

MINUTES OF THE TOWN COUNCIL MEETING HELD ON APRIL 8, 1997

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A. M. on April 8, 1997. The roll was called with the following Elected Officials in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Leslie Shaw, Councilmen Jack McDonald, Sam McLendon, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Police Chief Joseph Terlizese, Fire Chief Vincent Elmore, Director of Public Works Al Dusey, Town Engineer Jim Bowser, Director of Planning, Zoning & Building Robert Moore, Planner/Projects Coordinator Tim Frank, Chief Code Compliance Officer Brian House, Acting Finance Director Cheryl Somers, Purchasing Agent Charles Boggs, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Father Ralph Warren from Bethesda-By-The-Sea. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Jacqueline Albarran de Mendoza, Landmarks Preservation Commission- From 1990 to 1997

Mayor Ilyinsky presented Ms. Mendoza with a plaque in recognition of her service to the Town.

B. Recognition of Joanna Frost Golino, Landmarks Preservation Commission - From 1995 to 1997

Mayor Ilyinsky presented Ms. Golino with a plaque in recognition of her service to the Town.

C. Jane R. Grace, Landmarks Preservation Commission - From 1991 to 1997

Ms. Grace was not present at the meeting.

D. Retirement of Raymond E. Harley, Equipment Operator I/Sanitation - 24 Years and 10 Months

Mayor Ilyinsky presented Mr. Harley with a pocket watch in recognition of his service to the Town.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky stated that appointing the Charter Review Commission had been a difficult, but very gratifying task. The mission of the Commission was to investigate and evaluate the needs for change, then report the findings to the Town Council for action, with the registered voters being the final judge of acceptance of any changes. He explained that the people who had now agreed to serve were not necessarily people that he had personally known very well, however, they were a group of dedicated, experienced, and responsible residents. He then named the following as members of the Charter Review Commission: Mrs. Deedy Marix, Mrs. Jean Habitch, Mr. Rodney Fink, Mr. Tom Keresey, Mr. Doyle Rogers, Mr. Bill Guttman, and Mr. Jim Wearn. Mayor Ilyinsky emphasized that the commission membership was balanced geographically, qualified in experience, and dedicated in purpose.

Mr. McDonald made a motion to accept the Charter Review Commission as appointed; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mayor Ilyinsky announced that the first meeting of the Charter Review Commission would be held at 9:30 A.M. on Wednesday, April 16, 1997 if acceptable to all members.

V. APPROVAL OF AGENDA

Mr. Doney announced that Mr. Reid Ewing, Traffic Consultant would be available anytime after 2:30 P.M., and suggested that Item X. B. 6. (Status Report on Town of Palm Beach vs. City of West Palm Beach Regarding Downtown Master Plan) be heard at that time.

Mr. Shaw made a motion that Item X.B.6. (Status Report on Town of Palm Beach vs. City of West Palm Beach Regarding Downtown Master Plan) be heard at a time certain of 2:30 P.M; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Doney suggested that the introduction and recommendation of James H. Demming as Finance Director be included as Item X.B.3.a. (Item X.B.3. would then become Item X.B.3.b.).

Mr. Shaw made a motion to add Item X.B.3.a (Introduction and Recommendation of James H. Demming as Finance Director) to the Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Doney suggested that Item XI.D.8. (Consideration of Issues Regarding Legal Counsel for Mar-a-Lago Club, Inc. vs. Town of Palm Beach) be moved to become Item X.B.a.

Mr. Wyett made a motion to move Item XI.D.8. (Consideration of Issues Regarding Legal Counsel for Mar-a-Lago Club, Inc. vs. Town of Palm Beach) to become Item X.B.a.; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith requested a motion regarding a request for withdrawal on Item XIV.B.2 (Variance 5-97, Jack Friedman, 901 North Ocean Blvd.).

Mr. Wyett made a motion to approve withdrawal of Item XIV.B.2 (Variance 5-97, Jack Friedman, 901 North Ocean Blvd, per letter dated March 26, 1997, from Mr. Michael J. Johnson, Architect, and Mr. Jack Friedman, Owner); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith requested a motion regarding a request for deferral of Item XIV.B.3 (Variance 6-97, Michael Kalisman, 146 Dunbar Road).

Mr. McLendon made a motion to approve deferral of Item XIV.B.3. (Variance 6-97, Michael Kalisman, 146 Dunbar Road per the request for deferral to May 13, 1997 by letter of Attorney Ronald Kolins, dated March 27, 1997); seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Smith requested a motion regarding a request for withdrawal of Item XIV.B.4. (Variance 7-97, Homa Bahary, 160 Kings Road).

Mr. Wyett made a motion to approve withdrawal of Item XIV.B.4. (Variance 7-97, Homa Bahary, 160 Kings Road per the request for withdrawal by letter dated March 20, 1997 from Mrs. Homa Bahary, Owner); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith requested a motion regarding a request for deferral of Item XIV.B.14. (Special Exception 12-97 with Variance and Site Plan Review, CPS Properties, 312-322 Royal Palm Way).

Mr. Wyett made a motion to approve deferral of Item XIV.B.14. (Special Exception 12-97 with Variance and Site Plan Review, CPS Properties, 312-322 Royal Palm Way per the request for deferral to May 13, 1997, by letter dated March 27, 1997 from Mr. Charles W. Millar, Jr., Planner); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Smith requested a motion regarding a request for deferral of Item XIV.B.15. (Special Exception 13-97, Interoffice of Palm Beach, Inc., 125 Worth Avenue).

Mr. Wyett made a motion to approve deferral of Item XIV.B.15. (Special Exception 13-97, Interoffice of Palm Beach, Inc., 125 Worth Avenue per request for deferral to May 13, 1997 by letter dated April 7, 1997 from Attorney Gregory Kino); seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Director of Planning, Zoning and Building, Robert Moore, announced that Attorney Ronald Kolins was present to request consideration on Item XIV.C.16. (Site Plan Review 3-97 with Variance).

Mr. Kolins addressed the Town Council, requesting that Item XIV.B.16. (Site Plan Review 3-97 with Variances - Ed Cury, 110 Hammon Avenue; located in the R-C Zoning District; to allow construction of three multi-family units. Variances requested to provide west side yard setback of 13.5' in lieu of 25' required, to provide east side yard setback of 13' in lieu of 25' required, to allow a rear yard setback of 20' in lieu of 30' at unit C, and to allow privacy walls at a height of 9' in lieu of 7' maximum allowed) be moved forward in the Agenda due to his obligation to another client at a very controversial hearing in Jupiter this evening.

Mr. Wyett made a motion, in accordance with the suggestion of Mayor Ilyinsky, to hear Item XIV.C.16 at a time certain of 4:30 P.M.; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Smith noted that this may set a dangerous precedent for request by other attorneys for special attention.

Mr. Moore announced an addition to the Agenda of Item XIV.C.1, Other, per request of Attorney Robert Deziel for addition to the Agenda of consideration of a Construction Waiver to Section 12-51 of the Town Code Of Ordinances for Ms. Sydell Miller, 1415 and 1423 South Ocean Blvd.

Mr. McLendon requested addition of Item XI.D.16 regarding approval of attendance and expenses for an awards luncheon and conference, spending one night, in Orlando recognizing his 50 years as a member of the American Water Works Association on April 21, 1997.

Mr. McDonald made a motion to add and approve Item XI.D.16 (approval of the attendance and expenses of Mr. McLendon at the conference and awards luncheon of the American Water Works Association on April 21, 1997 in Orlando, Florida; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. McDonald made a motion to add as Item XI.D.17. consideration of traffic/safety study be done of the Par III area; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. McDonald made a motion to add as Item XI.D.18. review of the Spoil Islands regarding responsibility for maintenance; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. McLendon made a motion to approve the Agenda as amended; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS

Mr. Eric Gilbertson, 151 Chilean Avenue, addressed the Town Council acknowledging the curb ramps at the end of Chilean for wheelchair access, recommending that a stop sign also be installed at that location.

Mr. Louis Pryor, 227 Brazilian Avenue, addressed the Town Council commenting that only 23% of Town taxes remain in Town today.

Mr. Adrian Winterfield, Town resident, commented that he looked forward to the report on the Mar-a-Lago litigation, in particular to the explanation of why it was decided not to simply move toward dismissal of the damage action, since if the Town prevailed in certiorari action it would be difficult to determine damages. He further looked forward to an explanation of why Donald J. Trump had not been joined in the litigation.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF MARCH 11 and 24, 1997

VIII. LICENSES AND PERMITS - None

Mr. Wyett made a motion to approve the Approved Agenda; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

REGULAR AGENDA

IX. PUBLIC HEARINGS

A. Landmark Designation of 201 El Bravo; Resolution No. 25-97

Planner/Projects Coordinator Timothy Frank reported that proper notice of the Public Hearing had been accomplished. The Landmarks Preservation Commission had studied the subject property at 201 El Brave, finding that the property met the following criteria for designation as a landmark in the Town of Palm Beach: a) exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town; c) embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmen; d) is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age. Mr. Frank pointed out that this particular structure was advanced by request of the owner, who was willing to participate in the program.

Town Clerk Pollitt administered the oath to all witnesses who would be testifying.

