d



MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 10, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL - The May 10, 1994 Town Council meeting was called to order by President Wiener at 9:30 AM in the Town Hall Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Wiener, President Pro Tem Weinberg, Councilwomen Smith and Royal and Councilman Shaw. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Frank, Mr. Bowser, Mr. Jakubiak, Mr. Elwell, Mr. Moore, Mr. Bitzer, Mr. Dusey, Mr. Zimmerman, Chief Elmore and Chief Terlizzese.

Invocation

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

Presentations

III. PRESENTATIONS

A. Retirement of Dorothy M. Bragg, Account Clerk, Data Processor I, Finance Department - 16 Years, 2 Months - Mrs. Bragg was given a plaque of appreciation for her 16 years 2 months of service.

B. Presentation by Representative from Government Finance Officers Association of "Distinguished Budget Presentation Award" for Fiscal Year Beginning October 1, 1993 to Town's Elected Officials and Staff Georgetts B. Carroll from Government Finance Officers Association presented to Marie A. Crozier, Finance Director, the "Distinguished Budget Presentation Award". Mrs. Crozier recognized her staff.

Comments of the Mayor

IV.COMMENTS OF THE MAYOR - Mayor Ilyinsky commented: "Many times during our consideration of perplexing problems, we are pressed for solutions despite the fact that there may not be sufficient evidence at the moment to make a judgment. Quickly accepting recommendations can precipitate premature judgments that may prove unproductive and quite expensive. We have before us today two long term problems which will require long term solutions, namely sand erosion and water supply. This Council today considers the preliminary reports of staff on the current progress of both these investigations. Finding the correct solution includes underwriting the costs of definite action, which may I remind you may place a cost burden on this Council in its budgetary considerations which will be upon us very shortly. It is sometimes tempting to patch things by throwing money at them. The true art is finding solutions within the confines of our present tax structure, without increasing the cost of services to the members of this community. We do not wish to be considered guilty of preemptive judgments in the conduct of the business of this Council. In many instances exploring the problems further can inevitably point to an optimum resolution of the problem. As the Mayor, may I suggest that despite the pressures upon us, that the instant dispatch of problems by quick solutions does not serve us well - as a Council - as a government - or as a community. Thank you, Madam President.

Approval of Agenda

V. APPROVAL OF AGENDA - Motion was made by Mr. Weinberg to approve the Approved Agenda as printed. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

<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.

Approved Agenda

**<u>APPROVED AGENDA</u>** (ITEMS VI. THROUGH VIII.)

VI. APPROVAL OF MINUTES OF MARCH 8, 22, AND APRIL 25, 1994

Licenses & Permits

VII. LICENSES AND PERMITS

A. Charitable Solicitations

Charitable Solicitations

1. Palm Beach Community College Foundation, Inc.; No. 338-94
2. Palm Beach Opera, Inc.; No. 68-95

New Business

VIII. NEW BUSINESS

Bid Award

A. Bid Award

Bid. 94-018

1. Sealed Bid No. 94-018 - One Diesel Dump Truck - Recommend Rejection of All Bids Pursuant to Memorandum Dated April 28, 1994 from Mr. Dusey

Regular Agenda

**<u>REGULAR AGENDA</u>**- Mr. Doney requested Agenda Item XI.C.2 regarding the Lake Worth Inlet Sand Transfer Plant be heard at 3:30 PM or shortly thereafter, when Mr. Richard Walesky, Director of Palm Beach County Department of Environmental Resources Management, can be in attendance. Mrs. Wiener suggested it be heard as the next item after Mr. Walesky appears in the Council Chambers, to which Mr. Doney agreed.

Mr. Doney requested an additional item be added (XII.C.5) Consideration of date and time for groundbreaking for the South Fire-Rescue Replacement Station.

Mrs. Royal asked for a status report from Mr. Bowser on the monies being held by the City of West Palm Beach for the sanitary sewage renewal and replacement account funds. Mr. Doney explained this is an ongoing issue - the East Central Regional Sewage Treatment Plant, there is a renewal and replacement fund which has been in place since the late seventies, recalling two years ago a Board was formed with representatives from Palm Beach, West Palm Beach, City of Lake Worth, Riviera Beach and Palm Beach County who govern this sewage treatment plant and a request has been made of the City of West Palm Beach that the money which is held in the renewal and replacement fund instead of being administered by the City of West Palm Beach that it be administered by the Town of Palm Beach and be separately accounted for in a separate Town Fund. Mrs. Royal asked if a letter should be sent to which Mr. Doney responded he will follow up on this matter.

A motion was made by Mrs. Smith to approve the Regular Agenda as amended. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

## IX. PUBLIC HEARINGS

Public Hearings

A. Landmark Designation for 1695 North Ocean Way - Consideration of Resolution No. 23-94 - Mrs. Peters gave the oath to those who will be testifying. Mr. Frank explained this property has been recommended for landmarking by the Landmarks Preservation Commission and meets Criteria C:

Res.23-94

It embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship.

It also meets Criteria D:

That it is representative of a notable work of a master builder, designer, or architect whose individual ability has been recognized or who influenced his age.

Mr. Frank advised the architect is John Volk.

Dr. Sandy Norman of Research Atlantica addressed the Mayor and Council, indicating this house was built in 1936 and the architect was John Volk, noting it is an interesting adaptation of the Spanish Eclectic Style of housing, as well as a foretaste of the ranch style, which later became popular. She noted it was designed by Mr. Volk to take advantage of its location on the dunes on the beach and is U-shaped and could catch the breeze through the rooms and it was raised to also catch the breeze underneath the house, as this was built before air conditioning. She noted it has cross gables and a red tile roof, erusticated brick with a chimney on the end and a covered porchway which surrounds the interior of the "U" so all entrances open onto the courtyard are covered with an ocean view. She noted one of the early owners, Mrs. Smythe was a collector of antique hardware and most of the hardware is over 150 to 200 years old, and it was incorporated into the house. She recommended the house for landmarking.

Mr. Shaw commented not every house of a master architect is considered the showpiece of their career and he looks at this house and sees a nice little house but not one of landmark quality. He didn't dispute the presentation but what the value of this is to the community and whether or not landmarking a home of this size and design was beneficial to the Town and whether it would be beneficial to owners of the house in the future. Dr. Norman responded the owners have no objection to the landmarking and should the house be sold and a subsequent owner desired to make changes, they would have the opportunity to request same. She thought it was important because not all of the architecture in the community is the big stuff, and a lot of the architecture in the Town is smaller houses and this is their first example of what later is called a Ranch Style, so it is unique in that and Mr. Volk has taken the Spanish element and applied it to create a house perfectly suited for the environment.

Mrs. Smith moved the Designation Report be made a part of the record. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Attorney Randolph read Resolution No. 23-94:

> 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 ORD. NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES IN THE TOWN OF PALM BEACH.

Motion was made by Mrs. Royal to adopt Res. No. 23-94 designating the property at 1695 North Ocean Way as a landmark in the Town of Palm Beach on the basis that it meets Criteria C and D of the Code of Ordinances. Seconded by Mrs. Smith. On roll call, the motion carried 3-2 with Mr. Shaw and Mr. Weinberg voting against the motion.

B. Consideration of Request for Abandonment of Ocean Terrace (formerly Albee Avenue) West of North Lake Way - Consideration of Resolution Nos. 24-94 and 25-94. Mr. Doney advised a letter has been received from Attorney Brindell who has requested a one month extension on the abandonment.

Mrs. Wiener called for public comment and there was none.

Attorney Brindell requested this be postponed for one month. Mr. Weinberg so moved. Seconded by Mrs. Smith, who commented that they should address the size of the entryway as she thought six feet was much too narrow, and the access to the bike trail should be wider so emergency vehicles could get through. On roll call, the motion carried unanimously.

## X. COMMITTEE REPORT

Committee Report

A. Ordinance, Rules and Standards Committee Report of May 5, 1994

REPORT OF THE ORDINANCE, RULES & STANDARDS COMMITTEE MEETING OF MAY 5, 1994

ORS Report

I. CALL TO ORDER AND ROLL CALL: A meeting of the Ordinance, Rules & Standards Committee was called to order by Chairperson Royal at 9:10 AM on May 5, 1994 in the Town Hall Council Chambers. On roll call, Chairperson Royal and Committee member Shaw were found to be in attendance. Also attending the meeting were: Mayor Ilyinsky, Town Manager Doney, Assistant to the Town Manager Jakubiak and Ms. Reedy. Ms. Diane Christie, Director of System Development, and Mr. Len Rozek, Area Vice President from Comcast also attended the meeting.

Roll Call

II. APPROVAL OF AGENDA: No action.

Mrs. Royal called for comments from the public.

Comcast

Mr. Donald Kranenberg of 2850 S. Ocean Blvd. stated he has had an apartment in the Town for 30 years, and there are 66 units in the building in which he resides. He said it was his understanding that fiber optics would be available to them, and hoped that would improve their reception, however, this did not happen. Mr. Kranenberg stated they have had problems with outages and service, and during one particular outage, a Comcast representative told him that they would only respond immediately if five (5) or more people reported the same outage. Mr. Kranenberg also stated that Comcast asked him to check his equipment, even though he knew it was working. Mr. Rozek stated that Comcast uses a combination of fiber optics and coaxial cables.

The Reverend John Rick of 215 Phipps Plaza stated he also has had a problem with the service of Comcast. He said his problem was with his digital radio, and on Monday, May 2nd it took him approximately 45 minutes to reach an actual person at Comcast. He then arranged for a morning service call, noting that Comcast will only specify morning or afternoon service and no specific time. Reverend Rick reported he spent 2 hours with the Comcast technician who informed him that the entire wiring system was defective. He said the problem still exists as before. Mr. Jakubiak said this was the second complaint the Town has received in the last two weeks related to a problem with digital cable radio.

A test call was placed to Comcast to make a determination of the time it would take to make voice contact and the time was approximately one minute.

III. REVIEW OF COMCAST CABLEVISION'S MONTHLY REPORT AND 12- MONTH HISTORICAL ANALYSIS. Mrs. Royal asked Mr. Jakubiak for his comments on the Comcast report. Mr. Jakubiak explained that he has reviewed information received on May 4th from both Dade County and the City of Miami Beach in comparison to the reports provided to the Town of Palm Beach. Mr. Jakubiak stated that both Dade County and the City of Miami Beach have ordinances relating to customer service standards, but in order for the Town of Palm Beach to adopt an ordinance, future reports would have to be Town specific. After discussion of the Comcast report, Mrs. Royal asked Mr. Rozek if it would be possible for Comcast to fine tune their future reports to the Town, and separate complaints on service and outages and how Comcast has responded to those calls.

IV. CONSIDERATION OF PROPOSED ORDINANCE FOR CUSTOMER SERVICE STANDARDS REGULATION IN COMPLIANCE WITH THE CABLE CONSUMER PROTECTION AND ACT OF 1992. After discussion the ORDINANCE, RULES & STANDARDS COMMISSION RECOMMENDS that Comcast modify their reporting system to the Town to include data which is Town specific on both outages and service, and that Mr. Jakubiak confer with representatives of Dade County and attempt to identify the definition of "consumer complaint" and that further information will be reviewed in approximately 30 days.

V. ANY OTHER MATTERS: None

Adjournment

VI. ADJOURNMENT: Meeting was adjourned at 10:50 AM.

ORDINANCE, RULES AND STANDARDS COMMITTEE

signed by Michele Clarke Royal, Chairperson and Leslie A. Shaw, Committee Member.

Mrs. Royal summarized the report with regards to Comcast. Mrs. Wiener reported she had several complaints from residents in the south end of Town who had outage and could not reach Comcast. She also tried to reach them and got a recorded message and she thought the Town needed to be sure they could always reach a person and there should be no glitches on that subject.

Mr. Shaw stated one of the things the Committee wanted to know is how quickly Comcast would answer the phones and they made a test call and the phone was answered promptly, however it was a weekday and perhaps Mrs. Christie of Comcast would look into how calls are handled on the weekend.

Comcast

Mrs. Wiener called for public comment and there was none.

Mr. Weinberg referred to Mr. Jakubiak's memo on page 2, in the third paragraph which states "Customer service standards are effective to the extent they are imposed by the franchising authority. If the Town does not at the very minimum meet the FCC's customer standards, cable operators are not required to comply." Mr. Shaw explained the FACC has made the statement that if they do not create an Ordinance or a set of standards, then the level of performance provided by the Town from the supplier, is at their discretion, so that it would be in the Town's best interest to adopt the minimum that the FCC has prescribed. He stated the issue is not only review the minimums, but to bring into line the performance of Comcast and the needs of the community to devise a set of standards which will exceed the minimum of the FCC.

