziel if that was a problem with his client? Mr. Deziel responded at the Architectural Commission, they will be considering this and how the house will blend in with the neighborhood and he is not trying to usurp what the Council is doing today, but he really cannot commit for the footprint on the property at this time. Mrs. Wiener did not believe ARCOM could supersede the zoning and say they have a 35' setback and they should set the house back 50', as that is what she thinks they are talking about at this point. Mr. Koolaris noted his lot and the applicant's lot are narrow and the houses will be quite close together, so this setback is very important. Mrs. Wiener believed she could incorporate the stipulation in her motion and moved that the variance be approved with the stipulation that the house not have the same frontage as Mr. Koolaris' home but rather that it go back ten or fifteen feet. Mr. Deziel believed there might be a problem as the architects have given a conceptual plan which he brought to the Council to be overly prepared as he wanted to give the Council an idea of what is proposed, however, if he agrees on five feet, or ten feet or one foot, it will not take into consideration where the architect lines up the bedrooms. He thought they could push the house ten feet back and still have the bedrooms lined up so they could look at each other with binoculars, and what he is getting at, that whatever restrictions are proposed today, he doesn't know how they can be put into prospective as the architect has not yet put the footprint on plans to show where the home will be put as he looks at this as an ARCOM issue.

Mrs. Wiener suggested the matter be deferred. Mayor Marix believed Mr. Koolaris knew how far back his house and his second story is, and perhaps Mr. Moore could look at it and make a recommendation, as the tower will be 100' back and Mr. Koolaris might have some idea of where his bedroom is in relation to this tower. Mrs. Wiener pointed out the tower is to overlook the lake. Mr. Koolaris stated where the present house is located is probably a good place. Mr. Moore noted it is 93' back from North Lake Way. Mayor Marix stated that is not what she was asking, noting the proposed tower looks like it would be 90' back, and wondered how far back Mr. Koolaris' highest part of his house is, so there won't be a problem. Mr. Deziel stated he does not know where the bedrooms will be located in the house. Mrs. Douthit suggested they all meet at ARCOM and make the decision as to where the new home will be placed. Mr. Deziel believed that was an excellent suggestion as today the decision is to be made as to whether or not they can place a new structure there, and he isn't saying he doesn't agree with Mr. Koolaris, but he just can't say today where this footprint will be. Mrs. Wiener withdrew her motion to approve.

Mayor Marix asked Mr. Moore about the hedge, as if this is to be filled, there may be some damage to the hedge. Mr. Moore advised they would have to put in a retaining wall. Mayor Marix stated that could cut into the roots of the hedge. Mr. Moore stated the retaining wall would have to be placed farther away so the hedge will not be damaged, and the Council can grant this conditionally. Mayor Marix suggested they give the variance and state where the retaining wall should be placed in order that the hedge will to be damaged, and that if there is a major disagreement at ARCOM as to where the home will be placed, it should come back to the Council meeting. Mr. Moore stated it would come back to them in the way of an appeal if either party is not satisfied.

Motion was made by Mrs. Wiener to defer. Seconded by Mr. Weinberg. On roll call, the motion failed to carry 3-2 with Mrs. Douthit, Mr. Ilyinsky and Mr. Heeke voting against the motion to defer.

Motion was made by Mrs. Douthit that the Variance requested be granted with the preservation of the hedge by whatever means as the elevations of the property are not known at this time, and additionally, when it comes to the house's design, it go to the Architectural Commission, which she believed was a perfectly normal way to handle this. Mr. Heeke asked if there could be an addition to the motion that all other setbacks and zoning requirements are met. Mrs. Douthit agreed. Mayor Marix noted that if there were a serious problem, it could be appealed to the Council. Mr. Randolph reminded all that the Architectural Commission does not deal with setbacks and zoning considerations and when it goes to ARCOM and they don't work out the problem, the variance has been granted for this without any conditions with regards to setbacks and any changes that will be made by ARCOM will be limited to the design of the house and not to the placement of the house on the property, so they won't have another crack at changing the site of the house on the property. Var. 26-92 (cont'd)

Mrs. Wiener commented that was the reason she wanted it deferred so Mr. Deziel could talk to his client and find out whether or not the client would be willing to accept the condition of the granting of the variance with the house being pushed back. Mrs. Douthit stated at this point they don't even know if the house needed to be pushed back. Mr. Deziel commented that it was his thinking at this point this was too preliminary for his client to commit as to where he will be building the home as they have to go to ARCOM and let ARCOM tell them whether the home is synergistic with the neighborhood and at that time Mr. Koolaris will be there and be able to make his comments.

Mr. Moore advised that anyone that is aggrieved by the decision of the Architectural Commission may appeal that matter to the Council. Mr. Randolph stated all they would be able to appeal is the design and not with regards to the placement of the home on the property. He suggested that if the variance is granted, if the applicant will agree in the event this is not resolved at ARCOM, they will come back to the Council and allow the Council to have further discretion in regard to the placement of the home on the property. Mr. Deziel agreed to that stipulation.

Mr. Heeke restated the motion which was the variance be approved with protection for the hedge and the Town Council reserving discretion as to the site location of the house on the property, in the event it cannot be worked out at the Architectural Commission meeting, and all Zoning requirements will be met. The motion was seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

6. Variance No. 27-92 - Testa's Hotels and Restaurants, Inc., 231 Royal Poinciana Way; a Variance to Section 5.51(f) of the Town Zoning Ordinance to allow a rooftop installation of a 1.0 meter diameter dish antenna. C-TS District. Var. 27-92

Attorney Frank Lynch addressed the Council on behalf of his client, Testa's Hotels and Restaurants, Inc. who wish to put up a one meter satellite dish on the roof of the existing service station to process credit cards and is a condition of Chevron on the distribution of their products. Mr. Lynch advised it will be properly sightscreened with a chained link fence with white vinyl.

Mayor Marix commented this may be applied for by all of the gas stations in the Town and it would be hideous. Mr. Weinberg asked if trees in tubs could be placed around the fence instead of the white slats. Mr. Lynch believed that may be a hazard in heavy winds. Mr. Heeke could not see the hardship. Mr. Ilyinsky moved that Variance No. 27-92 be granted. Seconded by Mrs. Wiener.

Mayor Marix stated this is an unique Town and they should be thinking about the type of precedent they might be setting. Mr. Lynch pointed out last month Merrill Lynch received permission to place a larger satellite dish in a taller area. Mr. Lynch stated in this particular zoning district, only two story structures are allowed. Mayor Marix stated that is all well and good and perhaps the next applicant may want to put a dish on a one story building and this was her concern. She was also concerned about a chain link fence and hiding it behind vinyl slats.

