TOWN COUNCIL MINUTES OF MEETING HELD ON MAY 9, 1995

I. CALL TO ORDER AND ROLL CALL- The meeting was called to order by President Smith at 9:30 A.M. On roll call the following Elected Officials were found to be in attendance: Mayor Paul R. Ilyinsky, President Lesly S. Smith, President Pro Tem Jack McDonald, Councilmen Samuel C. McLendon, Leslie A. Shaw, and Allen S. Wyett. Also found to be in attendance were: Town Manager Robert J. Doney, Town Attorney John C. Randolph, Police Chief Joseph Terlizzese, Major Michael Reiter, Director of Planning, Zoning and Building Robert Moore, Planner/Projects Coordinator Timothy Frank, Public Works Director Al Dusey, Town Engineer Jim Bowser, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Fire-Rescue Chief Ken Elmore, Joe Ugi of Public Works, and Town Clerk Mary A. Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE - The invocation was given by Dr. Kirkman. The Pledge of Allegiance was led by President Smith.

III. PRESENTATIONS

A. An award was presented to John W. Davis, Police Officer for 25 years and 11 months of service to the Town of Palm Beach Police Department.

B. Mr. Nathaniel Horton, Mechanic I, W.P.C.O., who worked for the Public Works Department for 21 years and 9 months was not present to accept his award.

IV. COMMENTS OF THE MAYOR. Mayor Ilyinsky had no comments at this time.

V. APPROVAL OF THE AGENDA

Mrs. Smith suggested the following items be added to the Agenda:

1. The subject of the Cable Franchise Renewal. Motion made by Mr. Wyett, seconded by Mr. Shaw,to add to Agenda as Item XI.C.10. On roll call the motion carried unanimously.

2. Applied Technology Systems presentation for shoreline protection. Motion made by Mr. Shaw, seconded by Mr. McDonald, to add to Agenda as Item XI.C.11. On roll call the motion carried unanimously.

3. Mr. Randolph speaking on the attendance of elected officials at Town Board and Commission Meetings. Motion made by Mr. Shaw to add this item to the Agenda as Item XI.C.12, seconded by Mr. Wyett. On roll call the motion carried unanimously.

4. Mr. Wyett wished to include a recommendation that zoning be reviewed regarding staff studies of restaurants in connection with the Town-serving purpose and the consideration of separating restaurant licenses and night club licenses with music and dance.

Mrs. Smith commented that this issue would be covered by Mr. Robert Moore, Director of Planning, Zoning and Building.

Mr. Moore addressed the Council, stating that under Development Review, Other, there was a section in the study items for the upcoming 1995-96 Zoning Season, and the issue could be discussed at that time.

Mrs. Smith believed that would be an appropriate time to discuss the issue.

5. Mr. McDonald requested that questions regarding the Jones and Foster billing for the previous month be put on the Agenda as XI.C.13. Motion made by Mr. Shaw, seconded by Mr. McDonald. On roll call the motion carried unanimously.

The following items were added to the agenda: Item XI.C.10 Cable Franchise renewal; Item XI.C.11 Meridian Applied Technology Systems; Item XI.C.12 Attendance of Elected Officials at Town Board and Commission Meetings; Item XI.C.13 Jones & Foster Billing for the Previous Month.

Motion to approve the agenda was made by Mr. Wyett, seconded by Mr. McLendon. On roll call the motion carried unanimously.

VI. PUBLIC HEARING

A. Consideration of Recommendation by Landmarks Preservation Commission Regarding Landmark Designation of 1095 North Ocean Boulevard, Estate of Mrs. Rose F. Kennedy - Resolution No. 9-95.

Mr. Randolph addressed the Council, referring to the letter of April 28, 1995 to Mr. Doney, setting forth in detail the status of this matter as it came before the Council today. In addition, there was a Resolution for consideration, reflecting the recommendation of the Landmarks Commission as it relates to this particular property. Attached to that Resolution was a settlement proposal which was presented by the attorneys for the Kennedy family as it relates to the specific property, which had been modified slightly to incorporate amendments which addressed staff concerns relating to the agreement. Those amendments were quite minor and could be discussed and pointed out at a later time during discussion.

Mr. Randolph continued the Landmarks Commission was presented the proposal by the Kennedy family. The choice that the Landmarks Commission had was moving forward with consideration of landmarking of the property, or of entertaining a compromise. There was a two-phase hearing involved in the event they did not entertain the compromise. The first stage of the hearing was to make a determination as to whether or not there had been a substantial change of circumstances since 1980 and 1990. The Kennedys were of the position that in 1990 the property had been considered, as well as in 1980. This matter was in court and the argument made before the court by the Town was that it was the decision of the Town, not the decision of the court, to determine whether or not there had been a substantial change of circumstances since the previous consideration of the Kennedy property. The court agreed with that, and incorporated that in their order and said it was really for the Town to make that consideration in the first instance. The first task of the Landmarks Commission was to hear evidence, and upon having heard the evidence, to make a determination as to whether or not there had been a substantial change of circumstances so as to exempt the doctrine of administrative res judicata . Essentially, the doctrine of administrative res judicata says that if a matter has been considered before, it cannot be considered again. There was an exemption to that and that exemption is if the circumstances have changed substantially since the last time it was considered, then it may be considered again. Evidence was taken on that matter, and prior to their making a determination as to whether there had been a substantial change of circumstances, and after evidence had been taken in that regard, the settlement proposal was presented to the Landmarks Commission. At that time, the Landmarks Commission had a very lengthy discussion in regard to the settlement proposal, the pros and cons of the proposal, and ultimately made the determination that it would recommend the compromise proposal to you. As a result of having recommended the compromise proposal, it was not necessary for the Landmarks Commission to go forward with making determination as to whether there had been a substantial change of circumstances, nor was it necessary to go forward with a designation hearing. The proposal before the Council essentially provides that there is a dispute between the two parties as to whether or not this property can or cannot be considered again. It recognizes the fact that this is a situation in which administrative res judicata may be an issue. It recognizes the fact that there may be litigation in regard to it, and in order to resolve any questions which are unanswered as they relate to administrative res judicata and any questions that are unanswered as to whether or not litigation would proceed, the agreement attempts to compromise the situation as it relates to both parties. The first compromise is that the gate and the wall would be designated outright; that is the gate and the wall as it proceeds to the south. In addition, a plaque designating the wall would be placed on the property. The property could be photographed by the Town's representatives prior to a date certain. The real substance of the agreement comes at paragraphs 5 and 6, as follows: The Town would abate any consideration of the property at this particular time and that the property owner would be able to move forward with renovations to the property. The property owner would be able to renovate the main house in a certain limited fashion, and the property owner would be able to take down certain outbuildings. The agreement provides that the main house shall remain essentially intact. There would be no change to the exterior walls or the roof line of the main house. Basically, the agreement states that if there is any attempt to partially demolish or to demolish the main house, then the Landmarks Commission and the Town may, at that time, give consideration to designating the property as a landmark. At that time, all of the positions that the Town would argue as to why it should be landmarked, and all of the positions that the property owner would have as to why it should not be landmarked, including the principle of administrative res judicata, would remain. In other words, neither party would be prejudiced by abating these proceedings. They would both stand in the shoes that they stand in now, as it relates to designation.

Mr. Randolph noted that the Landmarks Commission then indicated at the hearing that they would like to see any modifications that are made to the main house come before the Landmarks Commission, as opposed to the Architectural Commission, and there was much discussion in regard to that. Ultimately, a decision was made that the property owner would agree to come to the Landmarks Commission for a Certificate of Appropriateness in order to make any changes to the main house. In the event the property owner was not satisfied with the decision of the Landmarks Commission, the property owner would then go to the Architectural Commission in regard to any proposed changes.

Mr. Randolph continued that the agreement provided that nothing done in regard to this property shall reflect any position of the Town as it relates to the appropriate zoning on the property. The involvement of staff on the proposal had been to modify the agreement with language that would protect the Town in the event the Town Council went forward with this proposal. The Kennedy lawyers were present today, and they could perhaps explain the proposal more thoroughly, and could answer any questions.

Mr. Jim Brindell, of the law firm of Gunster, Yoakley, & Stewart, addressed the Town Council. He introduced Mrs. Margaret Lucas, with Kennedy enterprises in New York, and Al Malfato of Greenberg, Traurig, Hoffman et al, who are handling the sale on this property, and Ronald Kochman, representing the contract purchaser of the property. Mr. Brindell stated that he appreciated the opportunity to appear before the Council, and that this was not an ordinary designation situation. In addition to serious issues about the merits of designation, there were even more serious issues about the legal rights of the Town to proceed at all with designation proceedings, the res judicata issue. These special circumstances must be taken into account when evaluating the compromise proposal. Until recently, it appeared that the Kennedy family and the Town were on a course of legal conflict to be resolved only by the courts. Then, the good fortune occurred of placing the property under contract for sale to Mr. and Mrs. John Castle. That contract creates an opportunity for the Kennedy family and the Town to avoid further legal entanglement if a compromise can be reached between them, enabling the Castles to close on the property.

Mr. Brindell remarked that background on the compromise, the elements of the compromise, and the benefits which would flow from that compromise would be presented. He continued that the history of the Town's designation efforts regarding the Kennedy property over the past fifteen years had created an unusual set of legal circumstances which must be evaluated when the compromise was considered. He handed out an outline of his presentation to the Council members.

Mr. Brindell explained that the Town's 1980 consideration and rejection of landmark status of the Kennedy house raises serious legal questions about the Town's current legal authority to subject the house to landmark designation again. This issue is strengthened, from the Kennedy's perspective, by the 1990 designation efforts of the Town's staff and the Landmarks Commission and the current designation efforts. In the recent suits for a Writ of Prohibition between the Kennedy family and the Town, Judge Baker's order held that "the doctrine of res judicata is certainly applicable to this case." He also provided the Town with the first opportunity to apply the doctrine to the facts in this case. A finding by the Town adverse to the current owners would entitle them to challenge that finding in court. If the Kennedy family was successful in its challenge of a designation by the Town, then the legal ability of the Town to achieve designation of any portion of the property, and to prevent demolition of the property would be lost, absent the voluntary agreement of the owner. While the Landmarks Commission did not rule on the res judicata issue, they did take all of the testimony and evidence from the Town's witnesses and the Kennedy's witnesses on that issue. The Commission then entertained the Compromise Proposal, and in light of the evidence on the res judicata issue, and the willingness of our clients and the Castles to compromise some more, they approved the agreement unanimously.

Mr. Brindell noted that currently the property was owned in common by a number of the members of the Kennedy family. Generally, none of them spends more than a few weeks a year at the property.

Consequently, the property does not benefit from the constant presence and oversight of one family unit, as would be the case if the current contract/purchasers close on the property. The property is in need of maintenance and repair, and adequate parking needs to be provided. The present contract/purchaser does not intend to demolish the main house, but does intend to invest substantial sums of money in renovating the house for year round living. That investment is in the Town's long term interest given its apparent desire to preserve the property. Marketing experience with the property demonstrates that prospective purchasers are willing to pay less for property with a landmark designation than they are without the designation, and are concerned that designation would be an impediment to performing needed renovation and restoration. Mr. and Mrs. Castle are not willing to close on the property and do not have to close on the property if the Town designates it. The current contract/purchaser will then be lost to the financial detriment of the Kennedy family, unless by May 15, 1995 a settlement is reached on the terms proposed by the current property owner or unless the Town is precluded by the application of res judicata from proceeding with designation. If the designation issue is not settled during this designation season, then it may be difficult for the current owners to find new potential buyers, thereby forcing them to suffer additional damages with respect to the ongoing maintenance cost of the property, or suffer a lower sale price, which they otherwise would not have incurred given the current contract for sale. If a settlement is not reached and the Town would proceed to designate the property, there would be litigation, not only challenging the designation, but also seeking demonstrable damages. This was not a position reached lightly by the Kennedys for the sake of negotiating. It had been the subject of much discussion, and reflected a conviction that significant rights of due process and fundamental fairness were involved.

Mr. Brindell stated that Mr. and Mrs. Castle wished to purchase the house and restore it. They did not wish to demolish it, however, being new to this community, they did not have a history of experience with the Town upon which they could base a sense of confidence that landmark designation will not bring with it obstacles and limitations which may make the restoration of the property impossible, or unduly burdensome. The Castles also had experience in another jurisdiction where landmark designation had been extremely burdensome. The Kennedy family's experience in landmarking the property has indicated that other prospective purchasers had not been interested in demolishing the property, but have had this same concern. Nevertheless, the Kennedy family and Mr. and Mrs. Castle were willing to volunteer to have a portion of the property landmarked immediately, and to protect whatever may be the Town's legal right to pursue landmarking of the main house on the property. The compromise being asked for consideration was as generous as was allowed by the contract terms between the Kennedy family and the Castles.

Under the terms of the compromise proposed today, and by which Mr. and Mrs. Castle would abide, the Town would obtain the immediate cooperation of the property owners to designate the portions of the front wall located along North Ocean Blvd., south of the existing garage, along with the gate in the wall, all of which are the most prominent architectural features of the property with which the public can identify, and which are visible from the street. Mr. Brindell then passed around photographs taken of these features.

In addition, Mr. Brindell noted that the Town's normal landmark plaque would be placed upon the wall. The Town's current proposal to designate the entire property, except for the portions of the wall and gate just described, would then be terminated and abated. However, should the present, or any future owner seek to demolish all or part of the main house on the property then the Town would have the right to reinstitute designation proceedings on the main house, subject to whatever rights, defenses, arguments or claims which either the Town or the property owner has today or has at that time.

In a survey of the property, Mr. Brindell pointed out the main house, the wall area south of the garage, and the gate. Mr. Brindell noted that the Town had, on other occasions, landmarked less than entire structures--for example, the facade of the First National Bank Building, and the wall and gate at the Wrightsman property. The Town would also be given an opportunity to photograph the exterior of all of the structures on the property as they currently exist for documentary purposes. Any renovations of the property would be reviewed by the Landmarks Commission, to the extent that such work would be reviewed by them were the property designated. The Landmarks Commission had indicated its belief that it could work successfully with the new owners to achieve renovations which were acceptable to those owners and which preserve the integrity of the house. The house did need substantial work. The Agreement would bind the present and future owners of the property and would be subject to a legal action for specific performance. That was an important requirement because it would allow the Town to seek injunctive relief to force compliance with the Agreement or to prevent violations of the Agreement, as opposed to simply seeking damages. As indicated earlier, Mr. and Mrs. Castle did not intend to demolish the main house, but do intend to invest substantial sums of money in renovating the house for year round living. That investment is in the interest of those who desire to see the property preserved. Once the investment is made, it would be much less likely that Mr. and Mrs. Castle, or any subsequent owners, would want to demolish that property. In the meantime, the status quo with respect to the Town's rights and the property owner's rights relative to designation of the main house would be preserved. If a compromise was not reached during this designation season, then, it may be difficult for the Kennedys to find new potential buyers without some drastic impact on the sales price, and without additional carrying costs that they would not otherwise have incurred had the Castles been able to close on the property. A pending contract for sale to Mr. and Mrs. Castle provides an opportunity, if the Town is willing to cooperate, for the many Kennedy family members who have an ownership interest in the house, but who spend very little time there and have very little incentive to invest funds in the property other than for basic maintenance to sell the property and be replaced by new owners who are interested in making a significant investment to secure the future viability of the property, and who would provide the house with the type of presence and oversight it needs. The commitment of Mr. and Mrs. Castle to approach the renovation of the property in a fashion consistent with the Town's interest is evidenced by the fact that they have discussed renovation of the house with Jeff Smith and his colleagues, and expressed their intention and expectation of hiring Mr. Smith.

Mr. Brindell continued that a draft of the specific terms of the compromise, and the Landmarks Commission approved unanimously the proposed compromise with four revisions. The Kennedys and the Castles agreed to those revisions. Since the Landmarks hearing, the Town staff and legal counsel have asked that six further revisions be made, which were not discussed or required by Landmarks. The Kennedys and the Castles had agreed to four of the six. Prior to the Landmarks Hearing, the Town Staff and legal counsel requested a number of revisions to the draft agreement, all of which were made. This had not been a case of threats and ill will. It had been a case where substantial efforts had been made to find a reasonable solution to conflicting objections, concerns, and fears, and to avoid a costly and troublesome legal battle. A copy of the draft agreement was provided for discussion.

The draft agreement included the changes requested by the Landmarks Commission, as well as the four additional changes which had been requested. Mr. Brindell explained that the four changes were quite simple. The draft agreement distributed to the Council was an add and delete version with the parts not underlined or stricken through being the original version taken up by the Landmarks Commission. The Commission had asked for several additions and deletions, plus the four additional changes, and those would be reflected by the underlines and strike throughs. Mr. Brindell proceeded to go through the draft agreement with the Council.

Mr. Brindell stated that the second "whereas" clause was a request that Mr. Randolph had made. Mr. Randolph had asked for a deletion in the third "whereas" clause, the reference to 1980 and 1990, and to use the word "previously." It was Mr. Brindell's understanding that Tim Frank of the Building Department wanted another "whereas" clause stricken, which was done. The dates on the draft agreement reflect the April date of the Landmark hearing, and today's date.

Mrs. Smith asked about the clause stating "whereas the Town, the Commission, and the owners would prefer to avoid further adversarial proceedings..", and inquired as to how that could be in the agreement when it was not known what position the Town Council would take today?

Mr. Brindell replied that this was a draft and that he was expecting a review and discussion today in order to reach a conclusion.

Mr. Brindell continued that on the second page of the draft agreement, Item 2 referenced to landmarking the wall and the gate south of the garage to the south end of the property. A standard landmark plaque would be placed on the wall as stated in Item 3 of the draft agreement. Item 4 would authorize the Town to have the outside of all of the structures on the property photographed by May 12 or a later date approved by the owner. The reason for that was related to the closing date on the property. Item 5 had two parts to it; in essence it said that except for the wall and the gate the Town would cease its designation efforts at the moment, until such time that this property owner or any future property owner would attempt to demolish all or a portion of the main house. If that were to occur, then the Town's rights to reinstitute landmark designation of the main house could be started by the Town again. There was also a provision that said that would be done during the first available landmarking season. On the top of page 3 of the draft agreement there was an effort to provide some clarity with respect to what kinds of repair, replacement, or renovation activity could be undertaken subject, to the appropriate approval, that would not trigger the designation process. There were several components of the property that needed to be replaced, repaired, or demolished because of the condition they are in, for example, the garage, laundry room addition, storage shed, etc. Those would not trigger designation. Provisions on page 4 essentially track the criteria in the Landmarks code. Mr. Brindell concluded that he hoped the Town would find the agreement acceptable, that he believed the Town's interests were protected while there would be an investment in the house, which was much needed.

Mayor Ilyinsky commented that one of his favorite words was "convoluted," meaning the folding or coiling together of many services into a single form. He continued that in one fold there was the unique ambiance of Palm Beach, which sets its own standards. In another, there was the possible designation of a winter White House as a national treasure. Another fold was the landmarking of an Addison Misner home. Still another fold was the veiled threat of an expensive lawsuit. Finally, the promise of the sorely needed restoration of one of Palm Beach's famous home was yet another fold.

The fact that Palm Beach could do almost anything within reason was well known. The precedent for designation of a winter White House as a national treasure did not exist, according to research. No presidential winter retreat had ever received such a designation. The Hot Springs Arkansas spa used as a retreat by Franklin Delano Roosevelt did have a designation of sorts, but it was privately owned. The expert efforts of the Town Attorney and other attorneys offer the chance to have our cake and eat it too, perhaps. There is a compromise for landmarking part of the estate, plus the fact that no structural changes could be made in the main residence without the express consent of the Landmark Commission as well as Arcom. The Kennedy mansion was designed by Addison Misner, with help from Maurice Fatio. Whether the character of this building was unique enough to warrant recommending landmarking was the assigned responsibility of the Landmark Commission, to whom this business should be sent back for a complete designation hearing, which had never been done. Notwithstanding all of the folds in this convoluted problem, Mayor Ilyinsky stated that he was convinced that Palm Beach had the unique privilege of fashioning its own destiny. For the Town to establish a precedent by recognizing the winter White House of one of our great presidents was very admirable, and he felt that it should be landmarked with no further nonsense.

Mrs. Smith asked if there were any comments from the public.

Mr. Stanley Rumbough, Executive Committee of the Civic Association, addressed the Town Council, reading what the Executive Committee permitted him to say. " The Palm Beach Civic Association is sympathetic to the problems of the Landmark Preservation Commission and the Town Council as regards the Kennedy estate. No one enjoys the idea of threatened litigation. On the other hand, the Kennedy Estate meets all of the criteria for landmarking. With its rich history, it is probably Palm Beach's most worthy candidate for this special status. If the former President's home is not worth landmarking, what is? The Kennedy family has long been opposed to the idea of landmarking this property, and now the prospective buyer also has declared his opposition. In fact, it appears that this sale is contingent on the estate not being landmarked. The Civic Association has studied this issue and we are concerned not about the specifics of the agreement between the buyer and the Landmark Commission, but about the precedent setting nature of these proceedings. We think the threat of litigation will send a dangerous message to all who do business with our Town. If you bring in your lawyers and threaten a costly lawsuit, the Town will hurry to negotiate on your terms. Other homeowners who oppose the landmarking of their residences will be encouraged to respond in the same way. In summary, we believe landmarking plays an important role in maintaining and protecting our Town. We believe the Kennedy Estate should be landmarked. We urge you not to make a decision which would set a dangerous precedent. We support you as you attempt to determine the best course for our community."

Mr. Rumbough then spoke personally, stating that he had an invalid sister who lived on North Lake Way. They had sent in a lawyer, Mr. Broberg, to suggest that her house not be landmarked, and almost every argument we had was similar to what had just been heard from Mr. Brindell, namely that it might decrease the value, that a prospective buyer might not have the privilege of making the changes he wanted. The house was landmarked, and they chose not to litigate, choosing to feel that the Landmark Commission and ARCOM would be as cooperative as a new owner might desire without basically changing the house. He wanted the Town Council to know that personally he and his sister had chosen not to litigate.