Motion was made to accept the Report of the Ordinance, Rules & Standards Committee by Mrs. Smith, seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Old Business

XI. OLD BUSINESS

A. Ordinances - Second Reading

Ord. 6-94

1. Ordinance No. 6-94 - Amendment Regarding Construction Work on Worth Avenue - Attorney Randolph read the ordinance by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5 OF THE BUILDING CODE AT SECTION 5.22, PARAGRAPH 103.6.3, SO AS TO MODIFY THE PROHIBITION OF CONSTRUCTION WORK ON WORTH AVENUE FROM DECEMBER 1 THROUGH APRIL 30TH TO NOVEMBER 15TH THROUGH APRIL 30TH; PROVIDING AN AMENDMENT TO CHAPTER 12, ARTICLE IV, SECTION 12-51, RELATING TO HOURS FOR CONSTRUCTION WORK, EXTENDING SAID HOURS FROM 6:00 PM TO 7:00 PM ON WORTH AVENUE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mr. Weinberg to adopt Ordinance No. 6-94. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

2. Ordinance No. 7-94 - Amendment to Section 11-30 Regarding Parking of Trucks and Commercial Vehicles - Attorney Randolph read Ordinance No. 7-94 by title: Ord. 7-94

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 11 OF THE TOWN CODE OF ORDINANCES RELATING TO MOTOR VEHICLES AND TRAFFIC AT ARTICLE II, SECTION 11-30; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Smith to approve ordinance No. 7-94, seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

3. Ordinance No. 8-94 - Beach Cleaning Requirements for Private Properties - Attorney Randolph read Ord. No. 8-94 by title: Ord. 8-94

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING THAT IT IS UNLAWFUL TO DEPOSIT LITTER ON BEACHES WITHIN THE TOWN; PROVIDING THAT IT IS A VIOLATION TO LITTER PRIVATE BEACH FRONT PROPERTIES OR TO ALLOW TRASH OR DEBRIS TO REMAIN THEREON; PROVIDING FOR PENALTIES: PROVIDING FOR LIEN PROCEDURES, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION: PROVIDING AN EFFECTIVE DATE.

Mr. Shaw thought there should be additional language that the Town is required to maintain the same standards that the private sector is required to maintain. Mr. Randolph stated normally there would not be an ordinance passed which would require the Town government to do something, as if the Town Council in the future changed its mind and decided to do more or less in that regard, it could impair the obligation on others that is being done through this Ordinance, and he was not sure this Ordinance was the place to impose an obligation on the Town. Mr. Shaw stated he didn't want the Town to change its mind as to its obligation to keep the public beaches clean, and whatever the private sector is being told to do, he thought it was only fair that the Town meet that standard. Mr. Randolph stated it is not implied through this Ordinance, but the question is whether the Council wishes to impose that obligation by way of Ordinance. Mrs. Wiener reminded all that the Town has always maintained its public beaches and the purpose of this Ordinance is to indicate what is going to be required from private owners.

Mrs. Smith asked if this was not drafted by the Ordinance, Rules & Standards Committee to which Mr. Shaw responded affirmatively, noting it was his understanding it would be reviewed by ORS and then the Town Council and in re-reading this, he had a concern that this doesn't specifically say the Town should maintain the public beaches, and if this is something that is not necessary and should not be included, he will accept that, but wanted to make a suggestion that some phraseology needed to be added.

Ann Cutler, Dunbar Road addressed the Mayor and Town Council, noting she has a beachfront property and has erected No Trespassing signs as she normally has from 30 to 50 families on her beach every weekend, and the signs were removed by someone other than herself, so she went down to the beach to talk with them and asked their help in helping to keep the beach clean. She found they were young people and they were rude and she was frightened, so she called the Police who came and offered to handle this, if she could prove this is her property. She called the appraiser's office and is getting such proof, however, she is leaving Town and she wanted to have some assurances, as there have been young people drinking on her beach and she is also concerned about the sea turtle nests which are on her beach. She advised there is one man who visits her beach with six dogs, which he lets run. Mrs. Wiener noted there is an Ordinance on the Books which handles loose dogs.

Motion was made by Mrs. Smith to approve the adoption of Ordinance No. 8-94. Seconded by Mrs. Royal. On roll call, the motion carried 4-0 as Mr. Shaw was out of the room.

4. Ordinance No. 9-94 - AT&T Use of Rights-of-Way Within the Town of Palm Beach - Attorney Randolph read Ord. No. 9-94 by title: Ord. 9-94

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH PALM BEACH COUNTY, FLORIDA, GRANTING A LICENSE TO AT%T COMMUNICATIONS OF THE SOUTHERN STATES, INC. ("AT%T) TO INSTALL UNDERGROUND CABLE EQUIPMENT WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Royal to adopt Ord. No. 9-94 on second reading. Seconded by Mrs. Smith. On roll call, the motion carried 4-0 as Mr. Shaw was out of the room at the time the vote was taken.

Mr. Doney reported the Town has received the required payment of $50,000 from AT&T.

5. Ordinance No. 10-94 - Amendment to Town of Palm Beach Retirement System Ordinance Regarding Lifeguards - Mr .Randolph read Ord. No. 10-94 by title: Ord. 10-94

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15, PENSIONS AND RETIREMENT, AT ARTICLE II, SECTION 15-33 (b), SO AS TO INCREASE THE MEMBER CONTRIBUTIONS FOR LIFEGUARDS FROM 8.21 PERCENT TO 9.21 PERCENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Royal to adopt Ord. No. 10-94 on second reading. Seconded by Mrs. Smith. On roll call, the motion carried 4-0 with Mr. Shaw out of the room when the vote was taken.

A short break was taken. Meeting called back to order by President Wiener.

Appointments

B. Appointments - A motion was made by Mrs. Royal to defer all appointments until the September Town Council meeting. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Arch.Comm.

1. Architectural Commission - One Alternate Member with Term to Expire March 1996 - Deferred from April Meeting

Golf Comm.

2. Golf Commission - One Alternate Member to Fill Balance of a Term to Expire November 1996 - Deferred from April Meeting

Zoning Comm.

3. Zoning Commission - One Alternate Member with a Term to Expire February 1997 - Deferred from April Meeting

C. Other (This matter was heard later at 3:30 PM).

Potable Water

1. Discussion of Potential Alternative Sources of Potable Water - Status Report by Town Staff and Town Attorney - Mr. Doney gave a status report, noting Mr. Dusey has written to the City of Lake Worth, City of Riviera Beach and to the Palm Beach County Administrator and he has talked to all three and are in the exploration stage which will require the technical analysis of the available capacities and other issues to determine the feasibility of the Town obtaining its water supply from one or all three of these sources.

Mr. Dusey addressed the Council on the technical responses received from these municipalities, noting he has sent a memorandum to Mr. Doney which outlined the actions they need to go through to get the end results, however, there are decision making points throughout the process, where they will be able to stop or go in a different direction. He has asked questions to see if there is an interest for Lake Worth, Riviera Beach and the County to provide the Town with potable water on a bulk purchase basis and the response has been positive from Lake Worth and until they receive replies from the others, they will not move ahead. He felt if the replies are positive, the next step would be to have an engineering analysis to make the determination as to what has to be done to get the water to us, and into our system that would have to be purchased from the City of West Palm Beach and the costs associated with it. He believed once the total costs are established they can look at the cost to the residents, with purchase of the West Palm beach system and making the necessary improvements to make this work. He requested authorization for the initiation of the consultant selection process, so someone can start the engineering analysis with a cost analysis. He has discovered one of the things that will need to be paid for is the capacity from the other entities as they have either existing capacity or in the City of Lake Worth,they have additional capacity and we will have to pay for it. He reported there is also a connection fee. He suggested they initiate a water conservation program that would limit watering to three times a week. He indicated the Town has irrigated at that level or less for five years and the Town parks are well maintained. He felt by limiting watering, they can lessen the water capacity by ten per cent. He noted for every million gallons of capacity they don't have to purchase, they will save at least a million dollars or more in capital costs. He believed that by reducing the demand in the system, it will be the key to whether or not it will be economically viable to go to a different source of water.

Mr. Dusey realized that if everything points in a certain direction as they go through the analyses, they would then initiate the purchase of the West Palm Beach system, do the design work and construction to get the water to our system, as well as the construction to set up the things that need to be done in Town to make all this work. He advised it will take some time as this is not a quick process. He stated it will take about three or four years to get the water available to the Town, and it is a long process.

Mrs. Wiener thought the first thing that should be done is to determine how much the actual physical changes would cost. She didn't think they should go to the citizens and tell them they will water only three times a week, but first they needed to investigate the cost figures and the availability and then if the limited watering is needed to make it fiscally viable, that is something else, but she didn't want to start off by limiting watering. She thought when they talk in terms of the Comprehensive Plan, she has always thought that just because someone in Tallahassee holds a job and makes decisions and tells us we need to do certain things, and that everybody needs to do the same things in the same way, that makes no sense at all. She stated many of our residents have lush greenery, huge hedges, tall trees, all of which require watering and more often than three times a week, but she is sure they could live with limited watering, if they needed to, however, they are not in a rationing mode and not in a situation where we are without and she felt strongly that they needed to do all the homework before they initiate watering policies.

Mr. Dusey responded the reason he suggested the limited watering is, once information is received from the other entities, and the costing, to run some very quick figures to see if at that stage it appears to be feasible to proceed. He wished to initiate the water conservation element at this point to develop a history as to how much water can be saved rather than guess at it. He thought if this was going to be done three years from now, he wouldn't know what the capacity was going to be for these entities. Mrs. Wiener suggested they get the figures based on the water usage we now have, and then a decision be made as to whether it should be ten per cent or less or whatever.

Mr. Weinberg agreed with the comments of Mrs. Wiener. He asked if the figure is known what the Town is using now and how much can the City of Lake Worth provide and can they supply all of our needs or just a portion. He wondered if we would be getting all of our water from one source or from several sources and also he asked Mr. Randolph what reaction has been received from the City of West Palm Beach on this matter?

Mr. Shaw was glad to see there was going to be some consideration given to conservation, although at this point he didn't know if cutting back was a good idea if it was going to be detrimental, however, he believed that systems can be designed which could be economical and conserve water also. He thought before a decision is made on conservation as far as individuals watering their property is concerned, they needed to have some long range planning and he thought the Public Works Department should address the issues of conservation and how the amount of water that is being processed can be reduced from a potable point of view. He thought strongly they needed to address a dual distribution system and he believed money could be saved and this Council needed to ensure there will be a supply of water for generations to come.

Mr. Shaw believed that approximately 60% of the water used in this Town goes for irrigation and if they were to use the Canal as a source of non-potable water, that would cut down on the amount of water which needed to be processed which will cut down on the capacity needed from the source. He thought $1.00 per gallon was a lot to build a processing plant based upon irrigation needs and a tremendous amount of money could be saved for the Town and the residents. He asked that another point which needed to be addressed with the various sources is to get the water into Palm Beach, there needed to be sub-aqueous mains installed. He believed there should be figures sought for potable and non-potable lines, which will provide alternatives for the future and he believed they would find themselves in a good position as far as water conservation and cost conservation by putting in a small filtration and pumping station and then be able to distribute potable and non-potable water and possibly could sell same to other municipalities.

Potable Water Issue

Mrs. Smith asked if Mr. Dusey and Mr. Randolph could respond to Mr. Weinberg's questions. Mr. Dusey recalled the average daily usage is 8.4 million gallons and the peaking factor is 1.6 and there should be some room for growth. He stated the original studies estimated a need of 16 million gallons per day, which includes South Palm Beach which was about three-quarter of a million gallons per day. Mr. Dusey advised Lake Worth has an excess capacity peak of three million gallons, which they are willing to sell us and Riviera Beach has an excess of five million gallons which they have expressed a willingness to sell to the Town. He recalled Lake Worth could provide additional capacity and the County has indicated they would build capacity.

Mrs. Wiener noted they are going to have to use all of them and she was not in approval of that type of supply, and she would like to see one source. Mr. Doney advised they are looking at all alternatives and the financial feasibility and technical feasibility of those supplies are being looked into in order to provide the water. He reported they will only advance those alternatives if the recommendations are satisfactory with regards to the technical aspect, legal and administratively and what they believe are sound. He stated this is the phase they are at right now, and he also needed to know what the City of West Palm Beach is going to do.

Mrs. Wiener recalled there were experts who were to help us along in the past three years and the large costs associated with that and she wants to be sure that whatever is done does make good sense. She read in the newspaper that the increase in water rates by the City of West Palm Beach would cost the resident an additional ten dollars and she would be happy to sign off on that today if that were so. She wanted it understood that they are not going to spend ten million dollars in order to achieve a saving of a half million dollars and they need to be realistic and if Mr. Dusey comes to them and tells us he thinks a plan will work with a water supply from Lake Worth, and other places, and she didn't wish to move forward on that unless the total Council agrees to that kind of a situation. She is opposed to paying the City of West Palm Beach an additional twenty-five per cent, but on the other hand in order to prove that what they are doing is morally correct, she was not prepared to spend a lot of taxpayer's money for an alternative.

