MINUTES OF THE TOWN COUNCIL MEETING HELD ON APRIL 9, 1996

I. CALL TO ORDER AND ROLL CALL

The Regular Meeting of the Town of Palm Beach Town Council was called to order at 9:30 a.m. by President Lesly Smith. On roll call, the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Jack McDonald Councilman Leslie Shaw, Councilman Sam McLendon and Councilman Allen Wyett. Also, in attendance were: Town Manager Robert Doney; Town Attorney John C. Randolph; Assistant Town Manager Peter Elwell; Assistant to the Town Manager David Jakubiak; Chief Code Enforcement Officer Brian House, Town Engineer Jim Bowser; Police Chief Joseph Terlizzese; Fire-Rescue Chief Ken. Elmore; Director of Public Works Al Dusey; Director of Planning, Zoning & Building Robert Moore; Planner/Project Coordinator Tim Frank; Purchasing Agent Charles Boggs; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Warren of Bethesda-by-the Sea. President Smith led the Pledge of Allegiance to the Flag.

III. PRESENTATIONS

A. Mayor Ilyinsky presented a plaque to Lindley Hoffman in recognition of his service as a member of the Architectural Commission from 1993-1996.

B. Mayor Ilyinsky presented a ring to Jack Ambrosine, upon his retirement as a Firefighter Drive-Operator, Fire-Rescue Department, after 22 years of service.

C. Mayor Ilyinsky presented a ring to Robert Crozier, Firefighter-Inspector, Fire-Rescue Department after 21 years and 11 months of service.

IV. COMMENTS OF THE MAYOR

There were none.

V. APPROVAL OF THE AGENDA

The following changes were made to the regular agenda:

Mr. Wyett made a motion to add the request by Mayor Graham of West Palm Beach to appear before the Town Council under item X.3 on page 3 of the agenda. Mr. McLendon seconded the motion. On roll call, the motion unanimously carried.

Mr. Shaw made a motion to remove from the Approved Agenda, item B. Licenses and Permits, Application for a new 4COP Alcoholic Beverage License by Mr. Louis D. Spagnuolo for Cafe Spagauolo at 139 North County Road and add as item VIII.A. Mr. McLendon seconded the motion. On roll call, the motion passed by a vote of 4 ayes and 1 nay, with Mr. Wyett casting the nay vote.

Remove from the Approved Agenda, Item A.2. Charitable Solicitations; Palm Beach International Film Festival, No. 410-96 and add as item VIII.B.

Add item XI.E.10, First Union Capital Management Monthly Report

Mr. Shaw made a motion to add item XI.E.11, Voting procedure/tabulation for appointments to Boards and Commissions. The motion was seconded by Mr. Wyett. On roll call, the motion was unanimously carried.

Mr. Wyett made a motion to defer item XIV.C.2., Variance No.5-96, to the May 4, 1996, Town Council meeting. The motion was seconded by Mr. McLendon. On roll call, the motion was unanimously carried.

Mr. Wyett made a motion to defer item XIV.C.7., Variance 11-96, to the May 14, 1996, Town Council meeting. Mr. McLendon seconded the motion. On roll call, the motion was unanimously carried.

Mr. Wyett made a motion to add item XI.E.12, Discussion of the Sunshine Law. The motion was seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

Mr. Wyett made a motion to approve the agenda as amended, seconded by Mr. McLendon. On roll call, the motion unanimously carried.

APPROVED AGENDA

Mr. Wyett made a motion to approve the Approved Agenda. The motion was seconded by Mr. McLendon and on roll call was unanimously carried. The following items were approved on the Approved Agenda:

VI. Approval of minutes of February 13, 20, and 29, 1996

VII. LICENSES AND PERMITS
  A. Charitable Solicitations

  1. The Center for Family Services, No. 252-96
     Other - Waiver of Advertising Requirement

REGULAR AGENDA

VIII. LICENSES AND PERMITS
  A. Application for a New 4COP Alcoholic Beverage License by Mr. Louis D. Spagnuolo for Cafe Spagnuolo at 139 North County Road.

Garrison Lickle, Attorney for applicant, addressed the Town Council, stating that this item had been pulled off of the approved agenda for discussion purposes, assumably because of the notice that the Cafe got last week regarding the seating issue. Mr. Lickle stated that the Council previously approved the outdoor seating with limitations of 48 seats, 20 outside and 28 inside. There were common area tables at the Paramount which ended up being served, and in addition, some of the tables ended up being on the other side of the walkway when entering the Paramount. Mr. Lickle stated that patrons were sitting down at the non-servable tables and staff served those tables because of the demand of the customers. It was brought to their attention that this was inappropriate. Mr. Moore's office called and Mr. Lickle had the situation immediately corrected. There was a subsequent inspection that afternoon to make sure they were in compliance. The Cafe separated the common area tables from the existing Cafe tables so this would not occur again. The tables were being marked to indicate "no service" at these tables. Mr. Lickle pointed out that when application was made for the outside seating, it was anticipated that customers could have take out lunches or bag lunches and sit at one of the 8 tables in the common area outside the Paramount, but that they could not be served by the Cafe.

Mr. Wyett invited Cafe Spagnuolo to come back before Council and ask for those additional tables as there was a public demand for outdoor seating in the location, and that service would not interfere with the other activities of the Town.

President Smith asked for comments from the Building Department. Mr. Moore stated that Mr. Lickle's representation of the facts was accurate. Mr. Moore said that the common area tables had been there for some time and the use was intended for people who were strolling and wanted to sit down to rest, and if they wished to eat a bag lunch or drink a take-out coke that was permitted. Also employees from the various retail and office establishments used the common tables.

Mr. Shaw commented that he had not known the common tables were there, pointing out that those tables were never shown on the original application. The application had to include parking for the facility. It was obviously the intent of the Cafe not to have people come in with their own lunches, but a customer would purchase a take out meal. Mr. Shaw remarked that the common tables were an integral part of the business, but were being used without having adequate parking. Mr. Shaw pointed out that the amount of tables requested in the original application was reduced because the Council was concerned with the parking situation. He recommended this be addressed with the Building Department--how to approach common area tables in direct proximity to a take-out facility. Mr. Shaw expressed concern that this was intended to be a casual take-out cafe, and he did not want to see this turn into a late night drinking spot.

Mr. Lickle stated that he understood there was a 10:00 p.m. curfew for music and service.

Mrs. Smith stated that the serving of liquor will not change, the service would still stop at 10:00 p.m.

Mr. Moore said that the restrictions would be enforced and would remain the same until such time as the applicant came back before the Council to request otherwise.

Mr. Wyett made a motion to approve the application for a new 4COP Alcoholic Beverage License for Cafe Spagnuolo. The motion was seconded by Mr. Shaw, and on roll call unanimously carried.

Mrs. Smith announced that the Council would hold its first public hearing on the Town's Comprehensive Plan Evaluation and Appraisal at 5:01 p.m. The Town Council meeting would be adjourned for that Special Meeting and reconvened if necessary.

B. Charitable Solicitation - Palm Beach International Film Festival, No. 410-96.

Town Clerk Pollitt reported that the Town Clerk's office was notified on Friday regarding this application from the Palm Beach International Film Festival. Mrs. Pollitt stated that the Festival itself lasts over a week and the final event would be a dinner at Mar-a-Lago. Rather than not have a legal permit for this event, staff accepted their application, and proceeded to put the application through the normal approval procedure. Mrs. Pollitt said that the Palm Beach International Film Festival was a new organization, had no past history, and this would be their first event.

Mr. Shaw noted that the cost of solicitation was supposed to be reasonable and pointed out that this was a business, spending $700,000 to operate a film festival and operate a program throughout the County. Mr. Shaw added that he did not see this as a charitable event, but as a commercial venture.

Mrs. Pollitt replied that since the organization was registered with the State of Florida, and was able to meet the standards for a charity with the IRS, they could legally raise funds. Mrs. Pollitt said that the application stated what the intent was for the monies raised.

Mr. Shaw questioned whether they applied for the 501C or had already received it?

Mrs. Pollitt stated that staff did not require a copy of the 501C, but accepts correspondence stating the 501C had been obtained, and that the organization gave grants and scholarships which qualified them as a charitable organization.

Mr. Shaw stated that even though he did not see this as a charity, if they received approval from the State then they were a charity.

Mr. Wyett made a motion to approve the request for Charitable Solicitation by the Palm Beach International Film Festival, No. 410.96. The motion was seconded by Mr. Shaw, and on roll call was unanimously carried.

IX. PUBLIC HEARINGS

C. Landmark Designation of 184 Sunset Avenue - Consideration of Resolution No. 20-96.

Mr. Frank stated that the property being evaluated was 184 Sunset Avenue and the proper notification procedures had been filed and published in the newspaper. Staff had evaluated the property, and the Landmarks Designation Committee found that it met the following criteria for designation:

1. Met Criteria A - exemplified or reflected the broad cultural, political, economical or social history of the nation, state, county or town.

2. Met Criteria D - representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or influenced his age.

Mrs. Pollitt stated she had proof of publication. Mrs. Pollitt swore in all witnesses that would be speaking for this public hearing.

Mrs. Jane Day stated that on May 26, 1924 Architect Bruce Kitchel received a building permit from the Town of Palm Beach to construct the building on the southeast corner of Sunset Avenue and County Road. Originally the development had been called the Biltmore Apartments and was now Meisner Court. Although originally slated for a 5 story building, a 3 story building had been built in 1924. Mrs. Day stated this was an important building for the Landmark Program because it represented the commercial aspects of the Town of Palm Beach from the very early boom times of the development of the Town. The architecture was important in the Mediterranean Revival style, and Mrs. Day provided details of the architecture as well as the architect's background. Mrs. Day noted this building was a good example of commercial architecture.

Mr. Wyett commented that he was always concerned with landmarking commercial property, and this particular building represented ground floor commercial spaces and upstairs apartments. The nature of rental apartments was long-term deterioration, and when this property was constructed County Road was more of a trail than a road or the busy thoroughfare that it now is. Mr. Wyett did not believe the apartments had high-end tenants whose rents would enable the landlord to maintain the property for a number of years. He realized that at some future time if the property fell into disrepair, the Town could de-commission it; however, his concern was with approving apartment buildings as landmarks.

Mrs. Day pointed out that the building has been completely restored and that although some of the footprint and the roofing style were Mediterranean Revival, all of the windows had been replaced; therefore, staff had not used Criteria C. She commented that it was important to note that for income producing properties there were Federal tax credits as well as the County tax abatements available for landmarked property. Hopefully, an owner would be aware of these which would be a help for them in dealing with the very problems concerning Mr. Wyett.

Mr. Shaw made a motion to approve 184 Sunset Avenue as a Landmark Designation. The motion was seconded by Mr. McLendon, and on roll call was unanimously carried.

Mr. Shaw made a motion to approve Resolution 20-96, seconded by Mr. McLendon. On roll call, the motion unanimously carried.

Attorney Randolph read Resolution 20-96 by title only, as follows:

RESOLUTION 20-96

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SETFORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

B. Landmark Designation of 840 South Ocean Boulevard - Consideration of Resolution No. 21-96.

Mr. Frank stated that staff reviewed this property with the Landmark Preservation Commission findings that it meets the following criteria:

1. Met Criteria C - that it embodied distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftmenship.

2. Met Criteria D - representative of a notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

Mrs. Day stated that in 1919, the same year that Bruce Kitchel arrived in Palm Beach, Marion Sims Wyeth arrived in Town. The property style was quite different, but equally important. This house was built in 1928 and was part of the Del-Mar Corporation Development during the real estate boom of the 1920's. The house was an Italianette example of the Mediterranean Revival Style, with the front entryway being its nicest feature.

Mr. Wyett made a motion to accept the designation report and make it part of the record. Mr. McLendon seconded the motion, which, on roll call, was unanimously carried.

Mr. Frank stated, in response to Mr. Shaw, that in both cases the owners were willing to participate in the landmarking program. Mr. Shaw asked how much of the existing house was in the original condition. Mrs. Day stated that the whole front facade was in the original condition, however, the house had been altered in the rear and in parts that were not in public access. Because Wyeth's work was different than a lot of the other Mediterranean Revival works, and is so classical, staff thought it was important to designate this property.

Mr. Shaw questioned if the Town Council should just landmark the front facade in cases when properties had extensive remodeling and were not in keeping with the exact design of the architect?

Mrs. Day responded that the Town had done that and there was precedent, if that was what the owner wanted. The Town gives owners the opportunity to have the whole property landmarked, going back to the original design, which would be their advantage in regard to the tax abatement program.

Mr. Shaw questioned whether there would be any motivation for the owner to bring back the original architectural style if the whole property was given the landmark designation?

Mrs. Day stated that the property must be land marked if the owners were to participate in the tax abatement program, and that the owners had not stated whether they were willing to reconstruct the rear portion of the house to bring it back to the original design.

Mr. Shaw suggested that if the Council only designated the front facade of the house it would be motivation to do something with the rear of the property; if the whole property was given the designation there would be no motivation.

Mr. Moore stated that the motivation was the 23 cents on the tax dollar for anything the owners do for rehabilitation of a property, as long as it went back to the original design and could meet the Secretary of Interior standard for tremendous incentive to landmark the entire property.

Mr. Wyett made a motion to approve Resolution No. 21-96; seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

Attorney Randolph read Resolution No. 21-96 by title only as follows:

RESOLUTION NO. 21-96

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SETFORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Mr. Randolph stated he was not sure that Mr. Shaw's motion on Resolution 20-96 included the adoption of the Resolution. Mr. Shaw stated that approval was part of his motion.

X. OLD BUSINESS

A. Other
1. Consideration of Beach Issues
a. Status Report on Restoration of the Lake Worth Inlet Sand Transfer Plant - Discharge Piping.

Mr. Dusey stated that one pipe was in place under the Inlet and the second hole was being back reamed, with 300-400 feet of that completed. The schedule for final connection to the Sand Transfer Plant was still scheduled for the end of this month. Mr. Dusey reported that the contractor placed a pipe on the beach for the dredging of the Inlet and would start pumping no later than tomorrow. Although there were about 210,000 cubic yards of sand, or more, in the Inlet, the Corps of Engineers only had money to dredge 175,000 cubic yards, which would be placed on the Town's beach. The permit call for a completion date of May 15.