Historic Preservation Consultant Jane Day continued with the presentation, stating that the property was a good example of the Mediterranean Revival Style, and had been built in 1931 by Arnold Construction Company and designed by John Volk.

Mr. Wyett made a motion to approve the Designation Report as part of the record; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Randolph read Resolution 25-97:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 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. Shaw made a motion that Resolution 25-97 be approved; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

X. OLD BUSINESS

A. Ordinances (Second and third Reading)

1. Ordinance No. 5-97 - Signage Requirements for Passenger Loading Areas.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE XI, OF THE TOWN CODE OF ORDINANCES RELATING TO SIGNS AND AWNINGS SO AS TO PROVIDE A NEW SUBSECTION (G) UNDER SECTION 5-421, ALLOWING FOR TEMPORARY SIGNS DESIGNATING PASSENGER LOADING ZONES LOCATED WITHIN THE COMMERCIAL AREAS OF THE TOWN; PROVIDING FOR REGULATIONS RELATING TO SAME; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph pointed out that the ordinance had been changed at Section 4, under Item I at Council direction, so as to add the words "or grass," -- "said signs shall not be placed upon the paved right of way of the Town, but may be placed on the sidewalk or grass in a manner so as not to impede or impair the flow of pedestrian traffic on the sidewalk."

Mr. Shaw made a motion to approve Ordinance 5-97; seconded by Mr. McLendon.

Mr. Wyett commented that there was still a problem with valet and off/site parking in front of restaurants.

On roll call, the motion carried unanimously.

2. Ordinance No. 6-97 - Franchise Agreement for Cable Service with Comcast Cablevision of West Palm Beach, Inc.

Mr. Randolph read Resolution 6-97:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, GRANTING TO COMCAST CABLEVISION OF WEST PALM BEACH, INC., A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE TOWN AND TO PROVIDE CABLE SERVICE IN THE TOWN OF PALM BEACH, FLORIDA, PURSUANT TO THE TERMS OF THE AGREEMENT ATTACHED HERETO; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Shaw made a motion to approve Resolution 6-97, and commented that the Town had gone to great expense to reach this point, and there had been some serious concerns about how the contract would affect many of the residents in the Town. He asked Mr. Jakubiak to update the Town Council on the proposed audit of cable service and utilities in Town. The motion was seconded by Mr. McLendon.

On roll call, the motion was approved 4/0, as Mr. McDonald was out of the room.

Mr. Jakubiak reported that a proposal would be sought from a firm familiar with telecommunications, that would be hired through the Miller, VanEaten law firm, to conduct an audit of the cable services.

Mr. Shaw replied that he was not in favor of incurring further expense by having Mr. Miller involved in the process.

Mr. Jakubiak explained that Mr. Miller would not be directly involved with the audit, but with the hiring of the cable auditor.

Mr. Shaw re-stated that he was opposed to having Mr. Miller as part of the selection process, as he believed staff was capable enough to go through a bid proposal to make a determination.

Mr. McLendon asked who was responsible for preparing the scope of what would be expected from the auditor, suggesting that Comcast itself be asked for the information.

Mrs. Diane Christie, Director of System Development for Comcast Cable, addressed the Town Council stated that an extensive audit by the City of West Palm Beach had just been completed, with the use of an outside firm, and she would provide any information that the Town staff would like to have.

Town Attorney Randolph suggested that staff be allowed to review the information.

B. Other

a. Consideration of Issues Regarding Legal Counsel for Mar-a-Lago Club, Inc. vs. Town of Palm Beach

Town Attorney Randolph reported that subsequent to the selection of his own firm and the firm of Attorney DeVault (Bedell, Dittmar, DeVault, Pillans, and Coxe, of Jacksonville, Florida) as representatives of the Town in the Mar-a-Lago case, communication had been received from the insurance company advising that because of the civil rights count in the complaint there was coverage for the lawsuit. The insurance company would have counsel available to represent the Town in that regard, and they advised that they would like the Town to consider the selection of that counsel, rather than the counsel chosen by the Town as its representative. Mr. DeVault had been requested to evaluate and report on this item. Mr. DeVault was present today for that purpose.

Attorney DeVault addressed the Town Council stating that he had reviewed the insurance policy with respect to coverage questions regarding selection of counsel. Prior Councils had retained outside law firms in cases such as the Handelsman Case, the Steinhart Case, the Home Federal Case, and several other cases. Subsequent to the hiring of his law firm, Mr. DeVault noted that the insurance company had contacted the office of the Town Manager to indicate that there was coverage based on the civil rights claim, and that they would be responsible for the payment of counsel fees, recommending that their insurance counsel handle the matter. Mr. Doney had responded, indicating that a prior selection of counsel had been made, pointing out that based on past experience it may be more cost effective to have counsel who had represented the Town in prior similar cases to go forward. The insurance company had recognized, under an endorsement to the policy, that the Town had the right with respect to its selection of counsel, but questioned whether they would pay the differential between the costs of the insurance counsel and the rates of the selected counsel. Mr. DeVault likened it to a medical procedure where a patient wanted to use his own doctor, whereas the insurance company doctor may charge less. In effect, that was what the insurer had said--that they would credit only what their counsel would cost against the deductible, and if the deductible was exceeded for future repayments. He reported that it was clear to him that the coverage the Town had was in no way affected, and no communication from the insurance company had suggested otherwise. In addition, he noted that the Town Council had the absolute right under its endorsement to select its counsel and to make a final decision with respect to future of this litigation, including any possible settlement. Under most liability policies an insurance company could settle a matter without the consent of its insured, however, under an endorsement to the policy the Town Council retained that right. One of the points made by Mr. Doney in his letter to the company was that the Town was desirous of having counsel that was looking out solely for the interest of the Town, not the interest of the insurance company. Unless the Town Council felt otherwise, the recommendation being made was that Mr. Doney put the insurance company on notice that at the conclusion of the litigation, if all fees and expenses had not been reimbursed, and were not recovered against the plaintiff, that the Town retain the right to go against the insurance company to recover any differential with respect to fees and expenses paid.

Mr. McDonald expressed concern about the fact that the Town Council had not been told that the furnishing of counsel was part of the insurance policy, and that there may be a significant difference in terms of what compensation the Town would receive. He stated that should have been an element that went into the decision process. In addition, he questioned the projected cost on the lawsuit, and what differential would exist in attorney fees.

Mr. Wyett commented that insurance companies found it less expensive to settle than to win; it was very important to the Town to win this case, and he therefore supported the hiring Mr. DeVault.

Mr. Shaw supported the concerns of Mr. McDonald, and hoped that in the future the person responsible for notifying the Town Council as to the conditions of the insurance policy would review them and let the Town Council know conditions in order to make proper decisions.

Mr. Randolph clarified that, in accordance with the decision of the Town Council, Mr. DeVault would remain as selected counsel, and the insurance company would be so advised by letter.

Mr. Elwell explained that the action of the Town Council had occurred at the January Town Council Meeting, and later in the month the insurance company advised of the concern. Since that time, there had been telephone calls and letters exchanged in an attempt to resolve this issue.

Mr. Shaw noted that had Risk Manager Barbara Martinuzzi made the statement as a point of fact, that there was a stipulation that the insurance company had the option to select an attorney it would then have been a stated fact, although he doubted whether it would have had any ramifications from the standpoint of the Town Council changing its decision as to who would be hired--the Town Council would then have known that the insurance company had that right.

Mr. Elwell responded that staff would govern themselves accordingly in the future--Mr. Randolph had explained that it had not been considered to be necessary information at the time, and he apologized.

Mrs. Smith stated that the apology was accepted, and Risk Manager Martinuzzi was now on notice that this was something that needed to be reviewed. She commented that the Town Council was very confident and supportive of the counsel hired to defend the Town.

Mr. McDonald advised that he would like some sort of an idea of the legal fees necessary to resolve the case.

Mr. Randolph explained that there would be no way to give a ballpark figure of what the defense fees would be at this point.

Mr. McDonald asked if Mr. Randolph could give any percentage of what his involvement in the case would be as opposed to Mr. DeVault's?

Mr. Randolph replied negatively; the case could not be divided as to who would be handling what, and the entire case was in litigation.

1. Consideration of Letter dated January 20, 1997, from Mr. Jeffrey P. Prudden Regarding Donation of Property, Lot 1 (West 315') of Sea Isle Estates, to the town of Palm Beach (*Deferred from March 11, 1997*)

Mr. Horton Prudden, on behalf of Jeffrey Prudden, addressed the Town Council, stating that the re-design of the harbor, as well as the deepening of the inlet, had caused further erosion on the property in question, which he wished to donate to the Town. He noted that he disagreed with the County Tax Assessor that the property was worthless; until four years ago the two pieces of adjacent property had been taxed separately. He realized that the Town may not want the property, as he had opinions from Public Works that negated the intent of the gift to the Town.

Mrs. Smith asked that the plan be exhibited so that it would be clear whether the entire property was underwater.

In response to the question of Mr. Wyett, Mr. Prudden responded that the lots ran to the Town limits--Sea Isle Estates was an approved subdivision of the Town of Palm Beach and he hoped that there would be interest in the property, since adjacent land owners were being washed out to sea. He mentioned that property along the beach area had been a prime concern of the Town. He estimated that 95% of the property was presently underwater; in 1973 approximately 65% had been underwater. Interest in the property had been expressed by an environmental agency as well as an educational foundation, however, Jeffrey Prudden had believed it should be offered to the Town.