Mr. Heeke asked Mr. Moore if this would be subject to the approval of the Architectural Commission to which Mr. Moore responded affirmatively. He suggested if Council wishes to approve, there be a condition that it be sightscreened subject to approval of the Architectural Commission. Mr. Ilyinsky amended his motion to include the provision stated by Mr. Moore.

On roll call, the motion carried 4-1 with Mr. Heeke voting against the motion.

7. Variance No. 28-92 - Mr. & Mrs. Frederick Adler, 1520 S. Ocean Boulevard; to allow construction of a first and second story addition at the north end of the residence with a 13.7' side yard setback in lieu of the required 15', and a second story addition at the north end of the residence with a 10.4' side yard setback in lieu of the required 15'. R-A District. - Var. 28-92

Attorney Robert Deziel asked that each variance request be considered separately to which Mr. Heeke agreed.

Mr. Deziel explained in the rear of the residence, there now exists a structure with a one foot sideyard setback and what they want to do is to build south of the existing structure with an addition of ten to thirteen additional feet. He advised if they were to meet the sideyard setback of fifteen feet, they would extend beyond a retaining wall where there is a difference in the grade of approximately eight feet. He stated they are restricted on moving away to comply with the sideyard setbacks because of the differences in the grade elevation of eight feet and they wish to go on top of an existing slab and one of the footing walls is an existing wall, which is a retaining wall. Mr. Heeke asked if this was a second story addition to which Mr. Deziel responded affirmatively, noting except for the setback requirement, it would comply with the height for a second story addition. Mr. Moore stated they have no objection to this addition over the existing first floor.

Mr. Ilyinsky moved the Variance No. 28-92 be granted for the second floor addition with a side yard setback of 10.4' in lieu of 15' required. Mrs. Douthit pointed out this first story structure is already there and it has an existing perimeter wall so she will second the motion.

Mr. Heeke noted the topography of the lot is quite unusual. On roll call, the motion carried unanimously.

Mr. Deziel stated the second request is for the north end of the residence where the request is for a first and second story addition with a 13.7' side yard setback in lieu of 15' required. Mrs. Wiener noted it was a request for a 1.3 sideyard setback and she so moved that this be granted for Variance 28-92. Seconded by Mr. Weinberg.

Mr. Deziel advised he has just been informed that his client wishes to add an additional couple of feet in the rear going in a westerly direction, which would not affect the variance as to the side-yard but may affect the square footage and if that is the case, he would have to come back to the Council next month on this particular matter. Mr. Heeke stated it would have to come back to the Council.

Mr. Heeke called for the vote and on roll call, the motion carried unanimously.

Var. 29-92

8. Variance No. 29-92 - Town of Palm Beach, Seaview Park Tennis Courts, 340 Seaview Avenue; to allow installation of lighting on courts 3 and 4 comparable to existing lighting on courts 1 and 2. R-B District.

Mayor Marix commented they hear this every single meeting about lighting the tennis courts. Mr. Moore reported this is an application for the lighting of two tennis courts at Seaview Park and they have discussed this several times and the Town is seeking a variance to provide additional lighting to enhance the other two courts that have been lit. He recalled there were some problems with a neighbor in Phipp's Plaza, which have been addressed and new non-glare lighting has been installed and they will be installing the same non-glare lighting for the two courts now being requested. He stated this is for municipal purposes and the Town Attorney has advised the Mayor and Council that the Town does not to govern itself under the same rules as set out for others and the application is here for lighting Courts 3 and 4.

Mrs. Douthit asked if this was for resurfacing also and what would the price tag be? Mr. Bitzer responded this is a scheduled FY92 Capital Improvement Project and the cost is approximately $30,000. Mayor Marix noted this was the same figure they had an argument over with regards to the reef, and she personally thought the monies should be raised by some other form, such as a Tennis Ball. Mr. Bitzer advised he has sent a memorandum dated 4-3-92, he has outlined that it is estimated it would be paid for out of the increased revenue they would be receiving as utilities would be paid for through the token meters that will be installed and it is anticipated they would increase their revenues by approximately $20,000 with expenses around $7,000, so the profit would be $13,000 and the cost of the lighting installation would be recovered in about six to seven years. He stated the useful life of the system would be twenty to twenty-five years, so they would not only recover their operating cost, but also the construction costs also and at the same time, they would be providing lighting for the working adults.

Mayor Marix asked if there were meters on the first two courts where the lighting was installed to which Mr. Bitzer responded affirmatively. Mayor Marix wanted to know if any money was made on those two courts? Mr. Bitzer responded they have a person there for extended daylight hours, they have recovered the monies to pay that person to be there. Mayor Marix thought perhaps some of the people who have a great interest in tennis might borrow the money to have these new lights installed and interest charged. Mr. Moore reminded the request is for tennis lighting and not how to pay for it.

Mr. Ralph Lubow, of the Seaview Park Commission addressed the Council stating one of the reasons the request should be granted is there is a serious demand from children who play with their parents in the evening hours as a lot of people work during the daytime hours and this would give them an opportunity to play at nighttime. He felt the cost of installation is a wash as the meters will take care of the cost in a very short time. He felt the Seaview Park facility was a valuable asset to the community and people who live in the community are entitled to use the facility and if at all possible, they should extend the use of the facilities into the evening hours.

Mayor Marix stated it was her thinking if this makes money, like Mr. Bitzer said it will, why does the Town have to pay for it as the tennis facility building is almost paid for by contributions. Mr. Lubow noted the building is not fully paid for but contributions have been received. Mayor Marix reminded some people do not play tennis and would rather play croquet, Mr. Lubow pointed out many people play golf. Mayor Marix pointed out no-one is giving croquet lessons. Mr. Lubow did not think there was a demand for it. He believed the tennis courts do attract people and he is hopeful the Council will approve the request.

Mr. Heeke thought they should focus on whether or not the variance should be granted and the real question is whether this is expanding a use in a residential area which is not otherwise permitted. Mr. Lubow commented on both sides of the tennis courts there are schools or commercial property. He pointed out they do pay a lot of taxes in this community.

Attorney Paul Prosperi thanked the staff and Mr. Bitzer and the Town for spending the monies they did expend for non-glare lighting which benefitted his property and the other properties on the west side of Phipp's Plaza. He stated in the spirit of community, he appreciates the comments of the Mayor on the expense. He stated they would not like to see the hours extended to ten or eleven o'clock as he thought until nine o'clock was what was proposed. Mr. Lubow stated the hours will not be extended beyond nine o'clock.