Mr. McLendon asked whether it was anticipated that the Town would need a bulldozer and if it would be the Corps responsibility?

Mr. Dusey stated that the Corps had a bulldozer and it was used as confined by the permit conditions. When there was this much sand, it could not all be placed south, but spread out over the whole project.

b. Update on Mid-town Beach Restoration Project, Including Use of PEP Reef Units as Groins.

Mr. Dusey reported that the beach had been opened and was being used. The Town had good recovery after the last large storm and there was a second tier of sand that had come back to the beach, with an approximate elevation of six feet. A very large sandbar remained off shore that was expected to move in with the southeast winds. The last part of the project was the dune planting which was about one half completed.

The Garden Club had approached staff about funding of an experimental planting project at Clarke Avenue to be completed by the same contractor doing the Mid-Town Beach planting project. The purpose of the experimental project was to determine whether dune plantings on a new beach, such as Mid-Town Beach, needed to be watered.. This has major implications for future projects, and staff was very pleased to have the project going forward at Clarke Avenue. Staff appreciated the Garden Club funding the equipment for the experiment.

President Smith mentioned that part of this would go under the Town's Water Conservation Plan, because if staff determined that the beach planting did not require a regular flow of irrigation that information would be passed along as part of the Town's Water Conservation Program. The Garden Club had heard from other people to the north about the results of this project and the determination on the beach planting, irrigation and fertilizer.

2. Monthly Status Report from Finance Department Regarding Enforcement Procedure for Collection of Fines, Fees and Other Monies Due to the Town.

a. Town of Palm Beach vs. Johanna Johnson regarding Code Enforcement Board Liens - Proposed Settlement.

Attorney Randolph stated that as an update from the past meeting, he had filed a loss of foreclosure action against the Johnson Estate in regard to the two outstanding Code Enforcement Board liens. Mr. Randolph provided Council with a copy of this filing. In addition, the Town had filed a claim against the Johnson Estate relating to the amount owed on the two liens. In the interim, the heirs of the Johnson Estate had attempted to negotiate a settlement in regard to this matter. They proposed that the matter be settled by payment to the Town of $400,000, which was not available in cash as of this time, but which could be secured by a promissory note in the amount of $400,000 along with a mortgage. In addition, Mr. Randolph handed out a copy of a title commitment which was provided to him that insured the Town's interests in its first mortgage on this particular property. Mr. Randolph stated the package of information provided to Council, specifically the foreclosure lawsuits, had copies of two liens which were issues in this proceeding. The first lien was originally $193,000 (Exhibit I in the package). That lien represented an accumulation of daily fines which had been imposed on the property. The second lien against which the Town was foreclosing was a lien in the amount of $30,400. The original $193,000 lien and the original $30,400 lien had accumulated during the last several months to an amount over $1,400,000. Each of the liens stopped accumulating fines on a daily basis as a result of the property having come into compliance. The heirs worked with Mr. House, Chief Code Compliance Officer, in regard to the two items that were originally cited.

Mr. Randolph explained that the mortgage stated that the $400,000 settlement would be due at the time the residence at 190 South Ocean Boulevard was sold or within 18 months, whichever occurred first, and that if the house did not sell within the 18 months, the Town would be paid the amount. If the cash was not available, the Town would have the first mortgage to secure its interest in the property.

Mr. Wyett made a motion to accept the settlement offer of $400,000 as outlined by Attorney Randolph. Mr. McLendon seconded the motion.

Mr. McDonald stated that he was not comfortable in taking a $400,000 settlement on a one and a half million dollar fine for money that would not be seen for 18 months. Mr. McDonald preferred the heirs get a mortgage from someone else and pay off the Town of Palm Beach. He suggested it was clearly indicated that there would be no interest given on this amount and the Town was not only giving up over $1,000,000 in revenue, but also giving up the use of the money for 18 months. If the heirs were in attendance today and offering a check in the amount of $400,000 he would be more inclined to accept.

In response to Mr. McLendon, Mr. House stated he had not seen a letter from anyone regarding an inspection of the house.

Mr. Doney stated that the letter was included in the agenda package.

Mrs. Smith said the letter is difficult to read when it is not submitted before the meeting. Mrs. Smith said there should be an appropriate time limit for letters to be submitted, and Mr. House has not seen the letter and he is the Code Enforcement Officer.

Mr. House stated that the property has been brought into compliance. Mrs. Smith replied that she would take Mr. House's word since he worked for the Town.

Mr. House reported that the house itself had been brought into compliance with the Code. The work that was done on the seawall was certified by engineer Bob Botkin. Mr. House stated he is not an engineer and could not speak to the safety or the methodology of repairing the seawall. Mr. House said he knew the work was done, and he inspected it to make sure there were no longer any leaks, however, he could not speak to the safety of the seawall.

Mr. McLendon stated that he would certainly accept an engineer's certification.

Mr. Wyett asked what recourse the Town would have if the seawall would break between now and the time of payment of the $400,000.

Mr. Moore replied that the seawall has been certified by Bob Botkin, who is a Florida Registered PE, and that it would meet the 100 year storm requirements of the State of Florida's Department of Environmental Protection. The sand was in front of the wall and Mr. Moore was not sure if there would be a test of this matter in the next 18 months. If the wall failed it would be the responsibility of the property owner to repair the wall.

Attorney Randolph stated that if the wall failed the owner would be cited and brought before the Code Enforcement Board. He noted that it was not appropriate to tie this into the agreement if the Code Enforcement Department had ruled that it was now in compliance and had a certification of an engineer.

Mr. Moore stated that the Code Enforcement Board was a misnomer, that it is really a code compliance board. Mr. Moore said that the whole issue is to bring the violation into compliance. If the owner failed to bring the property into compliance, then a fine would be assessed against the property. Mr. Moore pointed out that what is at stake here was a long running fine because the property owner failed to bring the property into compliance. Mr. Moore commented that the agreement presented a recovery that would be a substantial, if not the largest, recovery of a fine of this nature in the State of Florida.

Mr. McDonald stated he has not heard anyone indicate why the Town should accept 25 cents on the dollar, that the Town had two valid code liens on the property and questioned why the agreement was such a good deal?

Mayor Ilyinsky stated he had nothing against proceeding and perhaps getting the whole amount, however, the Town may not get the whole amount. The Mayor pointed out that there were a great many heirs and if he were voting on this issue he would take the $400,000 offer and be grateful that the Town would get such a settlement.

Mr. McDonald pointed out that the Town would not be getting the money, but receiving paper with a promise.

Mr. Moore stated that his opinion was to settle this agreement, and if the Town continued to proceed in an attempt to recover the entire amount, legal fees as well as court time would be involved, running the chance that the Town would spend as much in legal fees as would be collected. Mr. Moore recommended taking the settlement.

Attorney Randolph stated that the Town has 2 liens against the property that amount to a sum much in excess of what was being offered. The Town may recover on those two liens, but in order to recover, the Town would have to be involved in a foreclosure action before a Court of Equity. A Court of Equity would consider not only the law, but the fairness of the situation.

Attorney Randolph stated that representatives of the heirs have indicated concern as to why the Town allowed the liens to accumulate on a daily basis without giving notification to the property owner. If notice had been received, they may have done something about the violations. There were also statements from representatives relating to the health of the individual property owner and the ability of that owner to take care of this matter during her lifetime, in addition to concerns relating to the potential homestead nature of the property. Mr. Randolph stated the Council should give consideration to these types of concerns in determining whether or not the Town would prevail if going all the way to foreclosure.

President Smith stated she knew there were members of the Council who were concerned with the rise in legal fees and costs the Town is paying and she believed this type of action could result in hundreds of thousands of dollars worth of legal fees. President Smith stated that she too questioned why the time was allowed to lapse with the liens going back 7 years. She believed this would be lost in court and if the Town could recover $400,000, the Council should accept the offer.

On roll call, the motion passed by a vote of 4/1, with Mr. McDonald casting the negative vote.

Mr. McDonald asked Mr. Randolph to raise the amount in excess of the mortgage amount to cover any interest in costs if there was a default. Attorney Randolph stated that he would attempt to do that.

President Smith noted that a clause in the agreement stated if there was a default they would begin to pay 18% interest. She asked whether Mr. Randolph would be filing a lien on one property where the Town is owed $191, questioning if the Town would be spending more on legal fees then the lien was worth?

Mr. Randolph stated that several cases had been turned over to him with requests of what was legally appropriate, and that he did not know whether he would file a Notice Demand Letter or follow up with liens as he had not yet made that determination.

b. The Monthly Status Report from the Finance Department Regarding Enforcement Procedure of Collection of Fines, Fees and Other Monies Due To The Town.

Mr. Doney stated the report was prepared by Cheryl Somers of the Finance Department, and as indicated in her memorandum dated 4/2/96 the report is totaled on page 6 reflecting the original principle amount outstanding of $1,495,012. Of this amount $9,631 had been collected, leaving a principle balance of $1,485,381. It was important to note that of the $1,485,381 principle outstanding balance, $1,377,500 or approximately 93% is attributable to the Johnson Estate. The report would be amended accordingly next month. Mr. Doney stated that Ms. Somers prepared a spread sheet to give the Council an "at a glance" look at each of the outstanding amounts owed to the Town and would keep it up to date as actions were taken.

Mr. Doney reported that a number of items were referred to the Town Attorney for unpaid collection fees. The one referenced earlier by President Smith was for a solid waste fee for Barry and Judy Goldstein, 100 Sunrise Avenue.

Mr. McLendon stated that in some jurisdictions, perhaps not in Florida, it was possible to take a bill that was a year old and automatically put it as a lien and collectable as part of the taxes; and if not paid the process of the property being sold for taxes commenced.

In response, Mr. Randolph stated that these items were now going to a municipal lien book and that it was the responsibility of the property owner when purchasing a property to check whether there were any municipal liens or assessments. If they called the Town they would be informed of the liens and would have to pay the liens, since there was an exception on the Title Policy relating to municipal liens and assessments (meaning if the property owner bought the property and got a title policy he would be responsible for any of those municipal liens that existed).

Mr. Randolph said that there was a way to record the liens in the Circuit Court and that was the process he was now considering on some of the unsatisfied liens. He did not know whether all of them would need to be brought to judgement first, but would be researching that answer.

Mr. McLendon suggested it would not be cost effective to go very far on the small liens. Mr. Randolph agreed and stated that he would not file a lawsuit against a $114.99 lien, but would look at all of the fines together to determine if it would be appropriate to simply file a lien in Circuit Court.

In response to the question of Mr. McLendon regarding a procedure that would add unpaid fines to the tax bills, Mr. Randolph stated that there was a procedure for doing that in Florida, but it would involve setting up a special system of incorporating the water bills on the ad valorem tax bill that would require a resolution and public hearing.

Mr. Shaw stated that on the fourth page of the spreadsheet there was an item under Gardens City Company--a fine of $45,500 on the property, and notification that a memo was forwarded January 11, 1996 and he questioned the status.

Mr. Randolph stated that property was in front of the Code Enforcement Board where a bankruptcy was involved, however, he had not pursued that item as of this date.

Mr. Doney stated the property was Lots 6 and 7 of Ocean Lane, Case #89-422, and was about deteriorating structures and unkept property.

Mr. House stated that the case was initially before the Code Enforcement Board in 1989 and at that time they brought the property into compliance and no fines were issued. However, last year that case was brought back before the Code Enforcement Board again because the property was allowed to deteriorate. At that time the Board ordered them to comply within 30 days. They did not and the Board then ordered a $250 a day fine until compliance was obtained. The owners had not complied with the ordinance as of today, so the fine as shown on the spreadsheet was low because every day the Town assesses another $250 in fines. The owners were fully aware of the problem and have an attorney by the name of Brian Broad with whom Mr. House had been in contact.

Mr. Shaw pointed out that the spreadsheet referenced 1989. Mr. House stated that the case was carried on, and that instead of opening up another case the Town used the same case number as it was the same violation and reoccurrence. The Code Enforcement Board would be aware that it was a reoccurrence of the same violation.

Mr. Shaw asked where the Town was going with this?

Mr. Randolph stated he had not done anything with this fine as he has been concentrating on the Johnson problem, but it sounded like one that should be brought back before the Code Enforcement Board for authorization to file foreclosure.

President Smith pointed out that these two houses had not been occupied for 10-12 years and before going to Code Enforcement the neighbors were complaining about the property and would send the gardeners in to cut the grass. The properties went to Code Enforcement when there were holes in the walls and the fence and the owner and his attorney were aware. Mrs. Smith urged that Mr. Randolph move on this case right away.

Mr. McDonald stated he was mystified as to why these problems went on for years without a foreclosure suit and questioned why the Town Council allowed this to continue since 1989?

Mr. Moore stated that although Council policy had not authorized staff to go as far as foreclosure in the past, through recommendations in recent meetings on this subject, staff had been given the authorization to proceed all the way to foreclosure in this matter.

Mr. McDonald stated that he would like staff, when something is of some dollar value that accumulates, to come before Council and ask if foreclosure proceedings should begin, so that the Council could give direction needed.

Mr. Moore stated that there had been a deficiency in the system and staff was waiting for Mr. Randolph to finalize a policy that staff could follow.

President Smith stated that at this time she would be taking an agenda item out of order as there was a group in attendance from the South County Road Association to present a check to the Town.

C.2.a. Presentation of a Check by the South County Road Association for the Beautification.

Ms. Christine Franks addressed the Town Council stating that in representation of South County Road Association she was happy to present the Town with a check for $18,720 to get started on the greening of South County Road. Ms. Franks stated the check also represented the Town, the Preservation Society, the businesses and services and thanked the Council for their support.

