

be seen and if it is the Town Council's desire in the motion that the gates and fences not be removed, since they feel it serves a legitimate public safety interest and the remainder of the case be voluntarily dismissed, he believed they could do that in one motion.

Mr. Heeke felt the Attorney should have certain latitude to make decisions that he may be called upon to make swiftly and that is implicit in this discussion to which the remainder of the Council agreed.

Mr. Heeke understood the motion was to direct the Town Attorney to dismiss the suit which Mrs. Wiener clarified as being correct. Mr. Ilyinsky seconded the motion.

On roll call, the motion carried unanimously.

COUNTY COMMISSION'S ACTION ON A-1-A. Mr. Doney explained Mr. Elwell, Mr. Moore and Attorney Jurgens attended the Palm Beach County Commission meeting and Mr. Moore addressed the Council indicating this matter was commented on by the County Attorney. He stated there was no public comment permitted today on this item and that was scheduled for their meeting of April 17. Mr. Cook, the County Attorney, stated Mr. Moore, delivered his report to the County Commission on their research which went back to 1912 on the chain of title for this property and the County Attorney was convinced the County had title to the property. He further informed the County Commission that as a result of this title, they wished to contact the property owners of the subject properties where encroachments existed and the Town of Palm Beach is one of those property owners at Phipp's Ocean Park - the beach stairs. Mr. Moore indicated that in addition to their contacting the property owners, his further statement was they wished to negotiate with those property owners for either the removal of a method of payment - lease or rental - of their encroachments as they exist. He spoke to a representative from the County Attorney's Office and made him aware of the fact that the Town had not received proper notice on this and Mr. Jurgens is preparing a letter to Mr. Cook, copying Commissioner Elmquist requesting all of the pertinent information including the title chain, so it can be studied and this matter should be put on the April Town Council meeting agenda for direction in taking a position on this matter at the Commission meeting of April 17th.

Mayor Marix asked if she heard correctly and the County wants the Town to pay rent for this beach access? Mr. Heeke felt they were not as yet at that point.

Mrs. Wiener made a motion to adjourn the meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously and the meeting was adjourned at 2:05 PM.

Grace T. Peters, Town Clerk

TOWN COUNCIL MINUTES OF TOWN COUNCIL
MEETING HELD APRIL 11, 1990

I. CALL TO ORDER AND ROLL CALL; The meeting of the Town Council for April, 1990 was called to order by President Heeke, on April 11, 1990 at 8:30 AM in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilwomen Wiener and Douthit. During the afternoon session, Councilman Weinberg was also in attendance. Also in attendance for all or portions of the meeting were Town Manager Doney, Mr. Myers, Mr. Dusey, Mr. Bitzer, Mr. Crouse, Mr. Jaguar, Mr. Elwell, Mr. McPhail, Chief Terlizzese, Chief Elmore, Mrs. Peters, Mrs. Haynie-Timmons, Mrs. Crozier, Mr. Bowser, Mr. Moore, Mr. Zimmerman, Ms. Zamecnik, Cpt. Shetron and Attorney Monaghan.

President Heeke explained the first hour of the meeting will be devoted to the budget.

II. INVOCATION AND PLEDGE OF ALLEGIANCE. Father Joseph Ryan of St. Edwards Church gave the Invocation. Pledge of Allegiance was led by Mr. Doney.

III. STATUS OF CURRENT FY90 (10/1/89 - 9/30/90) GENERAL FUND AND OTHER FUND BUDGETS. Mr. Doney explained back-up material has been sent to the Mayor and Council which accurately identifies this year's budget status at this time. Mr. McPhail has indicated the figures, projected revenue, and expenditures are based on five months experience and these figures will be refined and revised as needed as we move forward into the fiscal year.

Mr. McPhail emphasized these figures are for five months and it is somewhat difficult to project the year end figures, based upon the five month figures. He noted revenues are made up of four main categories:

- Property Taxes
- Nontaxable Revenues
- Transfers from two of the three Enterprise Funds, (Marina Fund and Parking Fund).
- Use of Fund Balances

He indicated the revenues for the first five months, if extended out will be within four thousand dollars of the amount that was budgeted. He noted ad valorem property taxes are down slightly, due to reduction in the tax roll. He stated other revenues, utility taxes, franchise fees, state revenue sharing, local government licenses and permits are approximately \$175,000 higher than anticipated, but this too is on a five month basis.

Mr. McPhail noted the Inter-Fund transfers will be made, which means that to balance the budget, \$1,565,000 of prior year surplus is needed instead of \$1,570,000 which was budgeted, which is an indication that revenues are on target.

He stated there are graphs showing the four main sources of revenues. He noted Exhibit 2 shows a summary of the actual expenditures for the last three fiscal years and what expenditures are projected to be for these categories. He stated the expenditures are estimated to be at 97% of the General Fund Budget. He noted usually the expenditures total between ninety-four through ninety-seven per cent, which is an indication they do a good job in budgeting so there is no unexpended funds or surplus at the end of the year. This enables the Town to maintain the Triple A rating on bonds, and he noted this Town is the only municipality in the State of Florida with that rating.

Mr. McPhail noted page eight in the hand-out shows the expenditures over the last several years. Mr. Heeke noted the projected spending looks like it is under budget in all of the Operating Accounts.

Mayor Marix noted on the first chart, there were no use of fund balances in 1987, 1988 and 1989 but in 1990, there is a projection to do so. Mr. McPhail responded that generally they budget that item and in actuality that is never used as when you close out the end of the fiscal year, the expenditures are deducted from the revenues and the balance goes into the Fund Balance. He noted in these particular cases, the revenues exceeded the budget in each year and there was no need to use fund balances.

Property taxes	Mr. McPhail noted Exhibit 3 indicates the other funds the Town maintains, and in the Debt Service fund, they anticipate revenues to be slightly under again because the property tax is slightly lower than anticipated. He stated the reason for the large amount in the Capital Improvement Fund is the Beach Nourishment program. He stated the Parking Fund is slightly under in revenues and in expenditures. He indicated the Golf Course Fund will have increased revenues by approximately \$60,000 and expenditures will be slightly less than anticipated. He stated the Marina Fund expenditures will be slightly under and revenues will be as anticipated. He stated in the Self Insurance Fund, expenditures will be down a bit due to the liability and Worker's Compensation claims being down somewhat. He indicated Page 10 shows a graph of the overlapping tax rates. He noted the percentage of the Town to the total amount of taxes the Town produces, is 23%. He stated the Palm Beach County percentage figure is 23.2 and the School Board is 43.7%. The South Florida Water Management District is 2.6%, the South Lake Worth Inlet District which is applicable to properties south of Southern Blvd. is two tenths, Child Services is nine tenths; Florida Navigational District - two tenths and the Health Care Tax is 5.9%. Mayor Marix noted if you would add the Child Care and the Health Care, the County is really at about 30%. Mr. McPhail referred to Page 11 which shows the taxable value of Palm Beach County and the Town and the Town as a percentage of the County stays around the eight per cent mark and on Page 12 through 15 is this year's budget calendar which was adopted by the Council in March. Mr. McPhail felt the Town is basically at where it should be at this point in time of five months into the fiscal year. Mr. McPhail noted there are some known costs for next year, such as the Employees' Retirement System which will have an added cost of \$117,600 which does not include any changes in benefits but is the additional cost based on percent of payroll. He stated the actuary's report has been received on the Group Health Insurance program and this will go up approximately from \$110,000 to \$1289,000 and this depends on where we want to have the reserves. He noted the small figure, \$110,000 would bring their reserves to about thirty per cent; but if they go to the larger number, the reserves will be approximately fifty per cent. He asked the Council to bear in mind the excess coverage feature does not come into play until they have exceeded 25% of their normal average claims. He felt as they get further into the budget year, they will be better able to recommend what should be put into the reserves. Mr. McPhail noted while they are self insured, the excess coverage must be provided and the Town has to pay the State a fee, based on what the premiums would be. Mr. McPhail noted the Finance Department was granted \$8500 for a part time person in Purchasing, pending a job audit by Personnel and if the audit proves there is a need, that will increase his salary budget by approximately \$25,000. Mayor Marix noted what we have talked about probably will add up to approximately half a million dollars. She believed some of the things can be cut down on, but wondered if any thought has ever been given as to whether they might save more. Mr. McPhail stated the budget process is to look at what type of services you wish to render and try to do that for the smallest amount of dollars. Mayor Marix felt there should also be some thought as to what they have to do without. Mr. Heeke recalled the Department Heads have already been asked to stay within four per cent of this year's budget as their maximum increase. Mr. Doney reminded the Mayor and Council the initial meetings of the Finance & Taxation Committee are scheduled for Monday, June 4th and Tuesday, June 5th at 9:30 AM and will be done on a Department by Department basis. Mayor Marix wondered if there could also be an exercise in keeping the budget at exactly where it is, and what items would have to be changed or done without or cut down on, in order to do this. Mr. Doney responded that certain items would go up, such as the insurance programs and the utilities and the uncontrollable items could be isolated which would have dollar impact on the budget; however if they wanted to keep it at the same dollar level, they would have to prioritize what would have to be eliminated and the impact of that would have to be explained. Mayor Marix indicated this is what she meant and in order to keep the budget where it was, the items which would have to be eliminated would be enumerated as certain other items would be uncontrollable. She simply wanted to know where would be the best place to cut back and what the consequences would be to do the cutbacks. Mr. Heeke recalled some municipalities start from zero and to through and justify everything and a complete line item is done on a periodic basis, which gives a change to see if there is anything that hasn't been seriously considered before which could be modified. Mr. Doney believed the basis on which they view the budget provides that opportunity and this could be taken to infinite detail. Mayor Marix felt there were certain areas which could be held and everyone could look at their budget and know where these places are and they may have some drawbacks, but a certain amount could be cut and the reasons pro and con should be stated. Mrs. Wiener did not wish to receive a sheaf of reports as has been submitted this morning, as they cost money to produce. Mr. Heeke agreed.
Comments from public	IV. <u>COMMENTS FROM PUBLIC ON TOWN BUDGETS.</u> Mr. Eric Gilbertson addressed the Council and stated the Mayor's suggestion was a good one. He pointed out in 1980, the budget for the Town was twelve and a half million and in 1989/90, it is twenty six million and urged the Council to reduce it in any way that is possible. He reported the total assessment of the entire Town in 1980 was under eight million and today it is approaching four billion dollars. He stated the millage rate is the same as it was in 1980. He believed the fixed income taxpayer is the one who is paying for this because of the fair market value. He felt it was a great American tragedy and borders a criminal act. He urged the Council to impose a zero cap for the next five years and urged if this cannot be done, especially with the County taxes, the Town should secede from the County and create its own County, which could be Palm Beach Ocean County. Motion was made to adjourn until 9:30 AM by Mr. Ilyinsky. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. President Heeke called the meeting to order at 9:30 AM. On roll call, all elected officials were found to be in attendance with the exception of Councilman Weinberg, who arrived during the afternoon session. I. <u>APPROVAL OF MINUTES OF JANUARY 3, MARCH 13 AND 27, 1990.</u>
Approve minutes	2999.25

Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit to approve the minutes. Mrs. Wiener noted there were omissions on the minutes of March 13, and the bottom of some pages did not correlate with the top of the next page and she believed there was some new equipment being used. Mr. Heeke noted it was a problem in the generation of the copy, rather than the text itself and asked Mrs. Peters to make the corrections. On roll call, the motion carried unanimously to approve with corrections.	Approve minutes
II. APPROVAL OF AGENDA. Mr. Doney asked for an addition under Licenses and Permits and that would be Item IV. A. 2 - the addition of a charitable solicitation Ballet Florida, No. 156-90. Mr. Moore asked that Item IX, C, 2c Var. 18-90, as item postponed. Mr. Heeke asked if the request was received timely to which Mr. Moore responded it was not. Mrs. Douthit noted the reason it was not was because of the change in the Council meeting date. Motion was made by Mr. Ilyinsky to authorize the postponement of Var. 18-90 - Herbert Pheeneey to the May Town Council meeting. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.	Approve agenda
Motion was made by Mrs. Wiener that the agenda be approved as amended. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.	
III. PRESENTATION: A. Recognition of Martin E. Murphy - Retirement Board - Recommend Deferral to May 8, 1990 Town Council meeting. Mr. Heeke advised this item has been deferred.	
IV. MAYOR'S COMMENTS: Mayor Marix advised that April 17, is the Town's birthday as well as that of Gertrude Maxwell who was born on the day the Town was founded.	Mayors Comments
V. LICENSES AND PERMITS: A. Charitable Solicitations: 1. Make A Wish Foundation of South Florida, No. 300-90. Mrs. Peters explained the application was not filed timely as they wish to have their fund raising event tomorrow and if Council does grant this, she will need a waiver of the advertising rule. She stated that the application is in order, and this is their first solicitation in Palm Beach and an opportunity came up for them to have a fund raiser on Worth Avenue, which is the reason for the late filing. Motion was made by Mrs. Douthit to approve with the advertising rule waived. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.	Licenses & permits
2. Ballet Florida, 156-90. Mrs. Peters explained a letter was received from Mr. Beebe requesting an extension of their permit for the 89/90 Season, which expired 2-28-90. She stated on that permit there were two events held but find themselves in a shortfall and would like to hold small dinners or lunches in thirty homes in the Town of Palm Beach on April 28, 1990 and their request is this be treated as one event. She indicated if this is granted, the Council would have reinstated an expired permit and allowed three events under that permit. She explained when the original application was received, they did request the permit expiration date to be in August, but since their two events were earlier, she requested Ballet Florida to shorten the allowed permit time, in order that there would be no problem when they applied for their next year's permit.	
Mr. Beebe addressed the Council noting Ballet Florida did hold its first fund raiser in the Town in Feb. 1989 and at that time they should have requested the permit to cover their event held in Dec., 1989, but did not, therefore took a permit for the 1989-90 season and which also included the fund raiser held in February. He stated members of his support committees have offered to hold lunches in their homes and it would be for 8 or 10 people and he looked at it as being creative. Mayor Marix asked if he could just hold one lunch? Mr. Beebe stated he could but they are trying to keep the costs down and they would be more intimate. Mrs. Douthit noted two events have already been held. Mr. Beebe stated they have had only one event in calendar year 1990. Mr. Beebe viewed the fund raisers he was proposing as one event to which Mrs. Douthit did not agree. Mr. Heeke agreed. Mr. Beebe stated it is a different way of raising funds. Mrs. Douthit made a motion to deny the request on the grounds it is not close to the realm of the Charitable Solicitation Ordinance. Mrs. Wiener noted this is a traditional way to raise funds and she has attended this type of event and after the main meal in someone's home, so it is not a major expense, and then they would meet at one place for dessert. She pointed out this organization is a local one and is stellar to this community. She asked for the Town attorney's opinion. Mayor Marix agreed that having ten people to your home would be much friendlier than going to a hotel, but the problem is this is thirty fund raisers and there will be fund raising at each home. Mr. Beebe explained he has already set up ten homes not in Palm Beach. He stated this Ballet belongs to this community and if this is not acceptable, he has to find some way to come up with the additional funds and asked for permission to hold some sort of a fund raising event.	
Mr. Heeke felt the requirements of the Ordinance should be adhered to and it is his thought there is no application to be extended, since the Permit has expired. Mr. Ilyinsky felt they should be granted a variance to hold another fundraiser this year, but has to agree that thirty different houses would not be acceptable. Mr. Beebe pointed out all through the season they all attend this type of things which are held illegally. Mrs. Douthit felt that should be the very reason this is denied as they shouldn't be asked to permit further illegality. She agreed the organization was a very good one, but she couldn't go along with the thirty events. Mr. Beebe asked if they turn that request down, they grant him the right to hold a fund raiser before the end of the year. Mrs. Wiener believed there should be an agreement there be no further fund raising by Ballet Florida in the Town of Palm Beach if one fund raiser was allowed before the end of the year.	
Mr. Heeke noted there was no second to the motion and handed the gavel to Mr. Ilyinsky to chair the meeting and seconded the motion to deny. On roll call, Mrs. Douthit and Mr. Heeke voted for the motion to deny and Mr. Ilyinsky and Mrs. Wiener voted against the motion to deny. Mayor Marix broke the tie by voting for the motion to deny. 3-2.	
Mrs. Wiener then moved that Ballet Florida be permitted to have one fund raising function between now and December 31, 1990 to be held at one location in the Town of Palm Beach and waiver of advertising, if need be; and all paper work connected with same be in order. Seconded by Mr. Ilyinsky. On roll call, the motion carried 3-1 with Mr. Heeke voting against the motion.	
B. Beverage License - Change of Name. Request by Joseph Leo Bustani/Property Investment Enterprises, Inc. d/b/a Safari & Polo Club to Change Name from The Monkey Bar - 4 cop. Mr. Doney explained the application has been reviewed by staff and is in order and staff recommends approval. Mr. Ilyinsky moved for approval. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.	Beverage License
VI. OLD BUSINESS: A. ORDINANCES - SECOND READING. LAND DEVELOPMENT REGULATIONS: 1. Ordinance No. 3-90 - Water Saving Devices Required for New Development. Attorney Monaghan read the Ordinance by title:	Ordinance 3-90