Mr. McLendon asked if the property had been offered to the Federal Government?

Mr. Prudden responded that he had spoken with the Corps of Engineers.

Mr. Shaw expressed concern about the Town limits on intracoastal property.

Mr. Doney explained that the corporate limits of the Town went to the center line of the intracoastal waterway channel, and then through the mouth of the inlet.

Mr. Shaw questioned the difference between Town ownership and private ownership regarding the control of the southern migration of the channel?

Mr. Randolph replied that private ownership would involve easements or condemnation proceedings as opposed to Town ownership and any arrangement with the Corps of Engineers for widening or dredging.

Mr. Shaw explained that his interest was to make sure that the channel could not be widened or dredged to hinder the property, and Town ownership may create a buffer in that regard.

Mr. Randolph responded that Town ownership would not give any better control over a Federal project.

Mr. Wyett made a motion to deny the donation of the property; the motion died for lack of a second.

Mr. Wyett re-stated his motion: that the Town Council deny accepting the gift of the submerged property in Sea Isle Estates (Lot 1 - West 315'); seconded by Mr. McDonald. On roll call, the motion carried unanimously.

2. Consideration of Appeal of a Public Works Invoice Regarding Sanitary Sewer Issues by Mr. Cornelius Millane, 332 Eden Road (*Deferred from March 11, 1997*)

Town Engineer James Bowser addressed the Town Council, referring to his letter of March 4, 1997 outlining the construction project that had been undertaken in the alleyway south of Eden Road. It had been found that during the construction of new storm sewers and abandonment of the old one it had been learned that one property had an illegal connection into the storm sewer, which had been discovered by the property owners when the sanitary sewer backed up. The Public Works Department had then asked the contractor on the job to review the circumstances. After the owner's plumber was not able to correct the situation, Mrs. Millane had been advised that the Town would proceed under the condition that the responsible party would have to pay for the work. The line was relocated properly into the sanitary sewer in the most expeditious way. The property owners objected to the assessment, and staff was now recommending that the Town Council sustain the recommendation of staff to charge the property owners for the work.

E. Q. Daddario, on behalf of Mrs. Millane, addressed the Town Council stating that Mrs. Millane had hired Mike's

Plumbing to repair the problem that had caused the sanitary sewer back up, who had worked on the problem for three days and found it beyond their capabilities; they arranged for Culpepper Plumbing to take over. Culpepper Plumbing indicated the pipe was too deep to repair, recommending that a well point system would be needed.

Mr. Daddario stated that Mr. Bowser could not have based his actions in early January, 1997 on the Culpepper invoice of January 4, 1997, since he could not have seen it until it had been made available to him by letter dated February 12, 1997 to Peter Elwell. He asserted that Town staff had advised D.S. Eakins Construction Company to investigate the Millane job site as early as January 3, 1997, and replaced Culpepper with Eakins Construction. For the next several days Mrs. Millane saw the work on the site continue, and assumed that Culpepper was finishing the work. He noted that Mrs. Millane, nor her daily companion, Lynn Heaton, could recall a conversation with Mr. Bowser regarding the work done, or the attached costs. He pointed out that Mrs. Millane had no written notification that the Town was taking over the responsibility to repair the problem with another contractor, and there was no estimate of cost or explanation.

Mr. Bowser replied that field personnel had reported a problem at the residence, and the contractor had been asked to check the job to ascertain responsibility, which he did on January 6, 1997. Upon notification of the necessity to make repairs, Mrs. Millane had not felt it was her responsibility to pay for the work.

Mr. Doney noted that both he and Mr. Elwell had conversations in February with Mrs. Millane, and her son, who was out of State in an attempt to explain the situation.

Ms. Lynn Heaton, companion, stated that no one from the Town notified Mrs. Millane that work was being done on this project.

Mr. Bowser explained that the Public Works Department did not re-do, or create an additional expense on the job by the Town contractor doing the work.

Mr. Wyett asked if the cost would have been the same had a private contractor completed the work?

Mr. Bowser replied that he expected there would be no difference.

Mr. Daddario explained that it was not a matter of cost; Mrs. Millane had hired a licensed contractor to complete the project who was not given the opportunity to do so. He questioned the authority of the Town to operate by deciding that their own contractor was more capable than those that were already on the site.

Mrs. Smith noted that neither of the other contractors was present today, and that there was a communication problem in that they had not given notification that they were off the job.

Mr. Daddario asked what authority the Town had been acting under, and why written notification had not been given to Mrs. Millane?

Mr. Shaw responded that if the Town finds open sewage going into an open area there was a public safety obligation to resolve and correct.

Mr. Daddario replied that the Town also had the obligation to advise the property owner of the need for repairs.

Mrs. Smith asked Mr. Daddario if his reason for being present today was to question the Town policy on a telephone call as opposed to a written notification or to object to the bill from the Town?

Mr. Daddario responded that Mrs. Millane had nothing to do with Eakins Contractor.

Mr. McDonald commented that documented communication had not been great in this situation, and recommended that the Public Works Department notify any homeowner of action being taken regarding their property by hand delivering it in writing. He made a motion to deny the appeal; seconded by Mr. Wyett.

Mr. Daddario stated that the point he wanted to make was that the Town had no right or authority to step in and take over the responsibility of a property owner; the discussion today had been on the costs, rather than the rights of the individual.

Mr. Randolph summarized that the Public Works Department had been attempting to abate a public nuisance and in doing so made the determination that the property owner would be advised of the necessary repairs to the property, and in the event the situation was not corrected the repairs would be done and charged to the property owner. He noted that there was a provision within the Code dealing with emergency matters such as this, saying that if the Town Engineer considered a situation to be an emergency the property owner would be contacted and requested to correct the situation--in the event the property owner did not correct the situation within the time recommended by the Town Engineer, all costs expended by the Town to make the repairs would be borne by the property owner, who would reimburse the Town within 60 days of the notification of the amount of said repairs.

Mr. Daddario responded that the only information that Mrs. Millane had was a telephone call, and there was never any other communication beyond that. He recommended that the Town review this part of its procedure.

Mrs. Smith noted that according to testimony both Mike's Plumbing and Culpepper could not complete the job, and the Town had the authority to step in an emergency if the job could not be completed by the owner. She pointed out that Mr. Daddario had stated that the money was not the problem, and offered him the opportunity for further remarks.

Mr. Daddario replied that the Town did not conduct proper notification, and the issue was whether or not the Town should hold somebody else responsible.

Mr. McDonald asked Mr. Daddario if he believed the costs would have been any different had Culpepper been willing and able to complete the job?

Mr. Daddario responded that the rights of the citizens were the issue.

Mr. McDonald stated that a telephone conversation was as valid as anything in writing, and the Town believed proper notification had been given.

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

3.a. Introduction and Recommendation of James H. Demming as Finance Director.

Town Manager Doney stated that at the March 11, 1997 Town Council Meeting he had recommended the appointment of James H. Demming as the Finance Director for the Town of Palm Beach. He then introduced Mr. Demming to the Town Council.

Mr. Demming addressed the Town Council, stating that he had worked in public accounting for five years before getting into municipal finance. He had been with the City of Melbourne for one year, and the City of Palm Bay for thirteen years. His graduate degree was from Wake Forest University.

Mr. McLendon, along with Mr. Doney commended Cheryl Somers as Acting Finance Director for her admirable accomplishments during the past year.

Mrs. Smith noted that the Finance Department as a whole, under the leadership of Cheryl Somers had made great accomplishments and was owed a debt of thanks.

3. Quarterly Update on Implementation of Recommendations in the Nowlen, Holt, and Miner, P.A. Report

Town Manager Doney stated that 25 of the 37 original comments made by Nowlen, Holt and Miner, P.A. had been totally implemented. The remaining 12 items were at various stages of completion and were referenced in the update provided. He noted that the implementation date for some items had been delayed to allow for input from the new Finance Director.

Mrs. Smith noted that all Council members had read the report submitted by Mrs. Somers and asked if there were any questions?

Mr. Shaw referred to page 1, Item 5, asking if the recommendation that the Town investigate the use of credit had been implemented?

Acting Finance Director Cheryl Somers responded that credit card receipts were being taken at the Marina, and the plan was to expand to other departments, but that point had not yet been reached.

Mr. Doney stated that the issuance of credit cards to other departments would not be put into place until there was a written procedure concerning absolute control and responsibility.

Mrs. Somers commented that right now very few transactions were being processed with the use of credit cards, and the implementation in other departments would involve a much greater volume.

Mr. Doney referred to Item 35 and 36 of the Nowlen, Holt & Miner report concerning parking meter collections. He referred to the March 28, 1997 memorandum of Director of Public Works Al Dusey indicating that Town staff would undertake the collection and maintenance of parking meters throughout the Town. Mr. Doney recommended that the current Parking Meter Collection Contract with Parking Meters Ltd. not be renewed. During the transitional period functions would be performed with existing personnel. However, one additional person would be needed to perform the functions adequately; the overall cost of performing this work "in-house" was anticipated to be approximately the same as what the Town would have spent to continue the contract for the service.