X. 3. Consideration of Proposed Water Franchise Agreement with City of West Palm Beach and Related Issues.

Mr. Doney stated that the letter received this morning from Mayor Graham of West Palm Beach, was listed as item 3, however, as indicated in the letter, Mayor Graham requested the opportunity to come and address the Council at an upcoming monthly Town Council meeting to update the Town on the efforts of the City over the last 4 years. For the record, Mr. Doney read the letter from Mayor Graham addressed to President Smith.

Mr. McLendon stated that the Mayor of West Palm Beach was welcome to come before the Town Council anytime to share her wisdom and added that it sounded like they wanted to update what was presented to the Town Council a year ago explaining their expansion of the catchment area and aquifer recharge.

Mr. McDonald questioned whether West Palm Beach would be telling the Town anything that is not known about the expansion or improvement of the City. Mr. McDonald stated that the real issue for the Town was the surcharge, however, Mayor Graham did not want to discuss the surcharge, but wanted to rehash items already known to the Town.

Mr. McLendon stated that the issue, as far as he and Mr. Wyett were concerned, was the need to get two things from the City: 1) how they would develop a wholesale water rate for the Town of Palm Beach so they can make some sense out of what the Town can expect to pay and 2) the distribution system value. Both of these items were addressed in a letter to the City with a procedure recommended and the City had never recognized either one.

President Smith noted that the Council could not presume to know what Mayor Graham was going to say to the Town, and that as a courtesy there was now a letter from the Mayor asking to speak to the Town at the Town's convenience apologizing that the City had not effectively communicated with the Town. President Smith stated that Mayor Graham was reaching out toward the Town of Palm Beach and she could not think of any reason not to respond in kind in hope that she would come and speak to the issues.

Mr. McLendon stated that he hoped there was a gentle way of informing Mayor Graham that the Council wished to discuss the two items he previously mentioned at that informational meeting.

President Smith stated that the Town should respond by letter to Mayor Graham and list the issues that the Town would like to discuss.

Mr. Doney suggested that the Town Manager's office prepare a letter for Mayor Ilyinsky's signature inviting Mayor Graham to come to the May 14 Town Council meeting, and attach a copy of the past letters that Mr. McLendon has furnished to them, indicating that the Town still awaits a response on these issues.

Mr. McLendon stated he would rather the issues be newly phrased in a less confrontational tone.

Mr. Doney stated he would like Mr. McLendon's assistance in writing the letter.

Mr. Wyett commented that Mayor Graham stated in her letter in paragraph two, that she did not want to discuss the surcharge. Mr. Wyett stated that the Town is aware that the West Palm Beach Water Department is putting in a lot of new facilities, however, they have nothing to do with the surcharge. The City had informed the Town in the past that the surcharge was being spent on the Police Department and not on the water system. Mr. Wyett stated he was a little confused regarding the intent of Mayor Graham's letter.

President Smith stated that the Town did not know where the City was spending the money, pointing out that the police item was something that was mentioned over a year ago. She reiterated that the Council could not presume to know what Mayor Graham was going to say until she appeared before the Council.

Mr. Wyett made a motion, seconded by Mr. McLendon, to have the Town Manager prepare a letter of response to Mayor Graham for Mayor Ilyinsky's signature. On roll call, the motion was unanimously carried.

a. Town Attorney's Memorandum of Law Relating to Surcharge.

Attorney Randolph stated that pursuant to the Council's request at their last meeting, he had prepared a memorandum of law. Mr. Randolph noted that it was a confidential communication relating to his ideas in regard to potential lawsuits. A copy had been provided to each Council Member, and Mr. Randolph said that he would be happy to answer any questions.

Mr. McDonald commented that this was a confidential privileged document and did not feel there was a need to discuss it.

Mr. McLendon stated that to discuss this the Council would need to have an executive session as it related to litigation.

Mr. Randolph replied that the Council could only meet in executive session in regard to pending litigation and *not* in a private out of the sunshine meeting.

Mr. Wyett asked if Mr. Randolph recommended that the Town bring this lawsuit based on his studies.

Mr. Randolph responded that he did not have a recommendation at this time, however, stated that ultimately based on the information provided, it would be a policy decision for the Council.

Mr. Winterfield addressed the Council, stating that as indicated by Mr. Randolph the provisions of the Sunshine Law apply only when there was existing litigation, therefore, he suggested that this public document should be available to the public.

Mr. Wyett made a motion to authorize the Town Attorney to bring an immediate lawsuit relative to the water issue with the City of West Palm Beach.

Mayor Ilyinsky suggested that Mr. Wyett wait until the day before Mayor Graham's visit and stated that he did not want anything to do with the lawsuit.

Mr. Wyett did not feel that one issue had anything to do with the other and stated that Mayor Graham was coming to tell the Council what the City of West Palm Beach was doing to improve their water system, and the Town was bringing the lawsuit to determine if the surcharge was legal.

President Smith stated that this issue was not open for discussion as there had not been a second to the motion.

Mr. Shaw stated that he hoped that some of the questions would be resolved when Mayor Graham came before the Council. His basic concerns were as a water user, and with the Town as an individual entity, as well as whether or not the water system, and the distribution of the water, was maintained in the best interests of the users. Mr. Shaw explained that the question was whether the utility was a separate entity of West Palm Beach and responsible under the bonding guidelines to produce a highly efficient system at rates that are reflective of the monies raised or money expended, and whether or not they are meeting that obligation.

Mr. Shaw commented stated that West Palm Beach had indicated they were going to establish a water source, however, nothing has been said as to how they are going to get the water to the Town, or how the system would be maintained. Mr. Shaw warned that the Town may be one of many victims of a water system that was not being maintained and operated in a prudent manner and indicated that should be the direction of the lawsuit.

Mr. McLendon agreed with Mr. Shaw, but it was his understanding and recollection that the only additions and improvements made in the water system in a long time related to projects that the Town had done in the way of storm drainage or road improvements. He commented that West Palm Beach was in no way spending 8% of their sales revenue, which they claim to have budgeted, for renewal and replacement facilities in the Town of Palm Beach.

Clint Vecilluis, Chairman of Water Resources Committee for the Civic Association of Palm Beach, addressed the Council and stated that the possibility of a lawsuit was driving Mayor Graham toward reaching out to the Town, and that in the reply to Mayor Graham the Town should include an outline of the major parameters wanted in the contract. Items should include the reliability of the water supply, the continuance of the quality of the water, and the distribution system.

Mr. Wyett asked why the Town should wait until the next Council meeting and suggested that the Town should invite Mayor Graham next month so the residents that were still in Town could hear her directly. He explained that Mayor Graham could come for a discussion between now and the next Council meeting and the Council could take any action at the next regular Town Council meeting.

President Smith stated there was a Special Town Council meeting scheduled for April 23, 1996, at 5:01 p.m. for the second and final public hearing on the Town's Comprehensive Plan and Evaluation Appraisal Report. Mr. Shaw would not be in attendance at that meeting and Mrs. Smith suggested that the Council arrange a Special Town Council meeting.

Mr. Doney asked for 2 or 3 dates that would be good so he could work on them. Mr. Doney stated that next week on Wednesday, 4/17/96 at 9:00 a.m. the Landmarks Commission would meet and on Thursday, the 18th at 2:00 p.m. the Code Enforcement Board would meet in the Chambers.

Mr. Moore stated that it would be a long meeting of the Landmarks Commission as there are 9 designations on the agenda and some of them would be opposed.

Possible dates mentioned were April 16, after 2:00 p.m., April 19, around 1:30-2:00 p.m. and April 18, around 10:00 a.m.

3.b. Amendments to the Water Conservation Ordinance:

Mr. McLendon stated that the Water Committee had discussed and recommended consideration by Council to have alternate day irrigation regulations enforced. The Committee considered it important to do this prior to trying to get a handle on the amount of irrigation water needed. Watering three times a week was more than adequate and it would take the Town one step further in meeting the Comprehensive Plan requirements of the 30% reduction.

President Smith questioned how the Town had previously determined which days would be used by which parts of the Town.

Mr. Dusey stated it was odd/even, but could not remember the exact days, explaining that the odd addresses were to use certain days for irrigation and the even addresses used other days. There were modifications to some of that for some places where addresses were even on both sides of the road. Golf courses were given some leniency.

President Smith asked if this could be instituted as an emergency measure for alternate day watering when there was a water problem, as opposed to changing the ordinance.

Mr. Randolph stated that other than as an emergency measure, the ordinance should be amended to contain a provision relating to the restriction.

Mrs. Smith stated that in the ordinance the Director of Public Works was authorized to specify certain days and hours when lawns and shrubbery could be watered. If Mr. Dusey specified that there was a water shortage, he could determine and change it according to the needs of the Town.

Mr. Dusey stated it would be difficult to certify an emergency or water shortage given the lack of any indication from West Palm Beach or South Florida Water Management District. Mr. Dusey considered it a stretch of his authority under the ordinance.

Mrs. Smith asked what the Town's justification was for limiting watering to every other day?
Mr. Dusey stated it was pure water conservation in the Comprehensive Plan, requiring that the Town meet certain levels.

Mrs. Smith noted that the Ordinance stated that on the effective date of the April 15, 1993 article, new installation of automatic irrigation systems would be required to be equipped with a water censoring device. She questioned how the Town monitored that requirement?

Mr. Moore replied it was done through the plumbing code with sprinkler permits; the Town had already changed its devices.

President Smith stated that the other residents and businesses were grandfathered.

In response to a suggestion that this be retroactive, Mr. Dusey stated that could be done if a time period was set and was reasonable.

Mr. Moore advised that the enforcement and policing of that would be nearly impossible, and suggested that it be tied into violations; if someone did not have a monitoring device it would be required.

Mayor Ilyinsky stated that one day he saw sprinklers on and went to the resident and politely suggested that they turn them off because it had rained that morning. The resident had not known the sprinklers were on and thanked him for his information. Mayor Ilyinsky declared the Council was trying to make this a police state and reminded everyone that the Town was still a very personal town, and there was no way to control everything.

Mr. Moore stated it would be impossible with person power to enforce a retroactive situation, but it was not difficult to handle with new permits.

Mr. Shaw expressed that it made more sense to use either districting or zoning of the Town to determine odd or even watering days, and then the Town would not have to question the address of the property. In order to eliminate the problem of residents having to deal with resetting their time clocks, Mr. Shaw recommended the ordinance be designed to take that into consideration; that the time of watering would have a limit during daylight savings and a limit during standard time. Mr. Shaw explained that a lot of residents have complained that the clocks were set, then the times change, requiring the sprinkler company to come back and re-set the clock.

Mr. Shaw stated that if the Council was changing the ordinance he would like to see the word "West Palm Beach" deleted as he did not see that the reference to the City had anything to do with the Town's ordinance.

Mrs. Smith suggested that Mr. Fink and Mr. Barnes address the issue of water conservation and water censoring controls that could be enacted by their members. All of the condominiums that belong to these groups would receive the message that the older systems could now have the sensory devices put on them, thereby avoiding having to legislate everything that was done in this Town as well as being public education.

Mr. Louis Pryor addressed the Council, stating that as far as the Civic Organization is concerned he agreed with Mrs. Smith and was sure that the Executive Committee would endorse her suggestions.

Mrs. Smith suggested mailings to members would go far in helping to educate the people and those that could not set their sprinkler clocks.

Rodney Fink, Co-Chair of the Citizens Association South of Sloan's Curve, stated that he was sure his association would cooperate to the fullest in bringing this message back to its members.

Mrs. Smith believed that with the number of people that would be notified there would be a dramatic change and reminded everyone that the Civic Association and the Citizens' Association South of Sloans Curve assisted the Town with the survey for Comcast.

Mr. Wyett commented that the ordinance had to be reviewed and asked Mr. McLendon if any of the golf courses could survive on every other day or whether some provisions had to be made. While he knew the Town did not have the staff and that the Police Department could not go around enforcing this, he urged that the Town Council look at the fine situation so that the people observed grossly violating the watering agreement would get more than just a slap on the wrist.

Mr. Moore stated there was a fine set up in the ordinance now.

Mr. Wyett stated that the fine capped at $500 and that it would not get too much attention at $500.

Mr. Shaw stated on the second page of the ordinance under the Curtailment Authorization, he would not like to see someone get fined because of watering a vegetable garden, and that the idea was regulate watering lawns. In addition, even though it was included in the ordinance, he did not think it was *ever* legal to water down a filling station apron anymore because it was against environmental protection.

Mr. Moore stated it was legal as long as there was no oil on the apron and that this had been taken from the Palm Beach County and West Palm Beach ordinances. Mr. Moore stated that more is not always better, and sometimes the tendency is if you are told that you can only water on every other day then extra zones would be added for those people that cannot set time clocks. Mr. Moore suggested this would be counterproductive to not only the lawns and the vegetation, but to the saving of water.

Mr. McLendon stated that the issue was very simple in that if the Town did not meet its Comprehensive Plan requirement to eliminate 25% of the Town's water usage, in 1998 eliminate 30%, and in the future there was a drought, there may be some drastic State action that the Town would be facing.

Mr. Moore recommended, from staff standpoint, that the Town Council enact the every other day watering. The ordinance was now set up for even/odd days and Code Enforcement Officers and Police Officers had done a good job last time the Town had these restrictions, along with the cooperation of the residents. Mr. Moore did not believe there were any fines issued the last time these restrictions were in place.

Mr. Shaw made a motion that the Town implement an alternate day watering system and that it be done by zones rather than street addresses.

Mr. Moore stated that if the usage was heavy in one area there would be a distribution pressure problem, and that it was difficult now to get the water pressure for the systems in the high rise apartment buildings.

Mrs. Smith stated that odd/even addresses were used before and it worked fine, and that this was discussed at great length the last time the restrictions were put into effect.

Mr. McLendon stated there were various ramifications and that the Council should have a staff report to coordinate the amendments and recommendations.

Mrs. Smith replied that the experts should do this and that it was not up to the Council to tell Mr. Dusey how he should run his department and how the restrictions should be done.

Mr. McDonald stated that if Mr. Shaw would amend his motion to just pass the requirement to do the restrictions and let the mechanics be worked out by Public Works, he would second the motion.