Ordinance 3-90	AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE STANDARD PL MBING CODE, 1988 EDITION, AS ADOPTED BY THE PALM BEACH CODE OF ORDINANCES; PROVIDING FOR WATER SAVING DEVICE REQUIREMENTS IN ALL NEW DEVELOPMENT, REDEVELOPMENT AND RESTORATION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. Mr. Ilyinsky moved for approval of Ordinance No. 3-90 on second reading. Seconded by Mrs. Douthit. On roll call the motion carried unanimously.
Ord. 4-90	2. Ordinance No. 4-90 - Amendment to Definition of "High Hazard Area". Attorney Monaghan read the Ordinance No. 4-90 by title: AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE "COASTAL HIGH HAZARD AREA"; AMENDING THE SPECIFIC STANDARDS FOR FLOOD HAZARD REDUCTION; PROVIDING FOR REPEALS OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE. Motion was made by Mrs. Douthit to approve Ordinance No. 4-90 on second reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.
Ord. 5-90	3. Ordinance No. 5-90 - Amendment to Streets and Sidewalks Ordinance, Providing for Shared Access. Attorney Monaghan read the Ordinance No. 5-90 by title: AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 19 (STREETS AND SIDEWALKS) OF THE TOWN CODE OF ORDINANCES BY CREATING ARTICLE IV, SECTION 19-46 TO PROVIDE FOR SHARED ACCESS TO PUBLIC STREETS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE. Motion was made by Mrs. Wiener to approve Ordinance No. 5-90 on second reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.
Ordinance 6-90	4. Ordinance No. 6-90 - Amendment to Subdivision Ordinance, Providing for Lot Splits. Attorney Monaghan read the Ordinance by title: AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING SECTION 20-1 OF THE TOWN CODE OF ORDINANCES TO PROVIDE FOR FILING OF PLATS AND REPLATS; PROVIDING FOR THE PROCEDURE TO OBTAIN A LOT SPLIT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. Motion was made by Mrs. Douthit to approve Ordinance No. 6-90 on second reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.
Ord. 7-90	5. Ordinance NO. 7-90 - Concurrency Management System Ordinance. Attorney Monaghan read the Ordinance by title: AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, CREATING CHAPTER 25 (CONCISTENCY AND CONCURRENCY MANAGEMENT SYSTEM) OF THE TOWN CODE OF ORDINANCES, TO PROVIDE THAT PROPOSED DEVELOPMENT SHALL BE CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN; PROVIDING THAT PUBLIC FACILITIES AND SERVICES SHALL BE AVAILABLE AT PRESCRIBED LEVELS OF SERVICE CONCURRENT WITH THE IMPACT OF THE DEVELOPMENT UPON THOSE FACILITIES; PROVIDING FOR PROCEDURES AND CRITERIA TO ENSURE THAT FACILITIES AND SERVICES NEEDED TO SUPPORT DEVELOPMENT ARE AVAILABLE CONCURRENT WITH THE IMPACTS OF SUCH DEVELOPMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. Motion was made by Mr. Ilyinsky to approve Ordinance No. 7-90 on second reading. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.
Ordinance 8-90	6. Ordinance No. 8-90 Natural Resource Protection Ordinance. Attorney Monaghan read the Ordinance by title: AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, CREATING CHAPTER 26 (NATURAL RESOURCE PROTECTION) IN ORDER TO PROVIDE THAT PROPOSED DEVELOPMENT IS CONSISTENT WITH THE TOWN'S COMPREHENSIVE PLAN; PROVIDING PROTECTION TO RESOURCES FROM POTENTIALLY HARMFUL EFFECTS OF DEVELOPMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. Mrs. Wiener moved for approval of Ordinance No. 8-90 on second reading. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.
Alternate water supply	B. Other 1. Alternate Water Supply Investigations - "Notice to Consulting Water Engineers" and Related Matters Status Report. Mr. Doney explained since the 3-13-90 Town Council meeting, the staff has proceeded with acquiring the services of a professional engineer to do a feasibility study to look at the alternatives and cost associated with the water issue. He noted the reason why the Town needs to proceed on this course is because of State Law, as the Town must advertise and look competitively at those engineers who could analyze this matter in order to have available information for all to look at the cost of water in the future. He stated the ad was run and the deadline was April 9, 1990 and eight firms have submitted letters of interest and statements of qualifications and during the next two weeks, the Selection Team, which consists of Mr. Weinberg, as Chairman of the Public Works Committee; Mr. Dusey, Director of Public Works; Mr. Bowser, The Town Engineer; and Mr. Sunstrom, an attorney who will review the submittals and make a short list and then received presentations from the highest ranking firms. Mr. Doney explained at that point, the highest ranking firm will be selected and negotiations will be in progress for a contract, which is a key juncture to this process. He stated there will be a well defined scope of work and the Selection Team will be looking at that very carefully. He stated it is hoped the negotiation process will go well as it will be an involved procedure, but it is hoped the Selection Team will recommend a contract to be brought back to the May 8, 1990 Town Council Meeting, but if that time table is not met, this will be considered either at a Special Town Council Meeting or at the June 12, 1990 Town Council Meeting.

Mr. Heeke asked if the Team would come up with a recommendation for the successful bidder to which Mr. Doney responded affirmatively. Mr. Heeke called for comments from the public.

Mrs. Polly Earl read a letter from the President of the Preservation Foundation, Mr. John Machek: "On behalf of the Preservation Foundation, I wish to respectfully ask the Mayor and Town Council to move expeditiously to act on the DuPont Company proposal to build, for no cost, a reverse osmosis water plant to serve the Town of Palm Beach. It is our understanding that this offer has been public for approximately one year. In view of the long-term South Florida water crisis and competing claims for water resources, it is imperative that the Town act to secure for its residents an independent source of water supply. If no major negative impact of the DuPont proposal has been isolated through the past year up to date, the Preservation Foundation feels the Town should move forward, to facilitate the permitting process so that our access to water supplies is assured. We believe that any use of consultants should focus on the DuPont proposal, rather embark on a lengthy evaluation of other alternatives. How many other companies have come forward with a proposal as financially attractive and as beneficial to taxpayers as the DuPont proposal? If the beauty of our Town and our quality of life are to be preserved, water is a necessity. The Preservation Foundation urges the Council to act now and to exercise the vision to safeguard our water."

Alternate
water
supply

Mr. Anthony Baker, 150 Clarke Avenue, addressed the Council, indicated he had installed a water filter system in his home to filter the water we now receive from West Palm Beach and he exhibited samples of what the filter looked like after being in use for thirty days.

Comments
from
public

Dr. Robert Pollard of Emerald Lane addressed the Council to encourage them to proceed with the DuPont offer as they offered to build the plant and operate it for 15 years and then, if the Town so desires, to sell it to the Town for a cost of four million, and if the Town did not want to purchase it, would continue to operate it. He stated the DuPont people would sell us the water we use and would amortize it through the water costs as the water is used and he thought this would be less than we now pay for water. He hoped that as they move through the necessary studies and legalities, they would not lose this opportunity.

Mr. Heeke responded they are in touch with DuPont, advising them of the legalities we must observe, so they are not being ignored.

Mr. George Ford of 300 Regent Park addressed the Council, and he was delighted to see the Town moving toward the direction of obtaining an independent water supply. He reported in the last two months, he has talked to approximately six or seven hundred people and has found no-one against it and almost everyone is in favor of the system suggested by DuPont. He wishes them to follow their proper processes, but believed in requesting the bid, the bid should be on the same basis as the DuPont offer, to operate the plant for fifteen years, amortizing it and giving us a cost figure of purchasing it at the end of the fifteen years.

Mr. Heeke did not believe any member of the Council was in a position to comment whether this would be in the best interest of the Town to have DuPont build it and operate it and then the Town own it at that point, as the numbers have to be looked at.

Mr. Ford felt they didn't have to look at the numbers very much as they would need a twenty million dollar bond issue and six million dollars to carry it through the 15 year period. He pointed out there has been talk of a joint contract with West Palm Beach, and he had no objection to that if it were for the pipes and allowing us to sell them excess water, which we will have, but he felt the people in this Town did not want them to mix their water with the water in West Palm Beach. He believed the people in this Town deserved a water system which is their own and which is located here. He knows there has been talk of siting this in West Palm Beach and he felt they could find ample space to put it here in the Town, ideally perhaps to the rear of the South Fire Station or if that is found to not be satisfactory, they could raise money to buy a lot. He stated it would be properly landscaped and it would only be housed in a building which would be 50 x 100 feet. He urged them to continue on this project and get the permits quickly.

Mr. Heeke thanked Mr. Ford for the amount of time he has put into this project. Mayor Marix commended Mr. Ford also.

William Rasmussen, 201 El Bravo Way addressed the Council in favor of the DuPont proposal. He stated he had a reverse osmosis system in his home and it is very economical. He did not believe there were any other companies out there who would be willing to provide small turnkey operations such as DuPont has recommended and he felt this would be very beneficial to the Town.

Dorothy dePeyster, 315 Pendleton, a member of the Garden Club, addressed the Council indicating the Garden Club is behind the plan of using the DuPont proposal and urged the Council to expedite this matter of the water.

Mr. Ford again addressed the Council reporting to complete the plant after the contract is signed, would take nine months and it would be in operation at that time.

Mayor Marix wondered if they could make a decision that they are interested in only a turnkey operation, which might save some time. She felt there were other things that could be done to find out the industrial rate of the water and it might be something they could do now and they wouldn't have to wait for this kind of information.

Attorney Monaghan responded the request proposals have already gone out. Mr. Doney stated this is to select an engineer to do a feasibility study of the alternatives, operations and costs. Mayor Marix asked if the Council so desired, could they save some time and costs if it was known they only wished to look at turnkey operations? Mr. Doney responded that if the Council during the feasibility study, wants to limit that study be stating only turnkey operations should be evaluated and considered, they could do that; but he thought if the Mayor and Council would like to know all of the options and alternatives, with costs, in order that the best possible cost effective measure of providing independent water to the Town could be attained and that may or may not be a turnkey operation.

Mayor Marix asked if in his best judgment after the engineer is selected, when will they get started with the system they select. Mr. Doney stated either on May 8 or June 12 Town Council Meeting, or at a special meeting in May or June, the detailed scope of work will be negotiated with the highest ranking firm and that would be made available to the Mayor and Council and if they feel that scope of work needs to be revised to add items of study at certain costs, then that is the point at which the contract is authorized to be entered into, then the engineering firm would commence their studies. Mayor Marix felt this was the first bit, but her question was how long are these studies likely to go on before the pipes cost, or where the location might be is finalized. She stated her question is actually what is the overall time frame until they start building? Mr. Doney stated it is his understanding that only once the scope of work is defined, there will be a time table along with how the items of the study would be completed, then the results come back to the Town Council and the Mayor and then from that point, a decision will be made and one of the decisions made could be to look at the turnkey operation or other operations.

Mr. Heeke indicated they will now go on to the next item as this was not intended to be a full scale discussion and the points raised by the Mayor and the direction at which Mr. Ford has recommended has narrowed the point of inquiry to certain projects and he thought they were in the midst of getting consulting engineers and they can know the feelings of this group very quickly and that they would like to head toward a turnkey operation and he was sure the consultants would be bearing that in mind. He didn't believe any questions could be answered today.

Comments
from
public

underground
utilities
cost
sharing

Mr. Heeke asked if the bids had been received? Mr. Doney explained the letters of interest and statement of qualifications have been received, but there were no bids at this point.

2. Proposal for cost-sharing of study on underground utilities and related issues - requests by Daytona Beach Shores and Ft. Walton Beach - Deferred from March 13, 1990 meeting. Mr. Doney indicated this matter was deferred from the last Town Council meeting and the further investigation that was done was set forth in Mr. Elwell's memo of April 4, 1990. Mr. Elwell has consulted with Dr. Bart Moore, Chairman of the Civic Association's Beautification Committee who also participated in the conference telephone calls to Councilman Maney of Ft. Walton Beach and Councilman Dannecker of Daytona Beach Shores and the request is whether the Town Council would want to authorize the Town's participation in funding a portion of the cost of the study that would be performed by the University of Central Florida to investigate this matter.

Dr. Bart Moore addressed the Council, indicating his Committee agrees to be supportive of the recommendation for the contribution to this study and they would possibly be willing to donate some monies toward that study, however, final approval needs to be received from the Board.

Mrs. Douthit noted Mr. Wearn is in the room, a former Councilman, and recalled Mr. Wearn had looked into this matter a number of years ago and it was found the figures to do this would be astronomical. Mr. Wearn advised they did look into this and it is quite expensive from the standpoint of what the utilities companies tell them. He is continuing to explore this for the Town of Manalapan and would want to go forward with the concept in Manalapan and encouraged the Town Council to continue the explorations here.

Mayor Marix asked if they had checked into dealing with this in a completely developed area? Mr. Wearn stated the expense would be quite large, but it does depend on the subsurface as if it is a relatively easy subsurface and above the water table, it would cost less than if there was a difficult subsurface full of rock or coral or low in elevation. Mayor Marix asked if he thought this study would go into a built up area or is it just a general study on the subject? Mr. Wearn responded he believed it was generalized.

Dr. Moore recalled they are in their second phase of discussion on this matter and they have invited Ted Moffatt, the Regional Vice President for FP&L to assist them in a request to identify costs and started with a project which encompassed Royal Palm Way and South County Road to Worth Avenue and identified ten large concrete FP&L poles and the transformers and the lines they supported and found how much it would be to have the transformers pad mounted in utility easements behind and out of the way of the vision of the public and their cost estimate which identified ten poles. He was happy with the work done by Mr. Moffatt and his staff and the help they gave to them and FP&L waived a \$17,000 feasibility study fee which was to assist them and make recommendations to Council and he had a letter dated March 23, 1990 from Mr. Moffatt which states: "I am enclosing four copies of the plans to convert the overhead electrical facilities to underground facilities on South County Road generally between Royal Palm Way and Worth Avenue. The total cost for these exchanges is \$198,501 and the project would take approximately three months to complete."