Mrs. Joanna Frost-Golino, a member of the Landmarks Commission addressed the Town Council, stating that she was pleading for the Town Council to return this matter to the Landmarks Commission. As a member of ARCOM for seven years, and as Chairman for two years, she commented that they had tried very hard to establish guidelines to establish a checklist and to make sure that all projects had the same hearing in front of ARCOM and were treated fairly and in the same way. She was concerned that because of the complexity of this particular project the designation report was never even heard. She did not understand how there could be a compromise or how a proposal could have even be accepted to landmark a part of the property when that had not even been heard. Another concern that she had was that this particular proposal set up a conflict between ARCOM and the Landmarks Commission. She did not believe that the Town would want to set the precedent where if someone was not happy with what Landmarks had suggested that they could go to ARCOM and be satisfied. For all of the reasons stated, she believed that the process of what was being done needed to be looked at. She believed that the Landmarks Commission needed to look simply at whether the property should be heard again. The administrative res judicata issue was definitely one that was not decided at the Landmarks Commission meeting. Secondly, Mrs. Frost-Golino stated that the designation report should be part of the record and should be heard. At that point, the Landmarks Commission would have done its job and it would be in the Town Council's hands to decide whether there should be a proposal, compromise, settlement, or whether the property should be designated.

Mr. Adrian Winterfield addressed the Town Council, stating that this was not a question of landmarking, but was under a judicial order. A judge found that there is administrative res judicata and that it is within the authority of the Town to determine whether there was a valid exception thereto; that is, whether there is new evidence. The landmark consultant testified on that subject at the hearing in 1980. The Kennedys also had an expert who testified. It was in the light of this presentation that the Commission, in its good judgment, decided that it was not worth proceeding further. Implicit in that decision might well have been a finding that there was no new evidence, which would waive administrative res judicata. The question was not whether or not the Kennedy Estate should be landmarked. Mr. Winterfield noted that he was shocked when it was not landmarked in 1980, however, the damage was done, and it was only under very limited circumstances that it could be undone now.

Mrs. Polly Earl, Director of the Preservation Foundation of Palm Beach addressed the Town Council, stating that the Preservation Foundation felt that it was a simple matter of logic and common sense that this property meets all of the criteria for landmark designation. Not only was it the winter White House, but it had been the childhood vacation home of a President, a Senator, and other Ambassadors. An outstanding family of important historic personages were wedded to the history of this house throughout all of its existence. The Preservation Foundation also believed that the Town's Landmark Ordinance, the process of landmark designation of homes, districts, and important places in the Town had become part of the bedrock of what everybody wishes to do to maintain the quality of life and beauty of Palm Beach that we all aspire to live in. She stressed the importance of the decision and the unquestionable merit of landmarking the home. On the other hand, Mrs. Earl recognized the unfortunate troubled history of this particular issue, a history that had originated through preceding Town Councils. She expressed the hope that the Town Council would have the wisdom and good will to resolve this issue satisfactorily and expressed the support of the Preservation Foundation of the Town Council decision.

Mr. Ned Monell, a resident of Palm Beach, addressed the Town Council stating that there had been an article in the newspaper today indicating that the Town had gone over 100% of its budget in litigation, and as a taxpayer he did not want to see more money spent in another prolonged lawsuit. He felt it was fairly obvious that would be the result if a compromise was not reached. There had been another term mentioned in the newspaper, called "takings", and inasmuch as Mr. Mannell respected the fact that the property was somewhat historical he believed that the Town Council should consider proposing landmarking of the property to the citizens of the Town, with the Town purchasing the property, with a special assessment being passed onto the citizens in order to pay for it. He considered it a wicked waste of taxpayers money either way. He believed a compromise had been reached in good faith, and he urged the Town Council to consider it.

Mrs. Smith added that money would not be spent on litigation if people were not suing the Town, forcing defense against frivolous lawsuits. She continued that as far as the Town buying the property, the Kennedy family had a great legacy of giving to the country, and could have given the property to the Town.

Mr. Ron Kochman, representative of the prospective purchasers of the Kennedy property, Mr. and Mrs. Castle, addressed the Council, stating that Mr. and Mrs. Castle were willing to purchase the Kennedy home, and spend the money to renovate it. Jeff Smith, the Town's best landmarks architect would be retained to work on any renovations. If the Town Council would send this matter back to the Landmarks Commission, the purchasers would be lost, because the contract was conditioned on the landmarks issue being resolved by May 15, 1995. If litigation occurred, the best case would result in a complete victory for the Town, but at a cost of taxpayer dollars for legal fees; the worst case would involve the Town losing the landmarking case, spending untold legal fees, an order by a court to pay the Kennedy family the difference between the amount of Mr. and Mrs. Castle were willing to invest in the property, and the amount of money any future party would invest in the property. The Compromise Agreement was not a sell out of the Town, but allowed the Town to review what renovations were made, therefore, the public concern about the history of the Kennedy home would be preserved. In addition, the Town would save a great deal of money on legal fees. The issue of landmarking the Kennedy house did not pose a security threat to the Town of Palm Beach. He urged that the Town Council take heed from President Kennedy's words when confronting an unfriendly Congress in 1963: "Every President must endure a gap between what he would like and what is possible." Mr. Kochman urged voting with heads, not hearts, for approval of the Compromise Agreement.

Mr. William Gubelman, member of the Landmarks Preservation Commission, addressed the Town Council, stating that at the last Designation Hearing he had chaired the meeting, and wanted to share the information that had been presented at that time. It had been necessary to decide whether there had been a change in the status of the property, which would have allowed further investigation of the matter as a landmark. The information had been presented before they had been able to vote on whether a reinvestigation was warranted. A compromise solution had been presented by Mr. Brindell, and they had looked at it as one would look at a solution to a problem. Mr. Gubelman stated that deep in his heart, he felt that the former Kennedy Winter White House should be preserved as a landmark of the Town of Palm Beach, the compromise offered a solution that all could live with.

Mrs. Smith stated that the Town Council would now go into Executive Session.

Mr. Randolph interrupted with several comments: As he had stated in his letter to the Town Council, there should be no discussions in regard to whether the property is or is not a landmark. That was a quasi-judicial function, and although there had been statements made today in regard to whether or not to landmark, that was not within the parameters of the Town Council to discuss today. Secondly, he pointed out that the discussions taking place today were not to be used in any subsequent litigation, because they were in the nature of a compromise, and that had been agreed to by the lawyers for the Kennedy family.

Mr. Shaw began the discussion by stating that he did not agree that landmarking reduced the value of properties. He did not feel that a financial hardship was created for the Castles. He believed that multi-million dollar homes were very often on the market for a period of time, awaiting a proper buyer, and that there were circumstances which were of benefit to owners of landmark buildings in the form of tax credits. He was surprised to learn that someone would move into a Town starting off by saying that they did not trust the Town. He believed people came to the Town because of what it represents. Mr. Shaw felt that the home and the property should be preserved, and that the landmark designation should be done. The property should be looked at in accordance with the four necessary criteria in order to ascertain whether the property should be landmarked. A compromise could be reached, and that the offering of a gate and wall was very nice, but that he would like to see the whole house offered. Mr. Shaw suggested that the Castles accept the designation, outlining what they proposed to do, giving the Town and themselves the honor of owning one of the finest homes in Palm Beach.

Mr. McDonald had no comments at this time.

Mr. McLendon had no comments at this time.

Mr. Wyett objected to the continued threat of lawsuits to the Town and Town Council, however, he appreciated the desire to restore the estate. He inquired whether the intended new owners would agree to a landmark status after renovating the estate?

Mr. Kochman addressed the Town Council, stating that at this time Mr. and Mrs. Castle were not willing to have the home designated as a landmark after completion of renovations. This was not part of the agreement presented.

Mayor Ilyinsky stated that he had looked at the landmark ordinance in the State of Massachusetts and that it was one of the toughest in the country. He suggested that the Town of Palm Beach was somewhat gentler, and that Mr. and Mrs. Castle must understand that.

Mr. Kochman replied that he was aware of that, but when fears had been built up nothing could be changed.

Mr. McLendon inquired if the main concern was the question of approval of renovations by the Landmarks Commission?

Mr. Kochman replied that he could not speak to that since had had not seen the renovation plans. He believed the fear was basically related to a potential control issue, which had been alleviated by the fact that the Landmarks Commission would get a first look at it, and Landmarks would be able to prove to the Castles that they were cooperative. This led Mr. Kochman to believe that if there was cooperation, that somewhere down the road, once the renovations were done, the Castles might agree with the landmarking.

Mrs. Smith asked Mr. Randolph exactly what the time frame was--there was a draft agreement handed to the Town Council today; the closing was to be in two days; the photography in the house must be done within in two days; yet, there were being told that they were not being threatened. Why must a final decision be made today? Conceptual approval was being asked for to an agreement that had been approved by the Landmarks Commission, and Mrs. Smith felt that the Landmarks Commission had waived all rights to the property, except for the wall. If the right action had been taken in landmarking consideration in 1990 there would be no consideration today, however, they chose not to act. Mrs. Smith agreed that it could not go to Landmarks, and then if citizens did not like the feeling, then they go to ARCOM. This was not an either/or situation. If the house was not landmarked, Mrs. Smith believed it should go to ARCOM. They were two separate and distinct commissions. She asked Mr. Randolph what had to be done today--was it to accept the compromise today on their terms or be sued?

Mr. Randolph replied that he could not speak to that and that Mrs. Smith would have to speak to Mr. Brindell.

Mrs. Smith then asked Mr. Brindell if it was "yes" or "no."

Mr. Brindell replied that the closing was not in two days, but in five, and he wanted to stress that when there was a complex legal problem it was always difficult to raise issues, such as res judicata, which had not been evaluated frivolously. The belief of the Kennedy family was that unless some acceptable compromise was reached, there is an obligation for them to pursue their legal rights as they understood them.

Mrs. Smith said that her position was that the Town Council was being asked to accept a compromise that was seen today for the first time, because they were being threatened with a lawsuit.

Mr. Brindell responded that he would be glad to go back to the version that had been sent with Mr. Randolph's memorandum, because that was where they thought they stood with Landmarks. The agreement they received today had been an effort to accommodate Town staff.

Mrs. Smith noted that this was the first time that the Town Council was hearing a landmarks proposition on the basis that it was a compromise. She felt that it would set a very dangerous precedent for the Landmarks Commission, turning it into a group that would be threatened with lawsuits, and that it may be the end of the Landmarks Commission as we know it, and that in the future only voluntary designation would be seen in the Town. That issue was not being addressed today, however.

Mr. McDonald moved that the Landmarks' Commission proposal be denied and that it be sent back for a hearing. Seconded by Mr. Shaw.

Mr. Wyett asked what would be accomplished by sending it back to Landmarks?

Mr. McLendon said that it bothered him that the report of the consultant was not discussed and acted upon by the Landmarks Commission. He understood the implications and why it was done, however, he was a believer in property rights, having owners agreeable to designation rather than in opposition to it. His feeling was that the site was certainly something that should be designated because of its historical value. He was not sure that the structure itself with more than one architectural treatment, and more than one phase of construction over the years would necessarily fit what landmarking should be. He had some reservations about sending it back to the Landmarks Commission, feeling that the designation of the site as proposed would be sufficient. The confusion between Landmarks and ARCOM should be removed.

Mr. Wyett remarked that he agreed with Mrs. Smith about setting precedent, and also damaging the Landmarks Commission. He would have been much happier had the potential buyer submitted renovation plans to the Landmarks Commission. On the other hand, Mr. Wyett continued, there was a viable buyer with a desire to renovate a very difficult property. The property was historical, meeting all of the requirements of a landmark, however, it was rapidly falling into disrepair and it would take a very special buyer to restore it. The Castles had indicated strong desires to restore and retain this as a valuable property. The threat of a lawsuit was in poor taste and would not intimidate the Town Council. Mr. Wyett noted that even after renovation there was no desire to landmark the property, and he would like to learn more about that. He hoped the Town found some way to have a buyer acquire the property and restore it and keep it for the Town forever.

Mr. McLendon commented that it had been indicated by Mr. Brindell that there were four out of six suggested staff changes approved. He questioned which two were not approved?

Mr. Randolph replied that one related to a timing issue--that staff proposed to include in this agreement that if the outbuildings had not been demolished by a subsequent owner subsequent to a period of time of three years, that the entire property could, at that point, be considered for designation along with the outbuildings. In other words, if no action was taken in regard to the outbuildings, time passed, and then there was an application to demolish or to partially demolish, then there would be an opportunity to designate the entire property as opposed to simply the main house. The second one was related to the designation in the future, even if the outbuildings were demolished at that point, that consideration of the main house would include consideration of the entire property, not simply the structure of the main house on the property.

Mr. Brindell replied that was correct. He continued that part of what made this issue difficult was that the proceedings with the Landmarks Commission were now considered by the courts to be quasi-judicial proceedings. That had changed how lawyers were allowed to deal with issues now. Also, the res judicata issue created an additional threshold that had to be addressed separately from the balance of issues related to designation on "the merits of designation." So, it had not been that the Landmarks Commission did not want to look at the designation report, but the threshold issue had to do with the res judicata issue, as Judge Baker basically instructed that the issue was in law and the question was whether there was substantial change in circumstances to warrant a different result from what was achieved or could have been achieved in 1980. He appreciated the frustration with the process, but that was what they had been required to deal with. They had a full hearing on the question of whether there were changed circumstances substantial enough to warrant a different result. After all of that evidence was in, the Landmarks Commission entertained and evaluated the proposal, and it was in that context that it came to the Town Council.

Mr. McLendon asked Mr. Randolph what the recent ruling had said?

Mr. Randolph replied that the issue before the court was whether or not ARCOM and the Town should be prohibited from going forward in regard to considering this property for landmark designation on the basis of the fact that it had been considered previously, and the principle of administrative res judicata said that if you consider it before, it cannot be considered again. The petitioners argued that the Judge should make a decision as to whether administrative res judicata applied, and the Town argued that even if administrative res judicata did apply that the Judge should not intervene in this proceeding at this point, because the determination as to whether it applies or not rests with the governmental body. The Judge first made a finding that administrative res judicata did apply in these types of proceedings, however, he agreed that it was premature for him to be involved in determining whether or not the exception came into play--whether there had been a substantial change of circumstances since 1980 or 1990. The implication of that was simply that if the Town did make the decision that administrative race judica did not apply because of a substantial change of circumstances, then the matter would be with the court to determine whether the Town acted correctly, and whether or not, indeed, the exception was properly applied.

Mrs. Smith asked what the effect on race judica was when the Landmarks Commission elected not to hear the whole designation report?

Mr. Randolph replied that there was some misunderstanding existed regarding the Landmarks Commission. They were faced with the same question that the Town Council would ultimately be faced with in regard to the administrative race judica issue. It had not been a simple matter of considering four criteria set forth in the Ordinance as to whether this property should be designated. The Commission was faced up front with the issue of administrative race judica. They had a full hearing to determine whether or not the exception applied. After having heard that, they were presented with a Compromise Proposal, and they were then in the position of accepting a compromise which offered some certainty, or moving forward with a designation proceeding that carried uncertainty. Mr. Randolph remarked that he felt that the issue had been dealt with in a proper manner by the Landmarks Commission, and that based upon the evidence they heard, they had evaluated what was in the best interests of the Town.

Mr. Shaw stated this his sentiments were to have the house landmarked, and everything was being done to protect the property, but the word "landmarked" was being eliminated. He suggested Mr.

Brindell convince his client that this was a nice place to live and that they would be very happy here, and that landmarks in Palm Beach was not the same as landmarks in Massachusetts. Perhaps something could be resolved that would include renovations, and the eventual voluntary landmarking of the property.

Mr. Brindell stated that he had raised these issues with his client, and he had not ruled out the voluntary landmarking at a future date, but he was not willing to include it in a compromise agreement.

Mrs. Smith asked Mr. Kochman if he would be making any amendments to the agreement if the Council decided to go along with it, since there were only three working days to work on it?

Mr. Kochman replied that the closing date could probably be extended a few days to accommodate the Council.

Mrs. Smith said that if it could be extended, there would be another Council meeting next week where the agreement could be looked at.

Mrs. Smith asked Mrs. Pollitt to review the motion.

Mrs. Pollitt replied that Mr. McDonald had made the motion to deny and send back to the Landmarks Commission, and to reject the Compromise Proposal.

On roll call the motion carried 3/2 with Mr. McLendon and Mr. Wyett casting negative votes.

Mrs. Smith asked Mr. Randolph if the Landmarks Commission could call an emergency session within the next three days to review this matter?

Mr. Randolph replied that it was slightly problematic in that the designation hearing had been advertised in the newspaper for last Wednesday with the stipulation that if the Compromise Proposal were not accepted that the matter would come back at the regularly scheduled meeting. There could be the instance of complaints that there was not notice of the designation hearing itself if a special meeting was set.

Mr. Brindell stated that if they meet on the 17th, the first issue would be to determine if the race judica issue applied. If, on the other hand, it was determined that the exceptions had been met and it was necessary to go forward, then a hearing would be held that day on the merits of designation, relative to all of the criteria in the Ordinance. The problem of notice to third parties that Mr. Randolph had pointed out was a consideration. Another option would be to go the meeting and defer action, announcing another meeting date, but as far as having a Landmarks meeting sooner than that, Mr. Brindell expressed uncertainty as to what would be accomplished at such a meeting.

Mrs. Smith explained that she was trying to expedite the matter so that Mr. Brindell would have both the Landmarks action and subsequent Town Council action on hand.

Mr. Randolph interjected that he understood that the matter was being referred back to the Landmarks Commission, and there would be two matters to be considered by them. He understood that they were not to entertain a settlement proposal, because the Town Council had indicated the desire to go through the hearing. The hearing would go through two phases as indicated: first, to determine whether or not there had been a substantial change of circumstances to allow them to go forward; then upon making that determination the designation hearing would be held to either designate or not designate the property. That was the hearing process that had been advertised and that would give everyone an opportunity to comment. That was why there was difficulty in having it earlier. Mr. Randolph continued that he was not sure how having that meeting earlier would accommodate the Town Council one way or the other in determining whether to accept a settlement proposal. What was going to be heard was either that the property would not be designated, in which case it would not come back to the Town Council, or that designation was recommended. The only thing that could happen in three days that would involve the Town Council was designation recommendation. If the Town Council felt that there was still some opportunity for an acceptable compromise proposal, then the advice of the Landmarks Commission was not needed.

Mr. Brindell commented that the Landmarks hearing would take place, but he wanted to clarify that there still may be some basis for a compromise.

Mrs. Smith noted that Mr. Brindell should be very clear on how all the members of the Council felt, and asked if there were any conditions that any council member would like to see in a proposed agreement that was not included in the Agreement before them today?

Mr. Wyett suggested that the buyer agree to landmark status after completion of renovations.

Mr. Brindell clarified that they were going to proceed as if the hearing would take place next week. In the meantime, they would also look into making some changes that would be the basis for a compromise.

Mr. McDonald stated that if the house could end up in a recognizable form with a voluntary designation for landmarking, he would accept that.

Mr. Shaw questioned paragraph 6, page 4, pointing out the concern as to the precedent and practicality of both commissions reviewing the renovation issue.

Mrs. Smith thought Landmarks' criteria would be the proper standard for approval, with no appeal to ARCOM, whether the house was eventually landmarked or not. That would be something in the agreement that she felt very strongly about. She also took exception to the fact that the Town, the Commission, and the owners would prefer to avoid further adversarial proceedings over the designation of the property and did not like the implication that the Town would be forced to buckle under the threat of a lawsuit under any circumstance and in any regard. She would like to see that paragraph out of the Agreement. She would also like to see a little more give and take as far as the photography of the property--that there be ample time to document and review the property as it stands. Her impression of the Agreement that it was very structured and very adversarial to the Town.

Mr. Wyett commented that he did not like the idea of setting a precedent of appealing from one commission to another.

Mr. Brindell noted that there had been discussion about that and that assurances had been provided to Mr. Castle through his lawyer about the sensitive treatment Landmarks would provide, since the objective was to try to get the property owner to invest money to keep the property in a viable position. The overriding concern had been the experience of the Castles in Massachusetts.

Mrs. Smith said that it would have to be one or the other--there was no appellate court in the Town where someone could go to one group if they did not like what was said by another group. Mrs. Smith said that she would prefer Landmarks, but if it could not be Landmarks, then it would have to be ARCOM.

B. Consideration of Ratification of Landmark Designation of 240 Cocoanut Row, Palm Beach Public School - Resolution No. 10-95 -

Mrs. Pollitt swore in everyone who would be giving testimony.

Mr. Tim Frank, Planning Coordinator of the Building & Zoning Department addressed the Town Council stating that he would read into the record the criteria for designation that the Landmarks Preservation Commission had found that the subject property met. He would then ask Mrs. Day to continue the presentation, with remarks given by him afterwards.

Mr. Frank continued that the staff had found that the property met the following criteria for designation:

Meeting criterion A, that it exemplifies and reflects the broad cultural, political, economic, or social history of the nation, state, county or town.

Meeting criterion D, that it be representative of a notable work of a master builder, designer, or architect, whose individual ability has been recognized, or who influences age.