Mr. Ilyinsky moved Variance No. 29-92 be granted with the hours not to be beyond 9 PM and if there is a problem with that, they will readjust to 8:30 PM. Mrs. Douthit thought it should be brought out that this is a Town-serving activity. so this will not open the door to having lighting in residential areas. Mr. Ilyinsky agreed this was for a municipal purpose. Mr. Moore stated that could also be the hardship that it is for municipal purposes. Seconded by Mr. Weinberg.

Mayor Marix recalled Mr. Lubow stating this will make money, she would like to see an Enterprise Fund for the Recreation Center. Mr. Heeke did not think this was a matter that should be discussed under the matter of a variance. On roll call, the motion carried 4-1 with Mrs Douthit voting against the motion.

A short break was taken.

Meeting reconvened by President Heeke.

Spec.Excep. 9-92

9. Special Exception No. 9-92 With Variance - Parc Regent Condominium, 184 Bradley Place; to allow modification to Special Exception 17-82 to permit additional accessory structure (3 cabanas). A variance is to allow construction of cabanas providing a 10' street side yard setback in lieu of 25' required. R-D(2) District.

Atty. Paul Prosperi addressed the Council noting several months ago the Parc Regent bought the the Stop and Go property which consists of three lots and the building was demolished and a wall and landscaping installed on the perimeter of the property and ARCOM requested the wall be set back 25' and there is now a six foot hedge growing behind it. He advised this is being brought before the Council as a Special Exception as originally the developer acquired a Special Exception to build the apartment building and a modification is needed for that as well as a variance to build the cabanas in a building approximately 24 1/2' wide and 38.8' long and has about 950 square feet in it. He advised an additional 9000 square feet of open space was added to the project and his client is willing to enter into a unity of title agreement and they would also like to have a sideyard setback on the south side of the property which borders on Park Avenue, and the reasons are at the property line between the former condominium and the former Stop and Go building, there are utilities, which make it impractical to add the cabanas onto the existing cabana building, so it would have to be set back. He stated they then run into a security problem as if the cabanas are set back, it will create a blind corner, and be a security risk for the building, therefore the design of the cabana will have a four feet wall, a hedge, and then a part of a wall which will be consistent with the existing buildings. He stated the hardship is the location of the utilities, the security problems and this property is a residential property which borders on commercial properties across the street and the wall and hedge will block out the view and sights and sounds of the commercial uses protecting the condominium recreational area and will alleviate the security risk because of the blind corner if they had to have the full setback on that side. Spec.Excep. 9-92 (cont'd)

Mr. Weinberg asked why there would so much space between the contemplated space and the cabanas. Mr. Prosperi stated there would be an area created which would not be easily seen and it would create a security problem. Mr. Weinberg asked why they didn't move away from that corner to the north. Mr. Heeke believed they could put the hedge there. Mr. Moore stated the staff had the same question as raised by Mr. Weinberg. Mr. Heeke believed if the bottom cabana was taken from where it is proposed and moved closer to the center, he didn't believe they would have a variance request to which Attorney Prosperi agreed. Mr. Heeke believed the hedge would sightscreen from the sidewalk. Mr. Prosperi advised they would still have the security problem. He stated they are trying to create a barrier there with the wall and the hedge. Mayor Marix suggested if it be put on the north side, they could put a fence inside the hedge.

Mr. Prosperi pointed out the applicant did acquire this additional property and made a landscaped area there. Mr. Heeke believed the one cabana should be moved and another method employed to solve the security problem in that corner. Mr. Prosperi stated they would still need a variance. Mr. Heeke pointed out it would be a minimal variance and all he needs to do is take off the end cabana and move it to the north. Mr. Prosperi pointed out there are no nearby neighbors. Mr. Heeke stated he would like to see a minimal variance. Mr. Prosperi asked if he meant a 20' rather than 25' on that side? Mr. Heeke stated if they granted a ten foot variance, it would be pushing it back about ten feet. Mayor Marix thought this was a moral matter as though it wouldn't hurt anyone to grant this variance, the fact is it is against the zoning regulations.

Mr. Moore explained that was the question they had asked Mr. Prosperi to address and that would be to diminish the size of the variance request. Mr. Heeke noted it was for 20'. Mrs. Douthit suggested they simply move the three cabanas northward as far as they could and then come back with a lesser variance. Mr. Heeke believed the three foot variance would allow them to take the southernmost and make it their northernmost cabana and that would give them plenty of clearance with the utilities.

Mrs. Wiener pointed out this property has been granted a Special Exception and variances and here is something that nobody sees and no-one is effected by, and a major development has already been permitted on the next street. Mayor Marix believed they should review the minutes of that meeting in order to know why this was granted. Mr. Heeke recalled it was a very complicated situation. Mrs. Wiener recalled they did reduce their height. Mr. Prosperi reminded all they did add considerable open area and reduced traffic and the crime problem in that area. Mr. Heeke noted the value of their property was enhanced. Mr. Prosperi responded it was also an improvement for the Town as the store was a problem.

Motion was made by Mr. Weinberg that Special Exception 9-92 be granted with a five foot variance for the sideyard setback. Mrs. Wiener seconded the motion. Mayor Marix asked if this reduction to five feet would be considered as a minimal variance to which Attorney Randolph responded they're reducing the variance requested. Mr. Moore announced the variance is for 20'. Mr. Prosperi stated the hardships are the location of the easement; this is a residential property adjacent to commercial property; and the security problem that would be created.

Mr. Heeke noted this would be a 20' setback instead of the 25' required. Mr. Heeke asked if the motion could be amended to have a Unity of Title with the main property to which the maker and the seconder agreed. On roll call, the motion carried unanimously.

10. Special Exception No. 10-92 With Variance -

Linda A. Gary Real Estate, 201 Worth Avenue; to allow Brokerage, office and professional use, to occupy 2,200 square feet, and a variance to locate Brokerage office on the first floor. C-WA District. Letter Dated May 5, 1992 from Robert E. Deziel Requesting Postponement to June Meeting. - This Special Exception application was postponed to the June Town Council Meeting. Spec.Excep. 10-92

11. Special Exception No. 11-92 - Island National Bank of Palm Beach, 293 South County Road; to allow construction of two remote teller stations. C-TS District. Spec. Excep. 11-92

Mrs. Wiener declared a Conflict of Interest as she is a Board member of the Bank. Mr. Kildane, Landplanner, addressed the Council stating they wish to tear down the automatic teller which is now existing and reconstruct it as it will be a drive-in facility and relocated nearer to Brazilian Avenue. He advised the ATM system will be removed in its entirety and this will only be operated during banking hours.