Dr. Moore figured this was about \$20,000 per pole and he felt that was reasonable. Mayor Marix thought it was remarkable what they have done to come up with this kind of research and it isolates a particular area and gives a cost and it isolates a particular area and gives a cost and she wondered if this wasn't more of what they needed rather than the study proposed. Dr. Moore indicated they were looking at how to improve the beauty of the Town and has had concern with the hacking of the trees around the wires. He was concerned about trees falling during a hurricane and how long they would have to be without electrical service. Mr. Heeke wondered if the homeowners would be responsible if this program is ever undertaken for the service to the house and wondered if this would also include Comcast as well as Southern Bell. Dr. Bell stated this was discussed with FP&L and it was stated the feed would be down the lateral gutter lines of the street and branches off into the houses, which eliminates the need for easement control, but that is another consideration. He felt this would give the Town residents more protection. He felt if this was to be a meaningful beginning, they would start with a commercial application and if Council decided to move in this direction, the research could be shared for further refinement and it should have a very positive result.

Mr. Heeke commended Dr. Moore and Mr. Moffatt for this study. Mrs. Douthit encouraged them to continue on a local basis on a section by section basis. Dr. Moore felt FP&L made an excellent step in their direction to assist them on this project.

Mrs. Wiener stated she felt what has been done locally together with what is proposed in regard to discussing the entire matter on the State level as far as costs and influencing the overall cost of electricity in the State of Florida, she didn't think \$2500 for the study would be too outrageous and made a motion that the Town be included in the study and with the cost of \$2500 with the hopes that the Civic Association would be of some help to us to indicate their solid support for this study. Mr. Heeke asked if this motion should be deferred until after the Civic Association has an opportunity to consider this? Mrs. Wiener stated this will be a full study and it would change the way the State of Florida would look at electric rates, if they do go underground, as until now certain statements have been made by the Utility Companies as to the cost, but that does not include all the extraneous legal costs, damage costs that happen as a result of electrical surges, all of the costs included when poles go down in storms, all of which are major items, and it will be studied completely and a report made.

Mr. Doney clarified the proposed inter local agreement would have eleven participants and if all of the suggested eleven do not participate, the cost may be proportionately higher. Mrs. Wiener stated her motion states \$2500 and it should not exceed that amount. Mr. Heeke believed the motion is the Town will contribute up to the amount of \$2529.64 and not execute the inter local agreement. Mrs. Wiener agreed it would not be executed until such time as the other people are a part of it. The motion was seconded by Mr. Ilyinsky. On roll call, the motion was carried with a negative vote cast by Mrs. Douthit. 3-1.

Mr. Doney indicated a related request was whether the Town would consider being an intervener in the action before the Public Service Commission. Attorney Monaghan indicated there are different levels of intervention, one is you can intervene and allow others to take the lead; of course when one intervenes, there is a certain level of participation which is minimal as one would have to monitor the pleadings and keep up with the course of the litigation. He stated one can intervene and be a major contributor to the effort.

Mr. Heeke believed there would be a local attorney's cost for the monitoring as they are already represented before PSC, and he was against it, to which Mrs. Wiener agreed, as did Mrs. Douthit.

Mr. Monaghan stated another alternative would be to express their opinion directly to the PSC through correspondence.

Mrs. Wiener did not think it even needed to be monitored as the people from Ft. Walton Beach and Daytona Beach Shores will be doing that.

Mr. Heeke asked that a letter be sent to the PCS that we concur.

VII. NEW BUSINESS:

A. Bid Awards:

1. Sealed Bid No. 008-89/90 - Brazilian Dock Electrical Upgrade - Consideration of
Res. No. 44-90:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH
COUNTY, FLORIDA, AWARDING A CONTRACT TO AMERICAN LIGHTING MAINTENANCE FOR THE BRAZILIAN DOCK
ELECTRICAL UPGRADE.

Mrs. Wiener moved the Sealed Bid No. 008/89/90 be accepted as recommended and the Town Council adopt Res. 44-90.
Seconded by Mrs. Douthit. Mayor Marix asked why the professional services would be \$12000 to which Mr. Dusey respond-
ed this reflects the effort required to do the design work, and includes construction monitoring. On roll call,
the motion carried unanimously.

2. Sealed Bid No. 009-89/90 - Renovation of Finance Department and Town Clerk's Office
- Consideration of Res. No. 45-90. Mr. Monaghan read the resolution:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA,
AWARDING A CONTRACT TO RPM CONSTRUCTION FOR TOWN HALL FINANCE AND TOWN CLERK OFFICE
RENOVATION.

Mrs. Douthit moved that Res. No. 45-90 be approved. Seconded by Mrs. Wiener. On roll call, the motion carried
unanimously.

3. Sealed Bid No. 011-89/90 - Parking Meter Collection and Maintenance Service. Mrs.
Wiener moved the acceptance of Sealed Bid No. 011-89/90 pursuant to the memorandum of Mr. McPhail of March 27, 1990
and the award be to Parking Meters LTD in the amount of \$31,987.00. Seconded by Mrs. Douthit. On roll call, the
motion carried unanimously.

B. Appointments:

1. Code Enforcement Board - Two Terms to Expire April 1993. Mr. Heeke reported Mrs.
Goodale and Mr. Falcon are present members and are eligible for reappointment and have agreed to be reappointed if
members of the Council so desire. Motion was made by Mrs. Douthit, seconded by Mr. Ilyinsky that Mrs. Goodale and
Mr. Falcon be reappointed for a period of three years to the Code Enforcement Board. Motion carried unanimously on
roll call.

2. Landmarks Preservation Commission - Consideration of Appointment for Third Alternate
Member. Mr. Ilyinsky moved that Arthur Silverman be appointed as Alternate Member to the Landmarks Preservation
Commission. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

C. Other:

1. May Proposed Summer Golf Fee Schedule - As Recommended by Golf Commission. Mr.
Ilyinsky moved the recommendations as contained in the memorandum fo Mr. Dytrych of March 30, 1990 for summer golf
fees be approved. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

2. Consideration of Actuarial Study on Group Health Insurance Plan. Proposed Medical
Monthly Premium Rates for 1990. Mr. Doney explained the Actuarial report was received and the results and the
staff's recommendation are set forth in a memorandum dated 4-10-90 and the recommendation is of the actual dollar
increase, 50% of the cost be paid for by the employee and 50% paid for by the Town and this matter be revisited on an
annual basis. Mr. Heeke asked if the elimination of the three or four tier system is also being looked into? Mr.
Doney stated that was correct. Mr. Ilyinsky moved the recommendations of the staff be approved as it related to the
increase in medical monthly premium rates for 1990. Seconded by Mrs. Douthit. On roll call, the motion carried
unanimously.

3. State Beach Management Plan - Request by Florida Shore and Beach Preservation
Assocaiton for Town Support. Mr. Doney explained the Florida Shore and Beach Preservation Association is a state
wide organization composed of various municipalities and counties throughout the State with a number of purposes but
one of which is to encourage and support the protection of the beaches and methods of funding. He has received a
letter dated March 13, 1990 from the President of the Association, Mr. Tate, asking the Town to foim with other
municipalities in encouraging the Town, through the local Legislative delegation, to adequately fund a State-Wide
Comprehensive Beach Management Plan and as recommended by a Blue Ribbon Task Force to allocate seventy million
dollars annually for beach repair, maintenance, and acquisition. Mr. Doney suggested the President of the Town Council
be authorized to direct a letter on these items to the members of the County Delegation in lieu of a Resolution, to
which the Council agreed.

4. Lulu's Restaurant - Consideration of Noise Complaints. Mr. Doney reported a
complaint has been received from Attorney Maass, who represents the Dorset House, on noise coming from Lulu's
Restaurant. He had an investigation made of this through the Chief of Police and a report has been prepared which
has been furnished to the Mayor and Town Council. Mr. Doney stated he has written a letter to the owner, Mr. James
Clark, dated April 4, 1990 indicating the Town's concerns about this matter. He has received a response from Mr.
Clark yesterday stating what measures they have taken regarding the noise issue.

Attorney Maass addressed the Council indicating he represents the Dorset House residents and the problem has
gotten to the point where the owner of the building is having difficulty in finding tenants who are willing to
lease apartments in the area closest to the Dorset House, so in that regard it is economics. He stated the building
owner is very much concerned with the peace and happiness of his tenants and he is in receipt of complaints that
they are affected by the noise across the street, they are awakened in the middle of the night and that is the impact
on them as a building and on their tenants. He stated in addition the problem is having two components - the first is
noise from within the building itself which can be heard when the doors are closed and especially when the doors are
open; and secondly, from the patrons and car valet service as they leave late at night are making noise as they
leave the premises. He believed the Chief has proposed placing the noise complaints under the jurisdiction of the Town's
Code Enforcement Board, which he believes would be a favorable step in the right direction, as they believe there will
be some action on the noise complaints if handled in that manner. He hoped a response from the owner of Lulu's would
be a better effort to keep the noise down and they applaud that effort, but it won't solve the problem. He stated
the valet people and patrons cannot be brought before the Code Enforcement Board, but there may be some ways that can
be dealt with, and suggested that an ordinance be enacted that restaurants and bars such as Lulu's that are on a
boundary with residential districts be required at certain times to have an employee who will be situated outside of
the building and whose role would be to caution patrons to keep the noise down. He recalled Bradley's used an off-duty
police officer to do this and it was expensive to do this and they have discontinued that practice. He felt if that
didn't work, there should be restrictions on hours or activities within certain hours.

Mr. James Clark, President of Palm Beach Island Corp. who owns the Bradley House and is the owner and operator

Bid
awards
Resolution
44-90

Resol.
45-90

Appointments

Summer Golf
Fee Schedule

Health
Insurance
Plan

State
Beach
Management
Plan

Lulu's
Restaurant

Lulu's
Restaurant

of Lulu's Restaurant addressed the Council. He wants to be a good neighbor. He felt he had some experience as he lives above E. R. Bradley's, so is sensitive to noises which come out of an establishment which is operating in the evening. He stated early on at Lulu's, they sealed all the windows and covered them with three-quarter inch polystyrene which will absorb any sound that might come out of the restaurant. He stated that precluded them from serving lunch. He has installed acoustical panels, which are the same type of panels which a recording studio would use and which totally absorbs sound in the areas where the panels are placed, which is on the west side of the building which faces the street. He stated these have only been installed a few weeks ago and over the last two weekends, police officers from the Town of Palm Beach have been on the premises, both inside and outside and on both occasions, they stated the noise level was within the limits which are allowed. He hired James Maloney of Voice-Lanier who conducted an extensive acoustical survey in January and he has taken noise readings. He has three valet parkers on the weekends and also a doorman and the parkers are to park cars in a quiet and proper manner and the doorman's sole role is to ensure there is no-one coming onto the premises who is under age. He stated they also request gentlemen to wear jackets during the season. He stated the music is turned off and the lights turned up between thirty to forty-five minutes before closing time at 3 AM. He stated the only people who are on the premises after 3 AM are those who work there, as they make certain the patrons are out by that time. He stated upon leaving each person is told to be quiet and they make sure the valet parkers do not squeal the tires. He indicated his main objective is to operate a restaurant with reasonably priced food and the operation on the weekends is very important to him and he will do everything he can to ensure that no noise will be coming out of the establishment and hoped they could come to some sort of a solution with the people in the Dorset House. either through decibel testing etc., that will ensure they will not be disturbed as far as any noise coming out of the establishment, even if it means the front of the building is sealed tightly and the entrance to the restaurant would be from the rear of the property only.

Mr. James Maloney of Voice-Legier addressed the Council, indicating in January he did a survey of the area in question and it was evident that the Code was insufficient to address the problem as the Code basically states one cannot make noise that is a nuisance. He felt noise by definition is a nuisance. He believed there should be some allowable limits for decibels. He told Mr. Clark he couldn't tell if he was within the limits allowed by Code and the only thing they could do is to take measurements with the restaurant under full operation, to determine if it is taking any additional noise and he took some readings without music playing and then with the music playing at the normal loudness level that the music is played in the restaurant.

Mr. Ilyinsky asked what type of music is played? Mr. Mahoney responded it is disco rock, salsa type music.

Mr. Maloney reported he was taking readings on the second story landing of the Dorset House, directly across from the restaurant and found that the noise level, without the music playing and with the music playing at normal level and with the music playing at a louder level was all the same, to which the residents of the Dorset House in the audience did not agree.

Mr. Maloney explained how he does the sound readings, and that is to take 100 readings at a given interval of time and establish what is known as an Equipment Loudness Level for the Area (LEQ) which is the average sound of all sounds in the area, both near and far and it takes into account the traffic, any air conditioning units which might be running near by; people walking and talking on the street, and the music playing. He stated this as started at 11 PM and the survey ran a couple of hours. His survey showed they were not making any more noise, given the traffic flow at that time and with the activities going on, however he could not determine whether the traffic flow was less or more than other nights because they only did this one night.

He stated the bass sounds are a low frequency sound which easily penetrate through structures, however, in the averaging method typically used within the guidelines usually takes into account the frequencies to which the human ear are more sensitive.

Meeting was adjourned at 11:45 for lunch break.

Meeting called back to order at 1:35 PM by President Heeke.

President Heeke called on Mr. Maloney for his further comments. Mr. Maloney remarked there are no cut and dry standards about what is or is not acceptable for any given community and every community sets its own standards. He felt the reasonable way to approach the solution to this problem is given a reasonable amount of time, money and expectations can create an environment whereby the neighbors will not be disturbed by the music. He indicated Mr. Clark has agreed to have him continue working with him to approach methods of doing this and they have talked about effective methods of controlling the dep or low frequencies. He felt some of the materials selected to curb the problem are not very effective for these frequencies, as that kind of sound needs to be blocked, not absorbed. He felt once that is accomplished, the music can be controlled so that it will not bother the neighbors or least be at a normal reasonable level. He did not think it was practical to assume everyone would be satisfied all of the time.

Mr. Mahoney indicated the traffic noise should be a traffic control problem and not a Lulu's problem. He thought they should try and reach a compromise and continue to work on it.

Chief Terlizzese addressed the Council, noting the Police Department investigated 42 noise complaints from residents in 1989 and in 1990 thus far, they have had 15 noise complaints. He indicated some of the noise complaints were legitimate but some of the noise complaints were unfounded, Police Officers said. He stated there were two notices to appear in court issued to the manager of Lulu's this year and one he paid a \$50 fine and the other \$150 fine in the County Court system. He stated the County Court judges have indicated to them that their dockets are so busy with criminal matters, they cannot get into Municipal Code violations. He stated the State Attorney asked them not to refer any more Code violations to them as they cannot prosecute them. He felt the appropriate place for this to be would be the Code Enforcement Board and there recently has been an attempt made by the State officials to remedy the problem created when municipal courts were eliminated as they used to handle this type of case for them.

Chief Terlizzese stated the low frequency hass noises are the problem as it does vibrate the windows in the Dorset House and it should be overcome. Mr. Heeke noted there were recommendations that the forum for the noise complaints is properly the Code Enforcement Board, to which he agreed. He believed that Mr. Clarke believed it was the place where this should be handled.

Mr. Hoffman who resides at the Biltmore addressed the Council stating no business has the public right to carry on a public nuisance and encourage disorderly conduct, which he believes goes on from time to time and he sees the problem as the music from inside Lulu's and Bradley's, whether it is a drum, a juke box, radio or tv, it is very loud; thirdly, the young people leaving the premises make a lot of noise and fourth, getting their cars and revving the motors and shouting - those are the things that cause the problem. He suggested if these businesses are making a profit, which he believed they are, they are obligated to the Town to not allow these circumstances for the people living around the area, and he thought there should be an off-duty policemen or a guard in front of those establishments from 11 to 3 AM, to take care of some of the problems.