Mayor Ilyinsky indicated he was in favor of seeking alternate sources for water because he did not want to be held hostage by any single entity, however, he agrees with Mrs. Wiener about spending more money would be foolish, however, he did not see any other way to proceed other than the way that Mr. Dusey is proceeding, and whether or not they get their water from one or two or three sources, they need to find the mechanics of how to do it. He felt it was all very well to say that it was insane to buy water from more than one source, but he didn't see how they could move forward sensibly without ground work.

Mayor Ilyinsky addressed the water conservation problem, as he knows one day this state will be very short of water and he thought there should be some cutting back of water. He thought these problems needed to be faced and residents perhaps need to be educated on water use, and he could see no other way to pursue this objective, other than streamlining and as Mrs. Wiener stated, we should go as simply and as inexpensively as they can. He agreed also that they need to make a statement as to how much water is being used now, how much water can be supplied, and if anyone has a more constructive way to approach this, he would appreciate knowing about it.

Mrs. Wiener commented she has no problem with a certain amount of conservation but she didn't want to go into this whole program of looking at different suppliers and then reducing the water by 40%. She agreed there should be an adjustment as they have already instituted programs for some water savings, and perhaps it could be reduced by another five or ten per cent, but she thought that any plan that called for the immediate saving of 40% of water makes no sense to her. She knows times have changed and they wish to all save water, but there are dry years and there are wet years and whatever is done needs to be done reasonably with adjustments and not a major adjustment, such as 40% or 50% reduction in water. Mr. Dusey commented he agreed with her but he didn't know where she was getting the 40% figure as his memorandum states a ten per cent reduction, which he didn't think was unreasonable.

Mrs. Wiener pointed out they can now water seven days a week and he wishes to reduce it to three days per week and to her, that means a much larger reduction than 10%. Mr. Dusey recalled during the drought, they had water restrictions and it was only cut down by 15%.

Mr. Weinberg asked for Attorney Randolph's statement as to whether or not he has heard from the City of West Palm Beach. Mr. Randolph responded he has had no official reaction from the City of West Palm Beach, other than the letter from Erik Olson and the comments of the Mayor which were published in the newspaper.

Mrs. Smith felt that Mr. Dusey and his staff have done a good job in the thirty days which have elapsed since the request has been made of him to find alternative measures. She didn't feel they should shoot the messenger as he brings the information back to us, as half of this Council have sat here for three years when the negotiations were going on, and they are exploring other possibilities and she thought that should be an ongoing procedure.

Mrs. Smith felt a strong water conservation educational program should be available as far as the guidelines are concerned and since water has become very expensive, she is sure everyone is cutting back, or will cut back on their use of water. She recalled there is a voluntary program in effect as far as the sea turtles are concerned and she envisioned there could be a voluntary program as far as the water conservation is concerned. She stated she doesn't care where the water source comes from, and if it turns out the source is West Palm Beach and the Council makes a decision to go with them once again, so be it.

Mrs. Wiener recalled they have been listening to water experts for three years and have spent a fortune and she is concerned about that and this continued on and on and now they are walking away from that situation for various reasons, and she did not want to sit here with that same type of situation with bills approaching one half million dollars and the Town getting nowhere. She thought that was a false economy.

Potable Water Issue

Mrs. Wiener stated she would like to know how much it will cost the Town to get the pipes across the way and she didn't think an expert needed to be hired for that. She would like to know how much the City will charge for the piping from these various places; and how much would it cost to purchase what they have now if they need to. She believed there were basic facts that will take another month or two to acquire, and then they can spend the money on consultants or others but the ground work needs to be laid and she didn't think they needed consultants or engineering experts or anything else.

Mrs. Smith asked if in the hundreds of thousand dollars worth of reports which have been received, was there no information in those reports which can be used at this time? Mr. Dusey responded there was a lot of information which was very valuable. Mrs. Smith stated it does not appear to be a major problem with regards to the pipes as if the pipes are made larger, it would mean more water would be coming through and she read the letter from the City of Lake Worth who use the engineering firm of Mock, Roos and if they know the system, why could we not take the information which they could give to the Town under the umbrella that they already work for Lake Worth and not have to go through a bidding process and a major expense to the Town.

Mr. Dusey responded the water system is unique to the Town and Mock Roos could provide water at a certain point with a certain amount of pressure and so many gallons per day. He pointed out right now there are five crossings to the Town of Palm Beach and the system has been built for those five crossings, so the size of the pipes in the Town are based on where those crossings occur and if two crossings are introduced at a different location, the hydraulics of the system changes and it is not something that is done frivolously as it has to work and some improvements will have to be made at a cost.

Mr. Weinberg recalled the original studies by Montgomery explored various alternatives to the water system, such as the use of ocean water and in view of these expensive, detailed studies, the Town should have gained a running head start to the situation which would be helpful. Mr. Dusey responded the Reverse Osmosis Plan which was proposed using the Florida Aquifer in 1990 and the cost for a thousand gallons was $2.32, which is much higher than what West Palm Beach was charging. Mr. Weinberg stated he was not concerned with the cost but the physical circumstances, recalling there was also talk about reservoirs, and he believed that material should be helpful to Mr. Dusey in getting started.

Alexander Beal addressed the Council recalling he has heard Mr. Dusey state the total water available is eight million gallons, and we need sixty, which is far below what is needed and it may be they are just spinning their wheels. Mr. Dusey responded he will not let them spin their wheels and get nowhere and there needs to be some faith in the staff. Mrs. Wiener interrupted stating the question is what is the total amount of water available to which Mr. Dusey responded the excess capacity is eight million gallons per day, but with peaking factors and fire flows and during the season, sixteen million gallons are needed.

Mrs. Wiener asked if the entities they are talking with would be able to provide us with more water? Mr. Dusey responded that is one of the questions that was asked and Lake Worth has responded they could. Mrs. Wiener asked if by next month, they could find out how much all of them would be willing to provide and if it adds up to more than eight million gallons per day and is a more comfortable level of sixteen million.

Mr. Shaw asked if the staff could when they are pursuing the availability of water, take a serious look at the West Palm Beach Canal and the various canal systems for use as non-potable water. He believed that of the water that both Riviera Beach and Lake Worth could produce, their excess capacity would more than satisfy this Town's need for potable water and there would be no reason for them to increase the amount of water they are producing, if there was an alternate source of a non-potable supply. Mrs. Wiener stated there is a question as to how the Town procures that water. Mr. Shaw believed that staff cannot pursue this question unless the Council directs them to do so. Mrs. Wiener asked Mr. Dusey if this was a feasible procedure to which Mr. Dusey responded it is possible, and what they are talking about is a duplicate distribution system which is very expensive.

Mr. Shaw believed that the figure to add a second distribution system would probably be around fifteen million dollars and all he is asking that if Riviera Beach is going to give us water, they should take into consideration the fact that if there is equipment, personnel and management power being diverted to run the sand transfer line, as a pipe is a pipe and they don't care what they are running through there, and all he is wants is to make sure that when anything is being presented which involves a sub-aqueous crossing, whether it is the Intracoastal or the entrance to the Port, they should take into consideration that they may need water mains punched through, for potable and non-potable and as Mr. Dusey stated all of the water in four crossings cannot be loaded into one crossing, and that is why multiple crossings should be addressed and how they are going to achieve it. He felt they may be acquiring the pipe coming across and he doesn't want to close his eyes to what the alternate sources are and they should not ignore the fact that the canal has a lot of water going nowhere but into the intracoastal and that could solve all of the Town's irrigation needs with a minimal processing expenditure. Mrs. Wiener believed they needed over the next couple of months to seriously discuss this before they moved forward.

Mrs. Paul Ilyinsky addressed the Council noting when they are talking about dual piping, does that mean the residents have to install all new piping in her house to get water? Mr. Shaw responded that would not be necessary and what he is talking about is a two step process. He knew that the highest users of water are the golf courses and if they were to come across with water from the canal and it would be a straight run and each of the condominiums would tie into this line and he is not talking about new pipes for each house but he is talking about irrigation water and that would not be water used inside the house but would be safe water properly filtered by certain standards.

Mrs. Royal asked Mr. Dusey if he had any idea what it cost the City of Boca Raton to put in a dual piping system. Mr. Dusey indicated he could find out that information.

Mrs. Wiener felt that was at the heart of it as the real problem is the 60% and they need to direct themselves to a great degree to the non-potable water question. Mr. Dusey responded the cost to get that water to the Town would be approximately fourteen million dollars so they are looking at a lot of money to get it here compared to what is considered to be gray water. Mrs. Royal asked if they had the option of taking untreated water out of the Canal C-51, she would hope that they could look into that as they don't want to lose the beauty of Palm Beach but they should be paying for the non-potable at a different rate than they pay for potable water. She recalled the letter from Lake Worth refers to re-potable water, which she thinks is terrific as they want good drinking water but other water could be watering the trees.

Potable Water Issue

Mrs. Wiener recalled hindsight is wonderful and it is unfortunate that four years ago when they started this conversation, they didn't separate the potable from the non-potable, and she thought it was something that was kind of pushed aside. She thought the basic message was there are a number of things that can be addressed as obviously all the facts cannot be granted within thirty days time, and she doesn't wish to shoot the messenger and thought they should move ahead and she asked for a progress report next month.

Mrs. Royal moved that staff look at the non-potable and break down the potential expense of providing non-potable water as well as potable. Mrs. Wiener did not think they needed a motion. Mrs. Royal responded she would like it to be a formal motion and moved that staff be directed to look at non-potable as well as potable sources.

Mrs. Smith believed that Mr. Dusey has his direction and hindsight is 20-20 and there is no point in looking at what was not done and they are at a new point and they are going ahead with every possibility and many people have input and staff should come back in thirty days with an update and with all the information available. She commented they are talking about the same thing and that is what will be best for Palm Beach.

Mr. Shaw seconded the motion. Mrs. Smith thought the motion was encompassing the entire discussion on this subject. Mrs. Wiener asked if this was exclusive as she did not agree with Mrs. Smith and asked Mrs. Peters to reread the motion. Mrs. Smith thought that was just one point. Mr. Randolph did not believe it was exclusive and he sees it as specific but not exclusive and the intent was that one specific thing be done in addition to the others. Mrs. Smith asked if the motion could be expanded to include the entire discussion. Mrs. Royal indicated this was to be added on to those things which were already being considered. On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion.

Proposed Interlocal Agreement

b. Proposed Interlocal Agreement Between the Town and Palm Beach County - Attorney Randolph explained they would like to define staff recommendations to be included in the Agreement, and if authorized, it will be sent to the County staff for their consideration and then brought back to the Council and to the County for final consideration. He reported this would be in effect only during the temporary operation of the Sand Transfer Plant and would not continue after the Inlet Management Plan is completed and after some other facilities is constructed. He proposed the Agreement have three phases:

1. The first phase relates to the design phase and would have provisions that the County would, for the benefit of the Town, engage its staff in the design of the Plant, with the Town paying for the design phase, but that the budgets relating to it would be approved by the Town, prior to payment.

2. The second phase related to the actual construction phase and the crux would be the same, with the County going forth with construction and take charge of the renovation of the Plant itself. The Town would have a representative monitoring this phase and would pay for the construction and the budget relating to it would be approved by the Town, prior to payment.

3. The third phase related to the operational phase and County staff would operate the Plant, with the funding by the Town.

Mr. Dusey reported they would like the County to do the design work and give the Town a biddable set of specifications and they will hire the contractor to do the work. Mrs. Wiener asked if the figures submitted were realistic, stating her concern is attempting to move along quickly and having certain figures before them but when it gets down to the work being done, would they be faced with higher estimates and asked if that was a realistic possibility? Mr. Dusey responded the only problem would be the piping, as if for some reason that came in higher than what the consultant estimated, that would be the only surprise. He believed quotations have been received on the operating parts of the Plant, but the piping is a big dollar item. Mr. Randolph believed there was also a possibility with what answers are received regarding the permitting, and they will attempt to resolve that.

Mrs. Smith noted in the letter received by the Town Attorney from the County, they agree to pay one-third of the cost of implementing any portion of the Lake Worth Inlet Management Plan which they feel is in the best interest of the County, and she wondered if the Plan states the Sand Transfer Plant is an important part of the Plan, does that mean the County would pay for one-third of the restoration of the Plant or would the County ask us to pay for the whole thing, since we stated we would. Mr. Randolph responded that based upon the present posture of the County that they would not be happy to pay for 50% of the cost of a renovated Plant, or 30%, and this would have to be discussed with the County. He advised the County has indicated they are willing to go along with a long-term plan which would result in a better system.

Mr. Smith asked if this was the appropriate time to instruct Mr. Dusey to begin the bidding process for the pipes. Mrs. Wiener thought the first matter of business was as to whether or not they wished to have this Inter-Local Agreement.