At this time, Mrs. Jane Day, Preservation Consultant, continued the presentation, addressing the Town Council and stating that public education began in the Town of Palm Beach with The Little Red School House, which opened in 1886. The school, located one mile north of where the Royal Poinciana Hotel would eventually be built, opened with 12 students and a 16-year old teacher. The school remained opened until 1901. From that date until 1921 there was no public school in the Town of Palm Beach. Local children used a boat to take them across Lake Worth to classes in West Palm Beach. The Palm Beach County School Board, though founded in 1909, did not operate public school in the Town until 1921, when a small stucco building on the southeastern corner of Seaview Avenue and Coconut Row opened with two classrooms. The original corner stone for that building is there, dated 1923, and the architect was R. H. Trumble. That school was a two classroom school, with two teachers, and 50 pupils. Eventually, the needs of the Town increased, and as the school expanded to 225 students two more classrooms and a low colonnade were added to the school. This colonnade was still there on the eastern side of the property. It is in the Mediterranean revival style, constructed of hollow clay tile, with stucco on the outside, as is much of the Mediterranean revival style architecture in Palm Beach. It is ornamented with cast stone details. As the Town grew and the school population increased, in 1927 the School Board purchased the land on the west side of Coconut Row, but lacked the sufficient funds to build the school. The Mayor of Palm Beach, John Shepherd, was responsible for securing $30,000 needed to add the addition. In 1929, the School Board hired William Manley King, who was the architect for the School Board, to design a school on the west side of Coconut Row. William Manley King has been honored with other schools that he has done, listed on the National Register--the school in West Palm Beach, the school in Canal Point, and the Armory Building. It too is done in the Mediterranean revival style with cast stone detailing. At one point this building was a junior high school, and later the building was added onto again in 1952 when Edgar Whartman built Classroom C Wing to the school, and in 1958 Whartman and Gustof Maass designed the cafeteria, south of the original school. Most recently, the school had been re-roofed with a barrel tile roof by Peacock and Corales. One of the things that Mrs. Day wanted to mention about the designation report was the criteria with which the school was being designated. In this case, it was Criteria A and Criteria D. William Manley King was a noted architect, but this school had been added onto and altered so many times it no longer had the architectural integrity it had in 1921. However, under Criteria A, this building could be listed, because it represented the broad cultural history of the Town of Palm Beach. Mrs. Day said that she had often been asked if a building that she was presenting was unique, and often she would reply that it was merely representative of a style or of an architect's work. In this case, the school was unique to Palm Beach, and as such deserves designation under the Landmarks Ordinance.

Mr. Shaw made a motion to accept the Designation Report and make it part of the record. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

Mr. Frank pointed out that in the review of this particular property the Landmarks Commission did run into a few items for review that were part of this designation. One of them was that they could actually could landmark the original building or some of the buildings that were significant. They felt it was more important to study the entire site, and therefore tried to maintain the integrity of the structure throughout the site, so this would be a landmarking that would include the property on both sides of the street. Also, Mr. Frank wanted it on record that there had been a comment by Assistant Superintendent of the School Board, Mr. Lawrence Zabik, that the Town of Palm Beach did not cooperate with them. Mr. Frank maintained that the contrary was true. He had attempted twice to set up meetings with Mr. Zabik, which were cancelled by Mr. Zabik. It was Mr. Frank's understanding that Mrs. Day had also tried on numerous occasions to get a meeting with the School Board to discuss this matter with him.

Mrs. Day related that Mr. Zabik had never returned her calls, although she had spoken with his secretary, eventually speaking to August Hernandez, in the Planning Department of the School Board, who insinuated to her that the School Board was not in favor of landmarking of the school, as they felt that the School Board did not fall under the landmark jurisdiction. This had caused Mrs. Day concern, because his comment had been if they wanted to put a hole in a wall, or add portables to a site they did not want to have to ask permission of the Town of Palm Beach.

Mrs. Smith asked if there was any other member of the public who would like to speak to this issue?

There were none.

Mrs. Smith commented that the School Board was overlooking the Town of Palm Beach, since about $44,000,000 had been given to the School Board, and as a courtesy they could have been present for the designation process.

Mr. McLendon questioned trying to designate so much, as well as the fact that the east side complex was adjacent to the Town of Palm Beach Recreation Department, and he presumed that if this was landmarked that it could have a negative impact on expansion of the Recreation Department.

Mr. Randolph said that the Town would be subject to the jurisdiction of the Landmarks Commission.

Mr. Shaw commented that this building was a prime example of how the Town had been able to accommodate itself within the Landmark Ordinance.

Mr. Frank noted that the Landmarks Preservation Commission was an architectural review commission and the use of the site and the property would be controlled by the Zoning Ordinance and landmarking of the school would have no effect on the overall zoning of the site.

Mr. Wyett believed that public property had been landmarked before in that the bridges were landmarked, and the school represented what Palm Beach was all about, and landmarking the property would prevent any major changes.

Mrs. Smith asked if there was any member of the public that would like to speak to this issue?

There was none.

Mr. Randolph interjected that the School Board had taken the position that the Town did not have jurisdiction over their property to designate it as landmarked. He added that he differed from that opinion, as their argument was based on a State Statute which indicated that nothing could be done which would preempt the State Building Code as it related to their property. However, Mr. Randolph added, the position of the Town was that did not necessarily mean that zoning regulations could not be placed on the property and the Town considered landmarking a zoning regulation.

Mr. McLendon asked Mr. Moore, Director of the Building & Zoning Department, if the School Board wanted to add to the building at this point, would they have to come to the Town for a building permit, or were they exempt?

Mr. Moore replied that they were certainly exempt from that because they operate with the Uniform Building Code mandated by the State Legislature, and the issue of them obtaining building permits would be moot as far as the Town was concerned. However, there was litigation in this area with the School Board, in which it had been determined that they would be subject to zoning. They had come to the Town before on a voluntary basis for architectural review of certain matters, and had been cooperative in the past.

Mr. Shaw made a motion to approve Resolution 10-95 for the landmark designation of the Palm Beach Public School at 240 Coconut Row and all of the associated buildings based on the Criteria A and Section D. Seconded by Mr. Wyett.

Mr. Randolph read the resolution:

RESOLUTION 10-95

> A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOW AS CHAPTER 16, ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call the motion carried unanimously.

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

VII. APPROVAL OF MINUTES OF FEBRUARY 24, 1995, MARCH 1, 14, AND 30, 1995, AND APRIL 18, 1995

VIII. LICENSES AND PERMITS

A. Alcoholic Beverage Licenses

1. Application for a New 2COP Alcoholic Beverage License by Mr. Dana Dribben for Royal PW, Inc. d/b/a Cucina Dell' Arte at 257 Royal Poinciana Way

Mr. McDonald made a motion to approve the Approved Agenda. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

<u>REGULAR AGENDA</u>

IX. COMMITTEE REPORTS

A. Report of the Public Safety Committee Meeting of April 25, 1995 -

<u>REPORT OF THE PUBLIC SAFETY COMMITTEE MEETING</u>

HELD ON APRIL 25, 1995

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order at 1:05 p.m by Chairman Allen S. Wyett. On roll call, Chairman Wyett and Committee Member Lesly S. Smith were found to be in attendance. Other Elected Officials attending were Councilmen Leslie A. Shaw and Samuel C. McLendon. Others attending the meeting were Town Manager Robert J. Doney; Town Attorney John C. Randolph; Fire-Rescue Chief Vincent K. Elmore; Assistant to the Town Manager David F. Jakubiak; Planning, Zoning & Building Director Robert L. Moore; Police Department Major Michael S. Reiter; Risk Manager Barbara Martinuzzi; Parking Control Manager Henry Marchman; and Town Clerk Mary A. Pollitt.

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

III. CONSIDERATION OF ON-STREET VALET PARKING ISSUES AND POTENTIAL TOWN REGULATIONS: The Committee considered legal, technical, enforcement, and other issues regarding the Town's right to regulate public and private parking spaces related to the valet parking issue, along with valet parking ordinances from other municipalities and the comments of Mr. Doney, Mr. Randolph, Major Reiter, Mr. Marchman, Mr. Moore, Councilman Shaw, Councilman McLendon, and residents William Buckley of 151 Seaview Avenue and Nicoleta Watson of 170 Barton Avenue. IT WAS THE RECOMMENDATION OF THE COMMITTEE TO ADVISE THE COUNCIL THAT ANOTHER COMMITTEE MEETING WILL BE SCHEDULED TO STUDY THE CURBSIDE VALET PARKING SEPARATELY FROM THE OTHER CONSIDERATIONS SO THAT AN ORDINANCE OR OTHER REGULATIONS REGARDING CURBSIDE VALET PARKING MAY BE IN EFFECT BEFORE NEXT SEASON. At the end of the summer, the Council will receive the restaurant report for the 1995-96 Zoning Season and at that time, additional aspects may be considered during the 1995-96 Zoning Season, such as the shared parking provisions which will be re-considered.

IV. ANY OTHER MATTERS: There were none.

V. ADJOURNMENT: The meeting was adjourned at 2:45 p.m.

PUBLIC SAFETY COMMITTEE

ALLEN S. WYETT, COMMITTEE CHAIRMAN

LESLY S. SMITH, COMMITTEE MEMBER

Mr. Wyett stated that the Committee had reviewed the valet parking situation during the Public Safety Committee Meeting of April 25, 1995. It had been decided that the Committee needed more time to evaluate the issue, therefore, another meeting had been scheduled.

Mr. Shaw made a motion to accept the Public Safety Committee Meeting Report. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

B. Report of the Water Committee Meeting of April 28, 1995 -

REPORT OF THE WATER COMMITTEE MEETING HELD ON APRIL 28, 1995

I. CALL TO ORDER AND ROLL CALL: A meeting of the Water Committee was called to order by Chairman Samuel C. McLendon at 10:00 a.m. on April 28, 1995, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Allen S. Wyett were found to be in attendance. Other Elected Officials attending for all or part of the meeting were: Mayor Paul R. Ilyinsky, President Lesly S. Smith, and Councilman Leslie A. Shaw. Others attending the meeting were: Town Manager Robert J. Doney, Town Attorney John C. Randolph, Assistant Town Manager Peter B. Elwell, Director of Public Works Albert P. Dusey, and Town Clerk Mary A. Pollitt.

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

III. WATER SUPPLY MATTERS

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

The Committee members, Staff and Town Attorney Randolph reviewed the "Legislative Draft" of the Proposed Agreement for the Franchise Agreement with the City of West Palm Beach dated April 25, 1995. After suggesting language changes through the body of the document and discussing a number of issues including the surcharge and the percentage of funds that should be allocated to be reinvested into the system, the term length of the agreement, and the possible purchase of the water distribution system, Chairman McLendon requested Mr. Elwell to incorporate the suggested changes into the draft agreement.

The next meeting for the Water Committee was scheduled to be held May 16, 1995, at 10:00 a.m.

Mr. McLendon will schedule a meeting with Mayor Nancy Graham and her staff after a summary report of the last meeting held between the Town of Palm Beach and the City of West Palm Beach is provided to Mayor Graham. The draft of the franchise agreement will not be presented to Mayor Graham until the Town Council has approved it.

Chairman McLendon mentioned that he would schedule an official meeting with Hutcheon Engineers regarding the Irrigation Water Report, but that meeting would not be scheduled until the franchise agreement with West Palm Beach has been prepared for submittal to Mayor Graham.

IV. ANY OTHER MATTERS: There were none.

V. ADJOURNMENT: The meeting was adjourned at 12:10 p.m.

WATER COMMITTEE

SAMUEL C. MCLENDON, COMMITTEE CHAIRMAN

ALLEN S. WYETT, COMMITTEE MEMBER

Mr. McLendon stated that there is an ongoing attempt by the Water Committee to address contract issues with the city of West Palm Beach. The Committee had gone through most of the items, with a few additional things to be addressed which would be handled in another meeting to be scheduled today.

Mrs. Smith asked Mr. McLendon what the time schedule was for the Committee meeting?

Mr. McLendon replied that they had intended to have a Committee meeting next week, and then present it to the Town Council at the June meeting.

A meeting date for the Water Committee was set for Thursday, May 18, 1995 at 10:00 A.M.

Mr. Shaw made a motion to accept the Water Committee Report. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

X. OLD BUSINESS

A. Appointments

1. Code Enforcement Board - Two Three-Year Terms to Expire April 1998 (Deferred from April 11, 1995)

Mr. McDonald asked Mr. Moore about the lack of attendance of members of the Code Enforcement Board.

Mr. Moore responded that he did not know exact reasons behind the lack of attendance, although some of them had submitted letters of excuse.

Mr. Moore, Director of Building and Zoning, noted that there were two openings on the Code Enforcement Board. The Board was governed by State Statues.

Mr. Shaw suggested deferring this matter so that attendance issues pertaining to the Code Enforcement Board can be resolved.

Mr. Wyett nominated John Matich, Irving Wolfe, Robert Gottfied, and Leon Schwartz to the Code Enforcement Board.

Mr. McDonald nominated Leon Schwartz to the Code Enforcement Board.

Mr. Moore pointed out that both Mr. Sory and Mr. Steele had indicated their willingness to serve again.

Mrs. Smith passed the gavel, and nominated Mr. Sory and Mr. Steele to the Code Enforcement Board.

Mrs. Pollitt repeated the names of the nominees: Irving Wolfe, Leon G. Schwartz, John G. Matich, Robert W. Gottfried, Bailey Sory, III, and W. Trent Steele.

Mrs. Smith clarified that Mr. Wolfe and Mr. Matich were currently alternate members whose terms were not up until 1996. She felt that Mr. Wolfe and Mr. Matich should automatically be moved up.

Mr. McLendon made a motion to move the two alternates up to full members and then vote on two new alternates. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

Mr. Shaw made a motion that reconsideration of the previous vote take place. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

Mr. Shaw then made a motion that this matter be deferred until the Council meeting in June. Seconded by Mr. McLendon. On roll call the motion carried 3/2 with Mr. Wyett and Mr. McDonald dissenting.

2. Zoning Commission - Two Three-Year Terms to Expire February 1998, One Two-Year Term to Expire February 1997, and One One-Year Term to Expire February 1996 (Deferred from February 14, 1995) -

Mr. Wyett made a motion to defer this item until the next Council meeting. The motion died for lack of a second.

Mr. Moore pointed out that Zoning Commission members must be appointed because there would be work ongoing during the summer. There would be one Commission during the month of November, with the ability to bring back the Commission at any time after that meeting for any other subject.

Mr. Shaw nominated Martin Richmond for reappointment, Michele Clarke Royal, Jack Pyms, and Rita Taca. For clarification, Mr. Shaw added that one member had left the Board, asking to have his name withdrawn, and the other had already served two full terms and was no longer eligible. Therefore, there was no question of reappointment of members leaving the Zoning Commission.

Mr. McLendon nominated Ted Metzger and Charles Henderson.

Mr. Wyett nominated Mrs. Eileen Curran.

Mr. Wyett made a motion to move James Bertles up from alternate to full member of the Zoning Commission. Seconded by Mrs. Smith, who passed the gavel. On roll call the motion carried 4/1, with Mr. Shaw dissenting.

Mrs. Pollitt read the names that had been put into nomination: Martin Richmond, Michele Clarke Royal, Jack Pyms, Rita Taca, Theodore Metzger, Charles Henderson, and Eileen Curran.

B. Other

1. Consideration of the Lake Worth Inlet Sand Transfer Plant - Status Report on Restoration by Palm Beach County (Continued from April 11, 1995) -

Mr. Richard Walesky, Director of Environmental Resources Management for Palm Beach County, addressed the Town to give a brief update on the status of the restoration of the Lake Worth Inlet Sand Transfer Plant. The Plant itself actually had two aspects associated with it, involving two separate budgets. The first was the Plant itself, the internal pumping, the electric, the engine, etc. The second was the piping itself, that portion that went underneath the Inlet and would discharge sand south of the south jetty.

Mr. Walesky continued that the Plant was almost finished right now. Competitive bids had been taken for the engine. Monies were lined up in the budget, and the engine would be ordered soon.

In terms of the piping timelines, Mr. Walesky stated that completion of the final feasibility study was near, and two alternatives had been focused on that would go into the design and be competitively bid. The easements were also being worked on, and the actual design activity would start within the next ten days, with exception of completion by July 31, 1995. The bid process should take about a month, and sometime in early September a decision will be required that would allow the contract for the actual piping to be let. Once that contract was let, it would take approximately two weeks for the vendor to get the equipment on the site, and about 4-5 weeks for actual construction. The Plant should be ready to run during the first week of November.

A budget had been handed out to the Town Council, showing where monies were being spent in regard to this project.

Mr. McLendon commented that he did not understand why there had been such a long delay in designing the pipeline.

Mr. Walesky replied that there had been problems with the actual consultant who was going to do the job; there had been insurance problems; there had been some holiday delays. The feasibility study did all of the geotechnical work, and a lot of work had occurred to date on this.

Mr. McLendon asked what was included in the dollars shown for the engine, other than the engine itself.

Mr. Walesky replied that it was the engine and installation.

Mr. McLendon asked what the two alternatives were on the pipeline design?

Mr. Walesky responded the two designs were to look at the point of landfall. Initially, it had been planned to follow the path of the existing pipe, and that came out onto the jetty itself, overhang the jetty, and simply discharge sand into the water. It was felt that a better design would be to move that on a diagonal, and actually landfall around the mean high water line. Mr. Walesky said it could be built a lot cheaper there, and drillers mud could be better controlled. The two options involved where it ends up on the jetty--one several hundred feet out on the jetty, and the other closer to where the jetty meets land.

Mr. Dusey addressed the Town Council, stating that getting the design process started took a long time, and there had been many problems. Town staff had been trying to proceed with the pipeline landfall at the existing location. It was the belief that DEP said that reconstruction of the existing facility could take place without any permit or any delay. Although Mr. Walesky had expressed an interest in moving the landfall more landward, Mr. Dusey felt there were two issues that the County needed to address:

1. Does it change the permitting status. Will permits be necessary from DEP?

2. Who owns the land on which the pipe is going to fall and is there permission to place it there.

Mr. Dusey said that the County was addressing these concerns. The two alternative locations offset two alternatives with respect to one pipe and two pipes. It had been the intention, originally, to have two pipes, so that if one clogged it could be cleaned. The feasibility study showed that the original estimate from the County was optimistic, and that those costs were substantially higher. There was a potential possibility of getting State funds to help with the pipe construction.

Mr. Shaw asked what the justification was for looking at a dual piping system?

Mr. Walesky replied that the Plant had always operated with two pipes, and adding two pipes was a decision for the Town Council. With two pipes the same amount of engineering design would take place, along with the same mobilization costs.

Mr. McLendon asked how the design was being paid for, on a percentage of construction, or time and material?

Mr. Walesky replied that it was being paid for on time and material. Coastal Planning and Engineering had been used for beach related activities, with the use of a sub-contractor, Dames and Moore, who would do most of the geotechnical work on it.

Mrs. Smith asked Mr. Walesky if he would come to the Town Council meetings each month in order to give progress reports on the Plant?

Mr. Walesky responded that he would be happy to do that.

2. Consideration of Selection of Decorative Tile for Reconstructed Steps at the Entrance to the Police Facility -

Mr. Bowser, Town Engineer, addressed the Town Council, stating that the Town had approached the Landmarks Preservation Commission for tiles for the steps at the entrance to the Police Facility, and that he would show the Town Council three selections of tiles. Tiles would be put on alternate runs of the steps. Recommendations were that all three be approved to be used on the steps.

Mr. McDonald made a motion to approve the tile samples presented. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

XI. NEW BUSINESS

A. Ordinances

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

Mr. Randolph read the ordinance:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 14, DIVISION 3 OF THE TOWN CODE OF ORDINANCES, ENTITLED SEA TURTLES,BY CHANGING VOLUNTARY GUIDELINES TO MANDATORY REGULATIONS, AND BY ESTABLISHING A SCHEDULE OF FINES FOR VIOLATIONS, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Mr. Wyett moved that the Ordinance amendment be accepted. Seconded by Mr. McDonald. On roll call the motion carried unanimously.

B. Bid Awards

1. Sealed Bid No. 95-06 - Underground Traffic Control Conduit - Consideration of Resolution No. 11-95 -

Mr. Dusey addressed the Town Council, recommending approval of the Underground Traffic Control Conduit Project award to American Lighting and Signalization, Inc., for the base bid amount of $35,000. This was underground wiring for the traffic light system, replacing wiring that was placed thirty years ago.

Mr. Wyett made a motion for approval. Seconded by Mr. McLendon.

Mr. Randolph read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH,PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO AMERICAN LIGHTING AND SIGNALIZATION, INC., FOR THE 1995 UNDERGROUND TRAFFIC CONTROL CONDUIT.

On roll call the motion carried unanimously.

Mr. Shaw questioned the wording in the Sea Turtle Protection Ordinance--in the first paragraph it had stated "no artificial light," and it had been his understanding that the lighting should be approved and acceptable by DEP. There was no indication of this in the Ordinance.

Mr. Shaw made a motion to reconsider the Amendment to the Sea Turtle Protection Ordinance. Seconded by Mr. McLendon. On roll call the motion carried 3/2 with Mr. McDonald and Mr. Wyett dissenting.

Mrs. Smith announced that the Town Council was now going back to discuss item XI. A. 1. Ordinance No 6-95 - Amendment to the Sea Turtle Protection Ordinance.

Mr. Shaw stated that he was interested in adding the phrase "unless approved by DEP" after "all oceanfront property owners are required to ensure that no artificial light..."

Mr. Peter Elwell, Assistant Town Manager, addressed the Town Council, stating that he felt Mr. Shaw was right and that three or four words could be added to the Amendment. The reason that had not been done was to avoid the incorporation of language that would be too specific, as the State was using very general language at this time.

Mr. McLendon made a motion to include the wording "unless specifically approved by DEP". Seconded by Mr. McDonald. On roll call the motion carried unanimously.

The ordinance would come back before the Town Council for a second reading.

2. Sealed Bid No. 95-09 - Two Replacement Six Cubic Yard Garbage Trucks -

Mr. Dusey addressed the Town Council, stating that small garbage packers were being replaced, and the bidding went fairly well with a recommendation of award to Kenworth of South Florida, in the amount of $69,202.80 for two trucks.

Mr. McLendon asked Mr. Dusey if this purchase would be affected by rescheduling garbage pick-up?