Mr. McLendon made a motion to accept the recommendation of Town Manager Doney; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

4. Quarterly Update on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town

Acting Finance Director Cheryl Somers referred to her memorandum of April 3, 1997. One sidewalk assessment had been paid off for Louise Thompson, 230 So. Ocean Blvd., and a Code enforcement Fine for Garden City Co., Inc. Chief Code Compliance Officer, Brian House had indicated that the fine for Lee's Lawn & Tree Service had been paid. In additionally, under

Code Enforcement Fines, Antti Pirra, with a \$50.00 outstanding fine, had left the country.

Mr. Shaw made a motion to recommend that Antti Pirra be taken off the list of fines; that the issuance of fines to property owners be discussed at the Ordinances, Rules & Standard Committee; seconded by Mr. Wyett.

On roll call, the motion carried unanimously.

Mr. McDonald suggested that the report show under "Action Taken" any liens recorded against the properties, and that Mr. Randolph prepare a status report for the May Town Council Meeting on the items listed on page 1 of the report.

Town Attorney Randolph recommended that the Sidewalk Assessment for Olga C. Harrold of \$27.24 be written off.

Mr. McDonald made a motion that the Sidewalk Assessment for Olga C. Harrold in the amount of \$27.24 be deleted from the report; seconded by Mr. McLendon. On roll call, the motion carried 4/1, with Mr. Shaw casting a negative vote.

Mr. McDonald made a motion that the Sidewalk Assessment for E.J. & C.L. DeGuareiola, 152 Seabreeze Avenue be deleted from the report; seconded by Mr. McLendon. On roll call, the motion carried 4/1, with Mr. Shaw casting a negative vote.

Mr. Randolph clarified that these amounts would not be written off, but would merely not be included on the quarterly report.

Mrs. Smith clarified that Mr. Randolph would report back on action taken, Mrs. Somers would record the liens.

Mr. Randolph explained that he would make a recommendation at the next quarterly review on whether to file suit on the Guilford Dudley, Jr. assessment.

Mrs. Smith suggested that the property owners, past and present, receive some notification on this item before a lawsuit was filed.

Mr. McDonald clarified that the Code Enforcement Board fine concerning Mary V. Hanke, 177 Clarke Ave., would be recorded as a lien against the property.

5. Status Report on Water Franchise Agreement Negotiations with the City of West Palm Beach

Town Attorney Randolph reported that staffs of the Town and the City of West Palm Beach had met on two occasions in regard to the Water Franchise Agreement, with Mayor Ilyinsky (*please see addendum to Town Council Minutes with quoted statement of Mrs. Smith*) being involved with the discussions. Some progress was made, and Mr. Randolph would be meeting with Pat Brown, the City attorney for the City in this regard to come to some agreement regarding amendments to the Water Franchise, for presentation to the Town Council and the City of West Palm Beach, and at that time schedule another meeting on this matter.

6. Status Report on Town of Palm Beach vs. City of West Palm Beach Regarding Downtown Master Plan (heard at 2:30 p.m.--time certain)

Town Attorney Randolph stated that two closed door sessions had been held relating to this matter in an attempt to negotiate a settlement. Because the Statute was very strict with regard to who may attend these sessions, there had not been an opportunity to hear from experts who could help in the determination. Today the opportunity to hear from the Town traffic expert would be provided in regard to the Downtown Master Plan.

Attorney Scott Hawkins, partner to Attorney Randolph, addressed the Town Council, stating that the Town of Palm Beach had challenged the Downtown Master Plan Amendment, and in discussions questions had been posed regarding traffic concerns. Dr. Reid Ewing, professor at Florida International University, the Traffic Expert retained by the Town of Palm Beach was present to review the issues raised by the Downtown Master Plan, as well as Amendment II, the Traffic Concurrency Exception Area Amendment recently passed by the City of West Palm Beach.

Dr. Reid Ewing addressed the Town Council, commenting on the impact of the Downtown Master Plan and the Traffic Concurrency Exception Area Amendment (TCEA) Amendment on traffic within the Town of Palm Beach, and on the traffic on routes leading to the Town of Palm Beach, and also more generally to comment on the case from a planner's perspective.

Using the figures of the City of West Palm Beach, the Kimley Horn Analysis of the Downtown Master Plan and Transportation Concurrency Exception Area, the impact of the amendments on roads within the Town of Palm Beach would be moderate--there would be an impact, but it would not be a tremendous impact. However, there was the potential for a much larger impact if one used build out of the Downtown Master Plan, which was about four times the development assumed in the scenario for 2015, which would involve a potentially significant impact on Town roads. If one assumed build out, virtually all of the roads would fail.

Regarding the case as a whole, Dr. Ewing believed the Town had a strong case. He noted that there were two separate amendments--one was the Downtown Master Plan, which was an outgrowth of the Area Wide Development of Regional Impact for Downtown West Palm Beach in 1989, which became very controversial; the City of West Palm Beach then hired one of the top new urbanist planners and came up with the Downtown Master Plan, which was adopted in 1994, and was objected to by the State with recommendations for changes, however the City ultimately went ahead and adopted it; it was found in compliance with State law by the Department of Community Affairs, and it was that Amendment which the Town was challenging at this point.

The second Amendment involved the Transportation Concurrency Exception Area Amendment. The Department of Community Affairs had noted that many of the roadways in downtown West Palm Beach would fail under the Downtown Master Plan, suggesting in their Objections, Recommendations and Comments (ORC) document that the City of West Palm Beach establish a Transportation Concurrency Exception Area, which is an area in which roadway levels of service are thrown out, ignored, and there is no minimum level of service within such an area.

Attorney Scott Hawkins noted that there had been a suggestion of record that the two amendments be consolidated, but technically they have not been consolidated as of yet.

Dr. Ewing stated that he would comment on the two Amendments together. The issue was one of implementation, and it was frustrating to visionary planner to be saddled with the rules of growth management, however, growth management was a process that needed to follow certain rules involving quantification, analysis of impacts, and objectivity, as contained in Rule 9J-5 of the Florida Administrative Code. That was where the City of West Palm Beach had run afoul.

Dr. Ewing continued that the essence of growth management was two-fold--one was that before procedure to allow development the impacts must be analyzed on facilities and services, including roads, in a professionally acceptable manner. One of the Town challenges to the City of West Palm Beach was based on the assessment that their analysis and data were not adequate (professionally acceptable). In addition, when adverse impacts were determined, mitigations must be made or development cannot continue. Those were two things that were needed to amend a Comprehensive Plan or allow development.

Dr. Ewing reported that in the original objection from the State of Florida Department of Community Affairs one thing noted was that the City had not adequately analyzed the traffic impacts of their Amendment, so the City then used consultants to proceed with a series of studies to analyze traffic impacts. He explained that he had reviewed them, and would use them to assess the traffic impacts of the Downtown Master Plan, and he would also refer to a study done for the Town by the Florida International University, College of Engineering and Design, independent of the Kimley Horn Study.

Referring to the Kimley Horn work, Dr. Ewing noted that analyses were done in February of 1997, December of 1996, 1995, and one before that in the Downtown Master Plan, and each of them was different. It varied from about 10.7 million square feet of non-residential space at the low end to about 12.5 million square feet of non-residential space at the high end. The most recent analysis (February, 1997) assumed about 12 million square feet of non-residential floor area downtown in the year 2015. The traffic impacts were mainly associated with non-residential as opposed to residential.

Dr. Ewing indicated that the analyses had looked at the wrong target, comparing Transportation Concurrency Exception Area in the year 2015 to the Metropolitan Planning Organization (MPO) 2015 plan. The anomaly was that amendment of the Comprehensive Plan would include more development, less roadway capacity, and yet in the analysis the traffic impacts of the Amendment were described as benign.

Dr. Ewing explained that time had been spent in trying to analyze exactly what was being compared, and he would now discuss that and the result of moderate traffic impacts was obtained. The Transportation Concurrency Exception Area (TCEA) applications assumed less development (and hence less traffic) under the Downtown Master Plan than under the MPO Plan. In addition, a double standard had been applied to the two plans when the adequacy of facilities was assessed. In the MPO Plan they had used level of service D, which was the countywide level of service standard to assess all the roadways; in the analysis of the Transportation Concurrency Exception Area in the Downtown Master Plan, a combination of levels of service D (outside of the downtown) and E (within the downtown). It was the combination of assuming less development and applying a lower standard to it that caused the (TCEA), or Downtown Master Plan, to look as good as it did in the analysis. He referred to the Kimley Horn report, which he advised was a good report in terms of presenting assumptions, etc. He noted that the MPO number of how many trips would be assumed to be generated by the downtown zones was 335,000; while the TCA plan assumed to generate 10,000 fewer trips. The TCA plan was the Downtown Master Plan road network, changing Olive and Dixie from one-way to two-way, eliminating travel lanes on Flagler, converting Sapodilla and Rosemary to two-way, but not build-out of the Downtown Master Plan. Currently, the assumption was that approximately one-quarter of the building development would take place by the year 2015 (12,000,000 sq.ft. of floor area versus 44,000,000 sq. ft. possible).