Mrs. Wiener stated she agreed with the substance of the Agreement, as did Mr. Weinberg. Mr. Doney advised this issue will come back to the Council at the June 14th meeting as this must also go to the County Attorney's Office and they needed a little time. Mrs. Wiener asked if the Council agreed they are moving in the right direction to which the Council verbally agreed.

Mrs. Smith asked if a motion was needed to which Mr. Randolph responded the staff has the sense of the County and they will move in a direction to finalize it. Mrs. Smith so moved. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Donation by Abraham Gosman for Beach Restoration

c. Consideration of Donation by Mr. Abraham Gosman for Beach Restoration - Deferred from April Meeting - Mr. Doney advised he has heard nothing further from Mr. Gosman and Mrs. Wiener stated she also has tried to reach him and suggested this matter be put over to the next agenda in June.

Proposed Settlement of Lawsuit re: Town of PB vs. PB County

d. Consideration of Proposed Settlement of Lawsuit - Town of Palm Beach v. Palm Beach County - Attorney Randolph reported a packet of information has been forwarded to the Mayor and Council, and pursuant to the Council's instruction, he wrote to the County Attorney about a proposed settlement and that was the Appeal pending by the Town would be dismissed as would the Appeal pending by the County and that dismissal would result in a Circuit Court Order being in place as to the payment to the Town of $75,000. He stated the offer also provided that the County acknowledge its responsibility for the downdrift beaches from the Inlet and the parties commit to share equally in the funding. He advised the response from the Assistant County Attorney was somewhat different than what was submitted and the County will agree to the dismissal of the lawsuit and pay the $75,000 to the Town and will agree that maintaining the stability of the beaches is in the best interest of the County, but it went further to state they would not agree to be obligated to achieve that goal by any specific means, i.e., the operation of a Sand Transfer Plant. He commented the County further provided that it would not agree to be obligated to paying its share of implementing whatever comes out of the Lake Worth Inlet Management Plan until that is known and they want to have complete discretion to study the recommendations in the Plan and then make a determination as to whether or not that recommendation is consistent with the County's overall plans and policies.

Mr. Randolph advised he has written Mr. Doney in regards to this proposal and the gist of it states that the Town Attorney has a concern as to what the Town would be getting with that kind of an agreement and what could likely happen is the lawsuit could be settled and the Appeal dropped and then complete discretion would rest with the County as to whether or not they wished to participate once the results of the Plan are known.

Mr. Randolph reported the court date to hear the Appeal is sent for June 14th and all of the briefs have been filed by each side and all that remains is the argument before the 4th District Court of Appeal and he doesn't know how long it would take for a decision to be reached by the Court, but should the Town prevail, the result would be that the court would decide the Circuit Court is wrong and the County has the responsibility to operate the Plant, and the fact that they have gone to oral argument will not be the end of their negotiations, and it may well be they will be able to continue the negotiations to settle with the County, prior to receiving a final decision from the Court. He recommended that the Town Council not accept the counter-proposal and direct him to go back to the County staff and ask them for something more definitive from the County before the Town agrees to dismiss the Appeal.

Mrs. Wiener believed the only thing the County is offering in addition to the $75,000, is $20,000 for a wave refraction study and based on the fact they are in Court, there is no comfort in giving up the Town's position in court in return for the payment of that study. Mr. Randolph advised the downsized risk from a legal standpoint of going to trial is perhaps the potential loss of the $75,000, and he knows the Town wishes to maintain good relations and continue their good faith efforts with the County. Mrs. Wiener thought that could be done. Mr. Randolph understood the recommendation to continue with their negotiations with the County to get something more acceptable as a counter offer and would be more definite prior to the lawsuit being dismissed.

NewBusiness

XII. NEW BUSINESS

A. Resolution

Res. 29-94

1. Resolution No. 29-94 - Request for Federal Government to Reexamine Criteria Regarding the Classification of Refugees - Mr. Randolph read the Resolution No. 29-94 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING THAT THE FEDERAL GOVERNMENT REEXAMINE ITS CRITERIA FOR ELIGIBILITY FOR POLITICAL REFUGEE STATUS, REQUESTING THE FEDERAL GOVERNMENT TO PROVIDE THE FUNDING NECESSARY TO ELIMINATE THE BURDEN ON THE COMMUNITIES OF SOUTH FLORIDA AND ALSO OTHER LOCAL GOVERNMENTS, WHICH IS CREATED BY THE PRESENCE OF A GROWING ILLEGAL AND UNDOCUMENTED ALIEN POPULATION; REQUESTING OTHER MUNICIPALITIES TO ADOPT A SIMILAR RESOLUTION; PROVIDING AUTHORIZATION TO OUR U. S. CONGRESSMEN AND SENATORS, THE PALM BEACH COUNTY MUNICIPAL LEAGUE, GOVERNOR LAWTON CHILES, AND PROVIDING AN EFFECTIVE DATE.

Mrs. Royal referred to an article in today's New York Times entitled "The Haitian Mirror" and she could see no reason to not continue the American tradition of accepting people from other countries, and what has happened here is an unnatural burden has been placed upon this State in the expense of dealing with the problem. She felt it was not that they should not be allowed to come if they were processed properly, but that we should seek recompense for our expenses and she would like to entertain a resolution that says we support and endorse Gov. Chiles' position where he is seeking monies from the Federal Government for these expenses, but not to stop people from coming to the United States and partake of the American dream.

Mrs. Wiener agreed that some of the whereas paragraphs are outside of the frame of reference, and she thought it would be helpful to have a resolution supporting the position of the governor in his fight to provide funding but she didn't think the Town Council should concern itself with the immigration but that the State is properly compensated with the overburdening of our facilities and the burden on the taxpayers and she felt that was within our realm.

Mrs. Smith felt the State should be reimbursed and she could see no point in passing this resolution and she moved that the Town Council do not adopt any resolution at this time, but that they endorse the policy of the Governor that he be financially reimbursed by the Federal Government for the expenses incurred in this state. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

2. Resolution No. 30-94 - Supporting Save the Old Courthouse Inc.'s Efforts to Secure Grant Money and to Restore 1916 Palm Beach County Courthouse - Mrs. Smith stated she was not in favor of this resolution as this is something the Town is being asked to do and that is to support getting grant money for a project which is not a restoration but a recreation and she moved that Res. No. 30-94 not be adopted. Seconded by Mr. Weinberg. Res. 30-94

Mrs. Wiener called on the Town Attorney to read the resolution. Attorney Randolph read Res. No. 30-94 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, SUPPORTING THE EFFORT TO PRESERVE THE OLD COURTHOUSE OF PALM BEACH COUNTY, FLORIDA.

On roll call, the motion carried 4-1 with Mrs. Royal out of the room at the time the roll call was called.

B. Bid Awards — Bid Awards

1. Sealed Bid No. 94-012 - Town Hall Interior Renovations for Second and Third Floors - Recommend O'Connor & Taylor, Inc. in the Amount of $102,285 (Plus $2,713, if Alternate No. 1 is Approved) Per Memorandum Dated April 28, 1994 from Mr. Dusey - Consideration of Resolution No. 26-94 - Mr. Dusey explained the bids were very good and it is his recommendation the bid be awarded and the only question is whether or not to try and salvage the special panels in the room at the rear of the Town Council Chambers in the amount of $2,713. Mrs. Wiener asked about the specialness of the panels to which Mr. Dusey responded they are plaster panels that were in the office occupied by Chief Terlizzese before he moved to the new Police Station and he believed there was some historic value to them. Sealed Bid 94-012

Mrs. Smith recalled she brought up this subject as she does believe there is some historic value and if it is a question of the Council determining they don't want to spend the $2713, she stated it has been talked about for several years and she can't see why it would be held up for that amount of money. Mrs. Wiener stated she has no problem with it but she didn't think it should be paid for by the Town and if someone was going to be kind enough to underwrite it and it could be put away and perhaps be used in some way. Mrs. Smith thought that was a great idea and she would find a use for it. Mr. Randolph read the Resolution No. 26-94 by title:

Res. 26-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO O'CONNOR AND TAYLOR, INC. FOR THE TOWN HALL RENOVATION SECOND AND THIRD FLOOR.

Mr. Shaw made a motion that the Council accept the bid of $104,998 to be awarded to O'Connor and Taylor in the amount of $104,998 which would include the removal of paneling to be paid for by donated funds in the amount of $2713. Seconded by Mrs. Smith.

On roll call, the motion carried unanimously.

2. Sealed Bid No. 94-016 - Wastewater Pumping Station Renovation - Recommend Statewide Corporation C.P.S., Inc. in the Amount of $24,321.70 Per Memorandum Dated April 28, 1994 from Mr. Dusey - Consideration of Resolution No. 27-94 - Mr. Randolph read the Res. No. 27-94 by title: Sealed Bid 94-016

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO STATEWIDE CORPORATION C.P.S., INC. FOR THE WASTEWATER PUMPING STATION RENOVATION. Res. 27-94

Mr. Weinberg moved for adoption of Res. No. 27-94. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

3. Sealed Bid No. 94-017 - Mid-Town Beach Oceanfront Roadway Protective Seawall Rehabilitation - Recommend Gunite Construction & Rentals, Inc. in the Amount of $180,162.45 Per Memorandum Dated April 28, 1994 from Mr. Dusey - Consideration of Resolution No. 28-94 - Sealed Bid 94-017

Mr. Dusey advised this is the bid for the repair of the seawall and when the bids came in, they thought it might be too low but the credentials of the contractor has been checked and he has assured us he knows the scope of the work and they recommend the award to Gunite Construction and Rentals, Inc. Mrs. Wiener asked if there was a performance bond to which Mr. Dusey responded affirmatively. Attorney Randolph read the Res. No. 28-94:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO GUNITE CONSTRUCTION AND RENTALS FOR THE MID-TOWN BEACH SEAWALL REHABILITATION. Res. 28-94

On motion of Shaw/Weinberg, the Res. No. 28-94 was approved. Motion carried unanimously on roll call.

C. Other

1. Consideration of Appeal of Public Works Director's Decision Regarding Solid Waste Bill by Mr. Raymond Maistri, Le Monegasque Restaurant, 2505 South Ocean Boulevard - Mrs. Wiener called for someone to speak to this matter and there was no-one in the room. Mrs. Wiener announced this will be heard after Communications from Citizens

Solid Waste Bill - Le Monegasque Restaurant

Lunch break was taken.

President Wiener reconvened the meeting at 1:30 PM.

Noise at E.R. Bradley's

2. Consideration of Letter Dated April 13, 1994 from Mr. Brandenberg Regarding Noise at E.R. Bradley's and Request for Elimination of Parking on Sunset Avenue after 10:00 P.M. in Front of Royal Poinciana South Apartments - Attorney Gerry Brandenberg addressed the Mayor and Council indicating he represents the Pergament family who owns the apartment known as Royal Poinciana South. He has written a letter and thanked the Council for adding this item to the agenda to consider this matter. He believed a letter was also sent from Mr. Hoffman, President of the Biltmore Homeowners Association, who also is concerned about this issue. He advised this is not a new issue on noise and if they refer to their records, they will note this item has been brought to the attention of the Council many times. He asked the Chief of Police to run a list of the calls that were generated by the noise at E. R. Bradley's since January of 1993, and the list is 14 pages long and the Police Department has sent officers to Bradley's over 600 times during that period for various reasons.

Mr. Brandenberg commented his clients do recognize the need to coexist with the commercial activities nearby and do not want to harm the businesses in any fashion, but would ask them to be respectful of their neighbor's concerns.

He advised there are several issues:

1. It appears that the outside patio area was approved by a Town Council many years ago for purposes of serving meals.

2. The establishment keeps late hours and at 3 AM, people leaving the facility are joyful and boisterous.

He suggested perhaps a solution would be to enclose the patio area which would confine the noise to the interior of the facility, and if it is approved, it could be conditioned on having a member of the police force on the premises during the late night closing hours requiring the business establishment to recompense the Town for the cost of that individual being there and this might cut down on some of the activities of people leaving the premises, and most importantly for his client would be the Council's consideration of perhaps eliminating the parking along the strip of road directly in front of the apartment after a reasonable hour in the evening, perhaps at 11 PM.

Mr. Brandenberg stated they wish to be good residents of the Town and wish to be good neighbors and would appreciate the Council's attention to this problem and their help in solving it.

Chief Terlizzese addressed the Mayor and Council noting from April, 92 through March, 1993, there were a total of 82 complaints and from April, 1993 to March, 1994, there were 76 complaints, so the total number is lower than the year before and the most notable difference was the number of noise complaints dropped by 29 in the past twelve months, compared to the previous calendar year. He recalled there were a few assaults and fights but those took place inside the bar at Bradley's. He stated there were 13 more intoxicated persons this year than the year before, but those are the only notable increases.