Mr. Shaw stated he would remove the districting from his motion and allow it to be determined by the Public Works Department.

Mr. Wolfe addressed the Council and stated that if the Council was going to put forth this information to everyone regarding odd/even numbers, the citizen unit should be taken into consideration so some provisions could be made.

In response to a question, Mr. Dusey stated that the golf courses have an exemption currently to water every day and staff had asked them to install the sensors. They were all working individually to come up with plans to conserve water. Mr. Dusey noted that the water usage by the golf courses is quite small compared to the overall usage by the Town.

Mr. McDonald seconded the motion, which on roll call unanimously carried.

c. Water Reuse Issues

Mr. McLendon reported that the application for a grant to South Florida Water Management District was in progress and its deadline was on the 12th, and asked Mr. Dusey or Mr. Bowser to answer whether that is on track. The Town was also proceeding with a meeting on Friday with the Management District to start the wheels in motion to apply for a Consumptive Use Permit for the C-51 Canal to get definitive commitments, if available, from the Management District for a little or no restricted use of the canal. Mr. McLendon stated that it made no sense to have a project and not be able to use the water for so many days. The staff, with participation from Mr. McLendon, will proceed with the application to be able to divert reuse water, treated waste water. Staff noted that this was the only uninterrupted available, non-potable use found so far for irrigation purposes and would like to start the procedure, at least to the permit phase. It would require a long pipeline from the plant to the distribution system in the Town.

4. Consideration of Personal Communications Service (PCS) Wireless Technology - Request for Towers Siting and Related Issues (Deferred from March 12, 1996 Meeting).

Mr. Jakubiak gave a brief history on this issue, stating that the new Telecommunications Act had generated companies coming forward to install antennas and towers, and this issue was discussed at the last Council meeting. It was the recommendation of the Florida League of Cities that the Town enter into an agreement with CityTel to co-locate the antenna and tower locations in public facilities, giving the Town the opportunity to control the zoning requirements and also share the revenue. Mr. Jakubiak stated there was a representative from CityTel in attendance today.

Garrett Digman, representing CityTel, stated that CityTel is a for-profit making business and the premise was that they come to cities and towns recognizing that the new industry will be approaching with multiple requests for new antenna sites. For the most part the industry approached private property owners and asked for an options land. Many of the condominium associations had probably already been contacted by two of the newest operators. Most of the operators try to operate on an exclusive basis, meaning they operate their antennas for their own use. Technically, there was no reason why that had to be done, and Mr. Digman stated that operators could co-locate their antennas on the same antenna support structures. CityTel's approach was to come to cities and towns and rather than having these antennas, sometimes towers, offer municipally owned lands that can be utilized and offered to the operators for use of the antenna support structures. These structures would then be built to support multiple operators. CityTel would not come into a town and build a tower on a speculative basis. CityTel was asking the towns and cities to let them show the operators what municipally owned lands are available in the community. The operators then have something called a radio frequency design plan whereby they determine where the antenna sites were going to be. The two primary determinants were based upon density of population and geography. If there are areas that are high density during the tourist season, such as the Breakers Hotel, there would need to be a site in that area.

Mr. Digman stated it was hard to predict how many antenna sites the town may need because the industry will grow. CityTel offers operators a chance to look at the locations and then build a site that would support multiple operators. Today there were 2 cellular operators in the Town, and 2 PCS operators, the licenses of which were auctioned last year for seven and a half billion dollars nationwide. The operators already licensed in the Town's market place were Sprint, Spectrum and PCS PrimeCo. PCS PrimeCo was a venture formed by several large operating telephone companies. The third license for PCS was currently in auction and raised about 9.8 billion dollars in revenue for the Federal government. The West Palm Beach area was the 4th most actively traded market place in that auction, behind Miami, Tampa and Orlando. The current high bid for the third license was from DCR/PCS Company for $64,000,000. This license says they were offering the Federal government $64,000,000 to be able to provide wireless service in a community. There will be three more licenses auctioned provide wireless service in a community. There will be three more licenses auctioned before the end of the year and it was not known how much that might generate.

Mr. Digman explained that the Town would be faced with multiple operators asking for permission to locate antennas in the community. Mr. Digman said that rather than having multiple antenna sites, CityTel's approach was to have one support structure, multiple antennas on one site, located where the Town can have a little say so in the location and what they will look like, sharing the revenue with CityTel.

Mr. McLendon asked the ideal or maximum spacing of the towers?

Mr. Digman stated that if there was a 250 foot tower it would cover about 7 square miles. PCS generally would not be located at those heights. PCS tower antennas could be at 80 feet when there is a flat area, which would cover 2-4 square miles. Again, this depended upon the density of the population. Mr. Digman stated that some territories that they cover actually shrink--as the amount of call volume increased. One of the technologies was CDMA Technology which does shrink as the call volume increases so it is hard to tell how many sites would be needed. Mr. Digman stated that each site would have 6-9 panels, a panel is 6 inches wide and 7 feet tall, and there will be 6-9 panels per operator. The Town would probably have one of those per every 10,000 in population or for every 2-4 square miles. Mr. Digman stated that the way the Town of Palm Beach is laid out the length of the area would probably not have 3-4 antenna sites needed. Mr. Digman stated that was just a guess on his part, however, he felt that there would have to be a separate one at the Breakers Hotel and perhaps at the golf courses to handle the higher capacity.

Mr. Digman stated that for cellular service, because most of them are analog technology at the present, they would need a 20 foot separation on the towers to ensure that there would be no interference. For digital technologies there was not the same need for separation as they can be placed right next to each other or on top of each other. Mr. Digman stated that CityTel had been doing experimentation to allow one antenna to receive the radio frequency for multiple users from multiple carriers, trying to create a smart box at the bottom to separate the signals and send them out to the operators at the base of the antenna station. However, that was just in prototype at the present time.

Mr. Shaw said the Council received a memorandum that indicated the new generation may actually be in the 150 - 250 foot range, and he asked if Mr. Digman saw this as feasible in a low-lying community such as the Town of Palm Beach that was surrounded by water?

Mr. Digman replied he did not think so and added that CityTel used some rules, and that when he spoke to the operators they stated they were looking at the majority of their sites being between 80-125 feet.

Mr. Shaw asked if it would be reasonable for the Town to assume that most of the carriers would prefer to take a location further west to maximize the radius or were they looking toward the boating community with the need to get as far east as possible?

Mr. Digman stated that in the initial build-out the west would get the majority of the initial sites, but as capacity on the systems grew they would have to look to the Town of Palm Beach to increase that capacity. He stated he would be very surprised if AT&T or BellSouth Mobility had not come to the Town to ask for locations because their capacity was growing in this community as wireless technology is very desirable.

Mr. Digman stated that the Town of Palm Beach was very valuable real estate, and CityTel used a general number anywhere from $5,000 to $10,000 per site per year. CityTel had sites in and around Nashville that were going to generate from $25,000 to $30,000 per year. The revenue depended on the value of the real estate, and since that was high in Palm Beach, Mr. Digman estimated the average would be somewhere between $10,000 and $20,000 per site per annum.

Mr. Digman stated the revenue would be higher because the Town's population would want to have the coverage. The Town of Palm Beach is very residential with very high dollar value, making them hard sites to get since it was very hard to get zoning committees to go along with approving a telecommunication tower site on a private location.

Mr. Shaw confirmed that it would be approximately $10,000 - $20,000, with 5 to 6 sites.

In response to a question from Mr. McLendon, Mr. Digman responded that the operators would like to be located on a condominium building as it cuts down on the construction cost. If an operator could locate on top of a building, the antenna support structure was less costly and they could get the coverage needed.

Mr. Shaw asked if the Town were permitted to collect a franchise fee or a permitting fee from a user in the Town if they were to put up an antenna. Mr. Digman said the Town could not if it was located on private property.

Mr. Shaw stated that if Mr. Digman's figures were correct, the Town was looking at the potential of $120,000 of revenue, but also remarked he would be happier not to have to erect towers if there was some way the Town could gain revenue by having a permitting fee. Mr. Shaw suggested the permit could be an annual permit, such as that required for a sign; perhaps using an occupational license since it would be a business.

Mr. Randolph stated that he would look into Mr. Shaw's suggestions.

A discussion ensued as to the height of towers and Mr. Digman stated that the companies were trying to make the towers as unobtrusive as possible and discussed the technology needed to operate what was needed. Mr. Digman discussed how the antenna structures worked and stated that no equipment was needed between the towers, and that CityTel worked on behalf of the cities by going to the operators and working for environmental impact. Mr. Digman noted that the operators were very sensitive to this issue and added that BellSouth Mobility was probably one of the best in the industry for trying to make these sites look like the local environment. Towers have been put on baseball fields so that they are also a light tower for the ballfield; some towers were located on church steeples, and in Huntsville, Alabama, City Hall had a tower as it sits on a hill and gives great coverage.

Mr. Wyett stated that the Council needed to understand that whether these towers were going to be built on the Island or in West Palm Beach, some towers on the west side of the lake would cover the Town.

Mr. Digman stated his company talks to the operators, who often do not share their radio frequency plan because it is a very close hold information as they do not want their competition to know where they would put sites, and CityTel tells them what properties may be available for their use. The property would be offered to them and the operators indicate where they want a site. CityTel then would come back to the Town and specifies sites an operator would like to use, asking the Town if they want the site utilized. At that time CityTel would tell the Town exactly what the site would look like and what they intend to charge for it, including potential revenue from the site. Huntsville, Alabama, had nine sites selected by operators, and the City of Huntsville stated that they only wanted 4 used, City Hall and 3 water tanks. The operator was informed and told to find locations for the other 5 elsewhere, but not on city property.

Mr. Wyett stated that this was a situation where the Town should be cooperating with West Palm Beach and the joint location of these towers.

Mr. Digman stated that he has already presented West Palm Beach sites to the operators and would be meeting with the City. Mr. Digman stated that there was a build plan already in effect for 1996 and that the plan for the entire United States would build as many antenna sites in 1996 alone to support PCS as the cellular industry has built in the last 15 years. There would be build plans for 1997 and 1998. Mr. Digman stated that the Town's sites were too late to get in for the 1997 build plan unless they really need one on the Island.

Mr. Doney referenced the letter dated March 22, 1996 to Mr. Supportis, the area director, and indicated the next step in the process would be for Mr. Digman and his representatives to get more site specific detailed information with all other details, as well as revenues, and meet with Mr. Castro, Zoning Administrator. Mr. Doney said the meeting may also include Mr. Dusey, Mr. Bowser and Mr. Jakubiak. After that meeting, staff could then come back before the Council at the May 14 meeting.

Mr. Shaw made a motion to authorize staff to proceed in identifying site locations and return to the Council with a report at the May 14 meeting. Mr. McDonald seconded the motion.

President Smith asked why CityTel was the only company that did this work?

Mr. Digman stated that there were other companies, however, they had recognized that municipalities have lots of valuable property.

Mr. McLendon stated that he thought by the letter dated March 22, 1996, the Council had given permission to CityTel to look at the sites and come back with a request.

Mr. Doney stated that Mr. McLendon was correct, however, the interim step was now needed for Mr. Digman to give an update on the particulars of the concept of this service. The next step would be site specific.

Mr. Digman stated that he would take the property provided by staff, convert them to latitude and longitude coordinates and provide them to the operators. The operators would then come back to CityTel and tell them what sites they would like to consider. CityTel would then come back to the Town pointing out what sites the operators would like to build on and what exactly would be built..

Mr. Moore asked Mr. Digman as an expert in this field, knowing the Island is 12-1/2 miles long, an eighth of a mile in width, approximately ½ mile to the condominiums, where would the Town, having only a 3 story building at its highest, locate a tower?

Mr. Digman stated the expectation was that the initial build out of the antenna sites will probably be on the condominiums. As capacity increased on the network, they would need more antenna rays, and the Town would become a very attractive location. The antenna rays were generally at a much lower level then the original antenna sites, approximately 80-100 feet.

Mr. Moore stated that CityTel wanted staff to identify where they could put 80-120 foot towers.

Mr. Digman stated that it did not have to be towers and suggested that the Recreation Center or the fire department may be preferable sites.

Mr. Doney stated that a good example may be Bradley Park because the Town's master pumping station for sanitary sewage is located there and the existing 100 foot antenna located there may be used in conjunction with this.

On roll call, the motion was unanimously carried.

President Smith asked if all the Town properties on the list are covered by the Green Space Amendment. Mr. Doney stated they were not because some of them are very small sites. Mr. Doney said that staff did need direction from Council if they wanted staff to coordinate with the City of West Palm Beach.

Mr. Wyett made a motion to authorize staff to communicate with the City of West Palm Beach regarding tower locations. Mr. Shaw seconded the motion, and on roll call the motion was unanimously carried.

Mr. Shaw said that the issue of income from property other than town-owned property should be explored. Mr. Shaw said that the Town would not like to see a number of antennas throughout the Town, however, at the same time would like to take advantage of the revenue that would be generated.

After discussion, the Council decided to wait to make a decision on this issue until after the May 14, 1996, Town Council meeting when more information would be available before having the Town Attorney spend money looking into any provisions.

3c. Mr. Doney stated that Mr. Dusey needed to ask for authorization on the water reuse issue in proceed.

Mr. Dusey stated Staff required authorization to apply for two permit applications, a Consumptive Use Permit for the C-51 and an application to the local Health Department for water reuse.

Mr. Wyett made a motion to authorize staff to proceed with the two applications. The motion was seconded by Mr. McDonald and on roll call was unanimously carried.

5. Consideration of Cable Franchise Renewal with Comcast Cablevision of West Palm Beach, Inc. - Set Date and Time for Special Town Council Meeting.

Mr. Jakubiak stated staff needed to schedule the next meeting for a public hearing on the franchise renewal, however, no further discussion was necessary.

Mrs. Diane Christie of Comcast Cable stated that she sent a letter to the Town Council regarding the franchise renewal with recommendations.