Attorney Peter Broberg addressed the Council on behalf of himself felt the complaints were very silly and if the residents are concerned by noise they should be concerned about the airplanes that fly over the Island.

MINUTES OF TOWN COUNCIL MEETING
HELD APRIL 11, 1990

He noted the complaints only come in the Season and if the people around the area do not want to hear the noise, they could shut their windows. He felt the Town had a need for places that we are speaking of today and to control it by reducing the hours is not fair. He believed Mr. Clark has offered to submit his establishment to the Code Enforcement Board and perhaps that is the solution. He notes most of the complaints have been because of the music, not noise from the cars and he urged the Council to not do anything drastic, as these people were there first or their predecessors and he felt they had a right to do business there, as long as it was a commercial district.

Lulu's
Restaurant

Don Gilman, owner of the Dorset House, addressed the Council and stated he has a problem getting sleep due to the noise from Lulu's.

Isabella Arden, tenant of the Dorset House, indicated there is no comparison to the restaurant that used to be there and Lulu's, she has a northeast apartment and her guest room is closest to Lulu's and she cannot use it because of the noise. She stated she can feel the vibrations from the music. She complained also about the valet parking as they leave the motors running, which is quite noisy. She didn't know what kind of a help an off-duty police officer would do. She has closed windows and keeps her air-conditioning running constantly but she feels it is a horrendous problem and isn't confined to her area. She would like to have peaceful nights of rest which she hasn't had in over a year.

Mr. Farady, a resident of Dorset House on the east side addressed the Council agreeing with Mrs. Arden and he explained when the police are called, the noise stops but as soon as the police leave, the noise starts up again. He suggested that the Ordinance on disturbing the peace or public nuisance be enacted.

Mr. Heeke asked Mr. Mahoney what would be a reasonable time needed to handle the problem? Mr. Mahoney responded the kind of work needed could be done in a six months time period, as there would have to be a study made and a design of the interior treatment along the west wall in order for the sound not to be transmitted out through the doors and windows. Mr. Heeke asked why the sound work is going on, could the low frequency sounds be stopped at a certain time? Mr. Mahoney stated the gain could be limited on the low frequency sounds, however, when that is done, they may tend to have a fall-off in business or rise of complaints from the customers because the beat is fundamental to people's activity on the dance floor.

Mr. Heeke asked if the volume needed to be loud to have the beat heard inside of the building? Mr. Mahoney believed they could gradually reduce the noise level over a period of time, there would be less of a complaint from the people who frequent the premises. Mr. Ilyinsky felt it was nonsense that they couldn't cut the volume so the sound didn't vibrate the building across the street. Mr. Mahoney stated he was not sure the building across the street was vibrating but he can say from their survey, they were able to detect air born sounds but to say the building was shaking because of the bass music, he finds that unlikely.

Mayor Marix stated one does not have to have that kind of noise to have a nice time and there are many people who would not go there because of the loud music. She knew there was a restaurant there prior to the residential buildings being there, but there wasn't noise coming out of the building. She felt it was a matter of cooperation and she knew there was lots of music that can be pleasantly played without upsetting the neighbors and they should cooperate. She thought perhaps now is the time to have municipal courts reinstated so we can control the enforcement of our Code.

Mrs. Wiener asked Mr. Mahoney when he measured the sound at the Dorset House, did he notice what kind of windows were in the Dorset House and was there some kind of window that could be installed that would help keep out the sound? Mr. Mahoney stated there are different types of windows that can be used in a building to keep noises out but there is no window around, when open, that will keep the noises out and probably the complaints are happening when the windows are open. Mrs. Wiener stated she heard today that some of the residents keep their windows closed and have their air conditioning on and still hear the noise. She believed the installation of noise proof windows of some type might be the answer which could be pursued by the owner of the Dorset House. Mr. Mahoney felt it would be better to treat the noise at its source, inside the restaurant. He stated the materials used by Mr. Clark were his attempt to control the problem and Mr. Mahoney stated it was a good attempt for some of the frequencies, but did not do the whole job and now they are going to look at the other materials as well.

Mrs. Wiener stated her concern with Mr. Clark spending much money and not solving the problem. Mrs. Wiener felt the problem needed to be resolved as quickly as possible as there are people who have been affected by this noise for nearly a year.

Mr. Ilyinsky noted Mr. Mahoney stated his studies are going to be directed to lessening the sound level, and he felt it could be solved by simply turning down the volume and it seems they refuse to do that. Mr. Mahoney stated he hasn't refused to do anything but what he has suggested is putting a gain limit on the bass frequencies, which will prevent whomever is operating the speaker system from raising the frequencies too high and essentially puts a limit on how high they can make the noise level.

Mr. Clarke advised he would be happy to turn the music down and he believed there were some remedies which could be put in place very quickly, even if they were not perfect, as he can seal up all the windows and doors and that would eliminate almost 90% of any sound leaving the building. He wants to be a good neighbor as he has a lot invested in the business and if he had no music or waltzes there, he would go bankrupt.

He lives across the street from Publix and oft times doesn't get to bed before 3 AM and he is awakened by the trucks coming into Publix, so there are other noises which citizens are effected by. He will work with the manager of the adjacent building with regards to the parking at night, and will introduce measures to reduce the noise level. Councilman Weinberg arrived at the meeting.

Mrs. Douthit proposed they go along with the last paragraph of Chief Terlizzese's letter whereby the police officers will serve as Code Enforcement officers. Mr. Heeke recalled there will have to be an Ordinance on this change in the Statutes which will allow police officers to serve as Code Enforcement officers whether they are sworn officers or not, will be capable of writing citations and noise complaints can be directed to the Code Enforcement Board, as the courts are really not disposed to hear this type of matter.

Mr. Heeke believed that Mr. Clark's agreement to reduce the music level from midnight on, until such time as he can implement some blocking of the lower frequencies, which will give some relief to the immediate neighbors, and he believed Mr. Mahoney stated that would take about six weeks to finish his study and make recommendations to a more permanent approach and in the meantime, they would be under the jurisdiction of the Code Enforcement Board, to which the Council agreed.

Mrs. Wiener was concerned about the fact that Mr. Clark knew about the noise problem throughout the past year. Mr. Clark acknowledged he did although he took over the management of the restaurant in late October and in reviewing the number of complaints in the Police Department, he came up with 37 name complaints, with eighty per cent of them coming from one person. One lady complained five times in a 12 month period, with four complaints in a period of three days when it first opened and once after that and there were two other individuals who complained once a year ago.

He has gotten three tickets in the period of one year and the other 34 times, they were not ticketed. He stated when he took over, he soundproofed the windows and added additional people on valet parking and a doorman. He commented that more recently he added an additional barrier on the dance floor.

Lulu's Restaurant	Mr. Heeke believed the complaints had been heard by Mr. Clarke and he has agreed to do his best to try and alleviate the problem, and in the meantime, any purported violations will be handled through the Code Enforcement Board. He didn't think the parking situation could be controlled other than the valet people being instructed, but a person who does not use the valet parking, we really couldn't stop them from slamming car doors. Mr. Clark agreed that from midnight on, he will cut back on the music noise and proceed with the blockage of noise as soon as possible.
Off Shore anchorage	5. Consideration of Anchorage Areas Off-Shore from Lake Worth Inlet. Mr. Doney explained Mrs. Scripps had written a letter dated March 28, 1990 to Mayor Marix concerning some suggestions she had based upon legal research to the Town Council as far as the Mayor and Town Council President writing to and formally requesting the U. S. Coast Guard that the Federal Register be amended to abolish Anchorage Area B or transfer it to a safer and less damaging location. Mr. Heeke stated he would be willing to sign such a letter. Mrs. Douthit believed the letter should also be sent to any possible group that may have a voice in this matter, such as the Port of Palm Beach.
approve warrant list	Mayor Marix believed the information furnished by Mrs. Scripps contains the names to whom we should apply to have Anchorage Area B altered. Mr. Doney stated this matter has been ongoing since 1986. Mr. Heeke asked Mr. Doney to prepare the letter and have it reviewed by the Town Attorney and he would sign same, to which the Mayor and Council agreed. VIII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR MARCH, 1990. On motion of Mrs. Wiener, seconded by Mr. Ilyinsky, the Warrant List and Fund Expenditures for March, 1990 was approved. On roll call, the motion carried unanimously.
Development reviews	IX. DEVELOPMENT REVIEWS: A. Major Matters Previously Considered by the Architectural Commission at their meeting of March 28, 1990. Mr. Ilyinsky moved for approval. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. The major matters considered were: B6-90 - Addition and Remodeling for Mr. & Mrs. Holden Luntz, 234 Seminole Ave. Deferred until April. B9-90 - Addition and Remodeling for Madeline Herbert, 111 Via Del Lago - Removed from the agenda. B10-90 - New residence for Mr. & Mrs. Lopata, 234 Eden Rd. Modification approved with regards to windows. Landscape plan and driveway material samples will be submitted by June meeting. B13-90 - Remodeling - Mr. & Mrs. John Alban, 422 Australian Ave. - Deferred for restudy. B14-90 - New residence for Heinz Koop, 134 Atlantic. Approved conditionally with landscape plan and driveway plan with gates be returned to the Commission for approval. B15-90 - Zachary Shipley, 1498 N. Ocean Way. Addition. Approved conditionally. B16-90 - Addition - Michael J. Civitella, 272 Country Club Rd. Deferred. B17-90 - Demolition of front section of house and conceptual plan for site development. Dilow - Lowery Bell - 240 Banyan Rd. Approved demolition and conceptually approved Site Development plan conditionally. B18-90 - Richard Himmel, 311 Dunbar Circle, - Alterations and Additions. Approved conditionally. B19-90 - Addition and remodeling - Blair and Eliza Meyer, 205 Mightingale Trail. Approved. B20-90 - Addition and remodeling - 1616 South Ocean Beach, Inc., 1616 S. Ocean Blvd. B21-90 - Gates - Peter May, 1409 S. Ocean Blvd. - Approved. B22-90 - Commercial Building - Dr. Steven Spector, 242 Sunset Ave. - Approved conditionally. B23-90 -Renovation of The Sailfish Club, 1338 N. Lake Way - Approved conditionally. B. Appeals 1. Sloan's Curve Homeowners Assoc., Inc., Petition for Relief in the following order of priority: (I) for approval to remove all Australian Pines; (II) for approval to remove and trim Australian Pines as provided in the 1980 informatl modification of the PUD Town Res. No. 35-78; (III) for confirmation of Town permits issued 11-17-89 allowing 50% Australian Pine removal with the balance topped to no less than 35' (also constituting an appeal of partial revocation of permits); or (IV) for modification of the 1980 informal modification of the PUD Town Resolution 35-78 to allow for removal and trimming of Australian Pines. Attorney James Mc. Wearn addressed the Council representing the Sloan's Curve Homeowners Association which is separate and apart from each of the three condominiums and Townhouse single family residence associations at Sloan's Curve. He commented that the Association's prime purpose is to hold title to and administer the property located west of A-1-A between Sloan's Curve and Phipps Ocean Park. Mr. Wearn indicated the members of all of the associations of the single family residences, the townhouses, and the condominiums are the owners and members of the Sloan's Curve Homeowners Association, which holds title to the area he described previously. He stated the area they are concerned about and where the Australian Pines are located is approximately twelve to fourteen hundred feet from Ibis Island, at its closest distance. Mr. Wearn stated he has a drawing from Blakely & Associates which identifies the area which has been submitted with this petition for relief, which identifies the clusters where the Australian Pines are generally located. He noted the pines are generally in the northern part of the areas he is talking about. He commented this is virtually the last spot from Sloan's Curve to the south limits of the Town, which has not been beautified. He indicated as part of the beautification program the Association wanted to institute, contact was made with various Town Departments for advice and input, before it was instituted. He recalled the Public Works Department desired an area cleaned out for cuttings to be located off the road and such an area has been designated, apparently to the satisfaction of the Public Works Department. He noted a recommendation was received from the Police Department that in order to preclude people from pulling off of the road into the cutting pick-up area, some posts and a locked chain were desired, the key for which would be available at the Gate House entrance into the 2000 South Ocean Blvd. He reported all of this was agreeable to the Association. He stated the Police Department also considered the clean-out
Sloan's Curve Home Owners Assoc. re-move Aust-ralian Pines	2999.33

beautification program and the plans and Chief Terlizese reported that from a public safety standpoint, it was desirable to clean out and open up this area from the dense overgrowth.

Mr. Wearn reported the Building and Zoning Department had no problem with the clean-out, except it considered that only 50% of the Australian Pines should be removed and the balance might be topped to no lower than 35'. Mr. Wearn indicated the Sloan's Curve Homeowners Association wanted to remove all of the pine trees, as they were recognized as an undesirable exotic and invasive species. He stated in a spirit of cooperation, the Association adjusted its clean-out program to all of the Department requests or recommendations. He stated one element is being brought before the Council today and that is a question of what will happen with the Australian Pines. He stated the question is:

- (1) whether or not the Council would permit to be removed all of the Australian Pines; or
- (2) half of them with the balance to be topped to no more than 35'; or
- (3) none of them.

He felt this very straight forward question has apparently generated considerable opposition and emotion from those who do not wish to see the Pines disturbed on the private property. He stated the question comes before the Council with considerable emotional baggage, but the question is nevertheless still very simple and straightforward.

Mr. Wearn stated the answer to this straightforward question is found in the actions of Town Officials over the past five years. He recalled that up until about five years ago, there were no Town official guidelines for landscape preservation, installation and/or maintenance along the Lakefront, and where it became a subject of Town action, it was decided on a case-by-case basis, or a tree-by-tree basis.

Mr. Wearn stated in March, 1985 what was referred to by the Building Official Robert Moore as "Standardized Guidelines" were sent to each waterfront property owner in Town, on both the Ocean and the Lakefront and those guidelines specifically addressed this area west of A-1 -A from Sloan's Curve to the South Town Limits and the guidelines recommended it is desirable to remove the invasive species, including the Australian Pine, since those species choke out native growth and interfere with associated life chains. He recalled there was no mention there about any limitation of 50% of the pine trees or the 35' in height as the recommendation in the Guidelines was to remove all of them. He noted that notwithstanding the guidelines, they have been advised that there came to exist a Town precedent which allowed not more than fifty per cent of the Australian Pines to be removed and the balance to be topped to not less than 35' in height. He pointed out research of the Town records failed to reveal any Ordinance or Resolution setting forth that policy as a policy, much less any letter to any property owner or any administrative rule or regulation duly adopted and was given to understand that it may have been a past Town Council precedent established and followed a number of years ago when there was an objection to the removal of Australian Pines by a particular property owner. He did not believe such an objection seems meritorious or valid and explained that over the past few years there has been a civic policy against the retention of any Australian Pines and encouraging their removal. He stated as best he can determine, that policy has been consistently adjudged against Australian Pines and against those who would preserve them. He stated Palm Beach County, a charter county having limited authority to enact ordinances which are applicable in Palm Beach, has enacted Ord. 902 known as the Coastal Protection Ordinance which expressly encourages the removal of Australian Pine from any shore area, including the Lakefront and would appear applicable in Town.