Mrs. Wiener heard Attorney Brandenberg state a figure of 600 calls, and Chief Terlizzese responded they did not have 600 calls and these figures he is quoting are not in Bradley's but also at the Publix parking lot. Chief Terlizzese stated the other calls may have been traffic tickets and accidents in that area, which would include Publix.

Attorney Brandenberg noted most of them say "business check" and each have a different time, but he thought there was a lot of activity by the Police Department at that site. Mrs. Wiener believed it also included Publix and she didn't like to have this kind of misinformation. Chief Terlizzese noted a lot of the calls are business checks and that is not enforcement action but police attention. Mrs Wiener asked if this was for Bradley's only or did it include Publix? Chief Terlizzese responded it does include Publix, Sunrise Avenue and Sunset Avenue, Bradley Place, Royal Poinciana Way, the whole area. He noted that area is given a lot of attention every night as they do patrol it. Mrs. Wiener asked if this was patrol only at night or was it in the daytime also? Chief Terlizzese stated it is in the daytime as well, because of the Publix parking lot. He reported the major problem at Bradleys seems to be after midnight to 3 AM, and what happens people go for drinks and when they come outside, they yell and shout and talk to each other, much like people do at the break up of a party and the voices carry and it does disturb the residents and those people who are sleeping. He doesn't know what the owners of E. R. Bradley's can do about that, as it is outside of their premises and that is why it is up to the Police Department to try and patrol the area and keep the noise and disturbances down. He believed part of the problem reported to him by his on-line supervisors is the noise coming from the patio area and his supervisors recommend that area be enclosed. Mrs. Smith asked if the noise complaints are year round are they more prevalent during vacation times, Christmas, Thanksgiving or Spring Break or is it year round? Chief Terlizzese stated it is pretty steady but holidays and vacations are the worse times. He advised the Coniglios do employ an off duty police officer from midnight to 3 AM and whenever their is a policeman standing outside of the premises, things are kept in good order. Mrs. Smith wondered if the enclosing of the patio would help to reduce the noise of the people who are exiting the bar and going to their cars? Chief Terlizzese responded some of the neighbors have complained about the music and the loud goings and comings of people from inside the premises. Mrs. Smith asked if the owners would be amenable to enclosing the patio?

Gail Coniglio addressed the Council noting they wish to be good neighbors and would be happy to do that. Mrs. Wiener recalled there was a variance before the Council several years ago on this subject and it was turned down. Mrs. Wiener thought also that having a policeman there should be helpful and wanted to underline that when there is a capacity figure posted and once they are over that figure, the law is being broken and they needed to be serious about maintaining that figure.

Mr. Shaw stated he is a patron at this facility and he suggested that perhaps it could alleviate some problems, pointing out that right now there is an outside patio and perhaps that could be relocated to an interior courtyard which would transfer the noise into the courtyard and this would eliminate all of the traffic directly in front of the building and would bring the flow of people coming to the restaurant into the courtyard and make it much more conducive for them to use the Publix parking lot for their parking, and with a parking ban on the street in front of the apartment house would help to alleviate the noise and congestion, even the daytime congestion. Mrs. Wiener thought that went beyond the discussion today as they don't know what the landlord will or won't do. She believed part of the problem also is people lifting the plastic curtain and going back and forth. Mr. Shaw thought that would be alleviated by enclosing the patio, but also the problem of congestion, both day and night as that is where the entrance to the establishment is, and there already is a door there.

Noise at E.R. Bradley's

Mrs. Coniglio reminded all that this is landmarked building, but she is happy to look into any option. She noted the noise would be brought into the courtyard and there are apartments upstairs. Mrs. Wiener asked her to move forward with the variance and asked if she would continue to have a policemen on the premises to which Mrs. Coniglio agreed, noting she will work with the Fire Department on the capacity of 140 people, and will close off the patio doors.

Mrs. Wiener asked if the Police Department would provide a report next month on this subject and the Council will consider the variance presented by the applicant.

3. Consideration of Actuarial Study on Group Health Insurance Plan - Proposed Medical Plan Premium Rates - Mr. Doney explained this item is on the agenda inasmuch as the Town Council annually reviews the experience of the Town's Health Insurance Program and is required to establish premium rates for the employees and their dependents as well as the retirees and their dependents.

Study on Group Health Ins.Plan

Mr. Crouse addressed the Council indicating he has submitted a memorandum with his recommendations for rates per category of participants in the program.

Mr. Shaw moved that the recommendation of Mr. Crouse concerning the proposed medical plan premium rates be accepted. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

4. Consideration of Letter Dated April 18, 1994 from Palm Beach County Regarding Assessments of Court Costs for Additional Two Dollars for Expenditures for Criminal Justice Education Programs and Training Courses - Chief Terlizzese explained he did a survey and reviewed his arrest statistics and had a meeting with Mrs. Crozier on this subject and he believed this would cost the Town more money than what they would go back by participating and it is his recommendation the Town should opt out of this program. Motion was made by Mr. Weinberg to reject the proposed assessment. Seconded by Mrs. Smith. On roll call, the motion carried unanimously

Assessments of Court costs re: Criminal Justice Ed. Program

5. Date and time for the groundbreaking for the South Fire-Rescue Station. After discussion, it was decided to have this groundbreaking at 9 AM on May 17, 1994.

XIII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES REPORT FOR APRIL 1994 - Motion was made by Mrs. Smith to approve the Warrant Registers and Fund Expenditures Report for April, 1994. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Approval of Warrant List

XIV. COMMUNICATIONS FROM CITIZENS:

Communications from citizens

A. Adrian Winterfield addressed the Council suggesting that they look at several items in the Law Enforcement Trust Fund, such as the FAX/Copier machine, as he checked with the company, and the amount given was $1000 more than the company's current cost. He thought there was a question as to the necessity of the complexity of the machine as the greater part of the cost is for a scanner, which is not the primary function of this equipment.

B. Eric Gilbertson addressed the Council, noting the installation of the artificial reef is a step in the right direction, however, he would like to see three groins reinstalled from Jungle Avenue to Barton Avenue.

XII.C.1 - Consideration of Appeal of Public Work Director's decision regarding LeMonegasque Restaurant. Mrs. Wiener called for comment on this matter and there was no response. Mr. Doney advised his office had a phone call from Mr. Maistri who would like this matter deferred until the June meeting. Mrs. Smith asked if he was paying the bill during this time? Mrs. Wiener thought that was a very good question. She stated she had a problem with someone withdrawing during the Council meeting when they have gone to the trouble of putting them on the agenda. Mr. Shaw recalled another application of this type has been considered by the Council and was denied, and he thought they should stay with that position. Mrs. Smith did not agree, noting the applicant has the right to be heard. Mrs. Wiener agreed noting he is on the agenda and the question is whether to put him over to the next meeting. Mr. Shaw stated he would like to hear it at this meeting and not postpone it and he moved that this item be postponed to no later than the end of this meeting, but it will be discussed and settled at this time. Motion died for a lack of a second.

Consideration of Appeal of Public Work Director's decision re: LeMonegasque

Mrs. Smith moved that the application that was made in the middle of the lunch break by Mr. Maistri to have this deferred to the June Town Council Meeting be denied and if the applicant wishes to be heard again, he reapply or be heard at this meeting at the end of the agenda. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

XV. DEVELOPMENT REVIEWS

Development Reviews

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of April 27, 1994 Excerpt Available in Town Manager's Office.

Motion was made by Mrs. Smith to approve the major matters considered by the Architectural Commission on April 27, 1994. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

The major matters were:

Major Matters Arch.Comm.

B27-93 - John R. Grace, 230 Sunrise Avenue - one story commercial building with roof top parking. Approved conditionally.
B65-93 - Facade revisions to an approved project for Dr. Ross and Wendy Stone, 230 Clarke Avenue. Deferred.

Major Matters: Arch. Comm.

B10-94 - Second story addition for Mrs. Peter Schuster, 1720 S. Ocean Blvd. - Approved conditionally.
B11-94 - New residence for Picchio, Ltd., 210 Eden Rd. - Approved conditionally.
B13-94 - Garage addition for Faraway Shores, Ltd., 144 Chilean Avenue. Removed from agenda.
B49-93 - Remove bands on elevations for previously approved project for Mr. & Mrs. Robert DeMario, 275 N. County Rd. - Approved with conditions.
B64-93 - Revision to an approved project for Gay Cinque, 9 Goldview - Deferred.
B15-94 - Remodel facade for Cook International, 350 Royal Palm Way. Approved conditionally.
B16-94 - Remodel premises of Palm V Associates, 238-40 Worth Avenue - Approved.
B17-94 - Remodeling of 250 Worth Avenue - Power-Love Associates. Approved.
B18-94 - Demolition of present residence and build new residence for G. and Annie C. Vlachos & Peter S. Broberg, Trustee, 243 Clarke Avenue. Approved conditionally.
B19-94 - Remodel residence of Avril Mallardi, 217 Mockingbird Trail. Approved conditionally.
B20-94 - Addition and remodel of residence of Mr. & Mrs. Charles Bronfman, 501 N. Lake Way. APPROVED.
B21-94 - New residence for George S. Kantor, 765 Hi Mount Rd. Deferred.
B22-94 - Additions and Remodeling of residence of Jeffrey M. Picower, 1410 South Ocean Blvd. - Approved conditionally.
B23-94 - Additions and renovations to residence of Peter and Lani May, 1375 and 1409 S. Ocean Blvd. - Approved conditionally.
B24-94 - Demolish existing residence and construct two-family dwellings for Barry Boyce, Trustee, 353 Chilian Ave. - Deferred.
B25-94 - Addition of second floor for Irene Ritman, 215 Via Del Mar. - Approved.
B26-94 - Demolition and construction of new two-family dwelling for The Cocoanut 340 Co., 340 Cocoanut Row - Approved conditionally.
B27-94 - Two additions to Church Mouse, 374 S. County Rd. - Approved conditionally.

Variances, Spec. Excep. Site Plan Reviews Old Business

B. Variances, Special Exceptions and Site Plan Reviews

**Old Business**

Var. 20-93

1. Consideration of Request for One-Year Time Extension - Variance No. 20-93 - Dorothy V. DePaola, 124 Onondaga Avenue; to allow construction of a garage providing a 7.5' side yard setback in lieu of 12.5' required. R-B District. Francis deGiovionni on behalf of Mrs. DePaola addressed the Council requested the extension, noting that there is a Flood Insurance Variance being requested later in the agenda, and they couldn't go ahead with this variance request until that flood variance was worked out. Mr. Moore stated there is no objection from the staff.

Mrs. Smith moved approval of the extension for Variance No. 20-93 for one year. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Spec.Excep. 11-93

Mar-a-Lago

2. Special Exception No. 11-93 - The Mar-a-Lago Club, Inc., 1100 South Ocean Boulevard - Consideration of Letter Dated May 3, 1994 from Paul Rampell, Esquire Attorney Rampell representing Donald J. Trump as the owner of Mar-a-Lago addressed the Council advising that since the procedure for the conversion of Mar-a-Lago to a social club is somewhat unclear, he is here today to request the Town Council to allow the issuance of certain building permits for minor modifications required under the Declaration of Use Agreement between the Town and Mr. Trump.

Mrs. Peters gave the oath to all who would be speaking on this matter.

Mr. Rampell recalled there are approximately six small projects which are required by the Declaration of Use Agreement, the first is a fire prevention system must be installed; a new pumping station must be constructed; the northern boundary wall must be increased slightly in height and extended in order to protect Woodbridge Road residences; a new Southern Blvd. gate must be constructed to match the existing gate; grass pavers must be placed in a specific parking area along a cart path; miscellaneous minor modifications, such as a kitchen exhaust hood above the stove. He would not ask for these modifications to change Mar-a-Lago if he did not believe that the changes would be in the best interest of both the Estate and the Town. He believed all of the improvements agreed upon between the Town and Mr. Trump generally enhance this historic landmark, and the Landmarks Preservation Commission unanimously approved and applauded the new Southern Blvd. gate. He believed the new gate is more attractive and safer than the old gate. He believed that no building in Palm Beach needs a fire prevention system more than Mar-a-Lago as he felt along with the Breakers and Worth Avenue, Mar-a-Lago helps define Palm Beach and a fire prevention system is crucial.

He pointed out the pumping station now existing is over thirty years old and if it breaks down, the entire area can be flooded, and they are seeking a permit to replace the pumping station at their expense, with a Town-approved design. He stated there will be a primary pump installed and a secondary pump, in the event the first pump fails and all of the modifications serve the health, safety and welfare of Mar-a-Lago and the Town.

Mr. Rampell stated the Declaration of Use Agreement required them to evaluate the condition of the tunnel which runs under South Ocean Blvd. and connects Mar-a-Lago to the Beach and an assessment report was completed and the necessary construction was completed as required with the proper permit.