Mr. Dusey replied it would depend upon what type of rescheduling was being considered. There were eight trucks, and these were the first two being replaced, and if less trucks were needed then some would not be replaced in the future.

Mr. Shaw asked if the trucks would be usable in a recycling operation?

Mr. Dusey replied only for newsprint. These trucks were packers and could not be comingled with glass, plastic, etc.

Mr. Shaw made a motion for approval of Bid No. 95-09 for two replacement six cubic yard garbage trucks. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

C. Other

1. Consideration of Request for State Funding for FY 1995/96 from Florida Department of Environmental Protection for the Lake Worth Inlet Sand Transfer Plant -

Mr. Dusey addressed the Town Council, stating that several months ago staff was authorized to file an application for funding for the implementation of the Inlet Management Plan program for FY97. The Town coastal engineering consultant, Applied Technology and Management, found that DEP had approved funding for projects on a first come-first serve basis, and advised the Town that if we moved quickly it was possible that some State funding would be available for a part of our plan. What was being considered was the pipe crossing, because it was coming up and DEP would probably rather spend money on actual construction than on plans. Mr. Dusey was now requesting authorization to have the consultant talk to DEP to determine if they will consider funding money starting in July, and also to authorize the Town Manager to sign the applications on behalf of the Town should they agree to take applications.

Mr. Wyett made a motion to approve authorizing the Town's consultant to talk to DEP regarding funding to start July 1, 1995, and authorizing the Town Manager to sign the applications on behalf of the Town if DEP accepted applications. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

2. Consideration of Request for De-designation and Permission to Remove an Historic Strangler Fig Tree at 356 Worth Avenue by Mr. Donald Gilman, The Everglades Club -

Mr. Dusey addressed the Town Council, stating that every year the Town's horticultural consultant inspects the historic or specimen trees for condition and makes recommendations regarding the care of those trees. The tree in question was on the golf course property and was in poor condition and recommendation was being made for de-designation.

Mr. Ugi addressed the Town Council, stating that there were several areas of decay in the tree, and it was about one-quarter of the size it had been when originally designated. The tree was located at 356 Everglades, right near the entrance.

Mrs. Smith asked the purpose of de-designating the tree?

Mr. Dusey replied that the tree was no longer of specimen quality and did not deserve to be on the Town's list, and that trees did die or become damaged.

Mr. Doney remarked at the June 13, 1995 Council Meeting there was going to be a resolution that the Town Council would be asked to consider, which identified all the historic and/or specimen trees, recorded in the public records of Palm Beach County. The de-designation aspect was to then have the tree removed from the public records designation list.

Mr. Wyett moved for approval of the de-designation of the Strangler Fig Tree at 356 Everglades Avenue. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

3. Consideration of Request for De-designation and Permission to Remove an Historic Redbay Tree at 448 North Lake Way by Mrs. Eileen Fairchild Burns -

Mr. Dusey addressed the Town Council, stating that this tree was almost destroyed in a storm and now only had two upright branches, with the main trunk broken off about ten feet from the ground. It no longer served its purpose as a specimen tree.

Mr. McDonald moved for approval of de-deisgnation of the Redbay Tree. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

Mr. Shaw asked about the tree on Lagomar Road. Mr. Dusey responded that the last action on that was that an agreement was sent to each of the owners who had indicated willingness to participate.

Mr. Doney believed that two additional responses were needed in order to proceed. An additional letter would be sent out if these were not received. Letters had gone out to each of the property owners involved, asking if they would be willing to share in the cost. Letters had been sent twice now, as people had been out of town, and it was now anticipated that those who had been willing to participate would be contacted as to proportionate shares.

Mr. Elwell noted that all but one of the property owners had returned a signed contract. When that is received the Mayor can then execute all of them in order to proceed.

4. Consideration of Request by Francis X.J. Lynch, Esquire on behalf of Mrs. Wynne S. Ballinger, 235 Banyan Road to amend Section 22-5 (Parking Time Limit on Private Property) of the Town Code of Ordinances -

Mr. Frank Lynch, on behalf of Mrs. Wynne S. Ballinger, addressed the Town Council, stating that Mrs. Ballinger was requesting that the Town amend the Ordinance concerning the parking of recreational vehicles on private property to allow her and other members of the Town to park these vehicles on their own private properties, as long as the properties were site screened. Mr. Lynch continued that Mrs. Ballinger had owned this particular property for five years, and during that entire time she had the recreational vehicle. It had been site screened and remained site screened. A vehicle of this type was very expensive and Mrs. Ballinger would prefer to store it on her property, rather than on an off-island location where it may be subject to being vandalized. There had been no complaints from her neighbors regarding this.

Mr. Robert Moore, Director of Planning, Zoning and Building addressed this issue, stating that the matter was before the Code Enforcement Board now for violation of the section of the code that referred to the parking of motor homes and trailers in the Town. If changes were going to be considered in order to permit motor homes, they should be set up in such a way that the motor home or trailer could not be seen by anyone, whether it be a neighbor, or a street traveler.

Mrs. Smith asked if a Code Enforcement Board had already heard this matter?

Mr. Moore responded that the hearing was held.

Mr. Lynch noted that it was his understanding that the matter would be postponed, pending the Town Council decision of Mrs. Ballinger's request.

Mrs. Smith asked if the code now included recreational vehicles, trailers, and how exactly did it read?

Mr. Doney replied that Section 22-6, stated that it shall be lawful to park any motor trailer within the Town in a closed building for any period of time. Section 22-5, read that it shall be unlawful to park any motor trailer on any privately owned property within the Town for a space of time longer than 2 days. Under Section 22-1, a recreational vehicle was defined--any vehicle with or without motor power adapted to human habitation either for the purpose of sleeping, or eating, or preparation of meals, or both, or designed or adapted to use as an office or for the purpose of carrying on business.

Mr. McLendon moved that the request be denied. Mr. McDonald seconded the motion for discussion.

Mr. McDonald remarked that it would not be appropriate to get involved in what was visible or not visible from the street, so he was prepared to vote against changing the ordinance.

On roll call the motion carried unanimously.

5. Recording, Transcribing, and Tape Copying Equipment - Request for Authorization to Purchase from Undesignated General Fund Balance -

Mrs. Pollitt, Town Clerk, addressed the Town Council referring to her memorandum of April 24, 1995 requesting authorization for the purchase of recording, transcribing, and tape copying equipment. The reasons for her request were several, in that not only the Town Council, but all Town committees and commissions used the equipment in the Town Council Chambers. In April the Town Council itself had used the equipment for 23 hours. In addition, the current machine was the only unit for recording all of the meetings as official Town records. The machine was eight years old, and if it was not working there would be an immediate problem. Additionally, transcribing equipment was needed for peak conditions, which could involve seven people transcribing. The reason for bringing this item up now was that Lanier was offering a savings of $618.00 if four units were purchased together, which would included a transcriber/recorder, two new transcribers, (one in the Town Clerk's office and one in the Personnel Dept.) and a tape copying machine. The tape copying machine could be used to copy the four-track tapes onto tapes that could be listened to on any standard tape recorder, and would be a great time saver for the Town Clerk's office. Cost recovery could be accomplished through a charge for the tapes copied. Additional equipment requested in the memorandum included equipment in the amount of $1,400.00 for the conference room in the back of the Town Council Chambers. The total amount was $8,461.80.

Mrs. Smith asked if staff time had been included in the computation for the tape copying charge?

Mrs. Pollitt replied negatively, and noted that any State laws would have to be followed, which was an issue that she was looking into.

Mr. Wyett pointed out that the Voter's Registration office charged $25-$17 per tape copied for election purposes.

Mr. Randolph noted that other municipalities could be looked at as to what they would charge for copying, however, he did not believe that a charge was dictated by the State.

Mr. McDonald commented that the reformatter seemed to be mainly for the benefit of third parties.

Mrs. Pollitt replied that the reformatter had other applications, such as for department heads, Mr. Doney, or whomever might want a tape, since the tapes were not allowed out of the Clerk's office. For example, if Par III had a question about what went on in a meeting, as they did recently, the tape could be copied, saving time and effort. The tape could then be taken out of the Clerk's office and listened to by the interested party.

Mr. McDonald asked how many requests for copies of tape were received?

Mrs. Pollitt replied that right now there are not too many requests from departments because until now it has not been feasible, but the public requests would amount to at least once weekly.

Mr. McDonald stated that the machine was then mainly for the benefit of third parties, and if that was the case then he wanted to be able to recover the cost of the machine over its life. He suggested that the purchase of the machine be approved, with the understanding that a charge be made to people using the machine. Mr. McDonald asked when a decision would have to be made in order to take advantage of the discount.

Mrs. Pollitt replied that the discount would be available all summer, but one of the reasons for requesting the machine now was that the staff was having an internal problem with machinery use as there were not enough machines presently. Machines were being shuffled and moved, and if something would happen to the machine used to record and transcribe Town Council Minute that would create a problem.

Mr. McDonald felt that the charge of $5.00 was too low, as he wanted the Town to be able to recover the costs.

Mr. Doney commented that the tape copier portion of the request could be separated out, and if the Town Council approved the rest from the Undesignated General Fund balance, recommendations would be reported back on June 13, 1995 as to charges for the tapes for consideration of the Town Council.

Mr. Wyett recommended that the whole package be approved, with a price set at a later time for copying of tapes. The price of the copying had nothing to do with buying the equipment if it was needed. He added that much too much time was being taken up over nothing.

Mr. McDonald agreed with Mr. Wyett, seconding the motion, while remarking that he was interested in charging what it would take to recover the costs of the machinery.

Mr. Randolph intervened, clarifying that the way it had been proposed was that the purchase be made, then recommendation be made from staff as to the charge for use of the machinery.

Mr. McDonald replied that he would support that, with the understanding that staff would come back with a figure that would help recover costs of the machinery.

Mr. Shaw asked if discounts offered for purchasing additional equipment would be honored if the equipment was purchased at a later date.

Mrs. Pollitt replied that all purchases must be completed in order to qualify for that particular discount by October 1, 1995, and added that even though there were other machines available, she had considered hook-up and other compatibility factors in order to make the best determination.

On roll call the motion carried unanimously.

6. Consideration of Request for Authorization to Purchase Electric Greensmower from Golf Course Fund Balance -

Mr. Doney noted that Mr. Dytrych was present to address the Town Council concerning this matter, and that back-up material included a memorandum from Mr. Bitzer, Director of Recreation, dated May 1, 1995, wherein the request was made for an electric Greensmower from the Golf Course Fund Balance. Based upon the investigations of Mr. Bitzer, Mr. Dytrych and Ms. Tannone it was felt that the greensmower would address the concerns previously raised by Mr. Spitalny at the April Town Council Meeting.

Mr. Dytrych addressed the Town Council, stating that the electric greensmower was something that could be included in the 1996-97 budget year, so it was not something specifically needed right now, but it would help alleviate the noise problem in the south quadrant of the course, and was less expensive to operate than the gasoline. Golf course trends were leaning toward the use of equipment that would be environmentally effective. It would cost $.22 per day to operate the greensmower for electricity, with parts being less expensive.

Mrs. Smith clarified that the price was $15,825.00 and was locked in.

Mr. Dytrych agreed with that.

Mr. McDonald stated that in view of the circumstances at the last Town Council meeting he would move for approval of this purchase. Seconded by Mr. McLendon.

Mr. Shaw asked if Mr. Dytrych had figured what the income gain would be, since mowing could now be started earlier?

Mr. Dytrych replied that if the time slots were used, it would allow play of 56 more holes, with a foursome averaging $100.00 per group, amounting to $200.00 per day, $1400.00 per week.

On roll call the motion carried unanimously.

7. Consideration of Beach Erosion Matters

a. Consideration of Memorandum from Public Works Director Dated March 30, 1995, Regarding Town's Comprehensive Coastal Management Plan -

Mr. Albert Dusey, Director of Public Works, addressed the Town Council, stating that the purpose of his memorandum was two-fold: one was to transmit a copy of the Comprehensive Coastal Management Plan to each elected official, and also to describe briefly what was in the Plan and what efforts had been made since the Plan was adopted in 1986. The eight major components were:

1. Replace the Sand Transfer Plant in order to bypass more sand.

2. Extend the discharge of the Sand Transfer Plant approximately 2500 feet south of the inlet and require Corps' dredged sand to be placed in this same area to improve effectiveness of transport.

3. Renourish the Mid-Town public beach to improve that area as well as to provide a feeder beach for downcoast beaches.

4. Endorse the Florida DOT revetment project between Widener's and Sloan's Curve. That has been completed.

5. Maintain the seawalls that are roadway protective. There is a program for that.

6. Maintain or modify only those groins that are presently effective; abandon and remove all others as may be physically and financially practical. There had been some removals at mid-town in the late 1980s.

7. Improve the dune areas between Sloan's Curve and Kreusler Park. Recently the County had come forward with a project which had not been met with acceptance by property owners.

8. Monitor the Town's beach to develop a better data base.

Mr. Dusey remarked that he would not go over all that had been done, as it was fairly lengthy. The major point he wanted to make about all of it was that the Comprehensive Plan was subject to amendment and was very flexible. It was a Plan that set out goals and objectives that were not cast in stone and could be modified. Obviously, the Town Council had modified the Mid-Town concepts in 1992. The removal of the groins at Mid-Town occurred even prior to the Plan being completed, as there had been a program available funded by the State for that purpose, because the State was in favor of groins at that time. The point Mr. Dusey was trying to make was that the Plan was a living plan that could change based on the needs of the day.

Mr. McLendon asked who had requested the Sloan's Curve revetment project, and how long it had taken to be approved?

Mr. Dusey replied that he was not employed by the Town at that time, but he believed that the area had been washed out in a Thanksgiving Day storm in 1984.

Mr. Doney added that it had been in 1984, but that the area had washed out several times prior to that in the 1970s and had resulted in several emergency shut-downs of the easternmost northbound lane.

Mr. Dusey continued that he believed the Town had gone to DOT and asked for protection of the road.

Mrs. Smith said that the problem had started back in the early 1970s and at that time the County, the Town, and the residents were going to split the costs, amounting to $1,800,000, divided three ways. The residents in the southend at that time opposed the money being spent by them. When the County and the State heard that the residents opposed it, they withdrew the funding.

Mr. Dusey explained that the point of his memorandum of March 30, 1995 was to let the Town Council know that there was some work done in the area in 1987 that took a comprehensive look at the Town's shoreline, its structures, the conditions of those structures, the needs of the systems from a coastal engineering standpoint, and a master plan was developed on how the Town should approach those problems on a systematic basis.

Mr. Wyett suggested re-writing Item 6, as he believed it was currently out of date and written at a time when groins were in disfavor. He felt it may be a good idea to re-write it, and modify it to the point where groins are wanted. Mr. Wyett proposed that residents who owned beachfront property of the proper procedure to obtain permits to repair and renovate their groins. He had spoken to a large number of them, and most of them were ignorant of how to go about these things, and he thought it important that information be made available to them, because if they would be willing to pick up the costs of putting groins in it would be to the benefit of the Town.

Mrs. Smith asked Mr. Dusey if the Town's interest in restoration of the groins would be incorporated into the Plan?

Mr. Dusey commented that he believed it would be very appropriate for the Mayor and Town Council to formally take a position regarding the issue, so that the Plan could be so amended and the matter could be pursued.

Mrs. Smith noted that starting with Item 1, replacement of the Sand Transfer Plant - that was underway and currently should be completed by November 1, 1995. Item 2 would involve discussion of the length of the pipe. Item 3 would address the question of the Mid-Town beach. Item 4 was done. Item 5 was done. Item 6, concerning the groins, was currently being readdressed, and some conclusions would be made in the next three months. Item 7, concerning the dune areas, is also being looked at. Residents have said they are not in favor of these projects, but it was very hard to show disfavor for a project and at the same time want the beaches renourished. Item 8 was currently being discussed in various meetings. Mrs. Smith felt that the Plan was being updated, and that the Council would be addressing the specifics of the various issues in the next several months.

Mr. McLendon asked if there had been any amendments to the Plan after the adoption in 1986?

Mr. Doney commented that when the Plan was accepted in 1986 by the Town Council it was used every year by the Public Works Department, Town Staff, and Town Manager's office in developing the Capital Improvement Program for the Town. Each year when the budgetary process took place there was a five year plan identifying coastal measure that needed to be implemented. Thus, through review of the budget process and the adoption of the first year of a five-year Capital Improvement Program, the Town Council was dealing with the Plan in a policy fashion. It was similar to the long range Public Works Plan. It was used as a reference tool, and when there were street light problems, utility problems, etc., it was used as a data base and resource to do planning for capital improvement programs and proposed budgets, along with recommendations to the Mayor and Town Council.

Mr. McLendon noted that it would seem appropriate that the Plan should be amended to be made more current.

Mr. Doney replied that in 1986 the Plan had cost about $90,000, and was a tremendous, exhaustive process. He felt it would be very valuable for staff to update the recommendations, however.

Mr. McLendon suggested that if the Town Council could be apprised of changes that had taken place since 1986 it would be helpful.

Mr. Shaw asked about Item 6, inquiring if any groins had been maintained or modified since the Plan had been adopted?

Mr. Dusey replied that after the removal of the groins at Mid-Town in 1986 the Town did not have the resources to follow up on that particular program because other things were being pursued that were felt to be more important.

Mr. Wyett remarked that a summary of the Plan should be done so that future Council members would know exactly where things stood in the year 1995-96. Mr. Wyett moved that Mr. Dusey be thanked for the report and reconsideration of beach issues would be done at the meeting of May 16, 1995.

Mr. McDonald seconded the motion.

On roll call the motion carried unanimously.

b. Consideration of Proposed Shore Protection Commission

Mr. McDonald spoke to this issue, stating that the Commissions of the Town are very valuable, and that he saw shore protection as just as important as ARCOM or Landmarks. He had sat at a meeting recently where discussion had taken place about removing a reef that had cost $2,000,000, costing $900,000 to remove. He recognized that there was not one person on the Town Council today that had voted for that reef, noting the lack of continuity of Town Council members. He believed that having a commission, such as ARCOM or Landmarks, that would spend their time looking at the issue of shore protection, providing input to the Town Council was very important. He favored formation of such a Commission. He stressed that he was not criticizing former Town Councils or the Town Staff, but wanted a commission that could concentrate on just one thing, rather than the myriad of issues facing the Town Council and Town Staff. He suggested that a commission be established, with the primary responsibility being shore protection issues.

Mr. McLendon agreed that the issue was very important, and that the Town should take advantage of the talent available. He commented that he was leaning in the direction of workshop meetings, however, rather than establishing more committees.

Mr. McDonald agreed with Mr. McLendon while remarking that he felt the workshop was a "band-aid" approach, since new Council members would be involved in upcoming years.

Mayor Ilyinsky commented that Mr. Barnes from the Civic Association had suggested that organization may want to form a beach committee.

Mr. Barnes addressed the Town Council, stating that his organization had been interested in seeing a Committee or a Commission for many of the reasons stated by Mr. McDonald. Protecting the shoreline had always been a high priority and was now reaching an emergency status. There was a need for a group that would take charge and implement the plans and studies for the entire shoreline. The Civic Association was basically in favor of anything that would accomplish shoreline protection, and feel that a Commission may be the way to go, since the Town Council already had so many issues to address. Mr. Barnes felt that there were vast resources in Palm Beach of residents who may be able to help in this field, and perhaps their expertise could be drawn upon.

Mrs. Smith noted that the Comprehensive Coastal Plan had just been discussed. Yesterday, three hours had been spent on the issue of the PEP Reef. The Sand Transfer Plant had been discussed. She asked if Mr. Barnes was saying that the Town Council should not be involved in doing any of these things until a Shore Protection Commission would review all of the material and then come back to the Council? She questioned that perhaps this was a "do nothing" approach that voters would not approve.

Mr. Barnes replied that the Town Council would certainly be the decision and policy making body, but that he thought a commission could make recommendations to the Town Council in order for them to make decisions, thus streamlining the process.

Mr. Wyett added that he thought Mr. Barnes was approaching the issue with the feeling that total dedication to one area of major on-going problems concerning the beaches would be the responsibility of such a commission.

Mayor Ilyinsky remarked that a number of years ago a group had been established called a Long Range Financial Planning Committee, consisting of wonderful people, but it had developed into an unmitigated disaster. Forming more and more committees was not the answer to complex issues that were difficult to understand.

Mr. McLendon asked Mr. Barnes if the Civic Association had a Beach Committee would they have the benefit of talent that would not appear at normal Council or workshop meetings?

Mr. Barnes replied that many residents are involved with the Civic Association, and he is aware of some residents who would be very interested and willing to help.

Mr. McLendon asked if they would be more willing to work on a committee as opposed to coming and giving input at a Town Council Workshop Meeting?

Mr. Barnes replied that in his personal opinion they would be more willing to work on a committee, because he felt that opinions would be given more weight and credibility.

Mrs. Smith said that she would like to see the input from members of the Civic Association before a Town Council.

Mr. Barnes responded that Civic Association members would continue to do that, however, they would prefer a commission in this matter.

Mr. Shaw commented that the concern in creating a commission was that traditionally all commissions had specific issues that would come to a close within a reasonable period of time. Shore Protection was something that would be ongoing, and in the long run the Staff could be involved in the implementation of ideas. If the Civic Association or any other group wanted to formulate its own group to look at ideas and present them to the Town Council in an effort to work together. Ultimately all recommendations would come back to the Town Council and presentation of recommendations and ideas would be valued by the Town Council. He would be happy to see a concrete plan come from any group or individual.

Mr. McDonald clarified that he did not see this as a Civic Association committee and he had not intended it to be such. His intention had been that a commission could be developed that would volunteer time at no charge to the Town, with the Town Council retaining final authority. He realized that staff time and other time may be involved, but those were "soft costs" when compared to the ultimate value. Mr. McDonald explained that the Town Council would continue with making decisions and holding meetings because an emergency situation existed. The Council could not wait for the appointment of a commission, and that was not what his motion was about. He would be willing to compromise the committee, giving it a life of one year, and if it has no positive effect then it would be finished. Mr. McDonald emphasized that the Town Council could change every year and that it was difficult for a member to know everything that was going on concerning the Town.