Mr. Wearn reminded the Council they have enacted on second reading, Ordinance 8-90 which provides a New Code Section 26-16, entitled "Prohibited Plants" as follows:

(a) Prohibited Species. The following plants have been shown to be pestilent, exotic species and shall not be installed as landscape material and shall be removed from property as part of development and re-development activity:

1. Australian Pine
2. Brazilian Pepper
3. Punk or Paper Tree

Mr. Wearn believed from five years ago to now, there has emerged a consistent policy and law for the removal of all Australian Pines and he knew of no legal requirement whereby a private property owner may be bound to retain Australian Pines, particularly, in the face of the "Standardized Guidelines and Ordinances." He pointed out that on the Maddock/Peltz property, huge stands of Australian Pines were permitted to be removed without limitation and conditions.

Mr. Wearn stated the petition for relief today identifies four different kinds of relief that can be granted and they are requested in an order of priority, if they decline to grant the preceding requested relief:

1. Approval to remove all Australian Pines consistent with the Town's "Standardized Guidelines" and consistent with the State and County Policy and now a Town Ordinance.

2. If the first request for relief is not granted, alternatively the applicant requests confirmation of the Town Permits issued 11-17-89, which provided for the clean-out, including the removal of up to 50% of the Pine Trees, and topping of the balance to no less than 35'. He stated the Pine trees to be removed are clearly marked by ribbons established on 11-1-89. He pointed out when the work began under these permits, the Buildings Official received a number of complaints and suspended so much of the permit which dealt with the Australian Pines in order for the Town Council to act on this. He felt that particularly with the adoption of Ord. 8-90, the Town has already spoken on this matter and this third element of relief involves an appeal of the Building Official's action in suspending or revoking that portion of the Permit, which dealt with the Australian Pines.

Mr. Wearn stated in connection with this appeal, he would like to introduce his letter of March 10, 1990 and its attached exhibits and Petition for Relief and its exhibits. He would like to introduce the Ord. 8-90 and the Building Official's March 21, 1990 memorandum concurring that the facts stated in the petition are substantially accurate, so the facts are not in dispute. He would also introduce all matters that were presented today.

He suggested that in the event they do not grant the relief requested to remove all of the Australian pines under the first two elements of relief, then he would request the appeal be granted and confirm the Town Permits issued.

3. Modify the previously discussed 1980 minor modification of the PUD, which was never formalized in a written document, to allow the removal of the Australian Pine and if not removal of all of them, then trimming of the balance, all to be consistent with the Town's "Standardized Guidelines" published in 1985, and the State and County Policy and Ordinances consistent with the Town precedent applied along the Lake Worth shore, south of Sloan's Curve, through the south limit of Town, and consistent with the Town Official Action in issuing the

Australian
Pines re-
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Remove
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Pines

PUD

permits and the new Town Ordinance adopted today, if the first three elements of relief are not granted.

He believed this very simple and straightforward question brought before them today should not be encumbered with any question of whether the retention of Australian pine is desirable or be removed as that question should not again be revisited. He felt the revisiting of such a question can only lead to the possibility that this private property owner would have Australian Pines on its property treated different from others who similarly have Australian Pines on their private property and similarly, there should be no conditions considered to be imposed upon any approval for removal of Australian Pines as that will only discourage their removal and would be inconsistent with the policy which says they should be removed. He requested that the Council grant the petition and allow removal of all of the Australian Pines as requested in the Petition for Relief.

Mr. Moore explained the facts as presented by Mr. Wearn are substantially correct as he and the Town Attorney have made the determination that all other policies or ordinances put into effect would be superseded by the Planned Unit Development. He believed vegetation policies and/or ordinances would take second place to the zoning consideration of the PUD, therefore, in the appeal submitted by Mr. Wearn, he believed that Item No. 4 was the vehicle the Council should consider and that would be a minor modification to the Plan made on 5-13-80, at which time a condition was placed on the landscaping for the east side of the road which was discussed at great length and an additional consideration was placed on the west side. He noted the Town did develop the guidelines in 1985 along the Lakefront, which is a significant sensitive area along South Ocean Blvd. in the south end, in that when pine trees were moved from one specific project completely below Lake Worth Road, there was a huge outcry from the public at a Council meeting and the policy of up to fifty per cent was put into place by the Town's Architectural Commission, reviewing the removal and the actual replacement trees or vegetation that would go back and that policy has worked well up until this point in time. He recalled this particular project was before the Architectural Commission and trees were tagged, however, the ARCOM had a great deal of difficulty imagining what trees would be replaced and Mr. Wearn representing his client noted this is a long length of property and preparing plans would be time consuming and costly, therefore, asked for the ability to remove the trees and then through his Landscape Architect Council President as being the persons who are proper Town officials to make the determination.

Mr. Moore requested from a staff standpoint to consider the application and he believes there will be objection to it from the property owners on Ibis Island, but in an abundance of fairness, it is believed the same rules should apply, as they have asked other residents in the Town south of Sloan's Curve to go through a procedure that was fair and taking into consideration the aesthetics of the property as well as the property owner's views, even though this is a PUD and that is why Council is looking at it.

Mr. Wearn was not sure there was a contradiction, but there are differences in how this is viewed, as he does not consider that the question of the PUD came up until in fact, after the revocation of the permit action was taken on Feb. 16, 1990, consequently, there were no matters that involved the question of a possible PUD before that time.

He indicated that secondarily, the PUD is recorded in the Court House and it has nothing in it concerning this matter. He stated it was made in 1978 and in 1980, apparently in connection with landscaping in front of 2000, and 2100, there was a request by Mr. Weinstock to have a slight modification to the landscaping in front of those two buildings and a condition was placed on the approval of that, and it was a verbal condition that no trees would be removed to the east of A-1A, except on a case-by-case basis of the Town official and that is contained in a letter sent to Mr. Weinstock, but is not part of the record.

He didn't believe this is a matter that should properly be considered from a PUD standpoint, since it would only complicate the matter. He stated a decision has been made in the Town Ordinances that Australian Pines should be removed and since there was nothing in the formal PUD agreement, there is no reason why that ordinance is not applied on the permit and the application.

Attorney Philip Crenshaw representing the Ibis Island Condominium Association addressed the Council, reported his clients are all of the condominiums on Ibis Island, and the opposition is not a total opposition and he is more in agreement with Mr. Moore's position that as a PUD, this is a minor modification and his clients take issue with the word "minor" as they think it is a "major" modification, and it is a modification that has been relied upon and is part of the record, recorded or not, it is a condition that exists. He stated the application is not just to remove Pine trees but to redo all of the landscaping there and tear out what is there at the end at Sloan's Curve to Phipps Park, so the precedent established will be followed for this whole length. He felt the issue as he understood it is not just his client's concern about the Pine trees but what will be done the whole length of this property to Phipps Park. He stated the application of the new Ordinance, if it applies to development or redevelopment, they are not talking about that but are talking about existing plants that are PUD and landscaping in an existing development. He felt from a policy standpoint, this is a question of the Town Council's discretion and the modification approach. He stated his client's position is twofold: 1 - they wish to maintain the existing vegetation as they see it - consistent vegetation which has been allowed to exist. He believed there was no question there are Brazilian Peppers and mangroves mixed in with seagrasses and it is a godgepodge, but the concern is this vegetation has been allowed to exist there which allows a natural buffer between Ibis Island and the roadway. He stated the Condominiums have created their natural buffer on the east side of the road. He stated the second consideration is the Australian Pines and he knows there is a policy on pines and the Town has implemented this 50% policy. He recalled his clients have pointed out to him there has been no consideration of the pelican roosting that goes along with this vegetation. He believes when this was developed, the natural barrier was a trade-off with the developer that the east side should remain natural and it does look a little ragged and it should be cleaned up, but the result was a minor modification. He stated the minor modification has been somewhat unique as this is the only island that has a competing view as along other areas, there are no residences that look at what has been created by the condominiums on the east side of the street, so there is no competing concerns of the people across the water, and there is a natural environment there. He stated the policy which was adopted in 1988 in his estimation is not a policy, but a deed restriction that requires the Council's action about removing trees.

Mr. Crenshaw believed the trees were not only the Pines but there are trees the whole way down to Ibis Way and as you look at it, it is sparse in some parts and in those parts there are these invasive species and his clients are concerned that there not be a willy nilly ad hoc arrangement but there should be a clear unequivocal plan which states what is going to be removed and what is going to replace the trees which are going to be removed. He believed the ARCOM requested the applicant to provide a plan with dimensions on it and stating what is going to be placed on the property and what is being removed and he has yet to see such a plan.

Attorney Crenshaw noted the Chief of Police is concerned about the vagrants who use this property and he felt that should be a consideration in the clearing out of this area and it should be consistent with the area that is maintained by the condominiums. He indicated he had a petition requesting the area be maintained naturally and he doesn't quite agree as he thinks it should be cleaned up a bit, after talking with the Chief. He would not like to see destroyed the area that has been allowed to be there as a natural vegetation area. He was not sure the standard that has been adopted for the other areas of the lakefront should be the standard for this particular area,

as the pine trees have been there for many many years and they had the interest of the people who live on Ibis Island. He suggested this matter should be deferred, Blakely ought to prepare a plan as to what he is talking about and what is going to be put back and the visual effect will be more evident. He reported ARCOM deferred this until they had a plan and now the Council has the same application in front of them but they too do not have all the information and should defer this until they see a Plan.

Mr. Heeke noted reference has been made to Section 26-16 of Ord. 8-90 which follows the Comprehensive Plan and refers to Australian Pines which shall be removed from the property as part of development and redevelopment activity, although there are some exemptions. Australian pines removed.

Mr. Moore noted the PUD states there shall be no structures built on the west side of A-1-A, so he did not believe they were bound by the Ordinance as there is nothing being built on the west side.

Mr. Moore indicated the Town did look at this piece of property because of its uniqueness and considered the possibility of making it a Historic District, such as the Coral Cut on N. Lake Way and it was determined by the consultants that there were too many invader species in this area and it was a semi-usable wild life habitat but not a distinct one and has been invaded by trespassers so it was not proposed as a Historic District.

Mr. Heeke stated the Chief of Police notes there is a problem with vagrants there, which is an indictment to him there should be some thinning or cleaning out because of the Public Safety aspects.

Mrs. Wiener noted the Petition states that the Ibis Island Central Condominium Association oppose the cutting of any and all foliage, exotic or otherwise at Sloan's Curve area between A-1-A and Lake Worth, which is different from what Mr. Crenshaw stated. Mr. Crenshaw responded the Condominium Association wishes to oppose all cutting but he did meet with the Board of Directors and their authority as the Board is not carte blanc and as a Board of Directors they directed him to try and convince the Council to maintain the natural appearance but their request is to resolve this matter and their position is between the two extremes, to clear it out as the Chief would like to see it, and at the same time along the edge maintain that naturally and the pine trees would be a third element. He disagreed with the policy of the law and his position is the trees should remain as they are, but the real goal is to maintain the natural foliage as it is. He was directed to hand out the petition. Mrs. Wiener felt the petition muddled the water. Mr. Crenshaw stated that is why he requested a plan be drawn up, which will show the visual effect from the road and from Ibis Isle.

Mr. Wearn felt the petition was clear in that it requested one distinct question - and that is whether or not they will permit removal of the Australian Pines and if not all of them, fifty per cent of them with the topping of the balance to 35', and if not, then none should be removed. He stated this was a compromise suggested by the Town Building Department and this was accepted when the application for the permits were made and then the permission was withdrawn.

Mrs. Douthit recalled in the past there has been a large hue and cry about the removal of the trees, as some wished a better view and others missed the shade when they were walking, and that is where they came to the adoption of the guidelines to have 50% removed and the remainder topped at 35'. She was willing to approve that procedure. She reported there was a call received this morning from a lady who was concerned about the loss of mangroves and she didn't want to see any of the mangroves touched. Mr. Wearn stated the Building Department has been deluged with calls and they are monitoring the site and photographing it daily to ensure nothing is happening there to which Mr. Moore agreed that was the procedure going on right at this time and additionally, it is being monitored by the Department of Regulation Management to ensure the mangroves are safe.

Mayor Marix believed she was hearing Mr. Wearn asking for a ruling on the pine trees and Mr. Crenshaw is stating he doesn't want us to rule only on the pine trees because he was concerned about what they would be putting back there to replace the pine trees. She thought everybody agreed that the invader species are bad to have, such as the Brazilian Pepper. She believed the mangroves were quite safe and wanted to do what was the difference if they want it cleaned out and they leave half the trees and they leave all the mangroves and they take away the Pepper, is that the same as if they cannot remove the mangroves? Mr. Moore agreed that Mr. Crenshaw's presentation was different than what the petition stated and he felt the only issue at this point, in his opinion, is whether or not the replacement of the pine trees should come back to the Council prior to giving permission or subsequent to their giving permission. Mayor Marix stated she was trying to get to the real problem. Mr. Moore did not believe there was any disagreement on what the invader species are, as there are Brazilian Peppers, vines, the Holly, etc., and they are in the process of being removed now. Mrs. Douthit indicated she would like to see replacements of the invader species, which will be happy nesting habitats for the pelicans and other bird wild life. Mr. Moore believed the Council had the ability to grant the request with any conditions that they may wish to place on the approval.

Mrs. Wiener asked if one of the concerns of the people on Ibis Isle was that the invader species would leave big clumps of openness? Mr. Crenshaw stated the project as it now exists looks very ragged and the trees that were cut partially now look terrible as a couple of them were cut at the ground and some were pruned half way and it doesn't look right although he realizes they were stopped from continuing. Mrs. Wiener did not believe they wished to merely clear half of the property and then leave the other half and she believed the problem is a lack of understanding between the two groups. Mr. Crenshaw did not believe it was a misunderstanding but thought it was a concern that north of Ibis Way will become basically grass to the water, like in front of the area south of 3200 South Ocean Blvd. Mr. Moore pointed out there are an abundance of Seagrasses which now exist. Mr. Crenshaw believed when the invader species were being torn out, there would be gaps and he believed if it was replaced as it is in other areas of Town like the Atriums, his clients did not believe that was quite fair. He indicated they don't know what is being done there as there has been no landscape plan presented. Mr. Ilyinsky asked if it could be worked out with identifying the trees with ribbons that would be removed? Mr. Moore indicated they have tried that. Mr. Wearn felt the preliminary wording of the petition had the answer, as it tells the total answer and they wish nothing to be removed. Mr. Crenshaw responded his clients do know there has to be some reconciliation but they don't want their natural view spoiled.

Mr. Wearn stated the land is relatively narrow below where the pines are, and the native species are about twelve to fourteen feet in height along the waterfront. Mr. Weinberg thought it rather strange the people at Sloan's Curve have spent a lot of money to landscape the east side and he thought they had to work this out together for an acceptable piece of beauty which will enable everyone to enjoy living there. Mr. Crenshaw pointed out from Ibis Isle, one couldn't tell the difference between Brazilian peppers and mangroves growing there, and the purpose of his presentation is if they take out an invader species, it should be replaced.

Mr. Moore stated since Mr. Blakely cannot produce the landscaping plan and Mr. Wearn's clients state they cannot produce same until they know what trees they can remove and he asked if they may take down the trees and then the next question is when can Mr. Blakely come up with a plan and who will he show it to as obviously whatever is taken down should have something replace it, and Mr. Weinberg comments about them spending huge sums of money to landscape the west side of the road, and he felt Ibis Island would not be looking like anything that would be a poor piece of landscaping, but first the question needs to be answered as to whether or not they may remove the trees.

Australian
Pines
removal

Mayor Marix wondered if Mr. Weinberg would be willing to go to the site with the landscaping people, and get a program which makes sense, and bring it back to the Council for their further consideration.