He advised they have spent over $300,000 in architectural and engineering fees, they now seek other building permits which likewise will serve the health, safety and welfare of Mar-a-Lago and the Town.

Mr. Rampell pointed out the letter points out the improvements which needed to be completed this summer should be made and this is whether or not the residence remains as a single family or is converted into a Club. He doesn't pretend they are making these changes for a single family home, as they are intended for the club conversion, but the permits should ensure irrespective of their eventual usage.

Mr. Rampell advised until the Town-required construction under the Declaration of Use Agreement is complete, they cannot convey the Preservation Easement Deed to the National Trust for historic preservation. He advised last week he met with representatives of the National Trust and finalized a form of the preservation easement deed. He indicated the baseline documentation for the preservation easement deed must be taken after the Town-required changes are complete and the architect for the Trust has been helpful with the fire prevention system. He recognizes that no Certificate of Occupancy can be issued until the Mar-a-Lago Club's mortgage holder consents to the Declaration of Use Agreement or the mortgage is paid off and he waived any claims of equitable estoppel by which they might seek Certificates of Occupancy, after completing the improvements described today, and the others called for under the Agreement. He stated they fully understand this is a prerequisite to the Certificate of Occupancy and the Club conversion. Spec.Excep. 11-93 Mar-a-Lago

Mr. Randolph reported the Declaration of Use Agreement itself does not speak to the order in which the conditions imposed should be met, however, it is the position of the Building Department that before work begins, that certain conditions be met so that they can be assured when permits are issued that indeed those conditions are going to be met. He recalled he did write a letter to Mr. Goldfine, Mr. Trump's attorney in New York, which was signed by Mr. Trump which talked about the condition relating to the mortgagee's consent and when it appeared that the Town was not going to receive that consent as soon as it had anticipated, he advised Mr. Goldfine that the condition indeed needed to be met and the Town would issue no building permits until the mortgagee's consent was received or the mortgage was paid off or refinanced and the new mortgagee accepted the conditions of the agreement.

Mr. Randolph believed there was a concern about the date the Town would receive the mortgagee's consent, so effectively what happens is under the zoning code, it is required that once a Special Exception or Variance is granted that work begin within one year of that approval and the approval in this instance came August 10, 1993, therefore, work would have to begin before August 10, 1994 and the Building Department interprets the commencement of work as the date the first permit is pulled for the project, which creates a bit of the problem for the applicant since his letter to Mr. Goldfine indicated that no permits would be issued by the Town until the mortgagee's consent was received or until the mortgage was paid off, therefore in order for a permit to be issued by the Building Department the mortgage would have to be paid off or the mortgagee's consent received before that date. He felt the effect of the Town Council granting the request today, in addition to allowing the project to move forward would be that the mortgagee's consent requirement would still be met and would have to be met, but it could postpone the time in which it would be received and it would not have to be received before August 10 but would have to be received prior to the Certificate of Occupancy being issued.

Mr. Randolph stated he heard the comment of Mr. Rampell on the equitable estoppel and he would like to have that in writing and he has several other items he would like to be included in the letter, if the Council moves forward on the approval of this.

Mrs. Wiener suggested the attorney address all the matters he would like to have included.

Attorney Randolph stated in order to protect the Town, he suggested the Town receive in writing from Mr. Trump and the Mar-a-Lago Club, both of whom are the applicants, that:

(1) They acknowledge the obligation to receive the mortgagee's consent or the alternatives outlined in the September 24, 1993 letter.

(2) The applicant will make no claim that the Town has waived its' right to require compliance to the conditions of the Agreement by allowing them to move forward with the improvements.

(3) A statement that the applicant moves forward at his own risk and that he waives any right to argue equitable estoppel or otherwise attack the Town's decision not to grant Certificate of Occupancy in the event all of the conditions of the Agreement are not met.

Mr. Rampell agreed.

Mr. Moore advised they had issued a building permit for the repair of the tunnel and all of the work mentioned would be permitted under any other circumstances, however, they felt the issuance of the permit for the tunnel was a matter of health, safety and welfare and the permit was issued for its repair. He stated the conditions laid out by Mr. Randolph are the conditions the Building Department would operate by to activate the Special Exception and the related Agreement. He stated all of the actions, such as the variance for the gate, the tunnel, the request for Certificate of Appropriateness have all been done by Mr. Trump and not Mar-a-Lago Club, Donald Trump, so he is still coming for permits based on Donald Trump, individual. He thought if the Council granted the request to move forward which will be in contravention to the Agreement to which Mr. Randolph alluded, that indeed the Town be held harmless from subsequent action if a CO is not issued. He felt other than that they would have no objection.

Mrs. Wiener asked if this was done in contravention of the decision made by the Town Council or in contravention to a letter sent by the Town Attorney? Mr. Moore stated it was in contravention to a letter of agreement signed by Mr. Trump regarding the issuance of the permits. Mrs. Wiener recalled she did not recall numbering the items and she thought it was absolutely clear that every single item discussed and agreed upon must be completed prior to a CO, but did not recall being in a situation where they would complete one thing and then ask for the next thing, and this Council makes the decisions and she was confused as to why this was being discussed at this point in time. She had no objection to the work being done during the quiet time of the year, but is confused why they are discussing this.

Mrs. Smith understood they were discussing this today since Mr. Trump was asking for relief from having the mortgagee's signature on the Agreement. Mrs. Wiener did not agree, stating she thought it was a timing matter, as nothing happens without every single item being taken care of and somehow a decision was made and not by the Council, that the mortgage satisfaction or the signature of the mortgagee needed to happen before any work was done. Mrs. Smith stated that was her understanding, but there is no reason that Mr. Trump as private property owner could not move forward as an individual, as the Mar-a-Lago property is not and will not be transferred to the Club. Mr. Rampell responded it will not be converted into a Club until every single condition in the Declaration of Use Agreement is met, including the mortgagee issue. Mr. Rampell assured the Council he is not seeking relief from that requirement.

Mrs. Smith asked how the problem of the litigation between the property owner and the bank come into play with regards to the work being done at Mar-a-Lago? Mr. Rampell responded it probably doesn't come into play as far as the litigation is concerned. Mrs. Smith stated it was

Spec. Excep.
11-93
Mar-a-Lago

her understanding when they were here for the gate in March, this was coming to them piecemeal and she recalled Mr. Rampell stating it was his understanding that no permits necessitated as a result of the conditions imposed by the Declaration Of Use Agreement shall be considered for final approval until the conditions contained therein are met, which is the resolution of the mortgage issue, so no building permit could be issued. Mr. Rampell recalled he was quoting a paragraph from Mr. Randolph's letter. Mrs. Smith recalled Mr. Rampell agreed and then he got approval for the gate and now he can go and put that gate in as a private property owner to which Mr. Rampell agreed.

Mrs. Smith stated as far as whether or not the Agreement is terminated because there is no building permit, they could also say that the building permit for the tunnel actually has been put into effect within the one year period to which Mr. Rampell agreed it was for the property but they are trying to pursue a different path as they want the Town Council's permission to proceed with other building permits and if it seems redundant, he apologizes, however, there have been discussions over the issuance of the permits and he believed it was Mr. Randolph's pleasure for him to make this presentation today.

Mrs. Royal asked if they wanted building permits in the name of the Mar-a-Lago Club rather than in the name of Donald Trump, property owner to which Mr. Rampell responded negatively. Mrs. Royal asked if they were being presented by Donald Trump, property owner or the Mar-a-Lago Club to which Mr. Rampell responded they are presented individually and not as any type of a Club. Mrs. Royal wondered why they were here as how can this Council not grant the permits to which Mr. Randolph responded Mr. Rampell would rather not be here, as he would have liked this to be done administratively, but quite frankly, they did not think it could be done administratively. Mrs. Wiener asked if this was done out of an abundance of caution to which Mr. Moore agreed.

Mrs. Royal asked the Town Attorney if the Town would be jeopardized if the permits were issued and specifically with regards to the lawsuit now pending between Mr. Trump and the mortgagee? Mr. Randolph responded he does not know much about the lawsuit and doesn't know how or if that would put the Town in the middle of that issue. He explained what is being asked today is whether they should allow the permits to be issued, which otherwise could be issued to an individual for the improvement of the estate, and if they approve it and state it in that way, it could be interpreted as being separate and apart from the Mar-a-Lago Club.

Mrs. Wiener understood that the Club will not exist until a CO is issued, so it didn't make any sense what they are all talking about and she saw this as continuing to be a single family home until the day everything in the Agreement has been met and a CO issued to the new entity by the Building Department. Mr. Randolph explained the property could not be operated or used as a Club until that happens, and whether or not a Club would exist corporately is something they would have to address with the applicant, but what he was talking about was on the use of the property, a Club could not exist there until a Certificate of Occupancy is granted. Mrs. Wiener felt when they talk about zoning and land issues, they don't talk about legal entities but the use of a piece of property and as far as she is concerned, this is a single family home. Mr. Randolph commented she is correct that is a single family home as of this date.

Mr. Weinberg commented and as such they need no further circumstance and all the basic improvements no way hinder or depreciate the building in any manner, and this would be true of a single family home or a Club, nor does it endanger the National Trust Preservation Agreement. He stated the Declaration of Use Agreement did not impose conditions other than the procurement of a mortgage. Mr. Randolph did not agree, noting the Declaration of Use Agreement did in fact impose certain conditions and that is why we are here, as even though those things could be done by a single family property owner, they are being done as a result of conditions imposed by the Town under the Declaration of Use Agreement, such as the building of the wall along Woodbridge Rd., and that is why it is here before the Council today, as certain conditions have been imposed and what they are asking is to be able to go forward with those conditions in order to meet the Town's requirements, and they are coming to them as a single family property owner at this point and asking for the permits in the name of a single family property owner.

Mrs. Wiener pointed out based upon what they talked about - a single family home and the agreements that Mr. Rampell has said he will accept, she asked the Town Attorney if he found that the Town would have any jeopardy whatsoever in permitting this single family home at this time to move forward? Mr. Randolph responded not in approving a single family home with improvements to move forward. Mrs. Wiener pointed out there have been certain things requested, such as equitable estoppel to which the applicant's attorney has agreed, and she wondered now what is the problem? Mr. Randolph responded there is no problem but they are being asked to take specific action and he thought that action should come from the Town Council rather than the staff. Mrs. Wiener stated she had no problem with that.

Mrs. Smith noted in the letter of August 11, 1993 from Mr. Rampell it was stated that in the event the Declaration of Use Agreement is not executed by the mortgagee, that the Town Attorney would return the document to Mr. Rampell. Mr. Randolph recalled that was an escrow agreement which was broken when Mr. Trump agreed to dismiss the lawsuit and when the General Release was received. He stated he also felt that the Agreement should be recorded so in the event it was financed that that agreement would be of record for anyone to put a mortgage on the property. Mrs. Smith recalled it was recorded without the mortgagee's signature and asked if there was anyway that the Bank could come in and challenge that any of the changes that are being made to this property are actually depreciating the value and they might be losing monies in their investment and wondered if they could guarantee that to the Town Council. Mr. Randolph responded he could not guarantee that since he does not know what position the Bank might take, however, he thought that their remedy would be against the property owner for devaluing the property. Mr. Rampell explained the application is with the present usage a single family home and lenders who have mortgages on homes are not involved in the issuance of building permits to single family homeowners, and if the Bank were to take the position that this somehow devalues its collateral, he didn't believe they could seek relief from the Town. He thought the improvements would be worth hundreds of thousand of dollars and are all in accordance with the Town Code and the express permission of the Landmarks Preservation Committee. He felt it was ironic that the lender was actually taking the position in the proceedings that their consent was not necessary.

Mr. Robert M. Grace, addressed the Mayor and Council, indicating he believed they were making a decision that has to do with the Declaration of Use Agreement which is between the Town and the owner of the property and when they take action under an Agreement, it would be a germane moment for the Council to consider the actions of the other part to the Agreement, namely Donald Trump. He read from the Agreement: "WHEREAS, the land is owned by the owner and the owner shall convey an outdoor dining deck with awning over it. He reported the Club is located next to the Playhouse and at present has a bandstand approved 25 years ago, which goes up to two feet from the bulkhead. He stated there are no other restaurants on the water here at the Plaza or nearby, and the Holder's Poinciana Club has long been Town-serving and even before the Town-serving question was a concern. He noted there is no change which will occur to the long standing Special Exception Use which will continue and what they are seeking is a deck with an awning over it. He stated the deck will go to the seawall bulkhead and the awning is removable. He advised an extra two feet is being requested for the deck but not for the enclosure of the bandstand, which includes its' sides and its' top. He advised the purpose is to rearrange the space and the desire is to move social and dining areas further westerly to take better advantage of the water area. He stated this movement further to the wester allows for the expansion and renovation of the kitchen and service areas, which need it badly after 20 years, all of which will provide for better amenities for the patrons. He advised there is no change in the social or dining area as it is being relocated, there is no change in the seating or the parking, nor in the intensity of use, as all of the other factors for Special Exception consideration continue without change. He stated there will be no effect on the neighbors as there are none to the west and to the east is the parking and park area, the bridge, Bradley Park all a long distance away, which would not be visible to this deck area. He indicated to the south is large landscaping which separates the low building areas of the adjacent Towers, which is totally landscaped and blocked from view. He advised most of the other areas in this District and the adjacent Towers go within a foot or two of the bulkhead, and it would not be of any significant concern to those areas. Spec.Excep. 13-94

Mr. Moore gave the staff comments and stated the egress must be addressed to meet today's codes and the Architectural Commission states the expansion should not be of a permanent nature. He stated the Town Engineer wants the bulkhead to be examined and removed, if needed with a minimum elevation of five feet. He noted the Town Manager would like an explanation of the hardship and wants the Town-serving issue to be addressed and his Department also would like the Town-serving issue addressed and the bathroom facilities need to be addressed.