Mr. McLendon said that the letter asked for an 18 month contract in lieu of the 1 year contract proposed. Mrs. Christie replied that an 18 month extension on the existing agreement should be considered, and that would schedule the public hearing during the season allowing for public input from the residents. Mrs. Christie stated that based on the FCC laws a cable operator has to give a municipality 36 months notice prior to expiration. Mrs. Christie said Comcast was concerned with the language of the new franchise, and this extension would give both sides an opportunity to work together during that time frame.

Mr. Randolph did not think the questions could be answered at this Town Council meeting, because the questions have not been addressed by staff. Mr. Randolph suggested that the Town Council take that recommendation and consider it as one of the alternative items discussed at the meeting to be scheduled.

Mr. Doney suggested the Council consider Tuesday, April 23, as a meeting day since the Council already had a scheduled meeting at 5:01 p.m. for the EAR Ordinance. After discussion, the Council decided to reconsider the question at 3:00 p.m. to determine when the other meetings would be scheduled. President Smith informed Mrs. Christie that the Town would be in touch with her to let her know the scheduled meeting time.

6. Consideration of Request by Mrs. Jacqueline Cowell for El Vedado Road to be Renamed El Vedado Way - Identification of Recommended Town Actions for Consideration of this Item at the May 14, 1996 Meeting.

Mr. Doney stated this was on the agenda for the Town Council to direct staff whether or not the procedure as identified in Mr. Moore's memorandum of March 20, 1996, would be from a policy perspective acceptable to the Town Council.

Mr. Doney explained that in order for Mr. Moore to do the staff action required, and if Town Council would like any additional action, there would need to be direction so there would be no miscommunication between staff and Town Council.

Mr. Moore stated staff has not notified the applicant that initiated this study. The only time there has been a street name change was when a name was changed in a subdivision or a plat. This would be the first time staff has been associated with any type of name change for an existing street without a change in the plat. Mr. Moore stated that the purpose today is for the Council to see that it was not simply changing a name.

Mayor Ilyinsky suggested the applicant did not understand the issues and asked that staff sit down with the applicant and explain the procedure.

Mr. Doney stated that if 100% of the affected property owners do not agree to the changing of the name of the street, ill will is created.

Mrs. Smith stated that since all of the property owners have not agreed or signed off she saw no reason to continue with this until the Town had authorization from all the property owners.

Mr. Moore stated staff could approach the applicant, if it was the wish of the Town Council, and advise them that it is the Town's recommendation that there be 100% participation, just like a replat. Mr. Moore stated that he would be happy to explain the process to the applicant. Mr. Moore did not have an estimate as to what this would cost, but is recommending that the cost not exceed the fee of $2,000 which is a replat fee.

Mrs. Smith suggested that perhaps the residents of El Vedado Road who want to be renamed El Vedado Way would put up the cost of the name change.

Mr. McDonald made a motion that the residents of El Vedado Road be advised that they will have to pay 100% of the cost for the name change. Mr. Wyett excused himself from voting as he owned property on El Vedado Road. Mr. Shaw seconded the motion. On roll call the motion passed by a vote of 4 ayes and 0 nays, with Mr. Wyett recusing himself from the vote for reasons previously stated.

XI. NEW BUSINESS

A. Ordinances (First Reading)

1. Ordinance No. 7-96 - Cable Television Customer Service Standards.

Attorney Randolph read Ordinance No. 7-96 by title only, as follows:

ORDINANCE NO. 7-96

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING PROCEDURAL RULES AND ENFORCEMENT MECHANISMS FOR IMPLEMENTATION OF CUSTOMER SERVICE STANDARDS BY THE CABLE OPERATOR; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Shaw asked for clarification on Section 4., where it reads on the third line that the ordinance is subject to a fine of $500 for a first violation. Mr. Shaw questioned whether the first violation was an accumulation of seven complaints. Mr. Randolph stated that was his understanding.

Mr. Shaw questioned the time period of these complaints and whether it was per annum. Mr. Randolph replied a repeat would be after the first fine of $500 and would be a repeat violation after that.

Mr. Shaw questioned whether the 8th complaint would constitute the second violation after 7 complaints caused the first violation. Attorney Randolph stated that he did not know the answer to his question, however, Mr. Shaw should be comfortable with the structure of the complaint system.

Attorney Randolph stated that the complaints related to a bulk of complaints rather than an individual complaint and did not think it would be appropriate to charge an additional $500 fine if one additional call were received.

Mr. Jakubiak stated that 3 different standards are identified by a section in the ordinance, and a fourth section relates to accumulative complaints. The fourth section states that if 7 total complaints were received, the Town can issue a fine, however, if 5 complaints per individual standard were received that would be a violation subject to a $500 fine. Mr. Jakubiak said that a repeat violation would be if standard 1 was violated by the Town's receipt of 5 complaints and then the Town received notice of a second violation of section 1, the net result would be a $1,000 fine.

Mr. Shaw stated that even if he did not agree with the 7 complaints and just stayed with section one, 5 complaints would create a violation of $500. Mr. Shaw asked if there were 6 complaints if that would be a violation, plus one-fifth of the violation?

Mr. Jakubiak stated that 5 complaints called in to the hot-line or in writing would be cause for issuing a citation. Mr. Jakubiak stated that the second citation would be issued for another 5 complaints.

Mr. Shaw pointed out that it would take 10 complaints to create the second violation.

President Smith asked how Mr. Jakubiak was defining a complaint. Mr. Jakubiak stated that the standard speaks to unavoidable problems such as outages, and the ordinance outlines the specific information that staff will be asking for regarding the nature of the complaint.

Mr. Shaw stated he had a question regarding page 3, section 2, second line, which stated "each of the four following standards ..". Mr. Shaw asked which of the four standards that this line referred to?

Mr. Jakubiak stated that he would have to look at the FCC ordinance to see where that language came from because he could not answer this question at this time.

Mr. Shaw stated that since this was just first reading, that part of the ordinance should be eliminated. Mr. Shaw continued that it would remove the part that began with "Under normal operating conditions, the standards will be met"; and take out the "following four".

Mr. Shaw asked if there was a single word that could be added to the accumulated counts in order to go forward with the first reading and not delay?

Attorney Randolph responded that Mr. Shaw indicated the problem and staff will reword that section of the ordinance before a second reading.

Diane Christie, Director of System Operations for Comcast Cable, addressed the Council and requested a definition of " valid complaint". Ms. Christie cited the example of a customer who called the hot line and gave his or her name, address, etc., and asked how the Town would determine it was a legitimate complaint? Ms. Christie asked if a customer called in to the hotline and stated he or she could not contact Comcast on a particular date, would Comcast have a chance to respond to the complaint first?

Mr. Randolph replied that a provision in the ordinance allowed Comcast to address the complaints, however, Ms. Christie stated that she interpreted the ordinance to mean that after 5 complaints Comcast would have the opportunity to read the list and do the research before appearing before the Council. Ms. Christie continued that the ordinance should be worded such that if a call came into the Town, Comcast should immediately be notified so they could respond with the reason(s) for the complaint, and the determination could be made regarding the category at that time.

Mr. Randolph responded that it would be difficult for the Town to address each complaint and the hotline would not take anonymous calls. Mr. Randolph said that Comcast would have the opportunity to prove if the calls were legitimate.

Ms. Christie said she understood that Comcast would only have the opportunity to respond to complaints after the complaint was received.

Mr. Shaw pointed out that the number of calls were tied into a one month period and the Town was not asking Comcast to recall what happened 6 months ago.

Ms. Christie stated that if Comcast thought that 2 of the complaints were not legitimate complaints, Comcast's recourse was to appeal before the Council.

Mr. Shaw stated that if the administration accepted Comcast's evidence that some of the calls were not legitimate, the issue would not come before Council, however, if the administration did not agree then the issue would come before the Council.

Ms. Christie stated that she wanted to make it clear to the Council that while the FCC allows any municipality to impose stricter standards upon a cable operator, that if a municipality chooses to impose stricter standards the FCC also allows the cable operator to pass those costs on to the customers. Ms. Christie gave a couple of examples, such as the ordinance requiring Comcast to answer the telephones (page 2) and connect with a representative within 30 seconds. When the FCC came out with their standards, they said that cable operators were required to answer that phone within 30 seconds 90% of the time on an annual basis. Based on 5 complaints that would be a standard stricter than the FCC and there is a real possibility that if Comcast had to hire additional personnel to answer the telephone 100% of the time within 30 seconds the rates would be adjusted accordingly.

Ms. Christie said that on page 3, D., it states that under normal operating conditions the customer can receive a busy signal for no greater than five minutes. The FCC standards state that a cable operator cannot have a busy signal 3% of the time in a normal business day. Ms. Christie noted that the ordinance does not say a normal business day, and again, in five minutes that would not be 3%. That would be another standard that Comcast would consider stricter than the FCC and may require different trunk lines at a cost that would be passed on to the residents of the Town of Palm Beach.

Ms. Christie stated that on page 6, communications between the operator and the Town, the ordinance states that the cable operator will provide to the Town on a monthly basis detailed activity reports. Ms. Christie reported that for the last year and a half Comcast has provided the Town of Palm Beach detailed activity reports on a monthly basis as requested by the Town Council. 150 people work in a call center, and Mrs. Christie could not provide a break down of those telephone reports for the Town of Palm Beach separately without hiring additional employees. This cost could be passed through to the residents of the Town of Palm Beach.

Ms. Christie continued that Comcast would have to be at an installation within half an hour of the scheduled time if so directed by the Council and/or the ordinance; however, the FCC states that if Comcast has to abide by stricter standards, those costs can to be passed on to the customers. Ms. Christie stated that, for the record, Comcast disagrees with how the ordinance is presently written.

Mr. McLendon stated that he did not know why the Town could not give a copy of the complaint to Comcast as it was received.

Ms. Christie stated that she has been with Comcast since 1987, and if any resident has ever called the Town of Palm Beach she has personally answered that same day or within 24 hours. If it was a legitimate complaint, Ms. Christie said she would not want a customer to have to wait for Comcast to respond.

Mr. Jakubiak responded that he received complaint calls personally and always asked if the person would like him to follow up with Diane Christie of Comcast. Some people do not want follow-ups and some are just complaining for the record. Mr. Jakubiak stated that the Town has never not had open communications.

Mr. Jakubiak said that the Cable Act is very clear stating that the Town can impose stricter standards, and while Ms. Christie said that Comcast can pass those costs on, Mr. Jakubiak disagreed. Mr. Jakubiak stated that one would have to look at the history of how this ordinance was established. Three years ago the Town experienced problems with Comcast's telephone recording of Town customer complaints and Mr. Jakubiak asked if Comcast could meet the FCC standards. One FCC standard requires Comcast to answer the telephone 90% of the time. This Town is only approximately 8% of Comcast total customer base, so if the whole Town went out and nobody could get through on the telephones, technically they're meeting the FCC standard. The Town then asked if they could improve the telephone system and Comcast stated that they would, however, they would pass that cost on to the residents in the community. Therefore, the Town came up with a solution by putting a stricter enforcement of the ordinance, tied it to a small number, and established a hotline where the Town would record and track complaints. Mr. Jakubiak stated that the Town is not asking Comcast to hire new people or to install a new telephone system, nor was the Town asking them to assume any additional cost. The Town is now providing Comcast with an appeal process so that they can explain the problems that may occur that would violate the ordinance.

Mr. Jakubiak stated that if a fine were issued and it was passed on to the customers, the Town should file a complaint with the FCC at that time.

Mr. McLendon stated that he took issue with Mrs. Christie on her first comment in that if the Town notified her when a complaint came in why she was concerned with accumulating for a time so she could check the validity of the complaints?

Mrs. Christie stated she had a problem with the way the ordinance was written because using the number of 5 calls was stricter than FCC requirements. Mrs. Christie added that the whole point of putting an ordinance in force was to make sure that Comcast was doing the job correctly, to make sure there were no complaints, and to make sure the people in the Town were happy. Mrs. Christie stated that she had been involved in the franchise renewal for the last 3 years and it was evident in her mind that the residents were happy as there have been three public hearings in this Town.

Mrs. Christie asked the Town Council if the ordinance could to be postponed for 18 months to give Comcast the opportunity to put a call center in, pointing out that the Town could still put a hotline in to see if there really was a problem with how Comcast does business in the Town. If any laws or rules change within the next 12-18 months then the Council would have the opportunity to put that into a new agreement.

Mr. McDonald commented that the FCC standards were very strict and Comcast did not have any trouble complying with them, however, the Council wanted to have something a little more severe and a little more strict for the residents of the Town. Mr. McDonald stated that while the ordinance may require Comcast to respond a little better, they had responded to complaints in the past and he did not see that the ordinance would to be a big burden on Comcast.

Mrs. Christie stated that the way it was written it was stricter and if at one time they could not meet those standards, Comcast would make sure they did not get into a fine situation and would make sure they did have stricter standards in this Town, however, the rates may be adjusted accordingly.

Mr. McDonald made a motion to approve the Ordinance as amended. Mr. Shaw seconded the motion.

Mr. Wyett stated that on nights, weekends and holidays he wanted to make sure that an executive officer at Comcast was available to make a decision. Mrs. Christie stated that customer service representatives, their supervisors and the dispatchers at night have the home telephone number, beeper number and cellular number for every manager and supervisor, and could not believe there would be an instance where someone could not to be reached.

On roll call, the motion was unanimously carried.

Mr. Jakubiak stated that there were two additional items relating to this issue that he needed to discuss with the Town Council.

Mr. Jakubiak stated that the Cable Act states that the Town is to inform the Cable Company with a 90 day notice that the Town was intending to enforce the Customer Service Standards Ordinance. Mr. Jakubiak asked that staff receive authorization to do that as soon as possible.

Mr. Jakubiak explained that the Town would to be issuing a news release to notify the residents that the hotline was available once the ordinance passed.

Mr. Wyett made a motion that staff give Comcast a 90-day notice regarding the Town's intent to enforce the Customer Service Standards Ordinance, authorizing staff to issue a news release to notify the residents of the availability of the hotline. Mr. Shaw seconded the motion, and on roll call the motion was unanimously carried.