Mr. Moore stated they need to address the Town-serving nature and also the safety of the pedestrians on the sidewalk as the cars emerge from the property. Mayor Marix noted there could be two cars coming out of that area at the same time and asked what would happen if that was the case? Mr. Kildane advised one would have to give way for the other one proceed. He stated they wished to preserve the landscaping as much as possible.

Mr. Kildane stated with regards to the Town-serving nature, the Bank has an office on Sunrise and the proposal for this Special Exception is to expand the existing Special Exception and allow this package to work together as a single entity and without this facility, all banking activities would be required to take place within the building itself.

Mr. Anthony Newton advised they will furnish documentation on an annual basis on the Town-serving aspect, as they have done on their Sunrise Avenue facility.

Mr. Weinberg asked if they would be renting out space in the parking lot to others as he knows of a store along South County Road stated he has parking available for their customers in the lot. Mr. Newton advised he doesn't own the parking lot as when they bought the property they owned it for six days and sold it and now lease their parking from the company they sold the lot to.

Mr. Weinberg moved that Special Exception 11-92 be approved with the condition that the Bank needs to prove they are town-serving by December 31, 1992 and annually thereafter. Mr. Randolph stated they are proving themselves town-serving now as result of the requirement that they submit an audit showing the Town-serving status. Mr. Moore asked if it was understood there would no longer be a twenty-four hour banking service available and if ever they wish to return to that, it would have to come back to the Council. Mr. Heeke pointed out they are granting this Special Exception for a remote teller and not an ATM.

Mr. Ilyinsky seconded the motion. On roll call, the motion carried with Mrs. Wiener abstaining.

Spec. Excep. 12-92

12. Special Exception No. 12-92 - Giorgio Armani, 241 and 243 Worth Avenue; to allow applicant to occupy 2,857 square feet in lieu of 2,000 maximum permitted. C-WA District.

Attorney Doyle Rogers addressed the Council on behalf of his client, Giorgi Armani. He advised Mr. Armani has had a shop in the Town prior to this one and an audit has been performed on the "33480" customers for the period from April 1, 1991 thru March 31, 1992 and an actual audit was made of every sales slip during that period of time and it has been found that 65% of those who had transactions in the shoppe were Town-persons. He advised in addition to that, he has asked for any other confirmation which would show there was a greater percentage than the 65% and a letter has been delivered signed by the store manager and three sales persons, stating that they deal with these customers and in addition to the ones identified by the auditors as Town-persons, they feel there are others as they know the people they deal with as some of the purchases were sent outside of the state to their home addresses, so in all probability, this would cover 75% of their customers being Town-serving, and he felt they meet the requirements of the Code.

Mayor Marix asked about the parcels which were sent out of Town stating they must have been paid for by sales slip and wondered if that would make them get counted twice in the audit? Mr. Rogers thought they probably would have paid by credit card and the ones that sent their packages to another address were not the same one as in the audit, but in addition to.

Mr. Ilyinsky moved that Special Exception 12-92 be granted. Mr. Heeke asked if that was contingent to receipt of the audit to which Mr. Ilyinsky agreed. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Spec.Excep. 13-92

13. Special Exception No. 13-92 With Variance - Palm Beach National Bank, 125 Worth Avenue; to allow an expansion of a Special Exception use, the banking facility, from 1,665 square feet to 8,192 square feet. To allow a Special Exception per Section 6.25 for a drive-in facility. To allow a variance to the off-street parking regulations which would require 5 additional spaces. Letter Dated May 8, 1992 from H. Loy Anderson, Jr. - Postponed to the June 8, 1992 Town Council Meeting. Requesting Postponement to June Meeting.

C. Other

Casa Apava

1. Consideration of Proposed Amendments to Plat of Casa Apava Subdivision by A. Paul Prosperi - Deferred from April meeting.

Attorney Ray Royce addressed the Council on behalf of Mr. Bud Hansen, who is the owner of the property platted as Casa Apava. He stated Attorney Prosperi is also here and he made the original application to represent the potential purchasers of several lots in this subdivision. He advised he previously prepared a document to amend the Plat which was presented at the last meeting and some minor changes were made to it and presented to Attorney Randolph and Mr. Moore. He advised the essence of this is to essentially do away with the necessity of having a Homeowners' Association, as there are only seven lots. He advised the Homeowners' Association has not been formed heretofore and they wish to revoke various easements and dedications that were made through the Homeowners' Association and provide that each lot owner would be responsible for the maintenance of the walls and seawalls on their property and all of the lot owners would be responsible for the storm sewer pipe which services the Plat.

Mr. Royce stated in the event that the property owners do not maintain the walls in an appropriate manner along South Ocean Blvd. or fail to maintain the drainage facility, the Town can give written notice, do the work and have a lien against the property to pay for the corrective work that will be necessary. He advised the dedications on the Plat which will remain are the dedications for South Ocean Boulevard as well as the two driveway exits for each lot; also the limitation which provides for the setback line of 25' from the mangrove area will remain unchanged.

Mr. Royce noted there was a provision in the Plat that any changes in the wall must be reviewed by ARCOM and that also will remain unchanged.

President Heeke asked Attorney Randolph if he had any problem with the Homeowners' Association being eliminated and now dealing with the individual lot owners to which Attorney Randolph responded he did not and he thought it would be easier to deal with the individual lot owners rather than a Homeowners' Association.

Mr. Moore stated the concerns he had with the mangroves have been addressed, but he did walk the property and found the current drainage pipe is blocked and he asked that that be cleaned out at the owner's expense. Mr. Bowser stated he raised the question as to the ownership of the groins in the ocean in the event they need to be removed or repaired and there is a seawall that is buried also but if the individual lot owners would be responsible, that would be taken care of. Mr. Royce stated each lot owner would maintain such groins and seawalls that are on their lot. Mr. Heeke pointed out some of the groins may be on public land.

Casa Apava (cont'd)

Mr. Ilyinsky moved that the amendments to the Plat of the Casa Apava Subdivision be approved, subject to final review of the documents by the Town Attorney and authorization be granted to the Town Manager to execute same. Seconded by Mr. Weinberg.