Mr. Moore stated on the Town-serving matter, the question of whether 50% of the memberships are Town-persons as defined by the Code. Mr. Wearn reported the Poinciana Club has served the community for over twenty years and is Town-serving and they can demonstrate that and will produce documentation and then on an annual basis to recertify that.

Mr. Wearn advised on the restrooms, they will comply with the ADA regulations and there should be no problem. Mrs. Smith asked if they share the restrooms there with the Playhouse or when the Club is redesigned, will it be changed. She commented she heard the Club was going to be divided off from the theatre. She also knew that people come in and pay $5 to become a Club member so they can have dinner and she wondered if now it would be kind of more of a dining facility for the Playhouse. Mr. Wearn advised what is contemplated is not to change anything that exists in that area with the exception of the service and kitchen areas, however, the entrance areas will not be changed. Mrs. Smith asked if the restroom facilities would stay the same? Mr. Wearn responded they have to be upgraded. Mr. Lawrence, Architect, responded they will comply with the ADA and the restrooms on the second floor would now be on the ground floor, but all the entrances interconnecting the theatre and the Club will remain as they now are.

Mr. Shaw stated he reviewed the Plans and it appears that they are losing their ceiling in the main section of the Club and he doesn't know how that ties in but he wondered if that ceiling was going to be maintained? Mr. Wearn advised there is no anticipation of changing the ceiling. Mr. Lawrence reported the ceiling in that center room is in tact and will remain and the changes are at the floor level and not the ceiling level.

Mrs. Smith asked if there had been a decision made as to whether or not the Club will be serving lunch on a daily basis? Mr. Wearn responded it was not a subject of consideration at this time. Mrs. Smith recalled the Theatre has to come before the Council once a year to renew their authorization to have matinees, because of the parking problems in the area and if lunches were to be served in the Club on a daily basis and it would become one of the main dining areas in the neighborhood, what will they do for the parking on a daily basis? Mr. Wearn responded if the patrons make this demand, this question would have to be addressed as the Club has the desire to serve its members. Mrs. Smith asked where they would put the extra cars, as this is a congested area. Mr. Wearn believed there was always the capability of serving the patrons and lunches have been done on numerous occasions. Mrs. Smith asked if they would come back to the Council if that were to be the case? Mr. Wearn responded the Club is not expanding and is trying to come into the middle of the nineties and go forward successfully, meeting the needs of Palm Beach patrons and it is not expanding any of the seating and will not be increasing any of the needs already approved and in existence for the Poinciana Plaza.

Mrs. Smith asked how many members the Club had to which Mr. Wearn responded he did not know, as it is all driven by the number of seats and the amount of space available, neither of which will be expanded. Mrs. Smith asked if there was a cap put on the membership to which Mr. Wearn responded negatively. Mrs. Smith wondered if they could expand the use of the Club and there could be unlimited membership? Mr. Randolph did not believe there was a cap on the membership. Mr. Weinberg asked how many seats were there in the Club? Mr. Lawrence responded there are 330 seats. Mrs. Royal asked if the operation was seasonal to which Mr. Wearn responded affirmatively.

Motion was made by Mr. Shaw that Special Exception No. 13-94 with Variance be approved conditionally with the Town-serving issue being addressed and the bulkhead be put into order with supervision of the Town Engineer and the improvements to the egress and the bathroom will be done in accordance with the ADA regulations. Seconded by Mrs. Royal. On roll call, the motion carried 4-1 with Mrs. Smith voting against the motion.

7. Special Exception No. 14-94 With Variance - Jo's of Palm Beach, 375 South County Road; to allow applicant to occupy 4,300 square feet, thereby exceeding the 2,000 square foot limit; and, to allow off-street parking off-site within 500' of the restaurant, pursuant to Section 6.21(d)(1) of the Town Code. C-TS District. - Attorney Peter Broberg addressed the Council on behalf of the applicant. He recalled this restaurant has been in Town for eleven years and up to a few months ago, they were not considering relocation, but the landlord has decided to not renew Spec.Excep. 14-94

the lease and has asked for vacating of the premises by the end of the month. He reported space has become available across the street in the C-TS zone, and the request is to exceed the 2000 square foot limitation. He advised the restaurant is Town-serving as they are well over 68% Townpersons who are the clientele of this restaurant.

Spec.Excep. 14-94

He advised the other part of this application is to allow parking within 500' of the present location. He reported there are 22 seats allowed in a space of this size and with the kitchen, there would have to be 32 additional parking spaces, which have been secured in the Appollo Lot. He advised restaurants are permitted uses in the C-TS zone and restaurants of this size are already existing in this District.

Mr. Moore gave the staff comments, noting that the Police Department states if daytime hours are contemplated, they would like to see a traffic plan on how the traffic will be moved around the restaurant area. He commented on the Public Works Department who wishes to have the applicant address the solid waste and sanitary sewer and how they would hook up the grease traps and get rid of the trash and garbage. He indicated the Building Department wishes to talk about the Town-serving, which has been addressed. He thought perhaps they may wish to consider prohibiting valet parking because of the arrangement of the one way streets surrounding the restaurant. He noted the issue on the traffic study and traffic flow may be resolved by Mr. Broberg.

Attorney Broberg responded that with regards to serving lunches and daytime activities, no valet parking will be requested as most of the traffic would be walk-in traffic. He thought at nighttime, the whole building parking would be available to the restaurant and valet parking would be a convenience to the patrons at night. Mrs. Wiener thought the location of the restaurant will be a problem with regards to the traffic as it is where the entrance is located on South County Road which will be the problem. Mr. Broberg observed that the parking is available on the premises.

Mr. Shaw noted the building has 63 spaces and the actual number of spaces required is 55 and he would like to have the matter discussed during Zoning Season and the fact should be considered that there are buildings with multiple day and night uses, and this application has enough parking available to satisfy the needs of the nightime parking, but as far as the parking needs of the restaurant in the daytime, they wish to use the Appollo lot, and he thought what needed to be addressed is the split daytime/nighttime use of parking.

He thought another use which needed to be addressed is the scrubber which needs to be installed in the venting system and they should ensure that whatever designs are being made for the kitchen, the applicant should ensure they are the latest and the best. Mr. Broberg advised they would do that.

Mr. Moore believed the valet parking for lunchtime has been addressed and the applicant's attorney has told the Council there should be no problem of stacking up on County Road during the dinner hour, however, he thought they needed to make it as a condition.

Mr. Moore stated the solid waste is an issue as to where the grease trap will be located and the scrubber also.

Mrs. Smith recalled this building was designed to create the open vistas and she believed that that would be effectively terminated as they won't be able to look through the courtyard from Peruvian. Mr. Broberg responded the main entrance to the restaurant will be off of County Road. Mrs. Smith asked where the refuse area would be for the pick-up of solid waste material. Mr. Moore asked if they intended to use a compacter? Mr. Broberg stated they will do whatever it takes to get this done.

Mrs. Smith asked if all the residential neighbors were notified to which Mr. Moore responded affirmatively, indicating there were no objections received.

Mr. Shaw moved that the Town Council approve Special Exception No. 13-94, Jo's Restaurant, with the conditions that they will be providing off-street parking to comply with zoning; they will provide for proper treatment of all trash and waste material in accordance with zoning; there will be night only valet parking sufficient to allow for the proper flow of traffic determined by the Town. Mrs. Wiener suggested there be a provision also that there will be no back up of traffic on County Road. Mr. Moore suggested it be approved with the proviso the parking plan will be approved by the Police Department. Mr. Shaw added that condition as an amendment to his motion. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Spec. Excep. 15-94

8. Special Exception No. 15-94 With Site Plan Review - U.S. Trust Company, as Trustee, 334 No. Woods Road; to allow a residence on a 77,665 square foot site which is four times greater than the minimum lot size in an R-B District. Attorney Paul Prosperi addressed the Council on behalf of the applicant. He is here under the new section in the Ordinance, 5.15 (c) which states that any new single family dwelling or acccessory structure in the R-A or R-B zoning districts, constructed on one or more platted lots or unplatted parcels, or combinations thereof involving the land equivalent to a greater than four times the minimum lot size for the District, shall be subject to an application for a Special Exception with Site Plan Review. He has submitted a letter covering the 14 specific points set out in Section 9.60 on Site Plan Reviews.

He pointed out this property is the former Matthews property, and although it is 77,665 square feet, it is not subdividable under the Ordinance into four lots, as it doesn't have the size, the street frontages and possibly other dimensions. He recalled Mr. Matthews, the previous owner, wanted to subdivide the property into two lots, which was the source of litigation. He exhibited a plan of a large one story house which is set back 128' from the Lake at its maximum; and most of the house is setback in excess of 100' from the Lake Trail and from Mrs. Levinson's property, it varies from 50', 60' and at one narrow jog in the property, 35' which is a sideyard and it is all well in excess of the setbacks required. Mr. Moore advised the Council wished to review an application such as this, rather than merely having the Department tell you they have the right to build it and Council wanted to have the right to view larger structures which would be placed which would generally for the most part have smaller structures on the abutting existing properties, and that is why it before them today. Mrs. Wiener disagreed stating the reasoning was when something appears to look hotel-like, with many accessory structures on the property, and with a number of title of the land to the Club." He read from the court document known as the reply by Donald Trump to the complaint of Boston Safe Deposit: "There is nothing in the Use Agreement which requires Donald Trump to convey ownership of Mar-a-Lago to any other entity, in fact, ownership will remain in Trump's name."

Mr. Grace hoped he made clear to the Mayor and Council that there is a vast discrepancy between those two statements and he thought that the Council might want to give some attention to the conduct of the other party to this Agreement. He thought the people who spoke to them about Mar-a-Lago are not the same as those who speak to the Council, and he thought it would be educational for the Mayor and Council to know of different things which are said by residents and registered voters of this Town, as people are saying this is no Club, but is the personal fifedom of Donald J. Trump, who is running a business, who is hiring a banker to recruit members. He asked what agreement does this have to the brochure they were given when the Club was approved which described in detail the by-laws of various clubs in the Town and the manner in which those clubs determined who would become members. He asked if they were getting what they bargained for in this Agreement and is it incumbent upon the Mayor and Council to give any consideration to the Agreement or not? He advised people have said to him, which he found troubling and discouraging - why is this Town Council acting as if they were puppets on a string, manipulated by Donald Trump. He asked when they act on this request, they should give consideration to the way people are thinking about the way they are acting.

Spec.Excep.
11-93
Mar-a-Lago

Polly Earl of the Preservation Foundation addressed the Council indicating the proposed changes to Mar-a-Lago are not the point of issue as they are ones of complete propriety as they have been approved by the Landmarks Commission, and it was good news to hear of the progress on the easement donations, as this will give the people in this Town much comfort. She stated from her knowledge of easements, she didn't believe that these particular changes would need to be made before an easement could be conveyed, and it may be that this particular condition was put there by Mr. Trump which is his right as he is the donor. She thought some of the discussion has focused on the point that the Town Council made the bargain with the owner of Mar-a-Lago and this was done on behalf of the citizens of this Town. She asked if there was a clause in the agreement which requires the Bank to sign and affirm the Club conditions, before the Club happens, and she wondered if in any circumstance from which construction might go forward and the Club plans might proceed and the Bank were to take control of Mar-a-Lago and not having signed the Agreement, would the Bank in any subsequent operation of the Club be subject to the same conditions the Town hammered out to a liveable level? Mr. Randolph responded in the event the Bank were to foreclose on the property, they would not be bound by the conditions of the Agreement, neither would the Bank be authorized to operate a Club on the premises as they have not agreed to the conditions and terms imposed by the Council on the owner of the property. He stated the reason for the mortgagee's consent in this agreement is to assure the Town that in the event it proceeds down a particular path, that those who have an interest in the property have indeed agreed. He thought that normally a mortgagee's consent would not be required in the instance of a minor improvement in a property but this Agreement contains a provision of a Unity of Title and that the property would be transferred from Mr. Trump to the Club, and it imposed other conditions which the Town would want to see binding into the future and without the mortgagee's consent would not necessarily be binding, so that is why it is important to the Town that before anything happens to return the use of this property around from a single family residence to a Club that that mortgage be paid off or a consent be received so it is known there is no objection to the Unity of Title and the other conditions.