Mr. Wyett agreed with Mr. McDonald, stating that this was a very complex problem, man against nature, and an on-going Beach Commission would be relevant in providing constant information for the Town Council to act upon, augmenting the activities of the Department of Public Works. He saw only good things coming out of attempting to have such a commission.

Mr. Doney spoke to the Council, stating that he was involved with the Long Range Financial Planning Committee, and the Beach Clean-Up Committee and that many hours of staff time, as well as Town Attorney time went into trying to service those committees. He explained that in the Town Manager's office there were many responsibilities, such as the budget, in addition to many committee and Council meetings. There were day to day responsibilities, in addition to personnel responsibilities that were going neglected because there was no time. Mr. Doney questioned what type of staffing and Town Attorney assistance would be necessary for a Shore Protection Commission?

Mr. McDonald replied that it would be the same as any other Town Commission. Whatever was required by those commissions would be required by this one.

Mayor Ilyinsky said that there was a difference between a committee and a commission, and it must be distinguished.

Mr. McDonald responded that he wanted as many people as possible involved, therefore, he would lean toward a commission.

Mr. Wyett commented that this was a very complex problem and a commission would exchange ideas and formulate considerations for the Town Council. From ideas came solutions, and the Town Attorney would not be needed at these commission meetings, as his aid could be requested as needed. Town Staff would not have to be present at all meetings because a great deal of the meetings would be an exchange of information and ideas.

Mrs. Smith remarked that Mr. Wyett was making it sound more like a workshop, and ideas had been exchanged in 1990 when the Mid-Town Reef had been adopted, as opposed to the beach renourishment. Right now, concrete solutions were necessary for problems that were being handled on an emergency basis. A commission would be strictly structured and would have to conform to Town ordinances and codes, whereas a committee would be more loosely structured.

Mr. Doney noted that from his experience with the committees input from the Town Attorney was involved, meetings needed to be posted and recorded, and information had to be shared which was made available from Town Staff. The demands on staff had been very great, and he was trying to form an assessment of staff time necessary.

Mrs. Smith explained that she did not think Mr. McDonald was not considering having this committee forming until the major projects already underway were accomplished.

Mr. Wyett agreed, stating that the Town Council cannot abandon primary concerns, but still was of the opinion that an ongoing Beach Commission should be very strongly considered by the Town Council. He maintained that staff would be present only when needed.

Mr. Randolph commented that the committee itself could determine what resources were needed. There were ways of accomplishing tasks without necessarily having a lot of people present. For instance, if he was asked to address the Sunshine Law he could do it at the beginning of a meeting, and presuming there were no other legal questions he would not have to be present for the remainder of the meeting. From time to time there may be meetings where attorney attendance would be necessary to handle legal issues. It was a matter of how much support was needed at such meetings.

Mr. McDonald commented that currently shore protection was being managed by crises, and what he was looking for was to have a little more control in making decisions by having a a group responsible to advise the Town Council, with the Town Council making the ultimate decision.

Mr. Shaw stated that in trying to act in a proactive manner rather than in a reactive manner, the Town Council is truly not the final word. There were always budgets to contend with, residents that do not want things done, etc. A prime example was the dune restoration in the southend. There were almost none of the condominiums that were willing to be inconvenienced. Some of the same problems existed in the northend. Mr. Shaw continued that whatever a committee of this nature would come forward with had already been presented. The question was not one of new ideas, but implementing the ideas that had already been presented, while dealing with the many existing constraints.

Mr. McDonald questioned whether a recorder would have to be present at all meetings?

Mr. Randolph replied that technically a tape was not needed, but someone was needed to record the minutes. The Sunshine Law required that minutes be taken of the meeting. He did not recommend that appointed or elected officials take minutes. It should be someone who was trained to take minutes.

Mr. Wyett asked Mrs. Pollitt, Town Clerk, if there was a possibility of supplementing the work necessary to do a report for a committee or commission to satisfy the requirements of the law.

Mrs. Pollitt replied that there would have to be some priorities set, and at the moment there were no additional people available. Temporary services could perhaps be employed.

Mr. McDonald made a motion that the Town Council form a Shore Protection Commission to be comprised of twelve people, at least two-thirds of which must be Town residents, and it would act and function like any other Town commission. It could be sunsetted, or given a one year life, and if it proved to be too cumbersome and unresponsive then it would automatically expire at the end of one year. Seconded by Mr. Wyett.

Mrs. Smith asserted that this was not like any other Town commission. This would be larger. It would also have non-residents on it, which the Town Council had specifically changed regarding commissions.

Mr. McDonald declared that he would be happy to make it all Town residents, and also make it smaller.

Mr. McLendon suggested nine members and three alternates.

Mr. Wyett suggested that in order to be consistent there should be seven members and three alternates.

Mr. McDonald accepted that.

Mr. Wyett asked if the Town Council would appoint the members?

Mrs. Smith mentioned that the Council had not even been able to make reappointments to the Code Enforcement Board today on a long standing commission. She requested that if the motion did pass that it come back to the Town Council with specifications laid out at the next Council meeting, and that everything be in writing. As far as the appointments were concerned she would like to see one person appointed by each member of the Council, in addition to one member from the Civic Association and one member from the Citizen's Association South of Sloan's Curve, making it a representative Town committee. Everyone put on the committee should be a totally qualified person.

Mr. Doney suggested to the Mayor and Town Council that creation of this commission be included as an agenda item for the June 13, 1995 Town Council Meeting, with each Council Member and the Mayor identifying what they see as the duties and responsibilities of this commission.

Mrs. Smith said that the matter would come back to the Council in June for clarification, when each Council Member would present what they feel would be the objectives, goals and results of this committee, as well as when and how often they would meet and costs involved. In addition, at that time, each Council Member would have a nominee for appointment to this commission, as well as a nominee from the Civic Association and the Citizen's Association South of Sloan's Curve.

Mr. Wyett addressed the issue of how members would be appointed to the commission. He felt that it would be more effective to have some advisory people and their qualifications submitted to the Town Council in order to get experts on the commission.

Mrs. Smith suggested having the qualifications submitted to the individual members of the Town Council.

Mr. Wyett replied that he would like to see all resumes submitted, as it was important that the most qualified residents be appointed.

Mrs. Smith observed that Mr. Wyett would like residents of the Town that would be interested in serving on the about to be formed Shore Protection Commission to submit their resumes to the Town.

Mr. Wyett agreed with that.

Mrs. Smith continued that the process for selecting the Commission members would then be reviewed by the Town Council and decided at a later date.

Mr. Randolph intervened with the suggestion that some people had been talking about committees and commissions synonymously; others had distinguished between the two. The motion had stated that a COMMISSION would be set up, like any other Town Commission. All commissions were established by ordinance, and Mr. Randolph queried if that had been the intention, or had the intention been to set up an ad hoc advisory committee to deal with the issues and advise the Town Council. There really was no distinction between a commission and a committee technically. It was just a matter of intent and what was wanted. The motion had stated that it be a commission, like any other Town commission, and that would require an ordinance. If, on the other hand, an ad hoc advisory committee was desired, it must be clarified.

Mr. McDonald asked what the distinction was between a commission and a committee?

Mr. Randolph replied that if a commission was desired, like all other commissions in the Town, then he would have to come back with an ordinance setting forth all of the details regarding the establishment of the commission. An ad hoc advisory committee could sit without the detail of an ordinance, by just establishing a resolution that would establish the terms of the committee.

Mr. Adrian Winterfield addressed the Town Council, stating that to avoid the quarrel between committee and commission a board could be appointed, because whatever it was called there would have to be something in writing.

Mr. Wyett suggested that perhaps an ad hoc committee should be set up, with the idea that it could be changed into a permanent commission if desired.

Mr. McDonald then withdrew his motion.

Mrs. Smith remarked that it had taken almost 55 minutes to figure out how to set up a commission to deal with the beach. Somehow, she felt it was a waste of time. A course must be set for goals, purposes, and appointments relating to any committee to be ready for the June or July Council Meeting when it would be voted to be in effect. This portion of the Agenda needed to be brought to a conclusion.

Mr. McDonald made a motion that the Town Council appoint an Ad Hoc Advisory Shore Protection Board, with all of the details of this board being submitted to the Town Council by the June 13, 1995 meeting as to its structure and longevity. Seconded by Mr. McLendon.

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

Mrs. Smith explained that she had voted no because she felt that coastal management was the Town Council's job, and she hoped that the Town Council would continue to address the problem of the shores and the beaches while this committee was being put into effect.

8. Consideration of Potential Town-Organized 4th of July Celebration -

Mr. Doney addressed the Town Council, stating that last year discussion had taken place at the 1994 July or August Town Council Meeting that inasmuch as the City of West Palm Beach had decided not to have a Fourth on Flagler Independence Day Event, that perhaps the Town should have a Town-initiated and funded/sponsored Fourth of July Event. In his memorandum of May 2, 1995, Mr. Doney explained that Mr. Elwell had checked with the City of West Palm Beach to ascertain whether any activities were being planned for this upcoming Fourth of July, and found that the City was planning Independence Day activities--an old fashioned family picnic at Curry Park in the afternoon, and a symphony performance followed by fireworks on Flagler Drive waterfront in the evening. The reason that this item was before the Town Council was to determine whether the Mayor and Town Council believe whether there should be any Town Fourth of July activity. If so, it was important that the Town Council identify scope, time, place, funding, staffing, etc. From the staff prospective there had been no initiation or suggestion that this be done, but it was being reported for Town Council decision.

Mr. McDonald moved that a Fourth of July Celebration not be considered. Seconded by Mr. McLendon.

Mr. McLendon asked if there was any merit to suggesting to the City of West Palm Beach that the Town of Palm Beach may be interested in participating in a joint effort for a Fourth of July celebration. Perhaps in this period of cooperation things of that sort were needed.

Mrs. Smith asked how much involvement Mr. McLendon was talking about?

Mr. McLendon replied that he was talking about financial participation, recognition, etc.

Mrs. Smith continued that the reason that the celebration was cancelled in the Town of Palm Beach was because of the expense, and at that point it had cost $4,000.00.

Mr. Wyett stated that he thought Mr. McLendon's idea was very appropo, and that it would be a strong movement to show West Palm Beach that the Town of Palm Beach would join with them in celebrating the birthday of our Nation.

Mr. McLendon remarked that he thought it was time that the Town of Palm Beach made an overture to the City of West Palm Beach for cooperation.

Mr. Wyett asked if it was possible that the Civic Association, the Citizens Association, and the Chamber of Commerce might like to join with the Town Council in making a contribution?

Mr. McDonald remarked that the City of West Palm Beach already had two activities planned, and he had moved that the Town not hold any July 4th celebration.

On roll call, the motion not to hold a July 4th celebration in the Town, was approved 3/2 with Mrs. Smith and Mr. Shaw casting negative votes.

Mr. Shaw felt that the City of West Palm Beach should be asked if they would permit the Town to join them in their July 4th celebration.

Mr. Ned Barnes, President of the Civic Association, invited everyone to the Civic Association Community Celebration on Sunday, May 21st, at the Flagler Museum.

Mr. Wyett made a motion that authorization be given to the Mayor to discuss Town participation in a July 4th Celebration with the City of West Palm Beach. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

9. Consideration of Actuarial Study on Group Health Insurance Plan -

Mr. Doney provided background information, stating that usually at this time of year the staff would recommend to the Mayor and Town Council certain actuarially determined premium insurance rates for the program, but based upon implementation of an EPO exclusive provider organization, some very effective, cost advantageous changes were being recommended.

Mr. Crouse, Personnel Director, addressed the Town Council, stating that one of the requirements under a self-funded health plan was to get an actuarial report off to the State, so that the State will be assured that the fund was actuarially sound. A letter had been received from the State giving the Town a clean bill of health. In fact, the health plan was in very good financial shape. Mr. Crouse continued that over the years, changes were constantly made to the plan. One of the things being asked for today was for approval to move the premium changes to a calendar year for three reasons:

1. The health plan itself is based on a calendar year, therefore any changes that take place occur on January 1, so premium changes should be coordinated as well.

2. A flexible benefits plan is offered to employees, based on a calendar year, where employees can use tax free dollars to pay for unreimbursed medical expenses, day care expenses, and the premium cost. It is advantageous to the Town, because the Town does not pay taxes on those monies that are deferred.

3. For the first time, the Town has introduced a second plan for employees. This year, an exclusive provider organization had been implemented, with significantly discounted services. The price that is paid for that is a tighter network, in other words, there is not the ability to select doctors and health facilities as there is in the general plan. This is showing some significant cost reductions. A discount for dependent coverage may encourage some of the Town employees to get into this EPO plan, returning a cost savings to both the Town and the employee.

Mr. Crouse added that based on those three reasons a recommendation is being made to set premiums to be effective with the calendar year. By State law premium rates could only be changed once per year, so the change was possible.

Mr. McDonald made a motion for approval of setting premium changes to coincide with the calendar year. Seconded by Mr. Shaw.

Mr. Wyett asked what the General Plan was?

Mr. Crouse replied that the General Plan was the PPO (Preferred Provider) Plan, which had been started about three years ago. Prior to that it had been an Indemnity Plan. The PPO was Florida Health Choice, the second largest PPO in the State of Florida, and was very well established in Palm Beach, Broward and Dade Counties. It provided employees a very good base network of facilities and doctors, but what was remarkable was that the PPO had been saving the plan close to a half million dollars.

Mr. Wyett asked what the difference was between premiums for the PPO and the EPO?

Mr. Crouse replied that they were the same, and that was why an actuarial study would be provided so as to give information as to differences.

Mr. Wyett asked Mr. Crouse if most employees would move over to the EPO if a substantial difference was established?

Mr. Crouse responded that right now, about 30% of Town employees had moved over, simply because of the benefit of very little out of pocket expense. Another thing that would sell the EPO would be the success stories of employees already in it.

Mr. Wyett asked if it was required that both plans be offered?

Mr. Crouse replied that it was not required that both plans be offered, but he felt it was the best thing to do. The plan over the past five years had been doing very well, and there was the ability to offer options.

Mr. Wyett asked how much the Town had spent last year, after reimbursement, and what had the total premiums been?

Mr. Crouse responded that the Town was self-insured, so the Town pays reinsurers for catastrophic situations, but basically, the Town pays the bills, which runs approximately two million dollars for all expenses under the medical plan.

Mr. McLendon asked for an explanation of the statement that the Town would maximize its savings by reducing the premiums for dependents.

Mr. Crouse explained that by maximizing the savings by reducing the premiums for those employees who would join the EPO, more employees would be involved in the EPO program. Right now, about 30% of the employees were in it. The more employees getting into the EPO, the more medical services will be discounted.

Mr. Shaw asked what percentage of the employees were taking advantage of the flex-plan?

Mr. Crouse replied that approximately 75 employees were using the spending account.

Mr. Crouse replied that it had taken nearly a year for employees to become aware of the educational issues of the flex plan. Once the money is put in the flex-plan, if an employee does not get sick or does not have other expenses associated with the plan, the money was lost. The reason why a lot of people do not take advantage of the day care facet, was that it was only reimbursed after it was paid, so literally they would be paying into the spending account, paying the day care, and then taking the money out of the spending account, and a lot of employees could not afford to pay twice. That was an IRS rule.

On roll call the motion carried unanimously.

10. Cable Television Franchise Renewal -

Mr. Doney stated that he, Mr. Jakubiak, and Mr. Randolph had been meeting with Comcast representatives to discuss the proposed elements of franchise renewal. Mr. Wyett had suggested that the Town Council should direct staff to proceed with some other considerations.

Mr. Wyett stated that he had become aware that an element of competition should be introduced in negotiations with Comcast, and the only way to do that would be to authorize Town staff to pursue alternatives to cable television. There were other cable people in adjacent areas with better service. There was also the encouragement of satellite television, and Mr. Wyett felt that Comcast was very arrogant in dealing with the Town, noting that the Town did not receive first class cable service. Mr. Wyett felt that anything that could strengthen staff negotiations should be done.

Mr. Jakubiak, Assistant to the Town Manager, addressed the Town Council, stating that the Cable Consumer Protection and Competition Act did not permit exclusive franchises, so even if a franchise with Comcast was entered into, the Town could always enter into a franchise with anyone else. The problem was that there were few opportunities to obtain alternative services. Other cable companies could be contacted, however, streets would have to be torn up in order for them to lay their own cable. The better alternatives would be the new technologies coming out. There was current legislation being implemented that may modify providers and costs. Mr. Jakubiak acknowledged that this was a good time to look at competitive systems, because the agreement with Comcast expires on October 12, 1996.

Mr. McDonald made a motion for approval of authorizing Town staff to pursue alternatives to cable television. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

11. Discussion of Presentation by Meridian, Applied Technology Systems for Mata Mats -

Mr. Shaw stated that this company had come to his attention, and they were willing to demonstrate their product at no cost to the Town. There had been other mat concepts, however, this product was a 16 x 16 x 4 ft. honeycomb cube, which allows sand to flow through it, ultimately catching the sand particles. The cube breaks up the wave action, causing restoration of beaches, and is used as a means of coastal protection, and is used at the base of bridges, pipelines, and dams in order to protect against erosion. There was a study from Davidson Laboratories, which showed the success of this product, and Mr. Shaw made a motion for approval to invite Meridian Technologies to do a presentation at a future meeting. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

12. Discussion of Attendance by Town Council Members at Board and Commission Meetings -

Mr. Randolph stated that questions may arise as to the propriety of Council Members attending Board and Commission meetings. The Town staff and Town Attorney had discouraged regular attendance at meetings for several reasons. There was nothing wrong with Council Members learning about how these Boards and Commissions function by attention a few meetings. Town officials had discouraged attendance at these meetings because often the Town Council Members would find that they would be acting, often in an appellate capacity, on a matter which may have been heard by one of these commissions. Although there was no hard and fast legal answer as to whether it was appropriate to attend these meetings, Mr. Randolph pointed out that the considering the law relating to quasi-judicial functions, it would be best that Town officials not attend quasi-judicial meetings, for example those of the Architectural or Landmarks Commissions. The courts had stated in the Snyder and the Jennings cases that the position of those in a quasi-judicial status should be the same as a judge, with no ex-parte communications. Attendance at a public meeting could put a Council Member in a position where the purity of opinions could be sacrificed. Mr. Randolph stated that the reason this had come up was that some questions had been raised by some Council Members as to whether they could attend a certain meeting, and they had been advised of the position that had been taken in the past.

Mr. Wyett asked about the scheduling of an ORS meeting to discuss attendance requirements for committee meetings, and Mr. McDonald noted that an ORS meeting would be scheduled as soon as Mr. Shaw returned from out of town. An ORS meeting was scheduled for May 23, 1995 at 2:00 P.M.

13. Discussion of Jones & Foster Statement for Legal Costs -

Mr. McDonald commented on Mr. Randolph's litigation report in his monthly billing, stating that he appreciated the new format of the bill, and requested that Mr. Randolph present his billing a few days before the monthly Town Council Meeting. Mr. Randolph agreed to that, stating that he could provide his billing with his back-up material each month.

Mr. McDonald said that upon his review of the billing he had one question regarding the case of Rogers vs. The Town of Palm Beach and the $2,000 charge from October 1 to March 31, and inquired as to what that expense related to, and asked Mr. Randolph to check into it and let him know.

XII. APPROVAL OF WARRANT REGISTERS AND FUNDS EXPENDITURES
REPORT FOR APRIL 1995 -

Mr. Shaw made a motion to approve the report. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

XIII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Dr. Melvin Small addressed the Town Council, stating that he had been a physician and a teacher of medicine for forty years and had spent four years studying the health care system in ten countries, and had never seen a more efficient, professional, more caring emergency medical service than he had seen in Palm Beach. One problem, however, had struck him, and that was that all of this service was essentially gratis. Forty percent of the pick-ups in the past year were of residents other than Palm Beach residents. Sixty percent of the total pick-ups that were recorded were people in medicare age. This meant that of the 1,620 fully recorded pick-ups, about 960 could have been charged to Medicare, providing the Town with about $400,000. He knew there were reasons for not billing patients, but this was a government grant that was not being accepted. The many reasons for not accepting it that he had heard was that billing would have to be done for the residual, with the 80% being paid by Medicare would have to be covered by another 20% for the patients. It was true that there would have to a billing for this, but to ignore a potential inflow from Medicare was inappropriate and should be reviewed.

Mr. Robert Grace, 126 Seagrape Circle, addressed the Town Council, stating that he had an idea concerning the Par III Golf Course, and how it might be an even greater asset to the Town if it had a Clubhouse. The question of where to put it could be solved by putting an attractive one story clubhouse above part of the parking, with a small restaurant, a bar, and possibly a card room. Mr. Grace merely wanted to deposit these ideas with the Town Council.

Mr. Eric Gilbertson, 151 Chilian, addressed the Town Council, congratulating Mr. McDonald and the Town Council for consideration of a shoreline committee. Mr. Gilbertson mentioned the groins that had been removed at the mid-town beach that had safety lines, and now the remaining groins should have safety lines.

XIV. DEVELOPMENT REVIEWS

A. Minutes/Major Matters Previously Considered by the Architectural Commission at Its Meeting of April 26, 1995

The major matters were:

B17-95 Remodel residence at 171 El Pueblo Way requested by Mr. Scott Worley - approved.

B18-95 Addition at 274 Monterey Road requested by Mr. and Mrs. Stephan Cole - approved.

B19-95 New cabana at 214 Jungle Road requested by Mr. Brinkman - aproved.

B20-95 Addition at 200 Queens Lane requested by James and Eleanor Woolems - approved conditionally.

B22-95 Demolition and construction of new structure at 86 Middle Road requested by Elizabeth Frank - approved.

B23-95 Demolition of residence at 121 El Bravo Way requested by Stuart Subotnick, Trustee - approved.