Mrs. Lesly Smith of the Garden Club of Palm Beach asked about clay tennis courts which could be installed and which would have a run-off on the mangroves. Mr. Royce responded if there are going to be clay courts, he believed they could be constructed in such a way that there could be no run-off. He knew there was a seawall there and mangroves are landward of that seawall, but he didn't believe there could be sufficient run-off to do damage to the mangroves which are on dry land. Mrs. Smith stated for the record they are very concerned about the mangroves on Lots 1, 2, 3, and 4 of this property on both sides of the seawall as the mangroves would be affected by tennis courts and the courts would need to be elevated. She recalled no mention being made about fill on this property and the mangroves on the landside of the property would be effected by the the run-off from the tennis courts. She stated the seawalls have holes in it for the drainage which is an indication there is flooding and what she requests that when it comes to the development of Lots 1, 2, 3, and 4, that the mangroves be addressed separately and the Garden Club would be willing to help with the mitigation and management of the mangroves and she asked that Paragraphs 11 and 12 be deleted from the Plat for the protection of the mangroves at this time. Mrs. Wiener asked if the elevation of the tennis courts would take care of the problem? Mrs. Smith responded there will be run-offs as the Plat doesn't address the elevations and the Garden Club feels that Paragraphs 11 and 12 are bound together when it comes to the mangroves.

Attorney Royce stated they would like to get this through and he hadn't anticipated this objection and to answer the Garden Club's concerns and not have a prohibition against tennis courts, the language could be modified to say they would be prohibited unless they were elevated and constructed in such a way to prevent runoffs and then leave it to the Town to make those determinations on an individual basis. He doesn't wish to cause any environmental problems but he was reluctant to have a blanket prohibition against tennis courts on those four lots.

Mayor Marix thought they should simply state in the Plat that any tennis courts would have to have Town Council permission so that it couldn't be done without adequate control. Attorney Paul Prosperi addressed the Council noting he was representing the contract purchaser noting the prohibition is only on clay tennis courts and it is not a blanket prohibition against tennis courts. Attorney Royce suggested clay courts be allowed if they were built in such a manner to prevent the problem that Mrs. Smith is concerned about for the Garden Club. Mayor Marix stated there probably would have to be some fill and she believed the Garden Club was worried about what the fill would do to the mangroves. Mr. Royce clarified that right now the restriction says: "clay tennis courts will be prohibited on Lots 1, 2, 3, and 4." He thought the concern was there would be run-off and he would like to find an answer to that without flatly prohibiting the clay tennis courts.

Mr. Moore suggested that Attorney Randolph approve the language but it could state something like 'unless run-off is addressed adequately to the satisfaction of the Town of Palm Beach." Mr. Heeke thought that would be fine as each item will then be judged on its own merit on that particular lot.

Mr. Ilyinsky amended his motion to include the language stated by Mr. Moore with regards to the run-off being addressed adequately on the individual Lots 1, 2, 3, and 4. Seconder accepted the amendment to the motion. On roll call, the motion carried unanimously.

Cost Apportionment Formula re: Storm Drain. Improvements

2. Consideration of Proposed Cost Apportionment Formula Between the Flagler System and Town of Palm Beach Regarding Storm Drainage Improvements - Deferred from April meeting. Letter Dated May 11, 1992 from James Brindell Requesting Deferral to June Meeting. This matter was deferred to the June meeting.

3. Consideration of Proposed Settlement of Lawsuit - 2000 Condominium Association v. Town of Palm Beach.

Proposed Settlement of Lawsuit - 2000 Condo.Assc. vs Town of PB

Attorney Randolph explained the applicant has requested an opportunity to come before the Town again for an application and a proposal for settlement. He did not believe it was a standard proposal for settlement where an agreement has been reached between staff and the attorneys, but this is a situation where the applicant is coming before the Council to make a presentation to the Council for settlement and does not come with a recommendation from himself as the attorney. He wished to give them a status report of where they are with the case. He advised there are two pending proceedings, one before the State Court and one is an administrative proceeding. He stated the lawsuit was filed to attempt to get a Declaratory Judgment in regard to the Ordinance and stated the Ordinance was unconstitutional and asking for damages. He advised the applicant filed for a Motion for Summary Judgment in regard to part of that lawsuit and indicated the State has exclusive jurisdiction over land east of the Coastal Construction Control Line and because the State has exclusive jurisdiction, the Town's Ordinance is invalid as the Town would have no control. He stated he argued the State does not have exclusive jurisdiction but that it has concurrent jurisdiction with the Town and Judge Rogers ruled against that and granted the summary judgment, so the status of the case at this time is that the State has exclusive jurisdiction and the Town's Ordinance does not apply and he has appealed that decision to the Fourth District Court of Appeal and arguments are set at the beginning of June. He advised the Sierra Club has intervened in that case and the Attorney General's office has filed an Amicus Brief. He advised that even if they were to win on that appeal, that win would only overturn the actions granted by the Summary Judgment and if they were to win, they would be at the point they were when they filed their Summary Judgment, so there could conceivably be a full blown trial in regard to all of the issues which are framed by the case. He cannot speculate as to what the chances are of winning on appeal of this case. He advised simultaneously with this proceeding, there is a State Action wherein a Hearing Officer has ruled that no state permit is necessary for this project as it was ruled by the Hearing Officer that this project has no material effect on the dune. He advised he has filed exceptions to that and those exceptions will go to the Governor and Cabinet, but at this point in time, if the Hearing Officer's position is sustained, and if the State has exclusive jurisdiction, the State would not have to grant a permit as this project would have no material adverse effect on the dune.

Attorney Randolph advised communications have been received from Palm Beach County who indicate they feel they have jurisdiction to its Department of Environmental Regulation Management (DERM), so if after hearing this proposal for settlement, the Council is disposed to going ahead and settling by granting a permit, it should be understood that any permit that is granted by the

Lawsuit - 2000 Condo. Assoc. vs. Town of PB (cont'd)

Town is subject to any other permits deemed required by other agencies. He thought the Council should hear from the applicant's attorney with regards to the proposal.

Attorney Daniel Rosenbaum representing the 2000 Condominium Association addressed the Council noting this litigation is now entering its second year. He knew there was a lot of discussion with the Town's staff and the members of the 2000 Condo Assoc. towards a proposed resolution of this problem. He advised this has been a costly litigation as there are novel issues of law which he views as having wide ramifications for both parties. He stated he is here to ask the Council to review again the original application to trim the dune vegetation to a height of three and one half feet in most portions with some areas at eight feet. He reported this is part of a dune management plan which has been devised by experts, not for the purpose of solely returning the view to the owners which they had when they purchased their apartments and which has caused a diminution in value of approximately 50% of many of these apartments in Phase 2. He indicated the reason this has been brought back is because in 1990 by a close vote, the Council did not accept the Plan, but the Council did not have the benefit of the judgment of a scientific standard and he would like to focus on what the harm could or could not be.