2. Ordinance No. 8-96 - Regulation of Fishing from Public Right-of-Ways in Lake Worth Waters.

Attorney Randolph read Ordinance No. 8-96, by title only, as follows:

ORDINANCE NO. 8-96

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 13, OFFENSES, MISCELLANEOUS, BY INCLUDING A NEW SECTION 13-45 PROVIDING FOR THE PROHIBITION OF FISHING WITHIN THE WATERS OF LAKE WORTH ADJACENT TO THE PUBLIC RIGHT-OF-WAY BETWEEN SUNSET AND SUNRISE; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Wyett made a motion to approve Ordinance 8-96, seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

3. Ordinance No. 9-96 - Amendment to Chapter 4 of the Town Code of Ordinances Relating to Regulation of Animals and Fowl.

Attorney Randolph read Ordinance No. 9-96, by title only, as follows:

ORDINANCE NO. 9-96

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 4 OF THE CODE OF ORDINANCES RELATING TO ANIMALS AND FOWL; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Smith asked why the first paragraph described a leash not to exceed 8 feet, expressing a concern with 10 foot leashes used by residents.

Mr. Randolph stated he presented an ordinance that followed the language of an ordinance considered by ORS that they asked to bring before the Town Council for first reading. Mr. Randolph stated that this was not something that was discussed with any specificity and that perhaps it had been overlooked.

Mrs. Smith referenced Section 4-4, Page 2, bottom of the page, stating that the limitation on the number of animals was 6 and she was concerned that previously it had been 10, and she would prefer to see it kept at 10.

Mr. Shaw stated that he agreed to 10, however, asked for consideration of 6 of the same type of animal, i.e., 10 cats or 10 dogs.

Mr. Shaw stated that on Page 3, in the first section, he would like the inclusion of the area west of the West Lake Trail right-of-way. Mr. Wyett suggested the following language: "the grassy area between the Lake and the Trail".

Mr. Shaw said a neighbor called him concerned because he was called at 1:30 a.m. because his dog was barking and the complaint was filed by someone dialing 911 because they did not know the non-emergency number. Since the call went through 911, it was considered privileged information, and the caller's name could not to be disclosed. Shaw was concerned that neighbors could call in complaints, and a person could not find out who was complaining.

Chief Terlizzese stated that generally names are not divulged to a person who is being contacted by the police because they do not want any neighborhood squabbles, etc. When emotions are high the police generally do not tell the person who the complainant was, however, later on under the public records laws that information is available. Chief Terlizzese stated that the only thing that is not public record on 911 is medical information.

Mr. Shaw said that the issue is this ordinance states a complaint can only be filed with two written affidavits signed by two residents.

Mr. Randolph stated that this ordinance does not preclude the Police Department from going out to quiet a barking dog. This ordinance provides for charging someone with a violation of the Code, and the Town required two affidavits as one neighbor might to be spiteful.

Mr. Shaw referenced Page 6, Item 3, and suggested the word "permitted" should be "prohibited".

Mr. Randolph responded the intended meaning was that no animals permitted under the temporary permits shall be permitted in residentially zoned areas of the Town other than areas considered appropriate for petting. In other words, no animals permitted under this exception shall be allowed in residential areas other than ponies.

Mr. Shaw asked if it was reasonable to request $5,000,000 in a liability certificate for a petting zoo? Mr. Randolph replied that amount related to the dangerous animals.

Mr. Shaw stated that he wanted to exclude these items from the $5,000,000 liability policy. Mr. Randolph responded that he would add a sentence under Item 4 which would exclude the petting zoo animals.

Mr. Shaw asked if there was anything in this ordinance that permits the violation to to be stopped or give Code Enforcement or the Police the power to stop the event? Mr. Randolph replied that as with any code provision that has a penalty section the police officer has the right to tell the operator that this is in violation of the ordinance, and if the activity proceeds they would to be in violation. This ordinance includes language that would not preclude the Town from seeking injunctive relief, which requires going to court, however, the police officer had the right to go in and tell someone something was not allowed.

Mrs. Smith asked, with all the suggested changes, if Mr. Randolph thought the ordinance was ready for first reading. Mr. Randolph responded that he understood all the changes thus far, but it was up to the Council to determine if the ordinance was ready for first reading.

Mr. Randolph outlined the amendments as suggested by members of the Council:

Under "At large" - language will to be added to say which leash is not to exceed eight feet in length;

Under Section 4-4 - the limit of animals will to be 10;

Under Section 4-5 - specify the grassy area between the Trail and the Lake;

On Page 6, Item 3 - add "no animals permitted under this exception hereunder shall to be permitted in residentially zoned areas";

Section 4 - add a sentence which excludes the requirement for the indemnity for a petting zoo.

Mr. Moore, Director of Planning, Zoning and Building, asked for clarification that if a Code Enforcement Officer was called to a birthday party that included an animal, the Officer was precluded under this ordinance from stopping that event and sending everyone home?

Mr. Randolph responded that the Code Enforcement Officer could inform the host that it was a violation. Mr. Moore continued that the Officer would write the Notice to Appear at that time, but wanted the Council to understand that the Code Enforcement Officer had no authority to stop the event.

Mrs. Smith stated that some of the Council members believed that the officer would to be able to stop the event.

Mr. Randolph said that the officer had the right, as with any ordinance in the Town, to go in an advise someone that they would to be breaking the law if they went forward with the event and would to be cited if they insisted on breaking the law.

Mrs. Smith stated that if the animal is on the premises they have already broken the law.

Mr. Randolph said that the Town has had situations where the people have announced that they were going to do something and in that event the Police Department had the right to inform them of the violation. Mr. Randolph added that if the Council wanted him to include language that would indicate that the Town had the right to shut something down he could, but that would be highly unusual. Mr. Randolph stated he did not know another situation where the Town imposed a law with penalties, then stated if the resident continued the Town had the right to shut them down.

Mrs. Smith stated that if the event was not shut down, the operator would just pay the $500 fine and continue with the party.

Mr. McLendon stated that unless a person did not know he was breaking the law, he should to be arrested if in violation.

Mr. Randolph said that if the Council would like some explicit language included in this Ordinance which indicates that the Town Code Enforcement Officer or the Police Department had the authority to remove animals or shut down an event, he could include it. Mr. Randolph stated that he did not see the necessity for it, but if the Council thought it was necessary for purposes of clarification, he would include the language.

Mr. Randolph said that the Council could approve this ordinance on first reading with a clarification that the amendments be made and that inclusion would be made that the appropriate Town Official may close down an activity that was not permitted.

Mr. Doney said that Mr. Moore, Mr. House and Chief Terlizzese may have additional comments because there are practical problems with this ordinance.

Mr. House stated that he never has asked a resident to stop an activity and not had them comply. Mr. House said he could foresee a problem if that provision was put into the ordinance and he and a police officer ordered the resident to cease and desist, and the resident did not. Mr. House questioned what the alternative would be? Mr. House stated that they could not put the animal in the back of the car and take it away.

Mr. Moore stated that if a contractor was performing work on someone's property without the benefit of a permit or a license and it was discovered by staff, Chief Terlizzese provides staff with an officer for support. If the contractor does not leave the job, he would to be arrested for doing that type of work. Mr. Moore stated that there has never been a problem with someone refusing to leave.

Mr. Randolph asked what provision of the Code allowed him to do that? Mr. Moore replied that the Administrative Section of the Building Code which states a contractor needs a permit or license to perform work on someone's property.

Mr. Randolph questioned why that would be any different than having a lion or a tiger in the Town and needing a permit for same? Mr. Moore replied there was no difference. If they did not have a permit the event would be stopped.

Mr. Randolph stated if the Council wanted such a clarification in the ordinance, he could include that and the ordinance would to be back before the Council for second reading with the added language.

Mr. McLendon said that if the ordinance did not have some teeth in it, the Council should forget it.

Mr. Shaw added that he did not think a lion trainer would leave his animal in a field while he went off to jail, when his alternative was to pack up and go home.

Chief Terlizzese stated that if there were problems, his department could fall back on the provision for obstruction of justice and obstructing a police officer in the performance of his duties.

Mr. Shaw stated that the advantage of including it in the ordinance was that it would be very clear to those who read it, as the reader may not realize some other document states the event has to to be stopped.

Mr. Doney stated that on Page 6, under Section 4-15(a), the practical issue that will come up is when an application is required to to be filed with the Town Clerk at least 30 days prior to the event in which the temporary possession and permit requested does not happen. Mr. Doney stated that it will to be enforced by Staff.

Mrs. Smith noted that this has come up in the past, and Mr. Doney has brought it to the attention of the Town Council who stated that it was ok to go along with it; however, if the Council said no, then Mr. Doney could not expedite it and put the process through.

Motion made by Mr. Wyett to approve the first reading of Ordinance Number 9-96, as amended, including the provisions as outlined by Mr. Randolph and including the provision to have the appropriate Town Official stop an event. The language will be included in the second reading of the ordinance. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

B. Resolutions

1. Resolution No. 14-96 - Request by Undergrounders, Inc. For Florida Legislature to Study Cost Sharing Method for Underground Utilities.

Mr. Dusey stated there is an organization in the State that has been in existence for 15 years that has been working to try to get overhead utilities underground. At one time the Town even supported this organization financially. They are now asking the Town's support in asking the State Legislature to undertake a study of the benefits and cost of doing that with the hope it will show it is better to have utilities underground. Mr. Dusey recommended approval of Resolution No. 14-96.

Mr. Shaw made a motion to approve Resolution No. 14-96. Mr. Wyett seconded the motion. Mr. Randolph read Resolution No. 14-96 by title only, as follows:

RESOLUTION NO. 14-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING THAT THE FLORIDA LEGISLATURE UNDERTAKE AN UNBIASED STUDY OF THE TOTAL LIFE CYCLE COST OF OVERHEAD VERSUS UNDERGROUND UTILITIES.

On roll call, the motion was unanimously carried.

2. Resolution No. 19-96 - Objection to Proposed Elimination of Federal Funding for Beach Renourishment Projects.

Mr. Dusey stated that the Town received a letter from Congressman Shaw requesting support via resolution to object to the President's policy position that he's taken in the last two budgets that eliminates funding for beach protection projects. Mr. Dusey stated that the resolution before them is prepared somewhat after one prepared by Dade County last year. Mr. Dusey stated he felt it was in the Town's best interest to object to the elimination of Federal funding because loosing that funding source would put a burden on the Town.

RESOLUTION NO. 19-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, OPPOSING RECOMMENDATIONS IN THE PRESIDENT'S 1996/1996 BUDGET REQUESTS WHICH WOULD REMOVE FEDERAL PARTICIPATION IN BEACH RENOURISHMENT PROJECTS WHICH ARE NOT NATIONALLY SIGNIFICANT AND RECOMMENDING THAT THE 1995 FEDERAL CRITERIA FOR PARTICIPATION AND COST SHARING BE RETAINED AND OPPOSING ANY FUTURE LEGISLATION WHICH MAY ELIMINATE OR LIMIT FEDERAL PARTICIPATION IN SUCH PROJECTS.

Mr. Shaw made a motion to approve Resolution No. 19-96, seconded by Mr. McLendon. On roll call the motion unanimously carried.

C. Sealed Bids

1. Sealed Bid No. 96-09 - Special Operations Vehicle for Fire-Rescue Department

Fire Rescue Chief Ken Elmore stated that he recommended approval of the bid, adding that because it was a low cost vehicle there was only one bid received. Chief Elmore stated that the vehicle would be used mainly to carry the hazardous material equipment required, and some confined space equipment. Chief Elmore stated that the vehicle would be used 3-4 times a month as the department is averaging between 35 and 45 calls per year.

Mr. McDonald made a motion to approve Bid No. 96-09, seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

2. Sealed Bid No. 96-10 - South County Road Tree Planting Program; Resolution No. 22-96.

Jim Bowser, Town Engineer, stated the Town received only one bid on this project. The Town requested 2 alternates with the bid and while the contractor did not submit the alternates at the time he submitted the bid he did so afterwards. The prices for maintenance on the trees on a one year basis was $5320 and an additional one year warranty period on the survivability of the trees for $2000. Mr. Bowser stated that staff was recommending approval of both bids and stated that the project is funded primarily through Metropolitan Planning Organization for the Department of Transportation grant for the tree grates and the South County Road Association grant from Beautiful Palm Beaches in the amount of $68,959.

Mr. Bowser stated that the organization provided the Town with a check today in the amount of $18,720 to pay for the balance of the project, including the construction contingency.

Mr. McDonald made a motion to approve Bid No. 96-10. Mr. Shaw seconded the motion

RESOLUTION NO. 22-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO GREEN KEY ASSOCIATES, INC., FOR THE SOUTH COUNTY ROAD TREE PLANTING.

On roll call, the motion was unanimously carried.

D. Appointments

1. Code Enforcement Board - Two Three-Year Terms to Expire April 1999 and Two Alternative Two-Year Terms to Expire April 1998.

Mr. McDonald made a motion to defer these appointments until the June, 1996 meeting. The motion was seconded by Mr. Shaw.

Mr. McDonald stated that he wanted to defer the appointments because there were not enough applicants and because one applicant was already a member of another board. Mr. McDonald stated that the Town was having difficulty getting architects to serve on the board and wanted time to encourage those architects that have applied for other boards to apply for the Code Enforcement Board.

Mr. Shaw stated that he would like to defer these appointments until the May meeting because he felt the issue was how the vote the vote was being tabulated. President Smith stated that the issue of tabulation was on the agenda today to determine if it would to be discussed at the May meeting.

On roll call the motion was approved by a vote of 4 ayes and 1 nay, with Mr. Wyett casting the nay vote.

E. Other

1. Consideration of Petition by Harrison M. Robertson, Jr., Landmarks Preservation Commission Member, for Town Council to Excuse Two (2) Absences Pursuant to Section 16.35c of Town Ordinance No. 12-95.

Mr. Moore stated that pursuant to Ordinance No. 12-95, Mr. Robertson has made a proper petition for the Town Council to consider as identified in Section 16.35c.