Dr. Ewing pointed out that the 44,000,000 sq.ft. figure was only a best guess because in adopting the Downtown Master Plan in lieu of the old City Center Element, what used to be a future land use element was converted into a future building type element, reflecting a basic objection that the new urbanists had to zoning and classification of land uses. This change affected the estimation of development, because the Downtown Master Plan did not provide a range of densities or intensities for the different land uses. He explained that one would be in the position of guessing what could be built on a site, given a building type designation. He noted that in that respect, the City did not meet the minimum requirements of Rule 9J-5, which stated that one of the things that must be done in a future land use element was to establish standards for densities and intensities of use for each future land use category. In the pre-existing City Center Element the requirements of law had been met, however.

The MPO 2015 Plan was the adopted road network of the County, and an earlier version of the Downtown Master Plan, and Dr. Ewing considered this the most serious error made in the analysis done for the City of West Palm Beach, because when DCA objected to the original Comprehensive Plan Amendment (the Downtown Master Plan Amendment), maintaining that the

old City Center Element must be compared to the Downtown Master Plan Amendment regarding traffic levels. Instead of making that comparison, the city compared two versions of the Downtown Master Plan, the February, 1997 version was compared to the Downtown Master Plan of March, 1995. In his study of the situation, Dr. Ewing explained that he had measured how much development could occur in the City Center element.

Dr. Ewing stated that Rule 9J-5 and the Growth Management Act required two things: a professionally acceptable analysis of impacts, and adequate mitigation. He pointed out that he did not believe the mitigation was adequate in the TCEA or the previous Downtown Master Plan Amendment because so many of the policies were optional and vague as opposed to mandatory and specific. Another problem was that some of the policies had delayed implementation. In terms of what could be built, there were building caps, however, they would not be forced to stop building when they reached the ceiling, because the Comprehensive Plan would then be amended.

In response to a question from Mr. McDonald, a good case scenario to compel the City to change their plans would be to take the numbers from their Downtown Master Plan and simply say that those are caps, and at the point where the city reaches its building caps it must go with another amendment and another analysis to determine levels of service and impact. Another approach would be to monitor traffic on all roads; there would have to be mitigation at the point where any of the regional roadways started to fail. A third possibility would be to have numerical standards and enforce them through quantification.

Mrs. Smith commented that the City had said that the two-laning of Flagler Drive was a concept only, and before it could happen there would be years of public hearings and input, and she inquired as to that being part of the Downtown Master Plan?

Dr. Ewing responded that the two-laning of Flagler Drive was included in the Downtown Master Plan.

Mr. Wyett asked if any study had been done regarding medical evacuation equipment getting to the hospitals if Flagler Drive was two-laned?

Dr. Ewing replied negatively.

Mr. Shaw asked how the idea of pedestrian friendly could co-exist with the Government Center?

Dr. Ewing replied that there were many downtowns with lots of development that were pedestrian oriented. The theory behind the Master Plan was the principle of the new urbanism, with the idea to mix uses. Another important part of the Plan was to calm traffic.

Director of Planning, Zoning & Building Robert Moore asked Dr. Ewing what the Town could expect from the DCA if the Downtown Master Plan was legally challenged?

Dr. Ewing responded that the Hearing Officer would make a ruling as to whether the law had been complied with or not, but would not do any fine tuning of the plan.

Mr. Moore asked what the options of the Town would be if it was decided that the plan had failed and the City would have to go back to square one?

Dr. Ewing replied that there was an intergovernmental cooperation requirement in State law. The City could go back and correct the mistakes and adopt another plan. He believed that the Town had tremendous leverage because of the significant error made by the City of comparing the Downtown Master Plan as it was today to the Downtown Master Plan as it was in 1995.

Fire-Rescue Chief Ken Elmore commented in regard to emergency vehicles on route to the hospital--he noted that Flagler was used at the present time; Olive could certainly be used, although Flagler was preferable because of fewer intersections. He did not believe there was any significant difference in travel time; it was a matter of safety.

Town Attorney Randolph stated that the City attorney's office had advised him that they understood that the Town Council would be discussing this matter today, and would get back to them later in the week with further comments.

Mr. Wyett made a motion that the Town Council be polled as to another private closed door, attorney/client session; seconded by Mr. McLendon.

Upon polling the Town Council, it was decided that a closed door, attorney/client session would be held on Thursday, April 10, 1997, beginning at 1:30 P.M. regarding settlement negotiations relating to the Downtown Master Plan in the case of the Town of Palm Beach vs. City of West Palm Beach, in the Town Council Chambers, adjourning to the conference room behind the chambers. Attendees would be: Mayor Ilyinsky, President Smith, President Pro-tem Shaw, Councilmen McDonald, McLendon, and Wyett, Town Manager Doney, Town Attorney Randolph, Attorney Hawkins, and a court reporter from Ley & Marsaa.

XI. NEW BUSINESS

A. Resolutions

1. Resolution No. 24-97 - Florida Inland Navigation District's Financial Assistance Program for the Australian Dock Replacement

Town Attorney Randolph read Resolution 24-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AUTHORIZING THE APPLICATION FOR FINANCIAL ASSISTANCE UNDER THE FLORIDA INLAND NAVIGATION DISTRICT WATERWAYS ASSISTANCE PROGRAM FOR THE PURPOSE OF FUNDING THE REPLACEMENT OF THE AUSTRALIAN DOCKS.

Town Engineer James Bowser addressed the Town Council, stating that the Town had been given a \$360,000 grant conditioned upon receiving all permits. The Town had been unable to secure a Florida Department of Environmental Permit in time, however, the grant had been converted to engineering costs and \$21,000 of the monies had been received. The Town was re-applying to the Florida Inland Navigation District grant being requested via revised Resolution 24-97.

Mr. Wyett made a motion to approve Resolution 24-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

2. Resolution No. 27-97 - Proposed Sign Change from "Slow Speed/ Minimum Wake" to "Idle Speed/No Wake" Signs at the Town Docks

Mr. Randolph read Resolution 27-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING THAT PALM BEACH COUNTY PETITION THE STATE OF FLORIDA TO AUTHORIZE THE INSTALLATION OF "IDLE SPEED/NO WAKE" SIGNS AT THE TOWN MARINA.

Director of Public Works Al Dusey reported that there had been problems at the Marina with wakes and associated injuries, and the way to minimize the problem was to change the signs.

Mr. Wyett made a motion to approve Resolution 27-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Resolution No. 28-97 - Code of Ordinances Update

Mr. Randolph read Resolution 28-97:

A RESOLUTION OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING CERTAIN CHANGES TO THE TOWN CODE OF ORDINANCES TO REDUCE CONFLICTS AND DUPLICATION AND TO PURGE PROVISIONS WHICH ARE OBSOLETE OR SUPERSEDED BY STATE STATUTES.

Assistant Town Manager Peter Elwell reported that the important thing was not the Resolution, but the Exhibit A to that Resolution which contained the substance of the proposed changes. He recommended approval of the Resolution, thereby authorizing the changes to be sent to the Municipal Code Corporation who would then proceed with the reformatting and recodification process.

Mr. McLendon made a motion to approve Resolution 28-97; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

4. Resolution No. 29-97 - Extension of BellSouth Franchise Agreement

Mr. Randolph read Resolution 29-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE EXTENSION AND PERFORMANCE OF GRANT OF RIGHT PRIVILEGE AND AUTHORITY OR FRANCHISE FOR BELL SOUTH TELECOMMUNICATIONS, INC. UNDER THE TERMS OF ORDINANCE 6-87, PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that in May, 1997 the Franchise with BellSouth would lapse and negotiations were ongoing, awaiting the passing of the Town Telecommunications Ordinance. The purpose of Resolution 29-97 was to authorize the extension of the franchise in order to allow the negotiations to take place and be finalized.

Mr. Wyett made a motion to approve Resolution 29-97; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Appointments

1. Code Enforcement Board - Three Member Three-Year Terms to Expire April 2000

Current Board Members Jesse Newman, Enrico Caruso, and Paul Rampell were re-appointed to the Board.

C. Sealed Bids

1. Sealed Bid No. 97-09 - Underground Street Light Wiring and Conduit; Resolution No. 26-97

Public Works Director Al Dusey reported that there was old wiring in some sections of Town which needed to be replaced, and sealed bids were recommended. Award was recommended to The Signal Group, Inc. in the amount of \$33,847.18.

Mr. Shaw made a motion to approve Sealed Bid 97-09; seconded by Mr. McDonald.

Mr. Shaw asked when all street lighting would be underground?

Mr. Dusey explained that this project would replace old wiring that was underground and causing problems. He assured Mr. Shaw that the Public Works Department would review the lighting on Pendleton and Barton.

Mr. Bowser explained that the unit cost would be between \$10-15 per foot, which included re-wiring the poles, pulling the wires, installing the juncture boxes, patching the road, etc. The Town did not have a regularly spaced light pole system, so the cost per light pole would vary and would depend on the source of the power from Florida Power & Light.

In response to Mr. Wyett, Mr. Dusey replied that a full study of the electrical method of lighting had never been done.

Mr. Wyett suggested that competitive bids be requested to see if the Town should convert.

Mr. Randolph read Resolution 26-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO THE SIGNAL GROUP, INC. FOR THE 1997 UNDERGROUND STREET LIGHT WIRING AND CONDUIT.

On roll call, the motion carried unanimously.