Mayor Marix felt if Mr. Blakley, Mr. Tell and Mr. Weinberg came up with suggestions, it might help the Council to decide exactly how many trees should be removed. Mr. Heeke indicated he would be more comfortable in having some idea as to what is going to go back when the trees are removed. He has looked at the conceptual drawing and it is difficult to understand. He didn't believe there was a fair basis as yet on which to make the kind of decision they have to make as to what will be taken out and what would be replacing the trees being taken out, and he believed there had to be some good idea as to what that replacement will be.

Mr. Weinberg suggested it be on a tree by tree basis, but no more than fifty per cent. Mr. Wearn advised the trees have been identified which should be removed on November 8, 1989 with ribbons and barring them being removed they should still be there. He stated this was prior to the permit being issued for their removal and they thought it would be appropriate for the Building Official to consider them in that way, but if that is not appropriate, they will wait for the Building Official, the President of The Town Council or his designee. He felt in answer to their question, there is an Ordinance which provides for any activity to go on, the Australian Pines must be removed and obviously, with a private property owner, the Ordinance would not allow them to require the Australian Pines to be removed, however, they have given themselves the opportunity if there is ever anything done to that property by a vacant property owner, all the Australian Pines will have to be cut down and that is what the Ordinance now states with the exception of the exemptions which is where they are hedge material, not on the shore, for example, around tennis courts.

He stated they have asked the Council to allow the removal of Australian Pine Trees and that is all that is before the Council today, and he respectfully requests the Council permit that.

Mrs. Douthit moved the Council allow the removal of fifty per cent of the Pine Trees and the topping of the remainder to no less than 35' and presumably the ribbons will still be on the trees and the removal of other things would have to be applied, but she would also ask them when the pine trees are removed, they come back the Council with a replacement diagram.

Mr. Joe Pusatari, Past President of the Ibis Island Association addressed the Council stating he is presently an officer on the Board. He stated he was troubled by the motion as there is more involved than just the Australian Pines, asking about the seagrasses. Mr. Moore stated they only would be removing invader species and seagrasses are not invader species. Mr. Pusatari asked why they couldn't furnish a plan? Mrs. Douthit amended her motion that before there are any trees removed, they should furnish a plan. She stated the only trees that this applies to is the Australian pines.

Mr. Moore stated the Brazilian Pepper is now being removed and they have a valid permit to remove the invader species. Mr. Pusatari asked if the Brazilian Pepper would be replaced with something they can live with. Mr. Pusatari did not understand why Mr. Moore issued a permit to cut anything down until the Council made a change in the PUD Agreements. Mr. Pusatari knew that Mr. Moore called this a minor modification, but to him it was not minor, as if the original documents state it should remain in its natural state, that should not have been touched until such time as the Council has made a modification, which has not been done as yet.

Mr. Moore responded for the record, the original statement states there shall be no additional landscaping required and doesn't state anything about natural state. Mr. Pusatari recalled Mr. Moore made that statement in a memorandum.

Mr. Heeke recapped the motion stating the motion is to permit the removal of the identified pine trees, the topping of the others to a height of not less than 35' and the replacement would take place upon the presentation of a plan. Mrs. Douthit agreed that was the motion except that it would just be fifty per cent of the pines that would be removed. Mr. Heeke stated the plan would have to come back to the Council before the cutting could proceed. Mr. Moore asked if the Plan was to come back before the Council or go to the Architectural Commission? Mr. Heeke responded it should come back to Council.

Mrs. Douthit also hoped the replacement trees would be of a type that would be appropriate nesting areas for the birds.

Mr. Moore requested permission to read some of the conditions that he had stated in his memorandum and see if it fits some of the conditions stated here. Mr. Heeke agreed. Mr. Moore read:

1. The Petitioner be required to prepare complete construction drawings, indicating trees to be removed and their replacements; and that those plans be returned to the Town Council for aesthetic approval in phases, if budgetary constraints dictate.
2. No more than fifty per cent (50%) of the mature pines (two plus inches in diameter and/or fifteen feet in height) be permitted to be removed.
3. The remainder of the Australian Pines be permitted to be topped to a limit of no lower than 35', as measured from existing natural grade.
4. Steps to be taken to insure no damage to existing native trees, including but not limited to mangroves.
5. These conditions would be consistent with approvals of other properties given since 1985.
6. All work to be performed by Town licensed landscape contractors in conjunction with supervision of representative from the County Department of Environmental Management (DERM).

Mr. Wearn referred to the last condition about it being under the supervision of a landscape architect and he wished the Council to know they had an independent arborist who was there to make sure the landscape man was doing it right and there are conditions in the permit which exceed these requirements. He stated he was concerned with two parts of the condition, the first part they will concede on as they have previously compromised on it and that is only 50% of the trees and the balance topped to 35'. He wished to make it clear that it is the Sloan's Curve Homeowner's Association's desire to remove all of them as they consider them to be an invasive species which should be removed and they consider them to pose a potentially dangerous hazard in storm events, and they wish to have them all removed, but they will accede to this request. He stated the real problem does exist with the condition of coming back with construction drawings and as a resident he is concerned there are invasive species which they have determined should be removed yet the Council is going to impose a condition on that. He was concerned about the signal that sends to property owners generally as this is a vacant property owner who has agreed to continue his property being vacant and it has been agreed in the PUD, there be no further landscaping requirements imposed so the

condition of the plan coming back to the Council is a problem for them. He respectfully encouraged them not to impose such a condition.

Mr. Heeke advised if that condition was imposed and there was a solution for replacement, that could be presented at the same time. Mr. Wearn indicated the question being posed by the applicant is it a Town policy to remove invasive species and to get permission to do that, one has to replace it with something.

Australian
Pines
removal.

Mrs. Douthit felt the answer was this is on a one-to-one basis and they are trying to protect the interests of the people on Ibis Island, who are objecting to anything being cut down. Mr. Wearn indicated that was an adjacent property owner talking about the removal of the invasive species. Mr. Heeke commented they are dealing with a very large area relative to other places in Town where this might occur and he thought this was unique and should be viewed in the context in which it is brought to them, as they are looking at a particular issue because of the visibility.

Mr. Wearn was asked what percentage of the pines have already been cut to which he responded, they have only worked on the site for about six hours. Mr. Moore reported the permit for those trees was issued in error and he believed they were only working about six or seven hours and then they were stopped and pictures have been taken on a daily basis to ensure they have not gone any further.

Mr. Heeke asked Mr. Wearn if there was any possibility of the Council receiving a rendering which would not have to be detailed as complete as a construction rendering? Mr. Wearn responded affirmatively but indicated he had a concern with that condition being imposed, but there is a rendering which has been prepared for five months and shows in good faith what they intend to do with the 50% removal and the topping of the balance, and it is a conceptual rendering as to do anything more than that would be extremely difficult at this point. He asked if they would be willing to entertain consideration of that rendering today as fulfilling the condition of the motion, they would present it right now.

Mr. Moore requested permission to speak, and with all respect to Mr. Wearn and his expertise, this matter is a Planned Unit Development and has been discussed at great length by previous Councils in dealing with all of the landscaping issues and there was much detail that was put into this for approval for the PUD in order for this to go forward and to treat the west side of the road in a different fashion, in his opinion, would be a defeat of the original intent of the PUD and the beautification of this particular area. He recalled it has been said it was to remain in its natural state, but that is not the verbiage as the verbiage was "No additional landscaping required" in fact, there is a plan which shows just that - nothing but wild area over there. He felt to treat the west side differently than the east side, when it was a concern to the original Council, is this Council's choice, but he would like to submit the reason for the beautification of the east side was because it was along the road, but so is the west side along the road and a plan would be appropriate. Mr. Heeke agreed noting this is a carefully thought out development from its inception, and he would like to see a more definitive plan.

Mrs. Wiener believed sometimes we do forget the history of a project and the history of the west side of the road when all the condominiums were being built was to leave the west side alone and that was not because of their love of nature, but because developers were involved who were looking to sell their property and do nice landscaping around the property and make a profit. She felt the main concern they have is that the people on Ibis Island continue to have the illusion of nature they are used to and at the same time, permit the residents and owners of 2000 South Ocean Blvd. to beautify what they view on the front side of the lakefront, along the roadway, and there be a mix with the side of the lakefront, along the roadway, and there be a mix with the side facing Ibis a little different than normal so there are no large open areas.

Mr. Crenshaw asked if the motion could be amended to adopt Mrs. Wiener's suggestion that any open areas that are created by the removal of the invader species be closed in by the new plantings? Mrs. Douthit stated she would like to see a plan to make sure there are no large barren areas.

Mr. Weinberg asked if the Council could view the conceptual plan? Mr. Wearn stated he will present that but he has a problem with the concept that there be no holes in it, as his clients have a desire to have some openness, much more than what exists now with the evasive species.

Mr. Heeke called for a seven minute break. Meeting called back to order by the President.

Mr. Heeke stated there is a motion on the floor which states there will be allowed trimming and cutting of the trees for fifty per cent of the Australian Pines and the remaining fifty per cent will be topped to a height no less than 35', contingent upon conditions outlined by Mr. Moore. Mr. Moore recapped the conditions: there should be a detailed plan prepared, in phases, if budgetary constraints are a concern starting with the north area and moving south, and the plan be submitted to the Town Council; those trees to be removed must be mature, being two plus inches in diameter and/or 15' in height; protect the native trees; landscape contractor to be required under the supervision of County DERM. Mr. Heeke stated he would like to see the overall completed plan and not be going back to it in phases.

Mrs. Wiener wondered if there was a problem with a tree not being planted according to plan, would that mean the whole project would have to be scrapped? She felt there should be some thought about how specific they are getting and are they talking about something manageable and reasonable. Mayor Marix thought the reason they wanted to see a plan is to make a determination if there are gaps or holes in the plan along the way and if the gaps are there, with what will they be planted, so that if there is a gap, they would fill it with enough seagrasses or buttonwoods or whatever to fill in the hole. She thought if the Council decided on the Plan idea, the people from Ibis Isle will be able to tell if that is acceptable and they won't see the traffic on South Ocean Blvd. Mr. Wearn is hearing the Mayor stating there should be no view of the Lake. Mayor Marix stated she wasn't saying that but she believed that was the worry from Ibis Island.

Mr. Wearn stated his concern is that the property owner will be able to submit a conceptual drawing which is appropriate for the property and that does not necessarily be required to fulfill whatever desires Ibis Isle wishes, and that may be very different from what Ibis Isle desires. Mayor Marix stated that is something the Council will have to decide on at that time and that is why she comes back to her first idea that maybe the two parties, plus Mr. Weinberg might work out a few ideas prior to the time they come back to the Council. Mr. Wearn stated he could certainly try to do that.

Mr. Wearn explained if they are not able to remove any of the pine trees, their conceptual drawing will be difficult to finalize. Mr. Heeke felt the plan should be brought before the Council before the trees are removed as once they are removed, they are gone forever. Mr. Weinberg stated the motion is stating they can have fifty per cent to which Mr. Heeke agreed stating that is what was conditioned upon bringing in the conceptual plan and they not be removed beforehand.

Mrs. Wiener seconded the motion.

Mayor Marix clarified that they cannot cut the trees down until the plan is approved, to which the Council agreed.

On roll call, the motion carried unanimously.

Commercial
utilization
of 1st. floor
at 209
Phipps Plaza

Motion was made by Mrs. Douthit that the petitions and documentation presented to the Council by Mr. Wearn be a part of the record. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

2. Appeal by Mr. Michael W. Connors, Attorney of Decision by Zoning Official to the Town Council Regarding 209 Phipps Plaza. Attorney Charles Lubitz addressed the Council for Robert Shelton, Dr. & Mrs. Sanford Oxenborn, Mark Flynn, and Rev. John Ric, all residents at 215 Phipps' Plaza and wish to appeal the determination by Mr. Zimmerman and concurred with by Mr. Moore, with respect to the commercial utilization of the ground floor area of Phipps' Plaza. He gave the background, noting in 1980, the Council rezoned all of Phipps' Plaza, except for a small area to a residential zone (R-C) as previously it was a commercial zoning district. He read one paragraph from the Zoning Ordinance which was listed under Accessory Uses, that "...no person shall use any portion of any building or accessory building, or any land in this District, for the purposes of carrying on or practicing any profession, occupation or calling, or for any commercial or quasi-commercial purpose and such uses are hereby declared to be in violation of this Chapter."

Mr. Lubitz indicated there is a firm called "Assets Managers Advisors, Inc." who have been allowed to alter the ground floor portion of 209 Phipps' Plaza for using it for commercial purposes. He stated the apparent basis that Mr. Zimmerman has given for allowing this is contained in the Code under the grandfathering clause for non-conforming use which states that when the zoning code is changed as in this case it was changed from commercial to residential, if there was a commercial use going on at that time, it could continue until it was abandoned or discontinued by the user. Mr. Lubitz believed he could demonstrate that at that time in 1980 and probably before that time, there was no commercial use being made of these premises. He pointed out if the Council did not want to take advantage of the evidence he will present that this particular premise was used for residential use, nevertheless, the commercial utilization or the nonconforming use may not be relied on for this situation as the code provides "...nonconforming use is a use lawfully in existence at the effective date of this Ordinance," He stated the apparent claim being made is at the effective date of this Ordinance, the ground floor of 209 Phipps' Plaza was occupied by Polly Jessup, who was approximately 80 years of age at the time the Ordinance came into effect, was using those premises for the purpose of operating an interior design business. He pointed out there is another section in the Zoning Ordinance which states "...it shall be unlawful for any person who is within the categories enumerated in Section 10.3 to exercise any of the privileges or to carry on, engage in or conduct any of the occupations, businesses or professions enumerated in Section 10.14 without first having obtained a license from the Town, as hereinafter provided."

Attorney Lubitz remarked that a search of the Town records confirms that at no time, either prior to 1975 and up to the present time has Polly Jessup or a firm called Jessup, Inc., ever had an occupational license issued by the Town of Palm Beach allowing the occupation of interior decorating conducted at 209 Phipps' Plaza, nor was there an occupational license issued for the conduct of any commercial enterprise at 209 Phipps' Plaza.

Mr. Lubitz stated the predicate must be that the use that is claimed must be a lawful use at the time of the enactment of the Statute and to be a lawful use, the Town would have had to issue an occupational license and none was ever issued for these premises.

Mr. Lubitz pointed out the matter he has submitted previously and exhibits submitted today and they have done an exhaustive search with regards to what had gone on at 209 Phipps' Plaza in the ground floor area for the periods of time he has discussed today and he believed that Mr. Zimmerman would concur that at all times these premises were occupied by Pauline Jessup, who died in 1988 at the age of 89. He did not think it was likely that she was conducting an interior decorating business at the age of 81 up to the time she died from her home at 209 Phipps' Plaza. He has interviewed a number of people who were familiar with the activities of Pauline Jessup and affidavits have been secured from Aino Karhu, who was Mrs. Jessup's cook and housekeeper for 15 years and states that the residence of Pauline Jessup consisted of both the first and second floors and was utilized strictly for residential purposes and based on her personal knowledge, she never conducted business in her home. He stated there is an affidavit from Houston Fitzgerald, who worked for Mrs. Jessup 25 years prior to her death and he affirms that through his personal knowledge, gained through his daily activities at Phipps' Plaza, the residence of Mrs. Jessup consisted of both the first and second floors and was utilized strictly for residential purposes.

Mr. Lubitz stated other evidence submitted is the Palm Beach County Property Appraiser's records show this property has been appraised as residential. He noted there are records of the Tangible Personal Property Tax Department of Palm Beach County also reveal there has never been a filing of tangible personal property tax return for 209 Phipps Plaza and in order to operate a commercial enterprise, one must file and pay a tax with respect to the personal property they have in their commercial premises, and none has ever been paid with respect to 209 Phipps Plaza.