President Smith stated that Mr. Robertson states in his letter that he is going South America for 2-1/2 weeks which would have him back in town approximately 4/18/96. The ARCOM meeting was not until 4/25/96.

Mr. Shaw stated that Mr. Robertson was entitled to miss 2 meetings.

Mr. Moore stated that Mr. Robertson's request was for the Council to consider the merits for an excused absence as opposed to an unexcused absence.

Mr. McDonald stated that he was opposed because Mr. Robertson knew about the absences before he applied and did not tell the Council he would be out of town.

Mr. Wyett felt the Council had a policy position to take, stating that when someone applied for a position on a board they did not know what month they would be appointed, and active business people had active programs. Many members adjusted their business programs to attend meetings, however, Mr. Wyett said that the members could not adjust their programs to attend a meeting they did not know they would have to attend, and this was an extenuating circumstance and was a justified excused absence.

President Smith stated that this was not Mr. Robertson's first meeting and if it was his first meeting she would better understand his request. Mrs. Smith pointed out that business was not an excused absence, and that Mr. Robertson could take an unexcused absence.

Mr. McDonald stated that Mr. Robertson was in attendance the day the Council appointed him to the Board and could have indicated to the Council at that time that he would need an excused absence.

Mr. Shaw suggested that this was a sign that Mr. Robertson planned on missing more meetings and that was the reason it was important for him to have these absences approved as excused.

Mr. McDonald made a motion to deny the request for excused absences by Mr. Robertson. Mr. McLendon seconded the motion. On roll call the motion passed by a vote of 4 ayes and 1 nay, with Mr. Wyett casting the nay vote.

2. Consideration of Request for Additional Street Lights on North and South Woods Road by Ms. Barbara Levinson, 318 North Woods Road.

Mr. Dusey stated that Ms. Barbara Levinson of 318 North Woods Road approached the Public Works Department 3-4 months ago requesting that lighting be added to existing FP&L poles on North Woods Road and South Woods Road, adjacent to her property. As per internal operating policies, staff requested that Ms. Levinson obtain permission of all property owners in the area that would be impacted by the street lights. Mr. Dusey stated that Ms. Levinson was successful in obtaining permission from all property owners but one, Mrs. Karen Wright, 316 Plantation Road. Mrs. Wright had objections and concerns regarding the light on North Woods Road at the rear of her property.

Mr. Dusey stated that there is no cost of installation. The cost of installation, maintenance and electricity would be paid on a monthly basis on this type of lighting and was approximately $6.00 per month per light. Mr. Dusey stated that there was an existing pole on South Woods Road, however, on North Woods Road the matter was complicated by a neighbor objecting to the light. Mr. Dusey stated that Ms. Levinson and Mrs. Wright were in attendance today.

Mr. Shaw made a motion to split the issue into two questions, one light for North Woods Road and one for South Woods Road, and to approve the additional street lights on South Woods Road. The motion was seconded by Mr. McLendon. On roll call, the motion was unanimously carried.

Mr. Wyett stated that 8-9 months ago he brought to Council's attention the issue of photoelectric lighting that is powered by sunlight. Mr. Wyett noted that this was a more modern and advanced way to do street lighting, and at some point the Council should consider having a comparison done between the cost of photoelectric and the usual electricity.

Mr. Dusey stated that he has discussed this with his electrical personnel and the maintenance costs was a concern and that in a Town where electricity is available, the photoelectric was not cost effective.

President Smith stated that the second issue would be the street light on North Woods Road and that the Council had a letter a letter of objection from Mrs. Wright.

Mrs. Karen Wright, 316 Plantation Road, addressed the Council and stated that the back of her property was across the street from Ms. Levinson's house. Mrs. Wright stated that the light would shine directly on her property and is not something that she wanted. Mrs. Wright stated she was informed that FP&L would be removing her light at the back of her property and moving it several feet west. Mrs. Wright stated that a new pole has been installed by FP&L several feet west of her pole and wires attached to the new pole. Mrs. Wright suggested that the light be put on the new pole.

In response to Mrs. Smith, Mrs. Wright stated that she had not discussed her suggestion with her neighbor. Mrs. Wright stated she did not know the procedures and that she wrote a letter of objection to the Town.

Mr. Dusey stated there is a new permanent pole located about 100-110 feet to the west.

Ms. Levinson addressed the Council stating that she originally called Mr. Dusey regarding the FP&L opportunity to have a light because of the robberies that were taking place during the months of November and December. Ms. Levinson stated the police advised her what she could do to make the area more secure and she installed more lights, however, the police suggested a light on the pole across the street. Ms. Levinson also stated that one of the neighbors asked that the pole be located a little further down the street to also light his property, providing more security to the area. Ms. Levinson stated there was a large amount of shrubbery on the other side of the street that she owns, and FP&L did cut a lot of the shrubbery to make the lines more available. Ms. Levinson stated that the light pole would not impact on the other side of the street because of its location and pointed out that the wiring would be installed underground. Ms. Levinson stated that she sent certified letters to all the neighbors, and Mrs. Wright did not answer or accept any of the letters. A letter was dropped under her door and this week Mrs. Wright talked to Mr. Dusey.

Ms. Levinson stated that her request for the additional lighting was for security purposes because of the robberies, and for the safety of those using the roadway.

In response to Mrs. Smith, Mr. Dusey stated that the light could be shielded from shining on the rear of Mrs. Karen Wright's property at 316 Plantation Road.

Ms. Levinson stated that the post is not directly behind Mrs. Wright's home, but is to the west of her property behind her garage.

Mr. Wyett stated that if a shielded light was unacceptable to Mrs. Wright, would she pay to have a light pole installed in an area that would not shine into her yard. Mrs. Wright stated she would prefer not to pay, feeling that she was a small homeowner that would have to suffer because of Ms. Levinson's request as she would be the recipient of the light that she does not want.

In response to Mr. McDonald, Ms. Levinson stated that the pole is located diagonally across the street from her driveway and thought that she had to pay the $6.00 per month for the additional expense of the lights. Ms. Levinson was of the opinion that there were no compromises that would satisfy Mrs. Wright.

Mr. McDonald made a motion to approve an additional street light on North Woods Road with the provision that the light be shielded from shining on the rear of Mrs. Karen Wright's property at 316 Plantation Road. Mr. McLendon seconded the motion. On roll call the motion was unanimously carried.

3. Consideration of Proposed Palm Beach County Offshore Grand Prix Festival by Mr. and Mrs. Hank Harms.

President Smith stated that the Town received a request for deferral to May 14, 1996 Council Meeting per a letter dated April 8, 1996 from Mr. Hank Harms.

Mr. Shaw stated there was a faxed letter received today that states that for 1996 the event would be conducted off-shore of Singer Island to give the team another year's experience. Mrs. Smith stated that if the item is not deferred it would be removed from the agenda.

Mr. Wyett made a motion to remove this item from the agenda, seconded by Mr. Shaw. On roll call, the motion was carried by a vote of 4 ayes and 1 nay, with Mr. Shaw casting the nay vote.

4. Consideration of Request by City of West Palm Beach for $5,000 Cash Contribution for July 4th Celebration.

President Smith stated that last year when this item was on the agenda, the Council was filled with enthusiasm that this would help the Town with the waterfront tract. Mrs. Smith stated that $5,000 did not do a lot of good for the Town.

Mr. Shaw commented that this would to be to the benefit of the residents of the Town and if the Town could help it should.

President Smith stated that she would like to see the Town of Palm Beach have its own July 4th celebration and strongly objected to the fact that the Town did not plan celebration activities for the holiday.

Mr. Wyett made a motion to deny the request from West Palm Beach and directed that a plan for a July 4th celebration in the Town of Palm Beach be submitted at the May 14, 1996 Town Council meeting. The motion was seconded by Mr. McDonald and on roll call was unanimously carried.

Mr. Doney stated that staff would like to discuss ideas for a July 4th celebration on the next Town Council Meeting agenda to obtain direction.

5. Consideration of Architectural Commission Meetings.

Mrs. Smith stated that she has spoken to the Chairman of the Architectural Commission and he would like to bring the matter to the Commission for their consideration before it is considered by the Town Council. Mrs. Smith felt this was a good idea so that the Council could hear how the members of the Commission feel about double meetings and to get their input.

Mr. Shaw made a motion that the issue of the meetings should be discussed with the Architectural Commission first and ARCOM's reply should be included as an agenda item for the May 14, 1996, Town Council Meeting. Mr. McLendon seconded the motion.

Mr. McDonald stated that he appreciated Mr. Moore's memo on the subject, and although he agrees with his conclusion in the memo he could not agree with the subjectiveness of the comments. Mr. McDonald stated his objective on having this as an agenda item was to serve the residents a little better.

Mr. Wyett stated that he would like to ask the Town Council to consider advising the Architectural Commission to simplify their procedures as to signs and awnings, and that it would be a good idea for approval to to be given by staff for some of these items that fall within the guidelines in standard areas.

Mrs. Smith said that issue was discussed at ARCOM's last meeting and would be further discussed again.

Mr. Moore stated that he was at the meeting when this was discussed, and that would be reflected in the minutes of that meeting.

Mr. Shaw suggested that staff or ARCOM be asked if staff was able to take on the responsibility of reviewing plans and making sure they are complete and ensuring they meet with staff approval before going to ARCOM.

Mr. Moore stated that was sometimes an issue that ARCOM left to their own conclusions as to whether they want to look at a set of plans. Staff offers the fact as to whether or not the plans are complete, and advises ARCOM. Sometimes the Commission goes through periods of wanting all plans rejected. Often times the architects will try to circumvent procedures and have their conceptual plans reviewed that takes a lot of time. This can also produce bad feelings as some architects have their plans reviewed and some do not.

On roll call, the motion was unanimously carried.

6. Consideration of Parking by Users of Meeting Room at the South Fire-Rescue Station.

Ken Elmore, Fire-Rescue Chief addressed the Council, stating this should be divided into two issues. One was access roadway from the fire station to the south parking lot and the other was the parking in the south parking lot.

Chief Elmore stated that one of the problems experienced since the station had been open, when there is voting or a meeting in the meeting room, was that people were not aware that they must park in the south parking lot. People drive into and park in the fire station parking lot that has very few spaces. This results in people backing out with very little room to turn around. Chief Elmore suggested that an access road be built that goes to the south parking lot that would prevent people from having to turn around.

Mrs. Smith questioned the cost of $17,500 for the proposed project.

Jim Bowser, Town Engineer, stated there are a couple of trees that would need to be relocated, moving of an existing sidewalk, construction of a walkway as well as the roadway, and site grading. Mr. Bowser stated staff suggested a budget of $17,500 and that staff would do the job as inexpensively as possible. Mr. Bowser stated that the money would be taken from Council Contingency.

Mr. Bowser stated that staff may try to save money and play general contractor by breaking the job into smaller pieces to get better prices, however, Mr. Bowser pointed out that staff has not decided how the project would be done.

Mrs. Smith stated that this issue came up because of the parking at the metered parking as the Town gave free metered parking passes for one day parking. Mrs. Smith questioned whether this would save the Town $17,000.

Chief Elmore stated that the issue was associated with parking in the south lot, however, it was a separate issue. The Chief stated there was a problem with people pulling into the parking lot and having no place to go. While it was associated with a parking problem, it was really an access problem.

Mr. McDonald stated he would like to ask the Civic Association if they would consider making a contribution toward the cost of this project.

Mr. Wyett asked if the citizens considered this roadway important or necessary and stated that it seemed that every participant of the monthly meeting now knows that they should park in the appropriate parking lot. Mr. Wyett suggested the issue was the Town not wanting to ticket the parking and that the Police Department could be notified that on the second Monday of every month no tickets should be given. Mr. Wyett did not see the need to spend money for the problem outlined because there were other parts of Town with a similar problem. Mr. Wyett said on occasions, such as elections, staff could direct people into the parking lot.

Chief Elmore stated he would agree if this were a new problem and one that would eventually go away. Chief Elmore stated that the delegates to the Civic Association will become familiar with the parking situation, unfortunately it has been a problem with other groups that meet in the building and with the voters.

Mr. Wyett suggested that the study be continued for another season to determine if this will continue to to be a problem since the fire station is brand new.

Mr. Shaw stated he hated to see the Town spend $17,000 on this project. Mr. Shaw stated in discussions with Chief Elmore he learned there is an interesting new product by the company that makes the department's helmets, a thermo-imaging unit that enables fire fighters to walk into a building with no viability because of smoke to rescue someone. Mr. Shaw stated that unit could be bought for the cost of this driveway and could save a lot of lives. Mr. Shaw stated he would rather see the money go to that item, even though the Town would probably need 3 units.

Mr. Shaw made a motion to deny the construction of an access road from the south fire-rescue station to the south parking lot. Mr. Wyett seconded the motion, however, asked that Mr. Shaw amend the motion since the parking for the Civic Association monthly meeting was to be discussed this month by the Town Council. Mr. Wyett stated that until this matter has been further studied and the Police Department has been informed they are not to ticket anyone in that area on the second Monday of each month.

Mrs. Smith stated that if Mr. Wyett could withdraw part of his amendment that tied into the parking, the Chief would address that next.

On roll call, the motion was unanimously approved.

Chief Elmore stated the second issue was the parking and the feeding of meters. The Chief proposed that the Council allow him to issue temporary or one-day parking permits to those groups that are allowed to use the meeting room. This could be handled in-house.

Mr. Shaw made a motion to approve the Chief's request, seconded by Mr. McDonald.

Mr. Wyett stated that it would be easier to notify the Police Department that there is an approved meeting at the fire station and that they are not to issue any tickets for expired meters.

Chief Elmore felt it would to be difficult for the parking enforcement people to distinguish who is parking in the lot and who has approval and who does not, and that when the lot is opened for the Civic Association anyone could come in and park and go to the beach. The Chief stated he was proposing that those people who are approved to park in the lot be given temporary parking passes that would identify to the parking control people who had authorization to park in the lot and who did not. The Chief stated that when the application to use the room is approved, he will return the authorization approval with the number of parking passes. It will then to be up to the agency or group to issue the parking passes prior to the meeting.