Attorney Rosenbaum recalled there was a hearing held in October of 1991 before a Hearing Officer, Michael Parrish, for two days and they heard scientist after scientist on this issue and this is something the Council did not have the benefit of in 1990 when they reviewed these Plans. He recalled the Town did have a report from its expert who basically thought the Plan had helpful effects and he recommended approval of the Plan, as did the staff. He stated the project involved not only the trimming but overall maintenance of the dune, removing the invader species and fertilizing and watering the plants remaining in order to create a healthy dune. He believed the Plan, after being reviewed by the Hearing Officer and after hearing the experts, determined that not only was there not going to be a negative material effect caused to the dune, the vegetation thereon, the ecosystem, the adjoining neighbors property, but also determined that the condition at the 2000 Sloan's Curve is unnatural as having seagrapes in that zone twenty to thirty feet high is an unnatural state and it has been caused by the fertilization and watering over several years of the plant which were originally planted by the residents there in 1985 after a killer frost. The Hearing Officer determined that having these tall trees was detrimental not only to the dune, but in the event of a storm surge, those trees would topple more easily than fibrous roots of shorter plants.

He informed the Mayor and Council there was a Halloween Day storm which had an impact on the Town and the condition of that dune was exemplary and they have a situation here where the Council is sitting as the Hearing Officers and are being asked to determine fact which is many times beyond their normal abilities to judge. He believed the litigation spoke for itself as it is never a good thing to have residents of the Town suing the Town as it engenders bad feelings on both sides of the table and he thought it was time to put this thing to rest.

Attorney Rosenbaum recalled there was discussions between counsel and what they have come up is reverting back to the original concept as presented by the previous attorney representing the 2000 and allow this proposal to go forward on an experimental basis, and as there have been discussions on who will judge this, exactly how long a time period it would run, they have some thoughts they would like to present and the ultimate result would be a dismissal on both sides of this case which would end this litigation.

He suggested that the evidence strongly supports the concept that trimming the seagrape, removing the invader species is helpful to the Town. He knows there has been concern about the preservation of the dune and the property values as hindsight has shown that goal can be accomplished by allowing the project to go forward and is hindered by not allowing the project to go forward. He knows there are a lot of feelings on both sides but what has come out of this is the emotions do get embroiled and it comes down to a matter of science and if the Council could separate out the emotions from the problem and look at the scientific findings of fact, he thought both parties could be put on the track to create a healthy dune.

He recognized there were some things that need to be ironed out such as how long should the experiment last, and who would be the judge? He advised the 2000 people are willing to take risk that the dune will stay healthy and will prosper and the protection that the dune will provide to both the Town and the property values will be accomplished. He asked if the Town Council would reconsider the original submission which will settle the litigation and try to view this from a scientific basis to the extent they can, based upon the evidence submitted and found by the Hearing Officer, of which he has a copy to submit to the Council.

Attorney Randolph stated he would like to get one thing established as he and Attorney Rosenbaum have not discussed the fact that normally the Council does not discuss cases pending before the Court, and asked Attorney Rosenbaum if he would have any objection to an agreement that the discussions here today are similar to settlement negotiations and will not be used in the event the litigation should go forward to which Attorney Rosenbaum agreed.

Mr. Moore explained the residents of Sloan's Curve did initiate the discussions with the Town, prior to knowing the outcome of this court case and the hearing. He stated the Plan before the Council is the exact plan with the conditions which was before this Council in 1990 and the time has been discussed for monitoring and that was from three to five years. He believed Mr. Gann-Matzen would be the likely person who would be the judge on this project. He stated the staff was in support of this plan in 1990 and this will be a compromise which will achieve the experiment and the goals of having a view from the apartments and not a complete removal of the dune of all the large plants along the crest of the dune.

George Gann-Matzen, of Eco Horizons, addressed the Council indicating he was the Town's consultant on this issue and his feelings are the same as they were two years ago and he has seen and read nothing that would make him feel differently today. He stated the only change is the science of doing this type of work has improved and he would have some recommendations to make to the 2000 Condominium to improve the product. Mr. Heeke asked what period of time would he recommend? Mr. Gann-Matzen responded he has not yet considered that issue and that should be discussed with the staff and the 2000 Condominium, and he would like to reserve judgment on what time should be involved at this time.

Mrs. Wiener asked about the legal fees which have been spent on this case to this point in time. Mr. Doney responded he would have to check into this but he knew that figure was very large.

Mr. Heeke asked Attorney Rosenbaum if in his proposal of settlement, would there be a withdrawal with prejudice of all pending litigation? Mr. Rosenbaum responded affirmatively. Mr. Randolph explained there is an intervener suit here with the Sierra Club and that may still move forward. Mr. Heeke asked Attorney Rosenbaum if the Town were to accept the proposal, would the Town be held harmless by his client for any damage it might suffer as a result of the dune maintenance program in the event there was a tidal surge or something of that nature and they wouldn't come back to the Town for allowing them to trim the dune? Mr. Rosenbaum stated the President of the Association has indicated that would be acceptable.

Lawsuit - 2000 Condo. Assoc. vs. Town of PB (cont'd)

The President of the 2000 Condominium Association, Samuel Patent, addressed the Council stating they had to take this action to seek additional relief when they were turned down by the Council in 1990. He advised they are not seeking a victory or damages as they realize there were a lot of adverse reactions two years ago and they as unit owners, 96 of them, will not allow anything to happen to the dunes which will effect these unit owners in any way, shape or form and they are willing to ask for this experimental program, which they don't really have to ask for as they are entitled to it according to the law as it stands now. He advised they want to make peace and it is in that spirit that he asks the Council to reconsider this once again.

Mr. Gann-Matzen noted that from the beginning no-one has ever said that this plan will protect the Town of Palm Beach from erosion or storm and given that fact, he thinks it is a good plan and something that should be attempted.