D. Other

1. Consideration of Request by Mr. Mike Stein for Street Lights on El Mirasol

Public Works Director Al Dusey reported that a series of letters had been received regarding street lighting from property owners on El Mirasol. According to Town Code, the Town Council could approve, upon petition by a majority of the residents on any block or blocks, installation for lighting, charging two-thirds to the property owner on each side of the street at the same rate per foot, with one-third being paid by the Town, or the General Tax Fund. A preliminary design had been completed at an estimated cost of \$30,000 for five street lights. Since that time, discussions with Mr. Stein had indicated that he believed that five lights was too many since there was a light currently located on County Road. The removal of one installed light would take approximately \$3,000 off the cost.

Mr. McDonald made a motion to defer this item until later in the meeting so that a representative of the property owners on El Mirasol could address the Town Council; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

(Deferred to later in the meeting. Please see discussion immediately following XI. NEW BUSINESS. D. Other 8. -- This item was deferred to the May 13, 1997 Town Council Meeting).

2. Consideration of Donation from Saks Fifth Avenue - Designation of Use of Donated Funds

Town Manager Robert Doney reported that Saks Fifth Avenue had donated \$2,530.00 to the Town.

Mr. Wyett made a motion to designate the funds as "Town Hall Chamber Improvement" funds; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

3. Consideration of Estimate of Placing Overhead Wires Underground from Florida Power & Light Company

Dean Tramentano, Account Manager for the Town of Palm Beach for Florida Power & Light Company, introduced himself to the Town Council.

Public Works Director Al Dusey reported that FP & L had been asked to do some ballpark estimating on two different types of installations. One of them was for a main line, such as County Road, and for roads behind Worth Avenue and Royal Poinciana Way. The area behind Worth Avenue was so over developed that it would be impossible to put something underground there, as well as the area of Royal Poinciana Way. A feasibility analysis had been accomplished on a section of County Road, which would cost \$500,000 for one-third of a mile.

Mr. Wyett suggested that the record indicate the potential total cost to go north/south with underground wiring, which would approximate \$18,000,000.

No action was taken by the Town Council at this time.

Mr. Dusey brought up the area off South Ocean Blvd., Emerald Beach Way, where services could go underground for approximately \$17,000

Town Engineer James Bowser explained that there was a new house being constructed on that street, and FP & L requested a service line increase to increase the size of the cable there. It was his personal opinion that power lines on the sides of the roadway were less obtrusive than wires hanging across the street, and he believed that underground conduits would be appropriate in order to eliminate lines going across the road.

Mr. Shaw commented that he had understood that all future upgraded service would be underground.

Mr. Bowser explained that this case involved the feeder line that went from the west side of South Ocean Blvd. easterly to the terminus of Emerald Beach. There was no requirement that the owner would have to bury the whole pole line just because the size of conductors needed to be increased.

Mrs. Smith suggested that this item be deferred until the May Town Council Meeting so that the property owner could be contacted.

Mr. Wyett made a motion to defer this item until the May Town Council Meeting; seconded by Mr. McLendon. On roll call the motion carried unanimously.

Town Clerk Pollitt administered the oath to all those who would be testifying in the following proceedings.

(At this time Item XIV. Development Reviews. B. Old Business, 16 was heard per the request of Attorney Ron Kolins).

16. Site Plan Review No. 3-97 with Variances - Ed Cury, 110 Hammon Avenue; located in the R-C Zoning District; to allow construction of three multi-family units. Variances requested are to provide west side yard setback of 13.5' in lieu of 25' required, to provide east side yard setback of 13' in lieu of 25' required, to allow a rear yard setback of 20' in lieu of 30' at Unit C, and to allow privacy walls at a height of 9' in lieu of 7' maximum allowed.

Attorney Ron Kolins, on behalf of Ed Cury, addressed the Town Council, stating that Mr. Cury had proven himself to be a specialist in designing first class homes. The property was an enclave surrounded by incompatible and nonconforming uses and structures. Mr. Kolins displayed exhibits of the Site Plan, locating the areas where the four variances were being requested. He explained that Mr. Cury was attempting to design a project without creating homes with a tunnel effect and without burdening Hammon Avenue with front loading garages and front doors, and exhibited a rendering of the proposed project.

Ex-parte communication was declared by Mr. Shaw with Mr. Cury; Mrs. Smith with Mr. Kolins about Site Plan Review 3-97 with variances; by Mr. McLendon with Mr. Kolins and Mr. Cury; by Mr. Wyett with Mr. Kolins concerning the project.

Mr. Kolins continued with his presentation, stating that he had spoken with neighboring property owners; Mr. Daniel Green, Mr. Robert Woods, and Mr. and Mrs. Garick Stevenson who were in support of the project. Mr. Kolins read a letter of support from Mr. and Mrs. Stevenson into the record.

Mr. Kolins addressed the issue of hardship, explaining that there were no hard and fast rules about what was and what was not a hardship--the trend in the law today was to use a standard called practical difficulties for dimensional variance cases. He stated that he knew of nothing in the law that stated a variance could only be attained if there was some physical problem about the property, or any other restriction other than the sound discretion of the governing body. He asserted that there were a number of hardships connected with the property in question:

- a) A residentially zoned piece of property was surrounded by non-residential type uses, uses that were not appropriate

in their own zoning categories, uses and structures that were nonconforming, and uses which created noise and odor, all of which were incompatible with residential.

- b) Property on two sides of the property in question were zoned as different zoning districts--to the rear was an R-B district; across the street was R-D. The housing type created by Mr. Cury was much more like single family housing, with the same type of impact, as opposed to apartment housing.
- c) The Town Code did not provide appropriate zoning regulations relative to the kind of housing done by Mr. Cury. Therefore, unrealistic and inappropriate standards were required for the type of housing proposed.

Mr. Kolins suggested that the project was in the public interest, which was a concern with variances in the Code; that the granting of the variance would be in harmony with the intent of the Code; that the project would upgrade the area and would enhance property values, and there would be little impact on the area.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police Department: no comments. Fire Department: The building will be required to be sprinklered. Comprehensive Plan: Does not meet criteria for granting variance; should be designed to conform to the Town Code. Public Works: No comment. Town Engineer: Provide water quality retention for the first one inch of water for the entire lot. Rebuild and upgrade sanitary sewer in rear of easement for entire length of property. Building Department: Hardships must be addressed; less impact with two units. Town Manager: Concurs with staff comments.

Attorney Robert Deziel, representing Mr. and Mrs. James Kahn, 115 Gulfstream Road, addressed the Town Council, stating that his client lived just to the south of the property in question. In a response to the claims of Mr. Kolins, he noted that the south side of Hammon Avenue was zoned R-C, which was a residential neighborhood blocks away from any commercially zoned property. The property of Mr. and Mrs. Kahn was in the R-B District abutting the property in the R-C District. Mr. Deziel noted that there was only one nonconforming use which did not even abut the property of Mr. Cury. Mr. Deziel referred to the claim of Mr. Kolins that the property of Mr. Cury was surrounded by incompatible housing, however, Mr. and Mrs. Kahn had a nice, beautiful home in the R-B District right next to the property. Mr. Kolins had commented that the Code did not contemplate the kind of product that Mr. Cury proposed--Mr. Deziel asserted that development was intended to fit in with the neighborhood, and the property of the Stevensons did not abut the property of Mr. Cury. Mr. Deziel asserted although Mr. Kolins had cited the hardship of residentially zoned property being surrounded by non-residential zoned uses, however, there was nothing but residentially zoned property abutting the property of Mr. Cury. Mr. Deziel summarized that it would be an extremely poor public policy for the Town Council to allow a speculative developer to come in with new construction and re-write the Code, and that there was absolutely no hardship involved.

Attorney Frank Badach, representing Charley's Crab Restaurant, agreeing with the comments of Mr. Deziel. He noted that Town staff had summed up the correct position. There was no reason why Mr. Cury could not build two completely conforming single family dwelling units on the property. He asserted that the applicant was attempting to create something that was not permitted under Town ordinance.

Attorney Kolins responded that Town Code allowed his client a density of three units. He stated that he did not hear Mr. Deziel give a reason for the objection of his client.

Joyce Kahn, 115 Gulfstream Road, addressed the Town Council clarifying the position of her home in relationship to the property in question.

Director of Planning, Zoning & Building Robert Moore stated that the purpose of the R-C Zoning District was to maintain a generally spacious environment for residential uses, but at the same time permit a desirable variety of housing types. Mr. Moore stated that he disagreed with the assertions of Mr. Kolins, and the only hardship that staff could find was a marketing hardship--three units could be built on the property, however, that was not the basis for granting a hardship.

Attorney Kolins responded that the proposed project could be called a transition between single family and apartments. He asserted that Mr. Deziel had misquoted him a number of times. Mr. Kolins referred to the guru of municipal law, McQuillan, who said that indeed the very purpose of variances allowed by zoning officials was to avoid practical difficulties and unnecessary hardship. He referred to the complaint of Charley's Crab Restaurant, noting that there was no more nonconforming use building operation in the Town than Charley's Crab.

Mr. McDonald noted that no letters had been submitted from Hammon Avenue, and asked Mr. Kolins if he had spoken with neighbors on Hammon Avenue?

Mr. Kolins responded negatively, and displayed a photograph showing Hammon Avenue which was full of multi-family dwellings.

Mr. Shaw stated that he did not see how there was justification from the zoning standpoint to the economic issue of buying a piece of land to create three houses versus creating two houses.