B21-95 Demolition, alteration and addition of structures located at 88 Middle Road requested by Stuart Subotnick, Trustee - approved demolition, deferred the remainder of the project.

B24-95 Demolition and construction of new residence at 218 Tangier Avenue requested by Warwick/Robert E. List - approved conditionally.

B31-95 Addition to residence at 1193 North Lake Way requested by Peyton & Loren Cole - approved conditionally.

B25-95 New residence at 285 Jamaica Lane requested by Classic Homes & Remodelers - approved conditionally.

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

B27-95 Renovations for a residence at 215 Jamaica Lane requested by Thomas Parker - approved.

B29-95 Addition to 240 Miraflores Drive requested by Mr. and Mrs. Kevan Boyles - approved.

B04-95 Remodel residence at 127 Oceanview Road requested by Ms. Jani Whitney - deferred.

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

B32-95 Addition and remodel residence at 1029 North Ocean Boulevard requested by Rychard Trust - approved.

B28-95 Demolition and new residence at 560 Island Drive requested by Misbah & Hend Ahbab - approved conditionally.

B09-95 New residence at 124 Onondaga Avenue requested by Dr. and Mrs. DePaola - approved.

Mr. Campbell said that he thought there was a way around the problem by relocating certain depositors. The ability to store the trash in the restaurant had not been addressed as yet.

Mr. Wyett asked what the hours of operation were?

Mr. Campbell responded that it was not a late night restaurant, and thought it would be closed at 10:30 - 11:00 P.M.

Mr. Wyett pointed out that he would like to be sure there was a restriction that it did not operate past 11:00 P.M.

Mr. Moore asked Mr. Campbell to address where bottles were being broken presently, and for what time period?

Mr. Campbell replied that it was at the west end of the property, and that he did not believe that it had been in that location very long.

Mr. Moore believed that the complaint Mr. Wyett had mentioned had been addressed, resulting in the moving of the bottle breaking operation.

Mr. Wyett mentioned that Mr. Shaw had made a very good point that the size of the restaurant was being almost doubled, which meant a doubling of the amount of trash and perhaps the solution of refrigerating the trash was feasible.

Mr. Wyett asked Mr. Brindell what the hours of operation of the restaurant were, because he would like to stipulate a limit in order to avoid a new watering hole in the Town.

Mrs. Smith said that she did not think this was anticipated as a disco, and that should not be implied.

Mr. Ralph Benfanti addressed the Town Council, stating that the intent of the plan was to have a restaurant, with not more than ten seats at the bar, as an accommodation for waiting for a table. The fine dining side would only seat about 110-112 people, with a cafe side that would be a little less formal. Mr. Benfanti said that he was very familiar with the garbage situation, as he dealt with that in New York, and that it was up to him to make sure that his neighbors were happy.

Mrs. Smith asked how Mr. Benfanti proposed to handle the garbage situation?

Mr. Benfanti said that he would study holding some of the garbage, and he definitely would not have garbage brought down after a certain hour. Most of the garbage would be generated during preparation time, during the day. There would be no need for noise if the garbage was brought down at a certain time.

Mr. Shaw asked Mr. Benfanti if he would provide a refrigerated storage for garbage storage after a certain hour?

Mr. Benfanti said that he would study the matter, however, he did not think it would be necessary. He had already discussed it with the maintenance manager at the Esplanade, and as far as loud noise at night he was positive that would not be necessary.

Mr. McLendon inquired as to the actual number of parking spaces available.

Mr. Brindell replied that the area across the street could accommodate 37-44 parking spaces, and that the point had been that there was plenty of room there to bank spaces, rather than building a parking lot there.

Mr. McLendon asked if there was allocation for retail parking spaces in that area?

Mr. Brindell responded that when the Esplanade was built, the garage met the parking requirements, and what Mr. Moore had explained was that since then the parking requirements for retail had changed. All of the patrons of the Esplanade used valet parking, so parking worked more efficiently from a space point of view.

Mrs. Smith asked if the park would stay tied to the restaurant if a Special Exception was granted?

Mr. Brindell responded affirmatively.

Mr. McDonald asked what the hours of operation of the restaurant would be?

Mr. Benfanti responded they would be opened for lunch and dinner, similar to the hours of operation that are practiced now. There was no anticipation of serving past 11:00-11:30 P.M.

Mr. McDonald asked if he would stop serving at 11:00 P.M.

Mr. Benfanti responded affirmatively.

Mr. Brindell explained that he wanted to be sure that before Mr. Benfanti agreed to anything, that it would be on an equal footing with what had been done with others in similar situations.

Mr. Brindell conferred with Mr. Benfanti, who proposed to reduce his seating request to 175 seats, and then prove a Town-serving status within six months. At that point, he would be entitled to come back and ask for the balance of the seats. With respect to the garbage issue, Mr. Benfanti would be willing to try and find another means of working with that issue. The Goodman Company had already tried to effectively deal with it, and now there seemed to be the impression of adverse impact by some people. The Goodman Company was also willing to search for another solution.

Mrs. Smith asked if there were any remarks from the public.

Mrs. Frances Ruth Necco addressed the Town Council, stating that she was the owner of an apartment in the Winthrop House, facing the Esplanade. She had owned the apartment for 20 years, and was thoroughly established there before the construction of the Esplanade, which deprived them of their sunsets and culminated in a harsh, noisy invasion of their serenity. Both she and her husband were registered voters and year-round residents of Palm Beach, and she was coming before the Council today to make clear their resistance to the increase of the deafening noise pollution assaulting them day and night, 365 days per year, and that they oppose the expansion of the restaurant as requested in the application for Special Exception 7-95. The reasons for their opposition included the fact that an increase of patrons would mean more cars being parked, which would mean later hours of operation, more car doors slamming, a greater number of patrons loudly leaving, and an increase in kitchen employees congregating noisily beneath their apartment. Since the advent of the Esplanade life had been a minor hell because of the noisy terrorism endured by them, and despite their efforts through the years, the noise and distractions continue. Mrs. Necco continued with specific examples of the noise, and pointed out the impact that it had on real estate values. Both she and Judge Necco opposed the Esplanade request, however, they were willing to take a reasonable approach by withdrawing their opposition if the Esplanade management would state on the record that a clear condition for obtaining the Special Exception would be removal of the dumpster from below their terrace to the most westerly end of the Esplanade; that no dumpster trashing, or bottle crashing be permitted in any area adjacent to their residence. As to the valet parking the Neccos requested that the Esplanade management prohibit any horn blowing, enclose the Esplanade driveway and valet parking area with some solid material that would shield noise as conditions for obtaining the Special Exception.

Mr. Wyett asked Mrs. Necco if these problems had been reduced since Mr. House had last visited, or was it ongoing with no abatement?

Mrs. Necco replied that the bottle crashing was moved to the far west end of the Esplanade for about a week.

Mrs. Smith pointed out that the problem of the Neccos appeared to be with the Esplanade, and not with the new owners of the restaurant.

Mr. Shaw made a motion to approve Special Exception 7-95 with the following conditions:

1. NO MORE THAN 158 SEATS

2. RETURN IN 6 MONTHS WITH A TOWN SERVING AFFIDAVIT AND POSSIBLY REQUEST ADDITIONAL SEATING AT THAT TIME

3. ALL GARBAGE, INCLUDING GLASS, TO BE KEPT ON SITE AFTER 7:00 P.M. AND NOT PUT INTO DUMPSTER OR GLASS CRUSHING AREA UNTIL AFTER 8:00 A.M. THE FOLLOWING MORNING

4. PARKING SPACES ACROSS WORTH AVENUE ARE TO BE TIED TO THE PROPERTY FOR 15 YEARS (THE LENGTH OF THE LEASE AGREEMENT)

5. THE LAST DINNER WILL BE SERVED AT 11:00 P.M.; THE BAR WILL CLOSE AT 11:30 P.M. WITH TABLE SERVICE TO CONTINUE AFTER THAT.

Mr. McLendon seconded the motion for discussion.

Mr. Wyett stated that he felt the Esplanade had a very strong responsibility to monitor the valet service. He was strongly opposed to have residents of the Town annoyed by commercial ventures.

Mr. Brindell stated that Mr. Wyett's comments would be conveyed to Mr. Goodman.

Mr. Benfanti stated that they would try to open by November 1, 1995, giving a full season to demonstrate a Town-serving status.

Mrs. Smith said that perhaps Mr. Goodman would consider enclosing the east side of the Esplanade on the ground floor where cars are going up and down.

On roll the motion carried unanimously.

New Business

2. Site Plan Review No. 1-95 with Special Exception and Variances - Michael Pucillo, 230 & 232 Brazilian Avenue; to allow construction of a 5-unit, multi-family, three-story building per Section 5.48 of the Zoning Code; but, request variance to the special exception requirement of a maximum 25% lot coverage allowing 28.8% lot coverage; also, a variance of Schedule A, Section 4.10 to allow 5 units on a 33,041 sq.ft. lot in lieu of 33,333 sq.ft. required. R-C District

Mr. Michael Pucillo, owner of the 230 Brazilian property, addressed the Town Council, introducing Robert Jackson, the owner of the 232 Brazilian property, the architect on the project, Jerry Daum, as well as Mr. Wolf and Dr. Longo, principals on the project.

Mr. Pucillo felt that a history of the property would be helpful before getting into the Special Exception and Variance requirements. The property was in the RC District, which was a multi-family district, and 230 Brazilian had been in his family for 42 years, and he had lived there most of that time. In that period of time, the neighborhood had changed from a neighborhood with small cottages and small commercial rental buildings, to something that was drastically different today. Mr. Pucillo displayed some pictures of the block to the Council, and explained that two Variances and a Special Exception were being applied for.

The first variance Mr. Pucillo addressed was the Density Variance. The parcel was currently zoned for 4.96 units. The reason it was not 5 units was because one of the lots was a 93 ft. lot, falling about 290 sq. ft. short of what would be required for 5 units on the property. The characteristics of the property were unique as the lot was a non-conforming lot, and given what was already in the neighborhood, the density was considerably less than everything around the area. Mr. Pucillo submitted that the criteria for the Density Variance were clearly met under the Code.

B74-94 Modification to residence at 496 North Lake Way requested by Jeffrey Raynor, Trustee - deferred.

B10-95 New residence at 254 Atlantic Avenue requested by Janina Radtke - approved.

B13-95 New residence at 200 Banyan Road requested by Dilow Estates, Inc. & Rori Inc. - approved.

B16-95 Demoltion and construction of new duplex at 250 Everglade Avenue reuquested by Zack Ciomek - deferred.

B15-94 Renovations at 350 Royal Palm Way requested by Cook International - approval.

B55-94 Modification to previously approved project at 1236 South Ocean Boulevard requested by Sidney Kimmel - approved.

Mr. Shaw made a motion to receive the report. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

B. Variances, Special Exceptions, and Site Plan Reviews

Mr. Randolph stated that even though he would be making a more formal presentation later he wanted to point out that in regard to variances, there were specific criteria which needed to be met in order for a variance to be granted. The language of the Town Code stated that the Town Council must and shall find that those criteria exist before granting a variance. The staff had taken it upon itself to include that statement in every application for variances, and every applicant would be asked to address each and every criteria set forth in the Ordinance.

Special Exceptions were treated differently, with certain criteria having to be met, and if an applicant addresses and meets those particular criteria, then the burden shifts to the Town Council to make a determination as to why a Special Exception should not be granted. The decision in regard to granting a Special Exception cannot be based upon the feelings of neighbors or opinions, but must be based upon facts that are presented.

Mr. Randolph added that these were quasi-judicial hearings, at which witnesses would be sworn in and cross examination would be afforded.

All those speaking to any Special Exceptions and Variances were at this time sworn in by Mrs. Pollitt, Town Clerk.

Old Business

1. Special Exception No. 7-95 - Worth Avenue Associates, Ltd., 150 Worth Avenue; to allow a new restaurant to occupy approximately 5,200 sq.ft., in lieu of 2,000 maximum permitted, or in lieu of the previously permitted 3,700 sq.ft. occupancy approved by Special Exception 8-83. Further, to allow restaurant to meet parking requirements by reserving land area across the street to meet the need as demanded, a matter also addressed by the previous Special Exception approval. C-WA District (Deferred from March 14, 1995 and April 11, 1995) - Letter Dated March 31, 1995, from James R. Brindell Requesting Deferral Until May 9, 1995

Mr. Jim Brindell addressed the Town Council on behalf of Worth Avenue Associates, stating that this was a two-part request: one for the approval of a new restaurant in the space currently occupied by Cafe L'Europe, as well as to establish a receiving area for a few additional parking spaces.

Mr. Brindell continued that the current space occupied by Cafe L'Europe was 3,739 square feet. The new proposal was for 5,243 square feet. The new tenant was Mr. Ralph Benfanti. There is a second restaurant, Claudio's, in the Esplanade which would be closing at the end of the month. The space occupied by that restaurant is 2,207 square feet, so if the two restaurant areas are looked at together, the new space being requested would result in a net decrease of 703 square feet of restaurant space in the Esplanade. When the Goodman Company came to Palm Beach some years ago requesting approval for parking area across the street, the Town Council noted that the valet parking worked well, and that they did not wish to have a parking lot across the street if it were not necessary. Approximately 20 spaces could be accommodated across the street, should it become necessary. In exchange for that, Mr. Goodman agreed to construct the park that is now there. Of the 20 spaces available across the street, 15 of them were associated with Claudio's, with 5 of them being associated with the expansion of Cafe L'Europe. If Claudio's closes, then the 15 spaces could be applied to the 21 additional spaces reflected by the new restaurant space, resulting in a need for only 6 additional spaces allocated.

The restaurant that Mr. Benfanti planned to build in the Esplanade was a French continental restaurant of comparable pricing to the Cafe L'Europe. There were strong controls in the lease about things like decor, service staff, quality, and type of restaurant. Mr. Brindell pointed out that the space that was there was on the second floor, and was not visible from the street, and the trade was based upon people in Town knowing about the restaurant. The whole purpose of the restaurant was to serve people in the Town. Two affidavits had been provided to Town staff from Mr. Benfanti and Mr. Campbell. Mr. Brindell noted that Mr. Benfanti was present to answer any questions.

Mr. Moore addressed the Town Council, stating that staff had just become aware of the closing of Claudio's, and he wanted to clarify that 85 additional seats were being asked for, over and above what Cafe L'Europe had, and that Claudio's had a requirement for 15 parking spaces, with 5 for the Cafe L'Europe from the 1982 Agreement. Mr. Moore translated that 28 new spaces were needed for 85 new seats.

Mr. Brindell clarified that the spaces that had been designated across the street for Claudio's could now be used.

Mr. Moore asked what was the net parking required?

Mr. Brindell explained that they would be 21 spaces short if Claudio's parking spaces were not used.

Mr. Moore replied that comments from the staff were as follows: the Police Department feels that they need to speak to and satisfy the valet parking being sufficient to take care of the increased number of seats. This had been before anyone knew that Claudio's was closing. The Architectural Commission states that it does not appear to provide adequate off-street parking, Town serving should be demonstrated, and that it does not appear to meet criteria for granting a Special Exception. The Town Manager agreed with those comments, however, the criteria regarding the use of the area across the street could be addressed. The Building Department stated that the parking should be tied to the adjacent park across the street, and Town serving must be addressed.

Mr. Moore continued that the history of this had been given by Mr. Brindell quite accurately. If the applicant was to abandon both Claudio's and the original expansion of the Cafe L'Europe, the Unity of Title on the property known as the park across the street would disappear. The use of that park is not indefinite. As long as the owner of the property, Mr. Goodman at this time, has the restaurant, then those five spaces are the only spaces currently tying that park to the Esplanade by Unity of Title.

Mr. McDonald asked Mr. Brindell when he had learned that Claudio's was closing?

Mr. Brindell replied that he had learned that a few days ago.

Mr. McDonald asked Mr. Brindell if he had heard of Special Exception by ambush, because it would have been helpful to have had that information prior to this meeting. He asked Mr. Brindell if he would communicate information to the Town Council so that they would be able to prepare for it.

Mr. Shaw stated that even though Claudio's was closing, the space was not vanishing, therefore the spaces that were allocated to it had to come from somewhere.

Mr. Brindell replied that when the parking garage had been built it had taken retail space into account, and the parking requirements for a restaurant were higher.

Mr. Shaw clarified that the 15 spaces across the street were strictly the restaurant additional requirement and not the fact that the retail space had a requirement.

Mr. Moore noted that Mr. Shaw was basically correct. There was the allocation for the original retail space, however, at the time the Esplanade was built and the space accounted for the requirement was not as stringent as it is now for retail. Therefore, there probably would be a few additional spaces that would be the difference between the retail and the restaurant use.

Mr. Shaw stated that there were five things he had noted on this Special Exception. There had been some problems with neighbors over the years, and in looking at the plans he was concerned about the fact that seating is not considered adequate and a major increase of 85 seats was being requested. He did not feel that should be considered until the requirements of the Town had been met. More importantly, he mentioned the issue of trash, garbage, and its disposal. He suggested the restaurant provide a refrigerated, health-approved facility to store all of the garbage for the night within the premises, eliminating the noise late at night from garbage disposal.

Mrs. Smith asked Mr. Brindell if he had a copy of the floor plan for the proposed new restaurant?

Mr. Brindell responded that there was not yet an interior design plan, but that they did have a seating chart.

Mr. Donald Campbell, of the Goodman Company, addressed the Town Council, stating that presently the trash was locked and tenants could not use it from 6:30 P.M. until 8:00 A.M. They had tried to address each problem as it had come up, and glass recyclables, had been moved to the far west end of the property, as far away from the residential area as possible. Mr. Campbell offered to answer any questions regarding that.

Mr. Shaw stated that the complaints had been coming because the trash was being dumped at night.

Mr. Campbell explained that at one time that had been allowed, but now the area to the dumpsters is locked at 6:30 P.M. The glass may have been a problem, but that had already been relocated.

Mr. Shaw asked where the garbage was stored?

Mr. Campbell replied that they either keep it where it is, or put it right in front.

Mr. Wyett asked if the trash was deposited in front of the bins?

Mr. Campbell responded affirmatively, saying that people pick it up in the morning and put it in the bins.

Mr. Shaw mentioned that did not sound like a good idea from a health point of view.

Mr. Campbell replied that the garbage was stored in covered cans.

Mrs. Smith pointed out that noise was being made when the cans were dropped in front of the bins, and that could be a problem. She asked if there was an area upstairs where trash could be kept?

Mr. Shaw remarked that he had suggested eliminating four seats to the west, bring the wall out and that would accommodate ample garbage storage. The garbage would not be brought downstairs until at least 8:00 A.M.

Mr. Wyett reminded the Council of a serious complaint that had come from the apartment next door regarding the noise, and he was not sure it had been entirely resolved.

Mr. Pucillo stated that the real issues were the Special Exception on the height and the 28.8% footprint. The standards under the Section 640 of the Code for Special Exception were clearly met. Three stories was permitted in the RC District, it was highly compatible with the neighboring area.

Mr. Pucillo showed a street scape, giving a sense of the height, stating that the building was consistent with what was in the neighborhood and street scape. One important point was the fact that the first level of the building was parking, with the actual height of the building being 29.5 ft. The Code permits 40 ft. for a three story structure. The limit on height in the RC District was 25 ft., so this building was 4.5 ft. above the limit required for a two-story structure. With respect to the Special Exception on height, 4.5 ft. was not a dramatic change. Mr. Pucillo thought that was relevant for the Special Exception, and especially for the Variance on the footprint.

Mr. Pucillo continued that the footprint on the property was 28.8% of the square feet on the lot. If it were a two-story structure, it would be permitted to have 30% lot coverage. Instead, they had reduced that by going up in height, to 28.8%. The Code reflects an intent to have trade-offs with respect to Variances and Special Exceptions. As one goes up in height, lot coverage must go in. In essence, what the Code said was as height goes up 3 ft. on a structure, the footprint is reduced by 1%. The granting of a Variance requires that special conditions and circumstances exist, as well as a hardship. Mr. Pucillo thought they had met the other standards quite clearly; the hardship was demonstrated as the building itself was considered.

Mr. Pucillo displayed a diagram of the building, stating that the entire first floor was one enclosed parking area with no open space. They had tried to avoid some of the pitfalls of multi-garage doors facing the street, with parking visible from the street. They had designed two double doors facing the side of the property, with none of the garage doors visible, nor was parking visible. If the footprint was reduced to 25%, which was the lowest footprint permitted in the Town, it would be extremely difficult to have a workable, functioning garage. Mr. Pucillo submitted that all of these factors would support the Variance requirement of a hardship.

Mr Jerry Daum, of the Daum, Inc. Architectural Design Firm, addressed the Town Council, stating that he was proud and happy to submit the plan and to address the Council. Mr. Daum cited Section 1.20 of the Zoning book, which covered "Health, Safety, Morals and General Welfare." Mr. Daum had looked up the word "general welfare," and found that it was good cheer and prosperity, and if the trees on the sides of the property were taken away the beauty would be compromised, and a re-design of the structure would allow more noise.

Mr. Pucillo made the final points that they were reducing density overall, and they were also reducing the curb cuts from 4 to 2.

Mr. Moore stated that Mr. Pucillo had given an excellent presentation, although one piece of information had not been correct. The required side yard for multi-family would be 20 ft., or the height of the building, whichever was greater--not 15 ft. The staff had many comments on this project; Mr. Bowser would be addressing his concerns, the Fire Department would require that the building be sprinklered throughout, if approved, the Police Department had called attention to problems with parking spaces, the Landmarks and Architectural Commissions had stated that the plan did not appear to meet any of the criteria necessary to grant a Variance--the plan was too dense, parking and drainage did not work well.