Mr. Wyett stated that it was simpler to tell the Police Department not to ticket on a certain day during certain hours.

Chief Terlizzese stated the temporary permits would be easier on the enforcement personnel, however, the Police Department could be notified not to ticket on certain days.

Mr. McDonald stated he would like to ask Mr. Fink of the Civic Association a few questions. Mr. McDonald asked which procedure Mr. Fink would prefer?

Mr. Fink agreed with Mr. Wyett's last suggestion of notifying the Police Department of their meeting so that tickets are not issued. Mr. Fink stated if that was not practical, the Civic Association would cooperate in whatever manner the Town determined.

In response to Mr. Shaw, Chief Elmore stated that the meter rate was seventy-five cents an hour.

Mr. Shaw stated that a majority of people will drive up to a hotel valet and pay one or two dollars for a valet to park their car and did not think it was difficult for them to drive to another location. Mr. Shaw stated that he would make a motion, and if need be, draft a resolution, that the Town permit parking at that section of the parking lot, since meeting attendees would not park on the beach side of the lot, asking that those people not be ticketed during that time frame. Mr. Shaw said that perhaps another solution would be to issue stickers that say "Civic Association" that would to be placed on the windows of the cars.

Chief Elmore stated that there are other groups that meet at the fire station on different days and there are school bus drivers that park.

Mr. Shaw stated that associations could ask for a permanent permit that would be valid for a specific use.

Mrs. Smith stated that she saw the letter about the school bus that was ticketed and added that school buses could be exempted, and that if the Town was determining that there be free parking for any group once a month then the same courtesy should be provided to the other groups that would be using the meeting room. Mrs. Smith asked if it was possible for Chief Elmore to notify the Police Department when the room was being used.

Chief Terlizzese stated that he would not be opposed to removing the meters in the parking lot.

Mrs. Smith stated that may be the direction this is heading, and that the Town should not show partiality to any one group over another.

Chief Elmore stated that he has a schedule far in advance of when groups will be meeting, and it would be easy for him to notify the Police Department of specific times and dates of meetings in the meeting room.

Mr. Irving Will stated that somehow all the delegates of the Citizens Association received a sticker or sign some time ago and they have used it on the south parking lot. At the same time, knowing it isn't fair to use the facilities and the parking lot, they have determined at an Executive Meeting that they will contribute to the Town some monies at the end of the year for the use of the hall.

Chief Elmore stated he was trying to do this in the least labor intensive method as possible, and that the issue was allowing him to notify the Police Department of the groups, adding that this would not be a great loss of revenue to the Town. Chief Elmore asked that the Town Council authorize he and the Police Chief to handle the situation.

In response to Mrs. Smith, Chief Elmore stated that some attendees come from out-of-town, but belong to a society. Chief Elmore detailed some of the groups that now use the meeting facilities.

Mr. Shaw made a motion to approve the exemption of school buses from metered parking. Mr. McDonald seconded the motion. On roll call, the motion was unanimously carried.

Mr. Wyett made a motion to authorize the Fire-Rescue and Police Departments to resolve the issues pertaining to the use of parking meters in the south parking lot by attendees of meetings scheduled at the South Fire-Rescue Station. The motion was seconded by Mr. McDonald. On roll call the motion was unanimously carried.

7. Palm Beach International Airport:

a. Consideration of Federal Aviation Administration Agenda Scoping Meeting on April 2, 1996, Regarding Environmental Impact Statement (EIS) for Proposed Extension of Runway 9L-27R to 10,000 feet.

Mrs. Smith stated that the Mayor and Mr. Jakubiak attended this meeting, however, the Mayor is ill and asked that Mr. Jakubiak make a presentation regarding the meeting.

Mr. Jakubiak, Assistant to the Town Manager, stated that on April 2, 1996, he and the Mayor attending the agency scoping meeting and that there was poor news for the Town. Mr. Jakubiak reported that this meeting was held by the Airport officials and the FAA and that they were doing an environmental impact statement. Their plans are to extend the east/west runway, Runway # 9L-27R, up to 10,000 feet. The runway is currently 7,989 feet and will be extended 811 feet to the east and 1200 feet to the west. This issue has had opposition for a number of years and Mr. Jakubiak gave a brief history of this issue.

Mr. Jakubiak stated that at the meeting he asked the basis for the runway extension, and it was admitted that the plan was to bring in more international flights and more cargo aircraft. Despite the consultant's report they were going forward with spending taxpayers money for another noise study.

The Town's position had been to oppose this runway, and Mr. Jakubiak pointed out that the Town had until May 2, 1996 to present comments. Mr. Jakubiak asked for direction from Council as to whether or not they desired written comments to to be submitted.

Mr. Jakubiak stated that the north/south runway was shorter than the current east/west runway, and pointed out that the north/south runway was only used 5% of the time going to the northwest and not used going to the southwest. The consultants' report stated that the northwest runway under certain conditions could to be used up to 45% of the time. Mr. Jakubiak did not feel there were plans to use that runway, and use of the southwest runway was nonexistent, because they claim the Lantana Airport interferes with that runway resulting in most pilots being reluctant to go east and west.

Mr. Jakubiak stated there has always been a problem with runway distribution and the Town has argued for better runway distribution, however, 80% of the aircraft still heads in the direction of the Town.

Mr. Moore stated that he lives under the southeastern runway flightpath, and that it is used, however, there was a problem in taking off to the southeast because the runway was too short.

Mr. Jakubiak stated that while it is used, it was used less than 5% of the time.

Mr. Wyett stated that this was a situation of commercial versus citizens as very few citizens want the runway extended, and that while the Town should oppose the extension of the runway, it was a done deal. Mr. Wyett stated that he supported the continued opposition and would make a motion to that effect. Mr. McLendon seconded the motion. On roll call the motion was unanimously carried.

b. Consideration of Proposed Palm Beach County Airport Zoning Ordinance.

Mr. Jakubiak stated he discussed the implications of this ordinance with Mr. Moore and it was his understanding that if the Town was in an airport hazard area, the Town was required by State Statute to have a zoning ordinance for airports. Mr. Jakubiak reported that the County is initiating a zoning ordinance which would require municipalities to participate if they elect to do so. Mr. Jakubiak stated staff has gone on record requesting an opt out provision in the County ordinance.

Mr. Jakubiak stated that if the airport expands the Town may be pushed into an airport hazard area, and that he was merely bringing this to the Council's attention, and did not feel any action was required at this time.

Mr. Moore stated that he has reviewed the County's proposed ordinance and it was an opt-in ordinance; a combination of building code and zoning code. Mr. Castro researched the issue thoroughly and would be prepared to comment on the ordinance.

Mr. Paul Castro stated that he spoke to the planner at the County that worked on the ordinance with the airport authority and was told it was an option that municipalities could take if they so chose so they would not have to draft their own ordinance. This was going to be a requirement of all local municipalities that they implement some type of airport ordinance if they are in the hazard area. Mr. Castro stated that the Town would have to do an ordinance in the future.

Mr. Jakubiak stated that the ordinance dealt with two items. One was a height restriction on buildings, which did not concern staff, and the other provision would require a homeowner that either builds a new home or modifies a home to insulate the home and receive permitting at a County level. The concern would be if the airport expanded, the Town would be pulled into an airport hazard area.

Mr. Moore stated his staff would continue to monitor this, and if it is felt that the Town needed to develop an ordinance it would be brought to Council at the appropriate time. Mr. Moore stated that the Town's height restrictions already comply and the insulation on homes is already being done by those building under the flight path.

Mr. Jakubiak stated that the staff monitors property bought by the Airport and their plans for that property are covered in their annual report. Mr. Moore stated that currently that property is located in the City of West Palm Beach and is zoned residential. The County has attempted to rezone the property, however, it is not totally bought out and there are no plans at the moment for the development of that area.

8. Proposed Relocation of Coastal Construction Control Line (CCCL) for Palm Beach County - Consideration of Authorization for Mayor to Send a Letter Conceptually Supporting Efforts to Ensure the CCCL is Relocated in Accordance with an Appropriate Scientific Methodology.

Peter Elwell, Assistant Town Manager, addressed the Town Council stating that the memo in the back-up material explained what was occurring. The Coastal Construction Control Line matter would come back later in 1996 with a lot more substance to it for the Council to consider official comments on behalf of the Town when the State proposes official action. At this point, based on recent efforts, the Mayors of Highland Beach and Manalapan who have taken the lead on behalf of smaller communities, together with County Commissioner Mary McCarty, have identified a compromise with the State DEP regarding how to get to the point of proposing a specific location for the line.

The compromise agreed to provide for some official input from representatives of the Palm Beach County coastal interests into the State process before the State takes official action.

Mr. Elwell stated that staff was recommending that the Council authorize the Mayor to send a letter conceptually supporting this effort.

Mr. McLendon made a motion to authorize the preparation of a letter, signed by Mayor Ilyinsky, conceptually supporting the efforts of the Mayors of Highland Beach and Manalapan regarding the relocation of the Coastal Construction Control Line. Mr. Wyett seconded the motion. On roll call the motion was unanimously carried.

9. Consideration of Budget Calendar for Fiscal Year 1997.

Town Manager Doney was not in the room at this time and, therefore, the Council discussed Item # 11.

11. Consideration of the Voting Procedure/Tabulation for Appointments to Boards and Commissions.

Mr. Shaw made a motion that the voting procedure/tabulation for appointments to the Boards and Commissions be discussed at the May 14, 1996 Town Council meeting. Mr. McLendon seconded the motion, which on roll call was unanimously carried.

9. Consideration of Budget Calendar for Fiscal Year 1997.

Mr. Doney stated that there was not a final calendar at this point. Mr. Doney had spoken to Mrs. Smith as Chairman of the Finance and Taxation Committee and also to Mr. McDonald as a member of that committee. Ordinarily the Town would have its first meeting of that committee at the end of May or the first week of June, however, because of other meeting conflicts and because Mr. McDonald would be away the end of May and the first part of June, Mr. Doney suggested that a calendar be brought back to the Council at the May 14, 1996 meeting. Mr. Doney suggested that the first meeting of the Finance and Taxation Committee be held mid- to late June and would have a calendar out to the Council for their consideration within the next three weeks.

10. Consideration of First Union Capital Management Monthly Report.

Mr. Doney stated that there are typographical errors in the report, which will be corrected and reissued.

Mr. Shaw stated he was disappointed in the net affect of the earnings as he was given the impression that there would be a drastic turn-around in the excess earnings at First Union over the State Board. Mr. Shaw stated that while there was a slight gain in January there was again a deficit in February. Mr. Shaw stated that the purpose of the new form was to give the Council a better breakdown on a monthly basis and the actual adjustments that are made.

12. Consideration of Clarification of the Sunshine Law as it Pertains to Public Meetings at Which More Than One Elected Official is Present.

Mr. Wyett stated that this is a clarification as it pertains to the Sunshine Law and public meetings which more than one elected official attends. It would involve having the Town Attorney petition the Attorney General of the State of Florida to issue a letter similar to the one issued to the City of Sarasota clarifying what may or may not be said at a public meeting. Mr. Wyett stated this would allow more citizens access to elected officials and give elected officials the freedom of answering questions directly to the public, however, would not allow them to discuss it among themselves in public.

Mr. Wyett made a motion to add this item to the May 14, 1996, Town Council agenda. The motion was seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

VII. APPROVAL OF THE WARRANT LIST AND FUND EXPENDITURES FOR MARCH, 1996.

Mr. Shaw made a motion to approve the Warrant List and Fund Expenditures for March 1996. The motion was seconded by Mr. Wyett. On roll call, the motion was unanimously carried.

Mr. Doney announced that staff has heard from Mayor Graham regarding a date for the Special Town Council Meeting, which would be Tuesday, April 16 at 2:00 p.m. in the Town Council Chambers. Mr. Doney stated that he would write a confirmation letter tomorrow and asked Mr. McLendon for language to be included in the letter.

Mr. Doney stated that Mayor Graham will be in attendance as well as Michael Wright, Eric Olson, Don Munscard and Terry Collins. The Town will be represented by Mr. Dusey, Mr. Bowser, Mr. Elwell and himself in addition to the Mayor and Town Council.

Mrs. Smith stated that the meeting with Comcast Cable would take place at 3:30 p.m. and asked that Mr. Doney notify Ms. Diane Christie of Comcast Cable.

The Council adjourned their Regular meeting at this time to hold their special meeting regarding the Comprehensive Plan. Mr. Shaw made a motion to adjourn this meeting, seconded by Mr. McLendon. The meeting was adjourned.

SPECIAL TOWN COUNCIL MEETING

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

LAST NAME—FIRST NAME—MIDDLE NAME McDONALD John L	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Palm Beach town Council
MAILING ADDRESS 2875 S. Ocean Blvd	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: CITY COUNTY OTHER LOCAL AGENCY
CITY Palm Beach COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: town Council
DATE ON WHICH VOTE OCCURRED 4-9-96	MY POSITION IS: ELECTIVE APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

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

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

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

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

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

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

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

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, JACK McDONALD, hereby disclose that on 4. 9, 1996:

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

____ inured to my special private gain; or

____ inured to the special gain of ____________, by whom I am retained.

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

Although, I do not believe I have a special private gain resulting in a true conflict of interest, I am filing this conflict of interest form and have abstained from voting on this matter out of an abundance of caution and upon advice of the town attorney because of previous negotiations I had with the applicant.

4.9.96
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.

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

LAST NAME—FIRST NAME—MIDDLE NAME Wyett, Allen	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council
MAILING ADDRESS N	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: CITY COUNTY OTHER LOCAL AGENCY
CITY Palm Beach, COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: Palm Beach
DATE ON WHICH VOTE OCCURRED 4/9/96	MY POSITION IS: X ELECTIVE APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

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

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

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

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

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

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest

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

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, ______________________, hereby disclose that on ______________________, 19____:

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

____ inured to my special private gain; or

____ inured to the special gain of ______________________, by whom I am retained.

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

Own property on El Vedado

____
Date Filed

[signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $5,000.