Mrs. Douthit asked if it should be for three years or four years? Mr. Gann-Matzen responded it does depend on what they want to consider, such as the measuring of the vegetation as to how well it is adapting, or what percentage is adverse, etc., that could be done within a year. He stated if they wanted to look at engineering criteria as to how much sand is moving off the top of the dune, etc., it could take longer. He thought it should be discussed more thoroughly. Mr. Rosenbaum commented on that point stating it would seem to make practical sense to isolate a small portion of this and over a prolonged period of time, they watch the erosion and the functioning of same as more information can be learned from this experiment which could be benefitting the whole Town. Mr. Gann-Matzen believed it was an opportunity as there would be a lot of scientific data which could be accumulated and which could help the entire coast line preservation. President Heeke thought there may be occasions during this period of time when something is not working and they may wish to try an alternative and not be locked into a fish or cut bait type situation.

Attorney Randolph suggested outside parameters be set and they should come up with a period of time and who should be making the determination that this is successful or not successful to which Mr. Rosenbaum agreed. Mr. Patent suggested perhaps Mr. Moore would be the one to make the determination, with which Mr. Moore did not agree.

After further discussion, a motion was made by Mrs. Douthit that the 2000 Condominium group be authorized to go back to the original Plan, with a three year test period, with annual evaluations or whatever is appropriate by the Town's consultants. Mr. Moore suggested a six month evaluation. Mrs. Douthit agreed whatever was appropriate. Mrs. Douthit continued with the motion, stating there will be a Hold Harmless clause to the Town from the 2000 Condo and there will be a dismissal of all pending litigation with prejudice. Seconded by Mr. Weinberg.

Mr. Randolph understood this was an approval of the proposed settlement which has been offered by the applicant which includes the granting of the permit for the applicants to proceed with the project pursuant to the Plan as presented, subject to the test period and the consultants making a determination as to the success of the test; that the applicant and the Town will agree to enter into an Agreement to dismiss with prejudice the pending action, each party bearing their own costs and fees; and there is a understanding that this Permit no way implies the Town is agreeing that other permits from other agencies are not necessary and this is an independent action of the Town in granting this permit; and the other provisions discussed such as the Hold Harmless, etc.

Mr. Moore reminded all that under the Ordinance, licensed landscaped contractors are required to perform the work to which Attorney Rosenbaum agreed.

On roll call, the motion carried unanimously.

4. Request for Approval of 1992/93 Zoning Draft Calendar, Tentative Study Items to Date.

1992/93 Zoning Draft Calendar

Mr. Heeke asked if the study of buildings on fifty foot lots was on this calendar to which Mr. Moore responded affirmatively. Mayor Marix reported along the oceanfront, there seems to be more and more solid walls and wondered if there was some way the view of the ocean could be preserved. Mr. Moore recalled there is a study item on walls and setbacks in front yards and they could add this to that particular item. Mayor Marix believed it should be with regards to the beach houses and asked also if there could be something recommended also for the half demolished houses. Mr. Moore explained the authority for action on this type situation is in the Building Code and the property owners and the lien holders have been notified and the lien holders have asked that we not demolish these homes until they take possession. Mayor Marix thought it should be moved along as it is a problem. Mr. Heeke terminated the conversation as it was not relevant to the Zoning Calendar.

5. Resolution No. 27-92 - Denial of Request for Tentative Approval for Planned Unit Development for Application at Mar-a-Lago.

Res. 27-92

President Heeke turned the gavel over President Pro Tem Weinberg to handle the chairing of this item. Attorney Randolph read the Resolution No. 27-92 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RELATING TO THE APPLICATION OF DONALD TRUMP FOR A PUD-4, HISTORICAL PRESERVATION RESIDENTIAL DEVELOPMENT ON THE PROPERTY DESCRIBED HEREIN COMMONLY REFERRED TO AS MAR-A-LAGO.

Motion was made by Mrs. Wiener to move for the adoption of Resolution No. 27-92. Seconded by Mrs. Douthit. President Pro Tem Weinberg called for public comments.

Attorney Peter Broberg addressed the Council indicating he had received a copy of the Resolution to review and would like to point out that it does cover all the basics but he did not feel it reflected what the Council said, other than "No", but the reasons for the negative were not stated in the specificity as stated here. He understood the reason for the specificity and wished the record to reflect he did not believe the Resolution reflects the reasons why his client was turned down. Attorney Randolph responded the Council is required by written Resolution to make findings and conclusions with regard to the application and this is the written resolution which is before the Council for its consideration.

On roll call, the motion carried with Mr. Heeke abstaining.

Consideration of Request for Waiver to Sect. 12-51 (Palm Beach Hilton)

6. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Mr. Hohenstein, Vice President and General Manager, Palm Beach Hilton, 2842 South Ocean Boulevard, to Install a Backflow Prevention Device for Water System.

Mr. Moore explained the backflow prevention device is required by the City of West Palm Beach Water Department and the Hilton wished to do this late in the evening May 26, 27 or 28, in order to not inconvenience their guests. Mr. Weinberg pointed out this not only involves their guests but the hotel is located in a residential area also. There was no-one in the room to present the case, a motion was made by Mrs. Wiener to defer this consideration for a waiver to the next Town Council meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Consideration of Request for Waiver to Section 12-51 (Plaza Center)

7. Consideration of Request for Waiver to Section 12-51, "Hours of Construction Work," of Town Code by Mr. Kleinrichert, Best-Tec Abatement, for Work at the Plaza Center, 249 and 251 Royal Palm Way.

Mr. Kleinrichert addressed the Council requesting the waiver to remove asbestos in the Plaza Center as the owners do not want to do anything that would endanger the tenants or others and that is the reason for the request to be Friday night, Saturday and Sunday and it will not be a noisy process. After further discussion, a motion was made by Mrs. Wiener to grant the waiver of hours of construction, Section 12-51 of the Town Code to Best-Tec Abatement for removal of asbestos as the Plaza Center, 249 and 251 Royal Palm Way and the work progress commencing Friday evening through Sunday. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Communications from Citizens

XVI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT

A. Attorney Doyle Rogers addressed the Council for the Civic Association stating at their executive meeting it was suggested a request be made of the Town Council to take leadership in opposing the proposed Coastal Construction Control Line as he has reviewed 102 properties in the north end and most of the houses have the line going right through the middle of the homes. He felt it was very important for the Town Council to stand behind their citizens and oppose it. President Heeke suggested that under Any Other Matters there would be a motion to call for the staff and Council to interpose such objections as are necessary so there are no waiver of any rights.

B. Jan Kranich, Chairman of the Fourth of July Celebration Committee in Palm Beach extended an invitation to the Mayor and Council to attend the second picnic at the Palm Beach Recreational Center on July 4, 1992.