Attorney Ron Kolins addressed the Council on behalf of Mrs. Aileen Massey, indicating that they strongly objected to the approval of the application previously, however, he urged the consideration of the Council to several points made by Mr. Rampell that the changes were minor, in the best interest of Mar-a-Lago and served the health, safety and welfare of the Town and he doesn't argue that but that is not the point, which he believes that is what is being requested today is that these changes are inextricably tied to the Special Exception approval for the Club. He understood that the first thing that was being required and demanded by the Declaration of Use Agreement was that all of those with an interest in the property be party to the Agreement, as everyone with an interest in the land must agree, and they have not. He stated not only have they not agreed but are in heated litigation. He stated all Mr. Trump had to do is pay off the mortgage and he should have done so rather than be in litigation and since he has not done that, which suggests to him that he will not do so and will not make this go away comfortably. He sees what is at stake here is not a few minor improvements but the integrity of the Town Council's process, approval and the bargain struck with Mr. Trump which was done on behalf of the citizens of the Town, and he asked what was the rush with these improvements as if the mortgage matter is going to be resolved and the Certificate of Occupancy is not going to be released until that happens, then there should be no rush with these minor improvements and he did not know why the Council would not require the mortgagee's consent first and then there would be no problem with Mr. Trump moving forward with these improvements and he suggested the changes not be allowed until there is certainty that the Club will go forward and until the mortgage is paid or the mortgagee agrees, there is no certainty that the Club will go forward.

Mr. Kolins recalled when this was before the Council originally, Mr. Trump's representatives assured the Council there would be no problem in getting the mortgagee to agree, but that did prove to be wrong and this should be resolved before they allow this to move forward.

Mayor Ilyinsky commented that it was his belief that there was anything that any past or present or future Council could have done to satisfy everyone as to the future use of Mar-a-Lago and he doesn't wish to slide out of anything, since he was on the Council which made the decision, however, he truly believed that if this was sub-divided, that would not have satisfied everyone. He has a problem in this Council granting the building permits without getting the mortgage issue resolved, as he felt the Town Attorney is not very comfortable with it, and for that reason, he urged the Council to discuss it and think this one through as there is always a chance of something going wrong and unless both parties sign the Agreement, there is no contract. He asked them to remember it is not Mr. Trump they are talking about, but a very valuable piece of property and how it will be used in the future.

Mrs. Wiener believed the Mayor's statement were very profound especially the last statement, and she recalled that at this end of the table, it was not agreed that they could do one thing and then go to number two and then on to three and four, as there was an entire number of things that needed to be completed and if one crossing of a "t" or one dotted "i" is not completed, she would vote against permitting Mar-a-Lago to be a Club; but on the other hand people who have not been happy with the decision made by this Council and they seem to feel that by finding ways of lengthening the time, the Club will go away but she didn't believe that it will and without a

Spec.Excep. 11-93 Mar-a-Lago

question of a doubt, that the legal ramifications that have now been required, which are a change on the Council's part, as this Council didn't prioritize, and now they are adding additional protection and she viewed this as there not being any changes and she would like to move forward.

Mr. Shaw made a motion that they approve the items presented today. Seconded by Mr. Weinberg. Mr. Randolph asked if that was with the conditions stated earlier to which the maker and seconder agreed. Mrs. Smith asked if they could again state the conditions and Mr. Randolph responded these are improvements which could be made by any single family homeowner and the conditions they wish to have in writing from the applicant are:

1. An acknowledgement of the applicant's obligation to receive the mortgagee's consent, or pay off the mortgage or the other alternatives discussed in the 9-24-93 letter signed by Mr. Trump.

2. That the applicant will make no claim that the Town has waived its rights to require compliance to the conditions in the Agreement by allowing the applicant to move forward with the improvements.

3. A statement that the applicant states that he is moving forward at his own risk and that he and it (the Club) waive any right to argue equitable estoppel or otherwise attack the Town's ultimate decision not to grant a CO in the event all of the conditions of the Declaration of Use Agreement have not been met.

Mrs. Smith asked if all this would have to be done prior to the issuance of the building permits to which Mr. Shaw responded he believed he heard Mr. Rampell agree to that.

On roll call, the motion carried 3-2 with negative votes cast by Mrs. Smith and Mrs. Royal.

**New Business**

New Business

Var. 15-94

3. Variance No. 15-94 - Raymond Watts, 415 Australian Avenue; to allow construction of an addition providing a 6' west side yard setback in lieu of 10' required. R-C District. - Eugene Fagan, Architect, addressed the Council on behalf of the applicant noting the property is 140 x 50 feet, which contains two small buildings, the main residence and a guest cottage, and his client wishes to move a wall to enlarge his kitchen and add a second bathroom. Mr. Moore reported the staff has no objection and this would be a minimum variance request. Mrs. Smith moved for approval of Variance No. 15-94. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Var. 16-94

4. Variance No. 16-94 - Peter May, 1375 South Ocean Boulevard; to allow relocation of the gateway (garden walls and gates) to the property's northeast corner, adding 13'3" high gateposts thereby exceeding the 8' maximum height allowed. R-AA District. - Mark Ferguson, addressed the Council on behalf of the applicant, requested authorization to realign the driveway as his client has acquired the property adjacent and it is his intention to take the existing metal gate at 1409 and the piers which support those gates and relocate them to 1375 South Ocean Blvd. He stated this relocation would be consistent with the scale of the existing wall and the properties in that section of Town and this gate and the piers were presented to the Council three years in the same configuration for 1409 at which time approval was granted, and now they wish to relocate them.

Mr. Moore advised this was the service area for the Old Bolton Estate and in relocating the driveway that the applicant agree to a Unity of Title as one driveway is being closed off and opening up another where the gates will be installed. He stated they have no objection to this variance, however, would request the Unity of Title. He believed another variance would be needed for a kitchen removal agreement which will be coming back to the Council at a later date.

Mr. Ferguson stated he did not believe the applicant would have any objection to the Unity of Title. Mrs. Smith asked if it would be one address to which Mr. Moore responded affirmatively.

Motion was made by Mrs. Smith that the Variance No. 16-94 be approved with the conditions that the kitchen agreement be applied for and there will be a Unity of Title for the two properties which are being combined and one gate entrance. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Spec. Excep. 12-94

5. Special Exception No. 12-94 With Variance - Barnett Bank, 220 Sunrise Avenue; to allow an expansion of bank and financial use by locating trust office facilities in an additional 920 square feet. Variance: required off-street parking is provided with the exception of one parking space. C-TS District. - Attorney Ron Kolins addressed the Council requesting that this matter be held over to the June Town Council Meeting as this application was not originally filed by him and they would like to give it some attention before it is heard. Mrs. Wiener asked when he became involved in this matter to which Mr. Kolins responded he became involved yesterday but he does not know when it was first received by his law firm. Mrs. Wiener stated her concern is the lateness of asking it be removed from the agenda. Mr. Kolins responded he understands that concern and he is not comfortable with having to do that, however, he thinks the delay will ultimately serve both the Town and his client's best interest and he asked their indulgence. Motion was made by Mr. Weinberg that this Special Exception No. 12-94 be deferred to the June 14th, 1994 Town Council Meeting. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Spec. Excep. 13-94

6. Special Exception No. 13-94 With Variance - The Poinciana Club, Poinciana Plaza, Royal Poinciana Way; to allow an expansion of a special exception use by adding an awning covered deck for dining. A variance is requested to construct awning covered deck at bulkhead line in lieu of 10' required setback. C-PC District. - Attorney James Wearn addressed the Council on behalf of the applicant, the Poinciana Club, noting the application was signed by Albin O. Holder, as President of the Club on April 8, 1994, however, he passed away on the 15th and his son, Howard Holder, Gene Lawrence, the Architect and himself appear in his place and make the application for

guest rooms which would lead one to believe a hotel was being built in the single family district, and that is the type of thing she wanted to preclude.

Mrs. Smith noted this is a large house and asked how many square feet it was to which Mr. Prosperi responded the house has approximately 18,000 square feet of first floor area with 3,600 square feet in the second floor area and a garage and mechanical spaces underneath the house was approximately 4000', or a total of 26,000 plus square feet, and since the center portion of the house has high ceilings, there is a penalty of 8,000 square feet. Spec.Excep. 15-94

Mr. Shaw asked if there was an access to the Bike Trail on the south side of the property to which Mr. Prosperi responded affirmatively. Mr. Shaw noted the plan shows the house on the south side is setback only 20' and he thought it would be more appropriate if the house was moved to the north at least ten feet, so there would be 20' setback from the easement. Mr. Prosperi noted most of the house is set back 25', but there is a little section which has a 20' setback. Mr. Shaw asked if it could be pushed further back so there is more space on the two sides. He asked also that because of the way the house is being laid out on the property, and in order to ensure the present or future owner of the house does not come back asking for a variance for a tennis court because they have not allowed open space for a tennis court to be installed. Mr. Prosperi advised the house is set back from the Lake Trail at least four times the setback required and is setback further than any dimension required. He stated the bike trail is being hedged in on both sides and the vehicular traffic will see only the gatepost entrances.

Mr. Shaw felt with a house of this size, he would like to see a larger setback on the south side. Mr. Prosperi responded the house at this point is very narrow. Mrs. Smith thought it would be easy enough to line it up. Mr. Shaw stated he has no problem with the basic concept of the house but would like to see the south side moved in another ten feet.

Mrs. Royal noted Mr. B. B. Sory, a neighbor to the north, has written a letter indicating there will have to be a large staff and support and maintenance vehicles and this area is a large narrow section which will not safely accommodate the additional traffic and required parking. She asked if there was any reason to ask the applicant for a traffic management plan? Mr. Prosperi noted there could have two houses on the property, each of 11,000 or 12,000 square feet, which is a big house with staff and in what was proposed, there will be two people living in the house requiring less staff, so he could make the argument that the density on the property is half a unit per acre.

Mrs. Smith made a motion to approve Special Exception No. 15-94. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

9. Flood Insurance Variance No. 2-94 - Dorothy V. DePaola, 124 Onondaga Avenue; to allow remodeling of existing residence for more than 50% of assessed value. Floor elevation is 7.1' instead of 7.5' required by Town Ordinance. R-B District. - Mr. Francis DiGiavoni for the applicant addressed the Council requesting the flood insurance. Mr. Moore advised he had no objection with the provision that the applicant furnished an Hold Harmless Agreement. Mr. DiGiavoni advised they will furnish same. Motion was made by Mr. Weinberg to approve Flood Insurance Variance No. 2-94 with the provision that an Hold Harmless Agreement be presented. Seconded by Mrs. Smith. On roll call, the motion carried unanimously. Flood Ins. Var. 2-94

C. Other

1. Consideration of 1994-1995 Zoning Season Preliminary Study Items and 1994-1995 Zoning Season Calendar - Mr. Moore reported he has sent the proposed calendar of zoning items to the Council and will add, if the Council so wishes, the item discussed today about the split parking. Mrs. Wiener wondered if they needed to go through the zoning studies every single year which always means spending money and since there are not that many items, perhaps this is the year when they should just not have zoning hearings. Mr. Moore explained the zoning season runs from November through April and during the summer months, the public has the opportunity to submit applications for re-zoning and the PUD of the Breaker's may come to the Council this year and he suggested that they needed to have this calendar and they can't say no to a zoning season without changing the ordinance. Mrs. Wiener suggested it be a study item by the Zoning Commission that the Town needs to have zoning studied every single year. Mr. Randolph did not think there was a zoning amendment for that, as if the zoning amendments are confined to a zoning season, they need to afford the opportunity to the public to give them that opportunity, however, if there are no applications for amendments from the public during the zoning season, there is nothing precluding them from not going forward with the several items they wished to go forward with and they can accomplish what they wanted to accomplish, if there are no applications from the public for amendments to the zoning ordinance. 1994-1995 Zoning season

Mr. Gerry Goldsmith, a member of the Zoning Commission, addressed the Council believed it was an expensive thing to have a Zoning Commission meeting each year, as they do hear from their consultants, etc., and he thought it may not be necessary to hold it once a year.

XVI. ANY OTHER MATTERS - Mr. Doney noted the LeMonegasque Restaurant representative has called and cannot be here today and will reapply. Mrs. Smith hoped that in the meantime the bill is being paid. Any Other Matters

Mr. Shaw pointed out he had to pick up a police report and had to pay sixty cents and he thought that was a lot of paper work for sixty cents.

XVII. ADJOURNMENT - Meeting adjourned at 6:10 PM. Adjournment

Grace T. Peters,
Town Clerk