Mr. Kolins responded that this was not an economic issue, because Mr. Cury could build two single family houses that would be of equal or greater economic value, however that would be incompatible with the property, as compared to what he was proposing. The issue was one of the given property, what surrounded it, and how the Town Code did not deal with this particular situation.

Mr. Deziel stated that his client would have no opportunity to object as long as the applicant complied with Code

requirements. The applicant would either have to go with three units and comply with the three unit setbacks, or two units and comply with the two unit setback.

Mr. Kolins stated that the applicant would agree to withdraw the request for the rear variance, if acceptable to Mrs. Kahn. The critical issue for the applicant was the side setbacks, and he offered to withdraw the requests for the rear variance and the higher wall request.

Mr. McLendon remarked he liked the project, and that the major problem was that there was no real place in the Code requirements for the situation, and suggested that the issue be addressed in the next Zoning Season.

Mr. Kolins suggested that a concession be made to cut the request back to 15' on either side.

Mr. Wyett suggested that the matter be deferred.

Mr. Shaw made a motion to approve Site Plan Review 3-97 with the following changes to the application:

The western side setback and the eastern side setback would both be at 15'.

There would be no rear setback variance request.

The privacy walls of 9' would be approved as long as they reach 6' as indicated on the plans in front.

The motion was seconded by Mr. McLendon.

Mr. Randolph asked if the motion included a finding pursuant to Section 10.13, Items A through G?

Mr. Shaw added that the hardship of Items A through G in Section 10.13 would be included in his motion.

Mr. Deziel commented that the 25' height was very high when the structure was abutting a single family district, and suggested that the applicant could lower the beam height and reduce the extent of the variance on the sideyards.

Mr. Randolph was requested to read the hardships delineated in Items A through G in Section 10.13:

- A. The special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other land, structures or buildings in the same zoning district.
- B. That the special conditions and circumstances do not result from the action of the applicant.
- C. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district.
- D. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance, and would work unnecessary and undue hardship on the applicant.
- E. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- F. Not applicable.
- G. That the grant of variance will be in harmony with the general intent and purpose of this ordinance, and that such variance will not be injurious to the area involved, or otherwise detrimental to the public welfare.

On roll call, the motion failed 2/3, with Mr. Shaw and Mr. McLendon casting affirmative votes, and Mr. McDonald, Mrs. Smith, and Mr. Wyett casting negative votes.

4. Consideration of Proposed Settlement of Claim Regarding an Automobile Accident - Mary Patrickson vs. Town of Palm Beach

Assistant Town Manager Peter Elwell addressed the Town Council, referring to a memorandum dated March 28, 1997 from Risk Manager Barbara Martinuzzi, setting forth the circumstances of the claim, and her recommendation to settle the matter for a total of \$15,000 inclusive of all costs, fees, and related expenses in exchange for a general release.

Mr. Wyett made a motion to approve the settlement in the amount of \$15,000; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

5. Consideration of FY98 Proposed Budget Calendar

Town Manager Doney referred to his memorandum of April 2, 1997 concerning the FY98 Proposed Budget Calendar calling attention to several important dates: Thursday, May 29 and Friday, May 30 were the initial Finance & Taxation Committee meetings to review the current and proposed budgets with each individual department head; Tuesday, July 29 at 10:00 A.M. a Special Town Council Meeting would be held to set a tentative operating millage rate, as well as the date, time and place for the Public Hearing (suggested date: September 4, 1997 at 5:01 P.M., with the second hearing being held on September 9, 1997 at 5:01 P.M.).

Mr. McLendon made a motion to approve the Proposed Budget Calendar for FY98; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

6. Audit Report

a. Audit Report for Fiscal Year Ending September 30, 1996 - Discussion and Acknowledgment of Receipt

Town Manager Doney referred to the memorandum of Acting Finance Director Cheryl Somers, dated April 3, 1997, presenting the Audit and Comprehensive Annual Report. Section 11.45 of the Florida Statutes required that the report be received at a regular meeting of the governing body within 30 days of the date of receipt. The report had been received from the auditing firm on March 28, 1997, and was now being presented to the Town Council for acknowledgment of its receipt, and authorization of transmittal to appropriate State agencies.

The following recommendations were made:

- 1) The appropriation and transfer of \$1,000,000 from the Undesignated General Fund Balance to continue replenishing the Coastal Protection Reserve Account in the Capital Fund. This would bring the balance in the Coastal Protection Reserve Account to \$3,524,818 at April 8, 1997. The attached Exhibit A gave a recap and chronology of expenditures and revenues in the Coastal Protection Reserve Account.

Mr. McLendon made a motion to approve the transfer of \$1,000,000 from the Undesignated General Fund Balance to continue replenishing the Coastal Protection Reserve Account in the Capital Fund; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

- 2) The appropriation and transfer of \$1,000,000 from the Undesignated General Fund Balance to a newly created Storm sewer Pipe Replacement Reserve Account in the Capital Fund. The Town had been aggressively pursuing the replacement of deteriorated metal storm sewer pipes. The current five-year Capital Improvement Program had a planned expenditure of \$700,000. Also, the drainage improvements on Cocoanut Row were primarily related to deteriorated piping. The Public Works Department had performed a number of point repairs on the corrugated metal pipe system over the past several years which was an indication that much of this pipe was close to the end of its useful life.

Mr. Wyett made a motion to approve the transfer of \$1,000,000 from the Undesignated General Fund Balance to a newly created Storm Sewer Pipe Replacement Reserve Account in the Capital Fund; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Doney pointed out that the April 3, 1997 memorandum of Mrs. Somers also indicated an analysis of the General Operating Fund Balance reservations and designations as of September 30, 1996, as well as the reserves/working capital for other funds accounted for by the Town.

Mr. Wyett made a motion to accept and receive the audit for the Fiscal Year ending September 30, 1996; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

b. Management Letter and Staff Response - Acceptance (Pages 68 - 75 of Audit Report)

Acting Finance Director Cheryl Somers addressed the Town Council asking if there were any questions concerning the Management Letter, including staff responses, as part of the Annual Financial Report?

Mrs. Smith directed a question to Mr. Doney concerning the Golf Course Operations and Operating Transfers Out section: She asked if any consideration had been given to privatizing the Golf Course, since it had been operating at a loss for the past 3-4 years?

Mr. Doney replied that it had been discussed in the past, but losses had been anticipated as a result of necessary capital improvements made on the Golf Course. From an operational perspective privatizing the Golf Course was possible, however, proposals would have to be requested.

Mr. Shaw suggested that the operations of the Golf Course and Parking Fund be evaluated and re-addressed at the upcoming Finance & Taxation Committee meetings.

Mr. Shaw made a motion to accept the Comprehensive Annual Financial Report and the Audited financial Statements and Required Supplementary Information for the Town of Palm Beach Employees' Retirement System; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

7. Consideration of Authorization for Mayor to Execute Agreement with the City of Lake Worth Fire Department For Use of the Town's Washer/Extractor

Fire-Rescue Chief Ken Elmore addressed the Town Council, stating that the City of Lake Worth Fire Department had requested the use of the Town Washer/Extractor unit which was used solely to clean contaminated gear and uniforms. The Lake Worth Fire Department did not have such a device and would be willing to pay the Town for its use on an intermittent basis under the guidance of Town Fire personnel.

Mrs. Smith stated that it was great that the two communities were working together.

Mr. Wyett made a motion to approve authorization for the Mayor to execute an Agreement with the City of Lake Worth Fire Department for use of the Town Washer/Extractor; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Chief Elmore noted that a similar type agreement was in process with the West Palm Beach Fire Department--since the Town had purchased a Special Operations Vehicle there was no longer a use for the trailer that had held all of that equipment. West Palm Beach Fire Department needed a place to store and carry shoring equipment, while the Town did not have the equipment but did have the trailer to carry it with. Therefore, a cooperative agreement was in process where the equipment and trailer would be shared between the two municipalities.

8. Consideration of Issues Regarding Legal Counsel for Mar-a-Lago Club, Inc. vs. Town of Palm Beach

(Please see X. OLD BUSINESS B. Other a.).

9. Consideration of Inquiries Regarding Town Property - Potential Purchase, Sale, Lease, or Other Change of Status

Town Manager Doney referred to his memorandum of March 28, 1997 wherein the current policy of Town staff was stated regarding inquiries concerning the potential purchase, sale, lease, or other change of status of Town properties. He noted that it should be kept in mind that, according to Statute, in order for Town owned property to be exempt from ad valorem taxes when leased to others, it must be used for governmental, religious, charitable, scientific, or literary purposes. Mr. Doney stated that he believed the existing Town policy was the most effective way for the Town to consider periodic real estate inquiries.

Mr. Shaw stated that he did not believe Town staff should take time to review speculative applications, however the appropriate response to any individual interested in leasing any piece of property from the Town would be that a proposal should be provided. There were two issues involved on any Town owned property: the change in the tax relationship of the property, and liability. If the tax and the liability would be greatly exceeded by the revenue that could be generated over the term of the lease, the proposal would be viable.

Mr. Doney replied that proposals should be complete and stand alone by its own merits, and what had happened in the past was that piecemeal information had been provided. He pointed out that there was a related consideration if Town properties were made available for lease, sale or purchase, that it may be necessary to put out requests for proposals so that all interested parties would have the same opportunity at the same time.