Mr. Moore continued that the density request was a minimum variance; the lot coverage was another story. If one wished to have three stories in height, then 5% of the lot coverage had to be given up. That was the purpose of the Special Exception, in order to get the three stories. To the credit of this application, it was not using the full 40 ft. that could be put forward, mainly because it was not a full three-story structure, with a basement-type classification garage. With that information, Mr. Moore asked Mr. Bowser to address his concerns.

Mr. Jim Bowser, Town Engineer, addressed the Town Council, stating that he had reviewed the preliminary plan, and had noted that the wall at the rear of the property would not be permitted. The driveways would need to be at least 6 ft. off the property lines. A storm water retention system for one-inch retention was required. The R-drain system illustrated would not be sufficient. There were some swales shown on the sides of the properties as a drainage swale, which would not work as a drainage swale if the existing landscaping was installed. They had shown hedges and trees to be planted in the rear utility easement, which would not be permitted. Pertaining to the parking stalls, Mr. Bowser found the layout of some of the stalls to be difficult, if not impossible, to use. He believed that entire plan needed to be reviewed. With respect to solid waste, they show the trash receptacles to be in the rear of the parking garage, and the Town Public Works Department would not be able to access them in these locations, and had suggested that they could put the containers on rollers in the building, rolling them out to a truck that could back up to the building. Another option would be to fence or hedge an area with a ramp concrete pad near the roadway, behind the sidewalk. The general details of the garbage collection system must be worked out with the Solid Waste Division.

Mr. Moore stated that the concept of the underground garage was a definite benefit from a site plan review basis, as far as the staff was concerned, and consideration could be given to that. However, the underground garage had to work in order for it to be considered, and that the architect may wish to address the parking problem design.

The architect for the building, Hugh Caccesse, addressed the Town Council, stating that the parking requirement was for 11 cars and they had provided for 12. He noted that parking space No. 10 was a little difficult to get out of, and if need be they could eliminate that parking spot and still be within the Zoning requirements. Normally, there were 18 x 10 bays, which were within the zoning requirements, and No. 5, 6, 7, & 8 allowed cars to back out into the parking drive. That was basically the design of the parking lot. It was not a public parking lot, and people will have the ability to back out into the safe drive.

Mr. Caccesse continued that the rear retaining wall was set outside the easement, and the footer could be changed if necessary. The driveway was 6 ft. off the property, and the plan could be diminished to show this. He would have to get more information on the storm water retention system. The drainage swale would be addressed by their engineer, who Mr. Caccesse was sure would comply with all of the laws of the community.

Mrs. Smith asked Mr. Moore if the plan for consideration by the Council was supposed to be accurate as far as all of the details were concerned?

Mr. Moore responded affirmatively, that for a site plan review all of these matters had to be addressed. He mentioned that Mr. Daum had been called last week and apprised of all of the staff comments.

Mr. Daum stated that he was an architectural designer, and that they used Messler Engineering, and that Mr. Messler as well as Mr. Caccesse had both been on vacation recently. Percolation tests could be done on the property, and if a pump was required, then it would be put in the enclosed garage. They would make sure that,for safety reasons, it would discard all of the drainage water. Concerning the wall, it had been addressed with the footer.

Mr. Pucillo suggested that since a lot of the comments were engineering related, that the Council consider the Variances and approve the Special Exception and Variance, and defer the site plan for further engineering.

Mrs. Smith replied that she had been thinking that they would look at the site plan first, and then deal with the variances.

Mr. Pucillo responded that he had suggested that simply because he thought they had met the qualifications for the variance and site plan, and his concern had been that there were engineering problems. It would give them guidance in proceeding with the revised site plan.

Mr. Moore stated that staff believed that Mr. Pucillo had addressed the issue of the variance requested for the density, however, in doing so, it may be that in the site plan review in order to comply with the 25%, they may need to make an evaluation as to whether they need the size of the units that they have, and the type of parking totally that they have. The issue was whether or not they need the variance for the 28% versus the 25% that would be required for the three-story structure. Mr. Moore had indicated that Mr. Pucillo had presented an innovative approach as to why he feels he can obtain the variance, but from a staff standpoint, he must say that was not correct. The reason for that 25% was as a trade off to go to three stories. There was no contemplation of a sliding scale. Mr. Pucillo had been innovative, but that was not the purpose of the regulation.

Mr. Wyett stated that he had no problem with the underground garage, nor with the 28% average, however, he was concerned about the concerns brought up by Mr. Bowser. Mr. Wyett added that there were concerns that should be solved before asking the Council to grant the variance request, and made a motion to defer this matter.
Seconded by Mr. Shaw.

Mr. Pucillo stated that the guidance of the Council was very helpful to them in any revisions.

Mr. Wyett stated that he was concerned with Mr. Bowser's concerns, however he had no concern with the three stories and no concern with the underground garage, with the exception of the workability of the parking spaces.

Mr. Shaw stated that two of the issues could be eliminated by calling the "basement" what it is--underground parking, and that a very minor change would be what was being asked for.

Mr. Moore stated that if they proceeded in that fashion, there would be an additional requirement, because of problems with other basements in low areas, of the possibility of needing a pump and generator system to ensure that the garage remains dry.

Mr. Pucillo stated that one of their concerns had been the parking being below grade, and the problems that created.

On roll call, the motion to defer carried unanimously.

Mrs. Smith asked for the results of the voting on the Zoning Commission.

Mr. Randolph stated that there were actually three openings for full members and one alternate, and on the basis of that Mrs. Pollitt would read the tabulations.

Mrs. Pollitt read the tabulations--the three members were Martin Richmond, Michele Clarke Royal, Rita Taca, with the alternate member being Theodore Metzger.

Mr. Moore clarified that the lowest vote getter would be for the longest term, and then down in order from that. Mrs. Michele was the lowest vote getter, so she would be the longest term.

3. Variance No. 17-95 - Rychad Trust, 1029 North Ocean Boulevard; to allow construction of a second floor addition to the pool pavilion at a height measurement beginning from the 16.22' finished floor elevation in lieu of the required 7.5' allowed. R-A District -

Mr. Frank Lynch, on behalf of Rychad Trust, addressed the Town Council, stating that they were seeking to add a second floor addition for guest quarters to an existing pool pavilion. The problem was that the existing grade of the property was at 11'6", while the elevation of the existing house was 16.5', so the hardship was the existence of a grade of the property which was violated because of the existing house. They would like to add a second floor, transferring the point from which the elevation is measured, from adjacent to the street, which would be approximately 4.9' to the existing elevation of the house at 16.5'. He had passed out photographs of the existing pool pavilion, the corner of the exiting house where the difference in elevation between the house and the pool pavilion could be seen, and the pool deck area. In addition, he presented a site plan which reflected the existing pool pavilion where the addition would be located.

Mr. Moore stated that the staff recommendation was that the hardship was in the slope of the land and the siting of the initial house, and he believed that Mr. Lynch had addressed that hardship in the point of measurement from the road versus the point of measurement where the house exists for the second story. Staff had no objection.

Mr. Shaw made a motion to approve Variance No. 17-95, with the hardship being the lay of the land. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

4. Variance No. 18-95 - Arturo Burigatto, 261 Seminole Avenue; to allow construction of a single family dwelling on a lot 50' wide in lieu of 75' required. R-C District -

Mr. Moore stated that a letter from Louis Mrachek had been received that morning who was representing a neighbor in opposition.

Mr. Frank Lynch,addressed the Council on behalf of Mr. Burigatto, the contract purchaser from Judy Testa, the present owner of the house. Mr. Burigatto was seeking to demolish the existing house and replace it with a new single family structure. The basis for the hardship was the finished floor elevation was below 7.5', so the problem was the prohibition of making renovations to the property that would cost more than 50% of the existing improvements. Mr. Lynch showed some photographs of the house, showing a house approximately 60 years old, a wood frame structure, and one of the few single story residences on the block. The structure did not conform to the existing setbacks, and the side yard setback on the west side was approximately 5', whereas the existing setback on the east side of the property was approximately 8'. In addition, property located at 253 Seminole Ave. was shown, which may be demolished as well. The next photograph was a picture of a two-story townhome development, and immediately east of that was a vacant lot of approximately the same size as the lot at 261 Seminole.

Mr. Lynch also exhibited photographs of homes on the south side of the street, which were all two-story residences. Basically, what his client would like to do was to demolish the existing structure, and the problem with that was that the lot width was insufficient to replace that structure with another single family residence. The hardship was the existing elevation of the finished floor of the existing residence being below 7.5'. Because of that, renovations were limited, and for that reason the house must be demolished. The new structure would conform with zoning codes, and setbacks. Mr. Lynch mentioned that he had not had a chance to see the letter from Mr. Mrachek, although he had spoken with Ms. Smith Adam, the person represented in the letter, and she had expressed concern expressed that a two-story residence would be constructed. At that time, Mr. Lynch had told her that he did not have an idea of his client's plans, however, because the lot was narrow, he could not represent that a two-story residence would not be put up. He did tell her that the setbacks would be increased because the existing structure was nonconforming.

Mr. Wyett asked what the setback requirements were for this lot?

Mr. Lynch responded that the setback for the front yard was 25', with the side yards being 10' each.

Mr. Shaw asked if Mr. Lynch was aware of the contract purchaser acquiring any adjacent property in the area?

Mr. Lynch responded negatively. It had been asserted that there was a title defect on adjoining property, and that issue had been rejected by the other side. As far as he knew at this point, given the letters back and forth between the lawyers, his client would never purchase the property because the other side was not addressing the title defect. The other side claims Mr. Lynch's client is in default under that contract. There is a contract, and they are claiming default, while Mr. Lynch's client is saying that there is a title defect and they cannot close.

Mr. Moore stated that staff had no objections to this application, based upon the fact that there was a reasonable use on the property by way of one single family residence. However, in regard to the problem of the floor level of the property, and the condition of the house as stated by the applicant, FEMA regulations only allow for an improvement of up to 50% of the appraised value, and if they cannot find a reasonable use within that 50% of the appraised value, then they would have to ask for a variance so that the structure can be torn down in order to rebuild. The staff, therefore, did not have a problem with the variance due to the FEMA regulations. That would be the hardship. It was not a regulation that was within their control, and they need to discuss with the Council that the reasonable use on the property now is not reasonable due to the condition of the house itself. Further, Mr. Moore questioned that the application had been filed 30 days before the meeting, and at that time the applicant had been under contract to purchase the property immediately adjacent, which would have made the application unnecessary.

Mr. Lynch indicated that this was a wood frame house, and that as best he could determine it was nearly 60 years old. It was run down and had seen better days. His client was investing a substantial amount of money into the property, and his investment was not tied to the condition of the house. As far as the existence of a contract, Mr. Lynch declared it had not been his intention to mislead anyone.

Attorney Kenneth Beal, representing Ms. Louisa Smith Adam, the owner of the property at 265 Seminole, immediately to the west of the property in question addressed the Town Council, objecting to the variance requested, which objections were set forth in detail in a letter from Attorney Mrachek to the Town Council. Mr. Beal explained that they had not been retained in this matter until less than a week ago, and Mr. Mrachek could not be in attendance today. Mr. Beal had asked Mr. Randolph to advise him on the proper procedure to make the Mrachek letter a part of the record, and was doing that at this meeting. Mr. Beal explained the reasons for objection. The alleged hardship was actually a self-inflicted hardship, with the contract purchasers purchasing the property with full knowledge of the fact that it was nonconforming, making the alleged hardship a direct result of the purchaser's action in purchasing the property. Mr. Beal referred to two Florida cases; the Thompson case and the Burger King case, both cited in the Mrachek letter. In addition, Mr. Beal pointed out that in order to obtain a variance, the applicant must show that there was no reasonable use of the premises. In fact, the hardship may not be found unless no reasonable use can be made of the property. Mr. Beal declared that in the case at hand, there was a reasonable use that can and was being made of the property. It could remain a charming, single family home. Mr. Beal cited the case of Bernard vs. The Town Council of The Town of Palm Beach, where the Court said that the Council may not find the hardship necessary to justify a variance, unless the hardship is such that it renders it virtually impossible to use the land for the purpose for which it was zoned. Mr. Beal asserted that the enforcement of the Zoning Ordinances of the Town of Palm Beach would not, in this matter, result in undue hardship to the applicant, and therefore pursuant to the provisions of Section 10.13 of the Town Code, and the case law mentioned, Mr. Beal requested that the variance be denied.

Mr. Lynch remarked that Mr. Beal had represented that the hardship was self-imposed, and did not understand how something that had happened 60 years ago could now be self-imposed.

Mr. Moore said that he believed that this case and others that would ultimately come before the Council would have to be addressed in more detail than ever before. He believed that it was incumbent upon Mr. Lynch and his client to provide documented evidence at a subsequent meeting, proving that the property was not in a liveable, reasonable use condition. In order for the variance to be granted based on the FEMA hardship, Mr. Moore asserted that proof would be needed that it would cost more than 50% of the market value to bring that house up to reasonable living conditions.

Mr. Wyett made a motion to defer consideration of the variance until it was determined that there was no existing use for the property. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

5. Variance No. 19-95 - Pamela Dunston, 240 Bahama Lane; to allow construction of a single family dwelling on a lot 90' deep in lieu of 100' required. R-B District -

Pamela Dunston, the applicant, and one of the owners of Lot 17, Bahama Addition, addressed the Town Council, stating that a variance was being requested to construct a single family residence on Lot 17, which was 113' x 90'. She added that there were no lots in the subdivision that were 100' in depth, in other words, every single lot on Bahama Lane was non-conforming, however, every lot except Lot 17 had been improved with a single family home. In addition, lot 17 and the other lots on the south side of Bahama Lane had an appearance of more depth, because they were bordered in the rear by the Palm Beach Country Club Golf Course. Ms. Dunston said that a variance to construct a single family home on the lot had previously been obtained, in exchange for demolishing a non-conforming house on the adjoining lot. She had misunderstood and misinterpreted the language in the variance letter, which had required commencement of construction within one year. It had been her understanding that the home on Lot 16 was to be demolished and a construction of a new home on that lot was to be commenced within one year, and that was actually what had been done. Ms. Dunston continued that if she had realized that the variance required commencement of construction of two homes within a period of approximately nine months, she would have asked for an extension.

Mrs. Smith asked Ms. Dunston when the variance on Lot 17 had lapsed?

Ms. Dunston replied that she believed, from conversations with Mr. Moore, that up until several months ago she could have asked for an extension from his offices. Because she did not know that she was supposed to build the two houses within the time frame, she had not requested the extension, and that was why the re-application had been necessary.

Mr. Moore stated that Ms. Dunston had given an excellent history of the property, however, there had been nothing to preclude her from taking two building permits to build two houses at the same time on both lots. This had indeed received a variance before, and staff had found that a hardship did exist in that the entire subdivision tract was 90' in depth along the north boundary of the Country Club, along the south boundary of Bahama Lane. There had been a problem with the construction of the house, however, presently there was no objection to the granting of the variance.

Mr. Wyett stated that he wanted to be assured that if the variance was granted, the issue of curb-cuts would be decided because of the past problems in this regard.

Attorney Mike Buckner addressed the Town Council, stating that he represented Susan and Bruce McAllister, the contract purchasers, and that he echoed Ms. Dunston's comments with regard to the hardship and the request for a variance. He added that it was their sincere desire to address any issues today in this regard. The architect was present today with plans for construction.

Ms. Sally Gingras, architect for the McAllisters, addressed the Town Council, stating that she was very much aware of the problems associated with front-loaded garage doors, with multiple curb cuts and driveway locations. This particular lot was very narrow, and some balance had to be maintained between screening the front-loaded garage and the ability to actually get on and off the property. She presented photographs of all of the properties on Bahama Lane, with approximately 50% of them having front loaded garage doors, as well as 50% of them having circular driveways. She stated that a 14' driveway cut on the east side of the property was being planned, with the driveway moving behind some landscaping, and then sliding back out to a 12' wide cut on the west side of the property. The landscaping consisted of a 5' high silver buttonwood hedge across the front, with Triangle Palms screening the garage doors. When traveling from east to west, the garage doors could not be seen at all; when traveling from west to east there would be a small amount of time when the garage doors could be seen. If there was a center cut driveway, it would have to be wider than what was being asked for, diminishing the amount of screening, and making driving into the garages very difficult.

Mr. Wyett made a motion to approve on the condition that the curb-cuts locations be left to ARCOM. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

6. Variance No. 20-95 - Robert L. Shapiro, 735 North Lake Way; to allow construction of driveway gates at North Lake Way and at Ridgeview Drive, both set back 13' or more from the pavement in lieu of 15' minimum required. R-B District -

Mr. Peter Broberg, representing the purchaser of the property, Elizabeth Racey, addressed the Town Council, stating that the variance was being requested to allow gates to be placed on the property 13' back instead of the required 15' back. The house was at 735 North Lake Way, which was on the corner of North Lake Way and Ridgeview. The code required that all sliding gates be set back 15' from the pavement. The variance was requesting for relief of 2' on the Ridgeview side and one of the posts on the North Lake Way side. A site plan showing the position of the gates was shown to the Council. Mr. Broberg continued that the variance request was very much in line with gates that had been granted by the Town in the past.

Mr. Paul Castro, of the Building and Zoning Department, addressed the Town Council, stating that staff comments were that the variance request for the gates on Ridgeview Drive were minimal, given the fact that Ridgeview was a much lesser traveled right of way than North Lake Way, however the North Lake Way gate was a different story. North Lake Way was a much more heavily traveled street, and there did not appear to be adequate room to get completely off the road, and staff believed 15' needed to be provided at this location, and did not support the variance request.

Mr. Broberg replied that if the required 2' were complied with, it would require the expansion of the driveway to the house, and they felt they would be in line with the code with the variance request.

Mrs. Smith stated that she concurred and understood with the problems of security and safety of the children, and that she had no problem with Ridgeview. North Lake Way, however, did present a problem in that the area was very narrow, and the she was concerned about the liability of cars pulling off and coming in and out waiting for the gates to open.

Mr. Shaw made a motion to approve Variance 20-95 for the Ridgeview Drive portion, but denying it for North Lake Way. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

7. Variance No. 21-95 - Ray and Sharon Flow, 1350 North Ocean Boulevard; to allow construction of a single family residence on a lot 94' deep in lieu of 100' required. R-B District -

Mr. Ray Flow addressed the Town Council, stating that they were asking for a 60' variance on a 10,000' lot. He presented a petition signed by neighbors,and a letter from the neighbor next door to the property, both agreeing that the variance should be allowed. Mr. Flow continued that the old structure was a detriment to the neighborhood, and that the present house was very run down. It would not be practical to remodel or add on to it. Since the variance was quite small, Mr. Flow asked that it be granted.

Mr. Moore made a correction in that although the lot was 60' undersized, the variance request was for 6' in depth, rather than the 100' that was required. He added that the staff did find that there was a reasonable use of the property existing. The first thing that would have to be looked at would be the amount of the variance, as to whether or not it was a large variance or a small variance. The other side of the property was longer than the 90' needed, however, the reasonable use of the property must be proven before the variance could be granted.

Mr. Shaw stated that he felt there was a hardship on the land, as this was the last lot on the block and all of the other lots had been planned before this last one. All four sides of the lot were different sizes, and given the fact of the odd shape, Mr. Shaw moved to approve the variance on the basis that the hardship did lie with the land, and that it was unique, and that there would be no other variances requested on the property. Seconded by Mr. Wyett.

Mr. Flow replied that there would be no further variances.

Mr. Randolph stated that the property was unique and that a variance could be sustained on that basis. He pointed out that this was not a vacant lot, and that in addition to the findings made, there should be a finding in regard to the reasonable use of the property and the structure that remained thereon.

Mr. Shaw stated that Mr. Flow had indicated that the existing structure was not in good condition, and that it would be a hardship to try to repair it.

Mr. Flow stated that it would be impossible to rebuild the house, and that the house had not been inhabited for over three years. It was of no value to anyone, and would cost more to remodel than it would to build a new structure.

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

8. Variance No. 22-95 - Paul Nicoletti, 120 Clarke Avenue; to allow construction of a 8' x 17' trellis, 10' high, providing an 8' west sideyard setback in lieu of 10' required. R-B District -

Mr. Paul Nicoletti, representing Mr. Jim Scarposki, the owner of the property at 120 Clarke Avenue, addressed the Town Council, stating that the lot was on the south side of Clarke Avenue, midway in the ocean block, and he passed a survey around showing the house and the proposed addition. The addition was a very small trellis structure in the backyard that would encroach 2' into the western side setback. The structure itself would have a barrel tile roof and a concrete floor, with the idea that it would create shade and privacy for the use of the pool. The reason for the variance request was that immediately to the west was a two-story structure overlooking the entire pool area of 120 Clarke Avenue. The conditions existing on the property were such that this was a critical concern to the owner. In addition, this was the only variance being requested as part of a much larger project that was being undertaken. Mr. Nicoletti stated that the hardship derived because of the existing conditions and that in order for this area to be used in privacy there was no other way to do it.

Mr. Moore stated that the structure could be located elsewhere on the side in order to conform with the code, and that staff found no hardship to exist.

Mr. Ken Brower, the architect on the project, addressed the Town Council, stating that there was some room between the edge of the pool deck and the pool where construction could take place, however, the space was not sufficient and could be a safety concern.

Mrs. Smith asked Mr. Brower what the size of the proposed pavilion was?

Mr. Brower replied that it would be 8' x 17'.

Mrs. Smith asked how close it was to the property line?

Mr. Brower responded that they were asking for it to be placed 8' from the property line.

Mrs. Smith asked how high the structure would be?

Mr. Brower replied that it would be approximately 10' high.

Mr. Shaw stated that there would be no need for a variance if the structure could be brought in 2'.

Mr. Brower replied that they were trying to maintain the integrity of the pool deck, so that the structure would not be too close to the pool.

Mrs. Smith stated that the issue was whether or not there was a hardship.