Mr. Lubitz stated after Mrs. Jessup died, the property was offered for sale and the sale brochure refers to the property as a residence and shows a floor plan which shows the area that has since been turned into commercial previously consisted of a foyer, washroom, powder room and a parlor.

Mr. Lubitz stated the information he has placed before the Council was not available at the time Mr. Zimmerman made his determination and possibly his determination would have been different if he had this information on hand. He stated at all times his client became aware of the possible utilization of the premises as commercial, they notified Mr. Zimmerman in writing of their objections.

He urged the Council to allow his clients to continue to live in a building which is totally residential which he believed they were entitled to receive.

Attorney Frank Lynch on behalf of Assets Manager Advisors, Inc. addressed the Council and submitted affidavits of Mrs. Volk and other individuals who were aware of the commercial use of these premises. He stated in 1959, there were leases which put the property to commercial use and those are substantiated in the package from 1971 until Dec. 31, 1980 and it would become a nonconforming use and it could remain there for as long as the business was in existence and until such time as the intent of the property owner, changes. He indicated that would change that use and he will let Mrs. Volk speak to that. He stated the other aspect is if the use, regardless of the intent, ceases for a period of two years, it would no longer be allowed, however the leases they have to go through Dec. 31, 1988 and his clients negotiated a preliminary agreement to buy the property in September of 1989, so if there was any lack of use of the property, it was just for a nine month period which is well short of the two years allowed.

Mr. Lynch indicated the affidavit of Neal McGinnis is also presented, who was in the employ of Jessup, Inc. and was the tenant at 209 Phipps' Plaza and he states there were two rooms in particular, one is the area designated in the Sotheby's listing agreement as a "salon" and Mr. McGinnis notes that he and other employees of Jessup referred to this "salon" as the "client's room" and the reason they did that is they met with clients in that room. He noted another room designated on the the Sotheby's listing as "library" and that area was referred to as the

drafting room as that is where they did the drafting to present to the clients in the clients' room. Mr. McGinnis worked with Mrs. Jessup at 209 Phipps' Plaza since 1953.

Mr. Lynch noted there was an affidavit of Maria Bacinick, who did an oral history of Mrs. Jessup in 1987 and at that time Mrs. Bacinick inquired of Mrs. Jessup as to why she would need this much room and Mrs. Jessup's response was that she lived upstairs and operated her business downstairs, which shows some of Mrs. Jessup's intent, in spite of the fact that she may not have pulled occupational licenses and paid other taxes.

Mrs. Jane Volk addressed the Council noting there was a misunderstanding here and she wished that Mr. Shelton had talked with her and she recalled when the Royal Poinciana Shopping Plaza was designed by her husband, architect John Volk for the Bessemer people, they were one tenant at what was then 211 Phipps Plaza, now it is 209 and they moved to the new Poinciana Shopping Plaza and she and her husband bought the building in Phipps Plaza. She recalled that Mrs. Jessup had given up her shop on Worth Avenue. She recalled Jessup, Inc. started in Palm Beach. John Jessup was a friend of her husband's and they gave up their shop on Worth Avenue but Mrs. Jessup wanted to have a space in this Town where she could bring her clients and not particularly sell furniture, but it was a part of her lease that she could do so, if she wanted to. She doesn't know about the occupational license and Mrs. Jessup was almost 90 when she died but she was still doing business. She recalled in 1986, she redid her loggia and Mrs. Jessup helped her and she has the receipt for several thousand dollars worth of work and she never went to Georgia Avenue but always met with her in her drawing room downstairs at 208 or her salon. She recalled Houston Fitzgerald drove her truck but she didn't believe that Houston even paid attention to the clients who went into the premises and as far as the maid, Aino was concerned, she was over there all the time and never saw Aino downstairs.

Commercial
utilization
of first floor
of 209 Phipps
Plaza

Mrs. Volk recalled many of the more elegant clients were handled in the Phipps' Plaza.

Mrs. Volk has paid Florida sales tax and there was a corner of the space in Phipps' Plaza which has been kept for supplies and where they showed clients tile and other things. She recalled after the building was bought from the Bessemers, her husband did the upstairs over for Mrs. Jessup's residence and downstairs was always understood to be her salon, which in decorating terms was her reception room and she had a double drawing board in the other room. She stated in 1979, members of the Town Council came to her husband, since they were the principal property owners in Phipps Plaza, and requested, because of the growing commercialization of Palm Beach, to agree to allowing the Town to turn this into a residential area. She recalled after a great deal of thought, and in spite of her objections her husband did agree to this, but only if the grandfathered areas. and that was the bottom floor of 206 and of what was they 209 and 211 were honored. She felt if Sotheby's marketed that building saying it was Mrs. Jessup's residence, she didn't pay much attention and the contract with Sotheby's was terminated after a six month period. She did not believe it was ever her husband's intention to give up the entire building to residential purposes as it has always been a commercial area.

Mr. Moore explained they have done a great deal of research on this and after review of past zoning commission minutes when this was rezoned and discussion with prior Council members that there was never an intent in the re-zoning of Phipps Plaza to take away the commercial use that existed there as the grandfathering was in place and they have the opinion that the actual commercialization at 209 was consistent and had stayed in tact. They have been able to locate the occupational license for this area for 1968 and 1969, so there is a record that it was used prior to the zoning change as an interior decorating shop. He stated the question as to whether or not an occupational license was obtained after that time they can find no record of. He stated the Building Department has taken over the function of occupational license issuance two years ago and unfortunately, there was no detailed records kept of occupational licenses for zoning purposes and their records were ended on a year to year basis and absent that, the only other document they have been able to use is the actual owner operation or a lease and the first set of leases was back in the seventies and they noticed the most significant one signed was the one signed in 1986, which had a self perpetuation clause at the end of it that stated it would be automatically renewable year after year and was terminated because of Mrs. Jessup's death in July of 1988. He noted there were two leases drawn in 1986, one for the upstairs for her personal use and one for the downstairs for Jessup, Inc., and separate checks were written for each and that is the most compelling reason the Building Department felt the grandfathering existed on that property and the second compelling reason is the owner's testimony and there are conflicting affidavits now of people who worked for Mrs. Jessup. He stated the listing agent of Sotheby's did know that it was a mixed use building.

Mr. Moore referred to the Zoning Code stating the Article 8.10 states ... "the intent of this section is that by provisions of this Chapter, Ordinance, or by amendments that may be later adopted, there may exist uses and characteristics of use which were lawful before this chapter was adopted or amended and which would be prohibited regulated or restricted under terms of this Chapter and future amendments thereto. It is the intent of this Chapter to permit these nonconforming uses to continue until they are voluntarily removed by abandonment or otherwise removed, as required by this Chapter."

Mr. Moore did not believe the owner of these premises declared as Section 8.15 states under "Abandonment" that states ... "the discontinuance of a nonconforming use with the intention of the owner thereof to terminate said use for any period of time is abandonment, likewise the discontinuance of a nonconforming use for a period of two years, without the intention of the owner thereof to discontinue said use and or change of a use to more restrictive or nonconforming use for a period of time shall be considered an abandonment thereof and such nonconforming use shall not thereafter be revived."

Mr. Moore believed that Mrs. Jessup died without any intent of the Volks to abandon the use as she died in July of 1988 and the lease ran through to December of 1988 and Mrs. Volk has never declared she wished to abandon that use and he believed she had a two year period for either herself or a tenant to go into that space and perform some type of business. He stated it was his opinion that the acquisition of the property before that two year period either July of 1990 or Dec. 31 of 1990 has not expired and therefore the operation of a commercial use on the first floor was a valid use and should be permitted to be continued.

Mr. Heeke wondered if Mr. Lubitz could fill in the gaps as to what functions and duties Mr. Fitzgerald had while employed by Mrs. Jessup as he knows Mr. Fitzgerald and doesn't believe he ever goes into the home of the people he now works for, which is close to where Mr. Heeke lives. Mr. Lubitz recalled Mr. Fitzgerald was employed full time performing general maintenance on the interior and exterior of the Jessup residence.

Mr. Ilyinsky recalled going to the Jessup place in Phipps' Plaza and no-one in Palm Beach ever went to West Palm Beach to make their choice and there was no question in his mind that Mrs. Jessup was running a salon and making money on it and in the early 50's he shared space with Mayor Marix and they very often observed people walking in and out of this area who were doing business with Mrs. Jessup.

Mrs. Douthit recalled in the late sixties, she admired a particular fabric which Mrs. Jessup had, but the colors were not quite right and Mrs. Jessup invited her to her office which was on the first floor of her room to view other swatches.

Commercial
Utilization
of first
floor of
209 Phipps
Plaza

Mr. Lubitz stated he can only deal with the objective facts and even though people have gone to the Jessup home to discuss business with her, in order to operate a business, the law requires that certain things must be done and Mrs. Jessup did not do these things and the business which Mrs. Jessup operated was located at 6100 Georgia Avenue in West Palm Beach because that address where the occupational license stated the business was located and it did not state the place they did business was at 209 Phipps Plaza. He doesn't doubt that from time to time Mrs. Jessup had people come to her premises to talk about interior decorating but that was not her business address.

He did not believe the mere fact that the lease states the premises may be used for purposes of carrying on an interior decorating business does not mean nor is it evidence of the fact that such a business was carried on. He believed that if Mrs. Volk was relying on the use that Mrs. Jessup made of 209 Phipps Plaza during the eight years prior to the time and if the owner of the property did not evince or intend to give up the commercialization of 209 Phipps' Plaza is irrelevant as one can't have it both ways. He stated if Jane Volk was relying on the use that Mrs. Jessup made of 209 Phipps' Plaza during the eight years prior to the time that she died, he didn't believe was relevant.

Attorney Lynch felt the reliance that there was or was not an occupational license is irrelevant as people operate businesses every day and make money and don't have occupational licenses. He recalled people have stated this morning Mrs. Jessup indicated they should come to her office located at Phipps' Plaza and not at 6100 Georgia Avenue in West Palm Beach.

Mrs. Volk recalled Phipps' Plaza was a plaza of architects and decorators years ago and her husband had an office there since the late thirties and Maurice Fatio was located there as well as Belford Shoumate and the Worrell Co. started in the Plaza Building and Polly Jessup was in that area as it was a commercial district of decorators and architects and traditionally so. She recalled originally this particular building was not even a part of the Plaza. She has never had a question in her mind as to whether or not it was commercial and she has paid taxes on it and has dutifully signed leases and doesn't question Mrs. Jessup's statements.

Mayor Marix stated Mrs. Volk has lived in the Plaza a long, long time and when the transition came from commercial to residential, she was not on the Council but she did own the Plaza Building and recalled because the Plaza building was left to remain commercial and the rest of the area was residential, the Plaza Building lost all parking rights in the Plaza and the offices in the Plaza still do not have parking. Mrs. Volk recalled parking has been a problem and also when you go back in history, the parking that is there was created by her husband at 206 and 207 and 209 and 211, because when the Plaza was first laid out, the parking for the buildings was across the street on the park side which was owned by the Phipps' family, who gave the park to the Town with the condition that it would be forever dedicated as a park and if anything is ever done to it, it reverts back to the Phipps' family.

Mr. Lubitz responded he is hearing that he is interpreting the law wrongly but he believes the Code states without any equivocation that a building or structure lawfully in existence at the effective date.... and then it goes on and uses the term "a lawful use at the effective date" and then there is a licensing statute which states it shall be unlawful for any person to make use, etc., unless they comply with the Statute and he doesn't see how anyone could come to the conclusion that when the Code states it is unlawful to make use of a particular premises without a license that when they come to the nonconforming use statutes, which requires a lawful use that they can somehow ignore the fact that it is not a lawful use because no license was issued. He believed the Council should actually enforce the laws of the Town and to ignore that would be a dangerous precedent for them to set. Mr. Lubitz believed there is a problem with lighting, traffic which this use is attracting to the Plaza and his clients relied on the fact they purchased residences in what they believed was a residential zoning district.

Mr. Lubitz asked that the exhibits submitted by himself and Attorney Lynch be a part of the record and Mrs. Douthit so moved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Hap Perry addressed the Council indicating he is the owner of Asset Management Advisers which owns the building under discussion and he would like to address the comment made on the traffic created by his business and he wished to assure them the traffic is very light as they have a total of five employees and may see one or two individuals per day, so it is a light traffic situation. He pointed out an effort has been made to try and speak with the clients of Mr. Lubitz in order to handle this matter to a good conclusion and has received a cold shoulder from them.

Mrs. Douthit moved the appeal by Attorney Connors and Lubitz be denied on the grounds that the leases and the testimony by Mrs. Volk as the landmark takes credence over an older lady who may have inadvertently overlooked the securing of an occupational license. She recalled Mrs. Jessup was a very grand, wonderful lady. Seconded by Mrs. Wiener who felt it was clear that since an occupational license was issued at the 6100 Georgia Avenue address in West Palm Beach, it was clear to her that people who have several places of business and this was typical of an older person continuing on with their business and not being in a position to travel back and forth on a daily basis and to continue her part of the business exactly where it was.

President Heeke felt the evidence presented was conflicting and a fact determination could be reached either way the Council wants to on how they have viewed the information presented. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions and Site Plan Reviews:

Variance
16-90

1. Variance No. 16-90 - Elizabeth H. Howe, 432 Seabreeze Ave.; to allow construction of a two story addition permitting 28.7% lot coverage in lieu of 25% maximum allowed. R-B District. Mr. Lindley Hoffman, architect, representing the applicant addressed the Council indicating that his client wishes to construct a garage with two bedrooms above the garage. He stated at the present time they have to park their car in the driveway. He indicated they wish to have a secure place for their car and a secure entrance from the garage to his residence. He stated there will be a door from the garage going into the existing residence. He stated this addition is commensurate with other houses on the street.

Mr. Hoffman indicated the greenspace requirements will be met and the only area where it does not comply is in the lot coverage regulation and his client wishes to have this garage for security reasons and requested the variance be granted.

Mr. Ilyinsky asked what the hardship was for the bedroom addition over the garage? Mr. Hoffman stated there is none. Mr. Ilyinsky asked if he had plans to rent the rooms? Mr. Hoffman responded he is not as it will just be two bedrooms with baths. Mayor Marix asked if there was any footage that could be cut off the garage area. Mr. Hoffman stated they could probably take off one foot, which would bring the percentage figure down somewhat.

Mr. Moore explained there was no conversion of any existing garage in this case and Council has granted these in the past, however, he could see no hardship.

Variance
16-90

Mr. Howe addressed the Council indicating he has no intention of renting out the rooms as he has five children and many grandchildren and really needs the space to house his family when they are visiting. Mr. Heeke stated there is no hardship been demonstrated. Mr. Hoffman felt a case could be made for a hardship as far as the garage is concerned, as this will provide security for the homeowner. Mayor Marix felt security was a good reason but wondered if they wished to have this postponed and come back next month with something that may be more acceptable. Mr. Hoffman stated he could take off a couple of feet on the garage. Mayor Marix asked if there was anything else on the property which could be reduced to meet the lot coverage provision?

Mrs. Wiener moved the Council grant the ability to the applicant to build the garage at 432 Seabreeze Avenue with no upstairs living quarters. Seconded by Mr. Ilyinsky. Mr. Heeke noted the motion is to construct a one story garage with no usable area above the garage.