C. Attorney Paul Prosperi addressed the Council on the Coastal Construction Control Line pointing out the U. S. Senate and House are considering an amendment to the Federal Emergency Management Act which is the Federal Agency who administers the National Flood Insurance program, which would establish an erosion control line along the Coast, and seaward of which the properties would not be eligible for Flood Insurance. He advised if that should happen, the properties would be ineligible for mortgage financing and he suggested members of the Congressional Delegation for Florida be contacted, as both Senator Mack and Graham are on the Sub-Committee considering this matter, to which the Council agreed.

Any Other Matters

XVII. ANY OTHER MATTERS

Proposed Marina in City of WPB

A. PROPOSED MARINA IN CITY OF WEST PALM BEACH: Mayor Marix advised a letter has been received from Mr. & Mrs. Hudson who are concerned about the large marina that is proposed to be built in the City of West Palm Beach and the concern is for the foundations of the properties, such as the Flagler Museum on the Palm Beach side of the Intra-Coastal and the possibility of the bridges being opened for longer periods of time. President Heeke stated the City of West Palm Beach is a co-applicant for procuring the dock but are not the owner of the property. He suggested perhaps when the regulatory agency reviews the application, they should be requested to take into account the possibility of damage to property within a certain radius and request there be bonding of the pilings and things of that nature for protection. Mayor Marix thought that would take care of that problem but what about the worry of the bridges being opened for longer periods of time to accommodate the larger yachts which would be docked at the proposed marina? President Heeke responded he thought what needed to be done is there should be a schedule of when the bridge will be opened and it be adhered to, and also there should be regulations that the bridges not be opened during traffic rush hours. Mrs. Wiener believed there were regulations, however, they are not observed. Mr. Weinberg recalled there was some concern about the opening of the Lake Worth Bridge and the proper authorities were contacted about it and they were not cooperative. President Heeke suggested that other areas who have this problem such as Melbourne and Eau Gallie should be contacted and see what action those cities have taken. President Heeke asked if staff could contact the permitting staff with regards to the request about bonding to protect anyone within a certain area which could have damage as a result of the pile driving. He felt it was necessary for the Town to express its' concern about these matters, but we don't really want to interfere with the way the City of West Palm Beach handles these matters.

Palm Beach Co.Municipal League

B. PALM BEACH COUNTY MUNICIPAL LEAGUE: Mr. Doney advised anyone who wishes to be considered for appointment to any of the Boards and Commissions of the Municipal League should have action on this appointment by way of a motion of the Town Council. Mr. Heeke thought anyone who wished to volunteer should do so. Mr. Doney advised there will be a summer event of the League on May 27, 1992 at the Town's FOP and they are looking for several municipalities to host that event by contributing up to $300 to which the Mayor and Town Council did not agree.

Hurricane Plans

C. PUBLIC PLAN IN EVENT OF A HURRICANE: Mr. Doney asked if there were any comments on this plan, he would appreciate receiving same from the Mayor and Town Council.

Christmas Trees

D. CHRISTMAS TREES: Mr. Heeke recalled at the Town Council meeting when this item was considered a motion was made to allow three trees on Town property, but the motion did not address that these trees would be put there by the Town and it doesn't really nail down the fact that the Town is the one who would be putting the trees up and he suggested a motion be made that it is the Town who would be putting up those trees in the three locations, corner of Worth Avenue and Hibiscus; on Royal Poinciana Way; and at Memorial Fountain Park. Motion was made by Mrs. Wiener that the Town would be the one erecting the trees at the three public locations. Seconded by Mr. Ilyinsky. On roll call, the motion carried.

E. PROPOSED COASTAL CONSTRUCTION CONTROL LINE. Motion was made by Mrs. Douthit that the Council instruct the staff and the Town Attorney to interpose such objections that are necessary to preserve the Town's right to object to the establishment of a new Coastal Construction Control Line as proposed. Seconded by Mrs. wiener. Attorney Prosperi felt the Town had the strongest case as the Town got the revetment permit for the area between Sloan's Curve and Widener's Curve and he suggested the letter mention that fact to which Mr. Heeke agreed. Mr. Doney stated there will be a hearing on May 27, 1992 at 7 PM by the Department of Natural Resources in the Town Council Chambers, and he will ask Mr. Randolph to appear on the Town's behalf to object to this formally. Proposed Coastal Construction Control Line

Mrs. Wiener believed an item of this nature really needs to be part of the regular agenda so it can be discussed at length to which Mr. Heeke agreed.

On roll call, the motion carried unanimously.

F. BICYCLE TRAIL SOUTH OF SLOAN'S CURVE. Mr. Doney advised a letter has been received form the Citizens South of Sloan's Curve on the pedestrian/bicycle trail. Mr. Weinberg suggested experience be gained during the month and this matter be put on the agenda for next month. Bicycle Trail

XVIII. ADJOURNMENT. Meeting was adjourned at 8:45 PM. Adjournment

Grace T. Peters
Town Clerk

Rec'd at TC Mtg 5-12-92

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

LAST NAME—FIRST NAME—MIDDLE NAME HEELLE BERNARD ALLEN	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE TOWN COUNCIL
MAILING ADDRESS 124 Seabreeze Ave	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: X CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: PALM BEACH
DATE ON WHICH VOTE OCCURRED May 12, 1992	MY POSITION IS: X 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 A. Hecker, hereby disclose that on May 12, 1992:

(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 ______________________, by whom I am retained.

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

This conflict is being declared and filed for the reasons given for the conflict I filed after the April 16, 1992 special Town Council meeting (see disclosure dated April 23, 1992)

5-12-92
Date Filed

[signature]
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.

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

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
WIENER HERMINE L.	TOWN COUNCIL
MAILING ADDRESS: 215 NIGHTINGALE TRAIL	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: CITY · COUNTY · OTHER LOCAL AGENCY
CITY: PALM BEACH, FLA. 33480 · COUNTY	NAME OF POLITICAL SUBDIVISION: PALM BEACH
DATE ON WHICH VOTE OCCURRED: 5/12/92	MY POSITION IS: ELECTIVE · APPOINTIVE

WHO MUST FILE FORM 8B

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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, HERMINE L. WIENER, hereby disclose that on MAY 12, 1992:

(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 ________________, by whom I am retained.

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

I AM A DIRECTOR OF THE ONLY OTHER INDEPENDENT BANK IN TOWN AND A VOTE AGAINST COULD BE OF BENEFIT TO ME.

5/12/92
Date Filed

Hermine L. Wiener
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.