Mr. Shaw made a motion to deny Variance 22-95 for the lack of hardship. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

9. Variance No. 23-95 - Emerald Design & Consulting Corp., Inc., 100 Emerald Beach Way; to allow construction of a single family residence providing a street frontage of 25' in lieu of 150' required, and to allow a point of measure at elevation 24.5' MSL thereby permitting a height of 30' to the top of the tie beam (54.5' MSL). R-AA District -

Mr. Stephen A. Yeckes, the applicant for the request, addressed the Town Council, stating that two variances were being requested. The requirement was 150' of frontage and there was only 25' of frontage. The hardship was that only 25' of frontage existed, the property was on a cul-de-sac. The reasonable use aspect came in because the property west of the mean high water line was 2 acres, over 90,000 ft. of area west of the bulkhead. Reasonable use would not be just one existing 1,000 ft. cabana-type structure in an area of over 2 acres. The variance was being requested to allow development of the property with small frontage.

Mr. Moore stated that there was an additional Special Exception that would have to be advertised for next month if this variance was granted. This property was initially subdivided, and then re-platted into two small lots and one extremely lot on the ocean. It had been contemplated at the time that the cul-de-sac would be a buildable lot in the future. The then owner lived in the little beach house currently on the property, and constructed the two houses to the west. There had never been any intention that this property would not be built upon, and the Town had accepted the re-plat. The variance for the lack of 150' of frontage on the street was contemplated, and the variance for the point of measurement on where the height of the building should start was also contemplated. There was a building set back line that was contemplated and arranged for as a condition, and that had been identified on the plat line. The staff position on this was that there was no objection to these variances.

Mr. Wyett made a motion for acceptance of the two variances. Seconded by Mr. McDonald.

On roll call the motion carried unanimously.

10. Special Exception No. 9-95 - Asset Management Group of America d/b/a Murray's Palm Beach Diner, 2880 South Ocean Boulevard; to allow the continuation of 17 outdoor seats, and to allow the relocation of 8 indoor seats also to the outdoor deck area. C-TS District -

Mr. John Metz, President of Asset Management, addressed the Town Council, stating that they had been in front of the Town Council in the past requesting to enclose the patio at Murray's Palm Beach Diner. At that time they had been told that they did not need to renew their outdoor Special Exception, because they were in the process of enclosing the patio. They had submitted some plans to the Building Department, and unfortunately, they were rejected, and were not re-submitted because of the event of the high season, with anticipation of re-submission. Mr. Metz had met with Mr. Castro, and it was found that the Special Exception for the outdoor dining, as well as the Special Exception for the patio enclosure had been lost. Mr. Castro explained that a request could be made to either have the patio enclosed, or to request a reinstatement of the original outdoor dining Special Exception. Mr. Metz said that they had elected to go for the reinstatement of the outdoor dining Special Exception.

Mr. Moore stated that the Town-serving aspect of the business must be addressed, and that the purpose for him returning each year was to ensure there was no problem with the outside seats in the area. There had been no problems, and staff recommended that if the variance was granted that there would be no need to come back each year, although the Town-serving statement would still need to be submitted.

Mr. Metz stated that a Town-serving study had been submitted both in 1991, and in 1993, and at both times they had been found to be over 75% Town-serving.

Mr. McDonald made a motion for approval of the variance. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

C. Other

1. Consideration of Request by Mr. Tom M. Youchak, Janeiro, Inc., for Elimination of 11:30 P.M. Music and Entertainment Curfew

Mr. Tom Youchak, addressed the Town Council, stating that approximately two years ago, he had come before the Town Council and had agreed to an 11:30 P.M. music curfew. A closing time had not been discussed; the music had been the most important concern of the neighborhood. In two years, the restaurant had been operated successfully, and last year had been awarded as one of the top new 25 restaurants in the country. At the meeting of two years ago, it had been discussed that he could come back and ask for a waiver of the music curfew restriction, and he felt that the restaurant had proven itself a valuable asset to the community.

Mr. Moore stated that the original request had been tied to his application for a liquor license. Because there had been no public notice, there had been an attempt to contact the neighboring people.

Mr. Castro stated that he had contacted Jay Denger, L'Hermitage, Richard Britt at the Dorset House, E. Christy, and Sid Ible, and the Biltmore about the music curfew. They all had said that the restaurant was a good neighbor, but that they had requested that the restriction on Janeiro's not be lifted.

Mrs. Smith asked if there had been any police complaints?

Mr. Moore replied that there had been a report by Major Reiter, however, the Building Department had only one from a neighbor to the east, who had complained about some air conditioning equipment, which Mr. Youchek had addressed. Major Reiter had written to Chief Terlizzese regarding the request to lift the curfew at Janeiro's, and they had indicated that there had been no problems, and the survey of captains indicated that Janeiro's was not a public safety problem, and that unless the format of business had changed dramatically it would be unlikely to be a problem if the music curfew was lifted.

Attorney Teresa Bennett addressed the Town Council, representing the Dorset House, stated that there had been no public notice of this agenda item, and that several mis-statements had been made regarding the application of the beverage license. Mr. Youchek had stated that he would be free to come back before the Town Council to ask for the curfew limitation to be lifted. The language in Mrs. Wiener's motion at the time had been that Mr. Youchek do everything within his power to see that the valet parkers' conduct themselves in a manner that would please the people across the street, so that when the probationary period came to an end they would add a little more time if all was well. Ms. Bennett stated that she felt that fell far short of the lifting of the curfew of 11:30 P.M. She said that the neighbors feel that Mr. Youchek was a good neighbor because of the limitations currently set. At the time of the initial approval of the application, President Smith had been concerned with the late hours, noise, and parking in the area, and she declined to vote in favor of allowing the beverage license because she felt that there had not been enough protection for the residents in the area. Ms. Bennett corrected the record in stating that Mr. Youchek would not be permitted to ask for a waiver, but merely an extension of time. She suggested that currently there was a reasonable and fair balance between the business and the residents of the area.

Mr. Richard Britt, General Manager for L'Hermitage, 200 Bradley Place, addressed the Town Council, stating that he had discussed this issue with his Board of Directors and many of the owners today, and they were in agreement with Ms. Bennett. The main reason that everything was going well now was because of the 11:30 P.M. curfew, and it was the opinion of his Board of Directors that a change should not be made at this time.

Mr. McDonald asked Mr. Randolph if it was possible for the Council to give a conditional acceptance with a time certain, so that if problems developed the hours could be changed?

Mr. Randolph replied that when the Town Council last addressed this matter, there apparently was a willing applicant, willing to go along with conditions imposed by the Council. Tonight, this applicant was asking that those conditions be removed. Mr. Randolph said that this restaurant owner could not be treated any differently than any other restaurant owner in regard to the conditions that the Code allowed for the operation of restaurants. There was no right to impose conditions on a liquor license, and the only reason that it had happened in the first instance was because the property owner was willing. Tonight, that property owner was saying that he wanted those restrictions lifted. Mr. Randolph did not think that restrictions could be legally imposed on the operation of this liquor license.

Mr. McDonald recommended approval of the variance. Seconded for discussion by Mr. Shaw.

Mr. Shaw asked Mr. Youchek what the closing hours of Janeiro's were?

Mr. Youchek responded that they stop serving from the kitchen at 10:30 P.M. and that they close at 1:00 A.M.

Mrs. Smith asked if Mr. Youchek was asking to continue the music until 1:00 A.M.

Mr. Youchek replied that the primary problem with the 11:30 P.M. curfew was the situation that people come in for dinner at 10:00 P.M., 10:30 P.M., sometimes 11:00 P.M., and pre-recorded music was being played. At that time, it would be foolish to shut the music off when someone was having dinner. He had spent close to $1.3 million on the property and it would be a very strange situation if he changed to a dance club situation. He asserted that he was an upscale restaurant, one of the best restaurants in Town, and he agreed with Mr. Randolph's interpretation.

Mr. Shaw responded that he had been looking at this from a live music point of view, and had not given consideration to background music, which he thought was common to most restaurants.

Mr. Youchek replied that at Janeiro's music started at 8:00 P.M., sometimes going to 11:30 P.M., with musicians being hired for a minimum time. When they leave, people were still having dinner and Mr. Youchek had piped in music.

Mr. Shaw asked if it would be agreeable to slightly amend the motion to say that there would be no live music programs conducted after 11:30 P.M., but that dinner music would be permitted.

Mr. McDonald asked Mr. Randolph to respond.

Mr. Randolph responded that the difference between the restaurant application heard earlier in the meeting and this one was that the first application had been a Special Exception, under which conditions could be imposed. As Mr. Randolph understood it, there had been no Special Exception involved here; conditions had just been attached to a liquor license, which had been accepted by the owner.

Mr. Moore stated that there were no Special Exceptions on grandfathered space, and that there was no requirement for notice on liquor licenses.

Mr. Wyett referred to the Town Council meeting of July 13, 1993, during which there had been much opposition to any music after 11:00 P.M. It was not the music inside that concerned him, but no matter how fine the restaurant, it was the patrons in a happy mood leaving the restaurant that caused the noise.

Mr. Youchek stated that he had been at the restaurant for two years, and the reason why there had been no complaints was that he made sure that things happened properly, and would continue to do so.

Mrs. Smith stated that he did have the right to remain open until a certain hour, until 3:00 A.M., and further restrictions could not be placed on him, and there had not been complaints from the neighborhood.

Mr. Moore added that the only way that hours of operation could be changed would be to review operating hours for restaurants that serve alcoholic beverages in the Town, and change them for all. Mr. Youchek's restaurant was a grandfathered space.

Mr. Shaw pointed out that Mr. Youchek operated with hands-on management techniques, and had made an attempt to protect the neighborhood. His only concern was the difference between dinner music and bar music and live entertainment. Mr. Shaw asked for some assurances in an agreement that would say that Mr. Youchek would limit the type of music after 11:30 P.M.

Attorney Bennett again addressed the Town Council, asking for a point of clarification from Mr. Randolph concerning alcoholic beverage applicants making promises to the Town Council that would not be enforceable. She did not understand the scope and was confused by the Council's position that Mr. Youchek's promises had been purely voluntary, subject to change.

Mr. Randolph clarified that he had not meant to imply that the neighbors could not rely upon the agreement between Mr. Youchek and the Town Council. As he understood it, Mr. Youchek had the opportunity to come back before the Council subsequent to a certain date to ask that the restrictions be removed. Mr. Randolph said that he was advising now that if Mr. Youchek was not now willing to be bound by those restrictions that it would not be appropriate for the Council to put such restrictions on a liquor license.

Ms. Bennett asked if Mr. Youchek had ever been bound for any period of time?

Mrs. Smith said that he was bound for one year, and he had the right to come back. The conditions were placed upon him, and were not conditions that he voluntarily submitted--they had been placed upon him by the Town Council. From her understanding, there had been no complaints that Mr. Youchek had not lived up to the conditions imposed upon him by the Town Council.

Ms. Bennett replied that the minutes of the meeting of July 13, 1993 stated merely that the license was granted for a probationary period. Mr. Bennett asserted that there were two issues that arose as a result of that. One issue was the Town Council's inherent power to even impose any conditions on the license, and the other was what was meant by a probationary period.

Mr. Moore stated that there was no public notice requirement on liquor licenses, and that Mr. Youchek, the staff and the Council believed that the probationary period was a time to see how the business was going to conduct itself and how it would affect the neighborhood. Mr. Moore did not believe that it was intended to be punitive in any way.

Mr. Wyett asked if it were possible to approve the variance conditional on not receiving a large number of complaints from neighbors? He asserted that the residents of the Town should be protected over the interests of a restaurant.

Mr. Youchek replied that he is a Town resident who happens to own his own restaurant, and that he he had called everyone in the neighborhood to attend this Council meeting to advise them that he would be coming before the Council today.

Mrs. Smith stated that perhaps there would be more people present today if the hearing had been taking place at 4:00 P.M. instead of 10:10 P.M., and that it should not be assumed that the lack of people was because they did not get notice.

Mrs. Pollitt read the motion made by Mr. McDonald to approve the elimination of the 11:30 P.M. music curfew.

Mrs. Smith asked to what time the curfew would be eliminated?

Mr. Youchek said that he would voluntarily stop the music at 1:00 A.M., and many times he would not even be opened until 1:00 A.M. It was just the principle that if he hired someone to come and play music, which was quite costly, he would not like to have something happen at 11:30 that would force him to shut the restaurant down. Mr. Youchek said that he knew that he had the right to stay opened until 3:00 A.M., but that had never happened other than on New Year's Eve.

Mr. Wyett asked Mr. Youchek how he would satisfy residents if he was unable to control the noise factor at his restaurant in the later hours, resulting in a significant number of complaints?

Mr. Youchek replied that he would revert back to the 11:30 P.M. curfew.

Mrs. Smith commented that she thought that was very generous of Mr. Youchek, and called the question.

On roll call the motion to approve the voluntary extension of the music limit to 1:00 A.M., with the condition if any complaints were received the time would revert to 11:30 A.M. carried 4/1 with Mr. Wyett dissenting.

2. Consideration of Request by Robert Deziel, Esquire, for Clarification of Conditions of Approval for Variance No. 16-95 Relative to 253 Seminole Avenue -

Mr. Robert Deziel, representing 250 Everglade Inc., addressed the Town Council, stating that last month he presented a variance application which had been approved. There had been a condition that there be a development agreement, and through his own error he had not ascertained the exact conditions. He had gone back to his office and drafted an agreement, which he had sent to Mr. Moore and Mr. Randolph, who came up with some valid concerns. He was coming before the Council to discuss the issues and see what their position was. A variance had been granted to allow a two-unit structure on Seminole Avenue. When Mr. Deziel left the Council meeting and drafted the agreement it had not been approved, so Mr. Deziel was present today to ask the Council for clarification. Mr. Moore had told him that his concern was that the Council did not want the two-units to go up on Seminole and the two apartment buildings with the twenty-two units remaining on Everglades.

Mr. Moore stated that the Seminole property was the pivotal property that actually was deficient in size for two units which had received the variance conditioned upon an agreement that involved using of the Everglades property to provide enough total square footage so that it would end up with two duplex units on Everglades and one on Seminole. The problem was that building permits could not be issued with those densities still on Everglades for the property on Seminole. The Building Department did not feel that was within the spirit of granting the variance, nor the conditions applied to same. It was still the position of the Building Department that they would need to see the density on Everglades diminished before a permit could be issued for the undersized lot on Seminole. Mr. Moore stated that this was before the Council today for clarification as to the understanding of granting the variance conditionally.

Mr. Shaw asked if the issue was proceeding with Seminole Avenue before the actual demolition of Everglades?

Mr. Deziel agreed, and said the contract purchaser was scheduled to close two weeks ago.

Mr. Shaw said the concern of the Council was that something would fall apart, even though Mr. Deziel was willing to give back the certificates of occupancy.

Mr. Deziel stipulated that the property on Everglades would only be allowed to be occupied by four residential dwellings.

Mr. Randolph stated that the confusion had occurred through the representation that had been made that the density of the units on Everglades would be reduced to four, but there was no time limit stated on that and there was no connection made between that and the granting of the permit. The Building Department had to protect the intent of the Council and the motion, and wanted to create a time certain in the development agreement.

Mr. Deziel said that the problem was that someone wanted to buy Seminole, who did not want restrictions on the purchase. They could agree that as the certificate of occupancies were reduced on Everglades that no subsequent certificate of occupancies would be reissued until all of the improvements were demolished.

Mrs. Smith stated that the density issue had been addressed at the last meeting, and that they needed something more today.

Mr. Deziel said that he was offering to stipulate that as the units are vacated they would not be reoccupied, and no building permit or activity would take place on Everglades until both buildings were demolished.

Mr. Randolph asked what would guarantee that the properties would be vacated, once the building permit was given on Seminole?

Mr. Deziel replied that he did not know what he could give, short of tying up the whole project. He was open to any suggestions.

Mrs. Smith asked why this had not been discussed last month? It had been her impression that everything was scheduled to happen, and that they were not waiting for people to move out.

Mr. Deziel responded that the timing of everything had not been discussed last month. He had represented that they were going to vacate and demolish Everglades, and the Council had said that they would allow the building of two units on Seminole. No one had ever said that the two units could not be built until the two buildings were demolished. He was back today to let the Council know that they had moved in the right direction since last month.

Mr. Randolph asked if Mr. Deziel could sell Seminole unrestricted so that there would no tie to the Everglades properties, and give the Town an agreement that by time certain those properties would be demolished, and in the event they were not demolished the necessary steps could be taken.

Mr. Randolph clarified that the variance granted at the last meeting was unclear as to the removal of the density on Everglades, and that as a condition of the granting of the variance on Seminole it had been stated that there would be a developer's agreement, stating that the Everglades properties would be diminished in density to four units. Because there had been no time elements stated, Mr. Randolph proposed the consideration of the following:

An agreement be entered into between the applicant and the Town relating to the Everglades property, which would recite that as a condition for granting the variance on Seminole it would be required that the units on Everglades be demolished at a time certain. That time certain would be August 1, 1995, and that there be an irrevocable letter of credit or a bond posted at 135% of the estimated cost of demolition of those units to assure the Town that indeed the demolition would take place by August 1, 1995. Those units would then be replaced by four. Although the agreement could be entered into, if for some reason there was a problem and there were still people there on August 1, it would be difficult to demolish the property.

Mr. Moore stated that was a chance that could and would be revisited at the August Council Meeting.

Mr. Randolph clarified that as people de-occupy, there would be no permits granted for those units. There would only be permits granted on the Everglades property for four units, total.

Mr. Deziel stated that he would prefer a September 1, 1995 deadline.

Mr. McDonald made a motion to approve an agreement between the Town and the applicant, stating that the units on Everglade Avenue will be demolished by 9/1/95; an irrevocable letter of credit or a bond in the amount of 135% of the demolition cost to guarantee the demolition will take place and the 4 units on Everglade will be built. The Developer's Agreement will be submitted by Mr. Deziel within one week (after the 5/9/95 meeting) with the bond for Everglade Avenue. The Seminole property stands with the previously approved variance. Mr. Randolph will review the Agreement. Seconded by Mr. McLendon.

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

3. Consideration of Potential Study Items and Proposed Calendar for 1995/96 Zoning Hearings

Mr. Moore addressed the Town Council, stating that a potential calendar for the next year's Zoning Season, as well as the identified study items was being presented to the Town Council. There were several items that would involve further discussion. Number 6, a Town-serving restaurant study would include square footage of existing restaurants, number of seats, number of onsite parking spaces, number of spaces per seat, lunch versus dinner, valet parking services, nightclub licenses with music and dance, and establishing a more definitive procedure for Town-serving requirements for new restaurants. The staff planned to use the summer months to conduct the studies and put together a recommendation that would be passed along to the Zoning Commission. A great deal of time had been spent on restaurant and night club procedures, and staff recommended that if all of these items were studied, Council might consider the concept of zoning in progress on all licenses that would involve zoning Special Exceptions or Variances during the summer months.

An additional item that would require Town Council authorization would be the creation of a new recreation and open space zoning district that would include Town docks, Town parks, and all private clubs and golf courses. This action would have a heavy financial/intergovernmental/comprehensive plan impact. In addition to staff costs, the study would cost approximately $15,000.

Mr. Randolph stated that Zoning in Progress was a tool that could be used when the study could be narrowly defined. It had been used in regard to height limitations, square footage limitations--where a specific study of something was being done. Applications involving the study item during this time would not be accepted until after the zoning was over. Mr. Randolph stated that he was slightly uncomfortable in declaring Zoning in Progress relating to a broad issue, such as the restaurant issue. A more specific scope of the study would have to be defined. Otherwise, no permits could be allowed for any restaurants until the study was completed. If Zoning in Progress was used, it must be narrowly tailored, so as not to deprive people of permitted uses of property.

Mr. Moore stated that the reason the items are gone through at the May meeting was that they needed the summer to conduct the studies, and authorization of the Town Council was needed in order to proceed.

Mr. Wyett commented that he had a number of zoning items that he would like to add, as well as having the Council revisit the recreational zoning suggestion concerning zoning for clubs, etc.

Mr. McDonald made a motion to accept the calendar and study items 1 through 6 and to defer additional study items, including the issue of recreation and open space until the June 13, 1995 Town Council Meeting. Seconded by Mr. Wyett.

On roll call the motion carried unanimously.

4. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction Work, Regarding Re-Roofing of Town Hall -

Mr. McDonald made a motion for approval of the request for a waiver to Section 12-51 of the Town Code of Ordinance, Hours of Construction Work, regarding re-roofing of Town Hall. Seconded by Mr. Shaw.

On roll call the motion carried unanimously.

5. Consideration of Townwide Comprehensive Preservation Plan -

Mrs. Polly Earl addressed the Town Council, stating that the section of the Plan that discussed the ad valorem tax relief was not up to date and did not include the proper Constitutional Amendment that was passed, nor does it give any indication that the Town had passed its own Ordinance, and gives no up to date information that a home owner could rely on.

Mr. Moore stated that this was not a document for anything other than complying with the Comprehensive Plan requirement to have the document produced.

Mrs. Smith suggested that an appendix could be attached to the document about the tax abatement for historic properties.

Mrs. Earl suggested that the tax abatement program was in place in West Palm Beach and that ten projects had been approved by the City of West Palm Beach, and that there had been no projects requested in the Town of Palm Beach. She wondered if it had anything to do with the fact that the City of West Palm Beach had xerox materials handed out on the tax abatement to anyone making inquiries, and if the Town of Palm Beach could develop the same.

Mr. Shaw made a motion for approval of the Comprehensive Plan, with the addition of the tax abatement information. Seconded by Mr. McLendon.

On roll call the motion carried unanimously.

6. Consideration of a Rehearing Regarding Adler vs. Town of Palm Beach (1530 South Ocean Boulevard)

Mr. Randolph advised that this would come back before the Town Council in June as the applicant would have to reapply and readvertising would have to be done. This item would appear on the June Town Council Meeting Agenda.

XV. ANY OTHER MATTERS - There were none.

XVI. ADJOURNMENT - The meeting was adjourned at 11:05 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:

Sue Eichhorn