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

Variance
17-90

2. Variance No. 17-90 - Gregory & Edwina Kempf, 300 N. Ocean Blvd., to allow construction of a second floor addition to a nonconforming two-story dwelling situated 29.11' from the east property line in lieu of 35' concurrently required and 26'4" from the north property line in lieu of 30' currently required per Section 5.17 of the Town Zoning Ordinance; and to allow the construction of a garden wall providing a setback of 20' from the center of N. Ocean Blvd. in lieu of 25' required, per Section 5.14 of the Town Zoning Ordinance. R-B District. Attorney James Rainey representing Mr. & Mrs. Kempf addressed the Council indicating the property is shaped uniquely and they would like to put on a second floor addition which will fractionally intrude on the setbacks. He stated they are also requesting garden walls which will be a continuation of other walls in the area as this is the only residence which does not have a garden wall.

Mr. Bob Nicholas, the architect, addressed the Council indicating they are not increasing the nonconformity by the second floor addition.

Mr. Rainey advised he had been before the Council a few years ago and received the variance for the second floor addition, but in the meantime, the house was sold and the variance has expired, however, now he represents the new owners who want the same thing.

Mr. Heeke asked if the irregular shaped lot would be a hardship to which Mr. Moore responded it also has a double frontage and one of the variances is for one inch and the wall is consistent with the walls in the area and staff has no objection. He believed there were some letters of objection from a neighbor, Martha Moore Smith who objects to removal of landscaping and using every inch of the property for buildings.

Attorney Robert Deziel representing Mrs. Lillian Fanjul, 109 Wells Road addressed the Council on the garden wall, if it assumes the same plane as the one to the south, they have no objection, however, for the addition to the garage, he went over the conditions which are outlined in the Ordinance, as there are no special conditions which exist; and there would be granting a special privilege; he did not believe they would be deprived of rights enjoyed by other properties in the same zoning district and he could see no hardship nor was it a minimum variance. He did not believe the variance was in harmony with general intent and purpose of the Ordinance and it would be injurious to the area and detrimental to the public welfare as this home already violates the set back requirements on the north and east sides and to build an addition to the garage would give it a sense of a heavy mass hanging over the both streets.

Mr. Moore believed Mr. Deziel had made some good points, however this is an unusual shaped property and it has a double frontage lot, which in the past Council and administrators of the Zoning Ordinance have determined they do deserve more consideration and the Zoning Ordinance does speak to that. He stated the other issues are debatable issues and would be left to another forum, in his opinion. He believes the applicant has met the conditions necessary to grant a variance, which was granted two years ago but had expired, however, he believes they have an unusual condition in the fact that the Zoning Ordinance has changed from the time when the original structure was built and requirements are stiffer today and the Ordinance does contemplate that with the variance procedure.

Mr. Ilyinky asked if there were any objections to this two years ago? Mr. Moore did not recall. Mr. Deziel believed it could be different if there was only one nonconforming setback on this house, but it is non-conforming on both sides on the setbacks and the fact that it is on a corner lot and the fact that the applicant is coming with two requests on the north and east sides of the room. He pointed out the home at 280 N. Ocean, to the south of the applicant's home does sit back forty or fifty feet and the neighborhood has a number of large homes with proper setbacks, except for this residence and the applicant is asking this to be more obtrusive and cumbersome than all the other homes in that neighborhood. Mr. Moore pointed out the one setback requested is only one inch and the other is 3.6" and when the ordinance was changed a few years ago, it was acknowledged there would be cases like this in the future as a great many homes were being made nonconforming.

Mr. Moore believed the hardship does exist. Mr. Deziel clarified that the variance requested is not one inch but 5'1" to which Mr. Moore agreed. Mr. Nichols responded the five feet deals with a right-of-way and not the property itself and these conditions were existing at the time the applicants purchased the property as he has not done anything to increase the nonconformity of the structure and the request would grant no special privileges other than would be granted to anyone else. He stated if they are not able to build the second story, it would be inconsistent with the houses in that block, which are all two story structures. He stated this is the minimum effort necessary to make reasonable use of the property and he believed it is harmony with the intent of the Ordinance.

Mr. Deziel clarified Via Flora which is two houses away has some one story areas, and he didn't wish the Council to believe that every home in that area is two stories, because that is not the case. Mr. Moore indicated some of the concerns that Mr. Deziel has may be handled at the Architectural Commission meeting, as the mass of the structure and the roof design are the responsibility of the Architectural Commission.

Mr. Ilyinsky moved the variance for the wall be granted, in keeping with the existing properties. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mrs. Wiener believed the irregular lot and the two street frontages make a unique piece of property, and she moves the granting of the remainder of the Variance 27-90 with regards to the second story. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Variance
18-90

3. Variance No. 18-90 - Herbert S. Pheaney, 101 Banyan Rd.; to allow construction of a swimming pool providing a 3'8" sideyard setback in lieu of 10' required. R-A District. Postponed.

4. Variance No. 19-90 - Bustani Family, 350 S. County Rd., to permit a declaration of intent

Variance
18-90

to continue use of a grandfathered 10,000 square foot one-tenant nonconforming use thereby allowing a variance to Section 8.15 of the Town Zoning Ordinance which deals with abandonment. Applicant requests time extension through April 1, 1991 to lease space or lose grandfathered status. C-TS District. Attorney Gus Broberg addressed the Council for the applicant. He have a history of the property, noting the prime tenant, Brinkley's Market had terminated their lease sometime ago and the grandfathered clause had been extended for six months to April 1, 1990 and the Certificate of Occupancy is about to be issued on the building and it has been difficult to obtain a good decent tenant and they feel the owners has done a wonderful job of bringing this building up to code and request the Bustanies be granted another year on their grandfathered status in order for them to procure an outstanding tenant.

Mr. Moore indicated the Bustani family was cooperative with the Town in the renovation of the Town Hall by allowing parking for the dumpster and they feel the request should be granted for a six month period. Mrs. Wiener moved that the request for one year extension be granted. Seconded by Mr. Weinberg. On roll call, the motion carried 3-2 with Mr. Heeke and Mrs. Douthit voting against the motion although they were willing to go with an additional six months.

Variance
20-90

5. Variance No. 20-90 Norman E. Murphy, 325 Ridgeview Dr.; to permit installation of a patio awning providing a west street side yard setback of 22.25' in lieu of 30' as required. R-B District. Tad Moran from the American Awning Co. addressed the applicant for the applicant requested the variance. Mr. Moore stated the staff has no objection as it is in line with the existing garage and it is a double frontage lot. Mr. Ilyinsky moved for approval of Variance No. 20-90. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Flood Ins.
Variance
2-90

6. Flood Insurance Variance No. 2-90 - Gary Little, 251 Atlantic Avenue; permission to renovate an existing residence while retaining the existing floor of elevation 6.46' in lieu of 7.5' as required. R-C District. Len Warren addressed the Council for the applicant indicating they are making renovations to the house as it is seventy years old but to have to raise it one foot would be economically and physically damaging. Mr. Moore indicated in order for the renovation to occur, the entire house would have to be jacked up one foot and it is a complete renovation and he felt the variance should be granted. Mr. Ilyinsky moved for approval of the Flood Insurance Variance No. 2-90 with the furnishing of the Standard Hold Harmless Agreement. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

D. Other

Graham-
Eckes
Subdivision

1. Proposed Modification to Approved Graham-Eckes Subdivision Plat (Approved by Town Council at Meeting on November 14, 1989). Bill Meyer, the owner of the property, addressed the Council indicated he has received approval with regard to the proposed sub division plat and subsequent to that approval, he was contacted by a number of the property owners on Cherry Lane who were disappointed in having their street widened and asked him to look at the possibility of developing the parcel in another fashion, and he approached Mr. Michael Burrows for his input in subdividing the property and pleasing the residents of Cherry Lane and were able to develop a plan wich entailed the construction of a new 30' road which conforms to the regulations with regards to roadways. He stated instead of having five houses off of Cherry Lane, they now ill have four new houses with Lots 1, 2, and 3 being 16,700 square feet and each of the lots would front on the new proposed street which will be built and in addition, the road would come around and tie into Cherry to provide access for emergency vehicles. He stated there would be no parking on the road.

Mr. Heeke asked if this was Mr. Meyer's project and he was not involved with anyone else financially? Mr. Meyer responded that is correct, it is his project.

Mr. Heeke asked what was contemplated to be put on the north side? Mr. Meyer stated there will be a two foot easement to add to the existing three foot easement on the north side, so there will be a five foot utility easement and a six foot wall, to provide privacy and then there will be a heavy landscaping with trees.

Mayor Marix read a letter from Mrs. Clothier who requested the trees which line Cherry Lane be saved. Mr. Meyer reported these trees are Australian Pines and are considered to be an invader species and are no longer a desirable tree in South Florida. He indicated he does intend to replace the trees with landscaping. Mayor Marix asked if he could plant big trees to shade the road to which Mr. Meyer agreed.

Mr. Moore stated he is very much in favor of the new plan, however, they have not a chance to review this thoroughly with the Town Engineer and Mr. Meyer wanted a conceptual approval and he believed this does meet most of their concerns. He requested the homes on Lots 1, 2 and 3 be restricted to one story in height and Lot 4 be restricted to no further subdivision of that property in the future.

Mr. Heeke reported the Council doesn't vote on conceptual plans but they could express their opinions orally. Mr. Moore indicated they have some technical questions, such as who will be taking care of the maintenance of the nuisance strip on Cherry Lane, however these are things they can iron out before next month when they will come back for final approval.

Communi-
cations from
Citizens

X. Communications from citizens:

A. Mr. Gilbertson requested the Council to clean the beach in front of Hammond Avenue as they are using it as a public beach. He asked for signs be placed on the Bike Trail encouraging bikers to use their horn or bell when they are overtaking pedestrians. He suggested this item, communications from citizens, be scheduled for 1:30 on Town Council meeting day.

B. Francine Bernard, representing the Park Avenue Neighborhood Association, addressed the Council requesting some help with the parking and litter problems on Park Avenue, which are due to the hotel annex which a previous Council granted Mr. Tracey a permit to renovate this hotel annex and it now has 29 apartment units with only 22 parking spaces on the street and requested the variance be revoked. She believed the people who occupy the apartment units are alleging they are working at the hotel and they are granted permits to park on the street. She indicated the association is made up of residents who try to maintain their homes and have upgraded their homes and these students and young people who live in this annex have novested interest in the Town and are a problem. She indicated some of them work for Designer Consultants which is not located in the hotel but in the duplex which is in a residential zone on Park Avenue.

Mr. Heeke responded the Council has no ability to revisit a variance which was granted previously and the permit which was issued was done in error on the annex. He stated occupancy of the building is something they will stay on top of and find out about the business, Designers Consultants, operating in a residential zone.

Mr. Moore stated that his staff has met with the Bank who owns the property and their attorneys and have agreed to having any resident who lives in the annex have an affidavit signed by their employer who must be in the Palm Beach Hotel; and further the language has been added that to falsely sign the affidavit may result in the

loss of the occupational license for the employer who falsely signs the affidavit.

Mrs. Bernard thought they needed to look into what constitutes an employee as people can work only one hour a week at the Hotel and be considered an employee. Mr. Moore stated they did argue with the Bank on that issue and maids and housemen and employees who work in restaurants certain hours and he tried to get a twenty hour minimum but was not successful.

Mayor Marix felt the Police Department should be tough on the issuance of the parking stickers, especially now that we are aware there is a problem there and with regards to how many hours a week they work, regardless of how many, they will be working at the hotel and she didn't think it was an impossible task to find out how many hours they are working per week.

Mrs. Bernard presented a petition from the Association requesting permit parking be allowed for twenty-four hours and not limited to the daytime hours.

XI. ANY OTHER MATTERS:

A. PALM BEACH COUNTY RIGHT OF WAY. Mr. Doney indicated Mr. Randolph is seeking the documents from the County on this matter. Mr. Heeke felt it was premature to bring this matter up at this time as the Town Attorney is not ready as yet to comment on this.

B. NATIONAL PRESERVATION WEEK - May 14th through May 18th. Mr. Moore indicated they would like to use the Town Hall Square as the theme for this week at the Memorial Fountain and would like to have a party on May 18, 1990 at the Fountain. Mrs. Wiener felt this was a little premature and she wouldn't like to see a push from staff on this, as this is a sensitive issue. She had no objection to recognizing Preservation Week but didn't think they should be discussing Town Hall Square. Mr. Moore indicated the Fountain is deteriorating and perhaps someone would take notice and offer money for its repair. Mayor Marix suggested this could be used to familiarize the public with the attributes of Town Hall Square as if people know something is coming up, they may be interested in participating.

Mr. Heeke concurred that they are not put in a position of promoting something which hasn't yet been considered at a public hearing.

C. DEPARTMENT OF COMMUNITY AFFAIRS ON COMPREHENSIVE PLAN. Mr. Ilyinsky made a motion that the Town Attorney be authorized to settle the law suit with the Department of Community Affairs on the Comprehensive Plan. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

D. TAXING DISTRICT FOR KRAVIS CIVIC CENTER - Mrs. Wiener asked what the status was of the matter of the taxing district which was discussed at a Municipal League meeting. Mayor Marix stated it is discussed at a Municipal League meeting. Mayor Marix stated it is going to be considered in Tallahassee and she believed it was going to go to a referendum so people would have the opportunity to vote on it. Mr. Doney indicated he will check on the status of this. Mr. Heeke asked if letters should be written to the Legislative Delegation in opposition to which the Mayor and Council agreed.

XII. ADJOURNMENT There being no further business, the meeting was adjourned at 6:55 PM.

Grace T. Peters
Town Clerk

TOWN COUNCIL MINUTES OF SPECIAL MEETING
HELD ON APRIL 19, 1990

I. CALL TO ORDER AND ROLL CALL: A Special Town Council Meeting was called to order by President Pro Tem Ilyinsky at 9:00 AM on April 19, 1990 in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Pro Tem Ilyinsky, Councilwoman Douthit and Councilman Weinberg. Also in attendance were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, and Town Finance Director McPhail.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was give by Mrs. Peters and Pledge of Allegiance was recited.

III. APPROVAL OF AGENDA: Mrs. Douthit moved the agenda as printed be approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

IV. CONSIDERATION OF SETTLEMENT REGARDING BUCKLEY ESTATE: Attorney Randolph indicated the reason we are here is to try to settle out the Town's share of the Buckley Estate. He stated the Town under the will of Carolyn Buckley was devised a piece of the Buckley Building and the appraised value of the Town's share was .283529 per cent. He indicated the proceeds from the sale was \$194,787.37. He recalled the Town was bequested a chair which was valued and sold for \$4000, which means the Town's share was \$198,787.37. He recommended that all of the beneficiaries of the Estate pay an equivalent share of the costs of the Estate, which would be 25% and the Town's share would be approximately \$55,000. He noted this brings the Town's share to approximately \$143,787.37, when the costs are subtracted.

Mrs. Douthit moved the Town Attorney's recommendation be authorized. Seconded by Mr. Weinberg who was surprised there would be such a high cost to settle of \$55,000.

On roll call, the motion carried unanimously.

V. ANY OTHER MATTERS: None.

VI. ADJOURNMENT: Motion was made by Mrs. Douthit, seconded by Mr. Weinberg that the meeting be adjourned at 9:12 AM. On roll call, the motion carried unanimously.

Grace T. Peters, Town Clerk

Communications
from Citizens

Palm Beach Co.
right-of-way

National
Preservation
week

Dept. of
Community
affairs on
Comprehensive
Plan

Taxing Dist.
for Kravis
Center

Roll call &
call to
order

invo-
cation &
pledge
Approve
agenda

Buckley
Estate
settlement

Any other
matters