Town Attorney Randolph stated that the procedure for leasing property would not include a bidding procedure.

Mrs. Smith explained that if the Town Council decided to change the policy on leasing of Town land a formal proposal could be requested from anyone expressing an interest in Town property.

Mr. Shaw made a motion that the policy on inquiries regarding town property be that any individual interested in leasing property from the Town of Palm Beach would provide the Town with a complete lease offer, including costs, terms, full indemnification, and any other requirements that the Town Attorney would incorporate; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Doney clarified that consideration of proposals by the Town Council would not be automatic, but would be decided after review of each proposal.

10. Consideration of Request for Year-Round Drawbridge Regulations to the United States Coast Guard for the Flagler Memorial, Royal Park, and Southern Boulevard Bridges

Town Manager Doney referred to the letter from Congressman Shaw, dated March 21, 1997, to Mayor Ilyinsky identifying the proposed special Drawbridge Regulations for the Flagler Memorial, Royal Park, and Southern Boulevard Bridges.

Mrs. Smith asked why the Flagler Memorial and the Royal Park Bridge were both opening at the same time? She remarked that more appropriate times could be suggested, and then the Mayor could get back to Congressman Shaw.

Mr. McLendon suggested a 45 minute interval be used.

Mr. Doney suggested the times of 4:15 P.M., 4:30 P.M. and 5:15 P.M.

Mr. Wyett commented that there may be a problem with that because of the traffic back up at rush hour, suggesting that the bridge could stay down during the rush hour.

Mr. Shaw made a motion to request that the Mayor correspond with Congressman Shaw concerning the opening of the drawbridges, suggesting that the Flagler Memorial be timed at 4:30 P.M. and 5:15 P.M., and the Royal Park Bridge at 4:45 P.M. and 5:30 P.M.; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

11. Consideration of Legal Billings from Miller and Van Eaton, P.L.L.C., Regarding Telecommunication Issues

Town Attorney Randolph reported that a breakdown of legal costs from Miller and Van Eaton had been accomplished, as well as a projected budget for services for the telecommunications ordinance on the BellSouth negotiations. The costs included the preparation of the Telecommunications Ordinance (approximately \$10,000), and BellSouth Franchise Renewal (approximately \$5,000).

Assistant to the Town Manager Dave Jakubiak noted that the costs on the BellSouth Franchise issue would depend upon how negotiations went, and any unforeseen problems that may occur.

Mr. McDonald explained that he had requested the breakdown because the issues were contract issues, not litigation issues. If circumstances required a deviation from the estimated fees an explanation could be provided and the expenses would then be monitored along the way. Mr. McDonald suggested that the policy in the future included competitive fee estimations.

Mr. Randolph commented that there was a difference in quoting fees on real estate contracts as opposed to entering into open ended negotiations on a franchise, and that it would be difficult for an attorney to estimate costs in this regard.

Mr. McDonald replied that he did not disagree with the statement, but commented that an experienced attorney would have a good understanding of the costs of drafting of an ordinance.

Mr. Jakubiak clarified that costs on the Comcast Cable Franchise Renewal included significant conference calls, since issues had come up that had not been projected.

Mr. McDonald suggested that estimates be given on contractual matters; that the projected cost of \$10,000 for the telecommunications ordinance project be clarified as to whether it included the previous \$4,164.75 already billed; and that more data be given periodically, rather than only at the end of the project.

12. Consideration of Proposed Telecommunications Ordinance and Related Telecommunication Issues

Assistant to the Town Manager Dave Jakubiak referred to his letter of April 3, 1997, including the Telecommunications Ordinance, and recommended that the ordinance be sent to the Ordinances, Rules and Standards (ORS) Committee for review.

Mr. Shaw made a motion to send the Telecommunications Ordinance to the Ordinances, Rules and Standards (ORS) Committee for review; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. McDonald recommended that if Mr. Miller was asked to attend the ORS meeting, he attend by conference call rather than in person.

13. Consideration of the Placement of Sand from the Lake Worth Inlet Sand Transfer Plant or the Maintenance Dredging Operations at the Lake Worth Inlet as Related to the Beach Sloping Plans

Mr. McLendon explained that he had requested that this item be placed on the Agenda because of the continued correspondence with respect to the location/placement of the sand transferred under the inlet from the Plant, and the dredged sand from the inlet.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON APRIL 8, 1997

Public Works Director Al Dusey explained that Town staff was not in control of what was happening with the permit, since it was issued by a State Agency to the Corps of Engineers. In the past, because of large amounts of sand, the County had made suggestions as to how the sand should be placed in order to keep it at the north end. The long term solutions would include part of the Inlet Management Plan involving a sand elevation of +7, based on coastal engineering principles.

Mr. McLendon mentioned that he had sent a memorandum to Mr. Randolph relative to the modification of the Department of Environmental Protection (DEP) Permit for sand transfer.

Mr. Randolph would respond to the memorandum at the May Town Council Meeting.

Dr. Sanford Kuvin addressed the Town Council, stating he had sent Mr. Dusey an inquiry on January 18, 1997 addressing the issue of sand elevation. He noted that Town Engineer Bowser had communicated to the Army Corps of Engineers in 1995 giving the opinion that the elevation should not go above 1.6. The Department of Environmental Regulation requested raising the berm (the elevation of the sand) to 7' or 8'. He noted that there were complementary but diverse interests that all want the elevation to occur, and he was glad to hear that would be part of the Inlet Management Plan.

14. Consideration of Conflict of Interest Issues Regarding the Representation of the Town by a Law Firm with a Potential Conflict

Mr. McDonald explained that this item was placed on the Agenda because the firm of Edwards and Angell, who was suing the Town in the Burrows case, was hired to do the bond financing, and the question was raised of the Town conflict of interest policy.

Town Attorney Randolph responded that the Town did not have a specific conflict of interest policy and in this case the bond counsel had been hired by the Town to do a minimal amount of work. Apparently they had checked for conflicts and discovered that their law firm was also representing Mr. Burrows against the Town in a Petition for Writ of Certiorari, so they advised the Town of the situation. They had then written to the Town Manager asking that he sign a conflict letter acknowledging the conflict, but basically saying it was not of concern. Because of the timing of the situation, and because the case of Mr. Burroughs involved only an appeal of the Council's decision, it had been decided to move forward. Mr. Randolph explained that under normal circumstances, where timing would allow it, and the amount involved was substantial, the Town Council would have been asked for advice.

15. Consideration of Occupational License Issues - Post Office Boxes

Chief Terlizzese reported that he and Director of Planning, Zoning & Building had been directed to discuss the Occupational License issue regarding post office boxes, which they had done.

Mr. Moore reported that licenses were not issued to U.S. Post Office boxes per se. He noted that there were approximately five mail box locations in the Town that offered a variety of services for businesses to hang their hats. There were 20 at 292 South County Road, and 29 at 205 Worth Avenue (some with desk space, some without). He advised that Mr. Randolph was looking into some opinions from the Attorney General as to regulation of Occupational Licenses in the Town. He suggested that this study be completed and a full report be given at the June Town Council Meeting, which would coincide with the new ordinance with fee increases which would be brought forward at that time.

Mr. Shaw suggested that no new Occupational Licenses be granted until this issue was resolved. He explained that the location of the business was not the problem, but whether an individual or business was entitled to get an Occupational License at a place where they were not conducting their occupation.

Mr. Randolph responded that an individual entitled to an Occupational License under the current code could not be precluded from getting them. He explained that further research would reveal whether the law would deal with the issue, or whether it would be merely a policy matter.

Mr. McDonald made a motion to defer the Occupational License issue to the June Town Council Meeting; seconded by Mr. Shaw. On roll call, the motion carried 4/0, as Mr. Wyett was out of the room.

16. Consideration of Attendance and Expenses of Councilman Sam McLendon at a Conference in Orlando

Mr. McLendon explained that the registration fee for the American Waterworks Association was \$50, the Award Luncheon was \$25, and the hotel room was approximately \$140-\$150. Mr. McDonald made a motion to approve the attendance and expenses of Councilman McLendon at the American Waterworks Association Conference in Orlando; seconded by Mr. McLendon. On roll call, the motion carried 3/0, as Mr. Shaw and Mr. Wyett were out of the room.

17. Consideration of Traffic/Safety Study at the Par 3 Golf Course

Mr. McDonald suggested that traffic be surveyed again at the Par 3 Golf Course in order to see if there were any additional safety measures that would need to be taken, and made a motion that the issue be discussed at the May Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

18. Consideration of the Clean-up of the Spoil Islands Leased by the Audubon Society

Mr. Shaw made a motion that the lease and accompanying responsibilities concerning the Spoil Islands be discussed at the May Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

At this time, Mr. Shaw made a motion to defer Item XI.D.1 (Consideration of Request by Mr. Mike Stein for Street Lights on El Mirasol) to the May Town Council Meeting; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mrs. Smith suggested that administration advise the appropriate parties that the opportunity to be heard had been provided at this Town Council Meeting, and if there was no one to address the item in May it would be off the Agenda.

XII. COMMENTS OF THE TOWN COUNCIL MEMBERS

There were none.

XIII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR MARCH 1997

Mr. Shaw made a motion to approve the Warrant List and Fund Expenditures for March, 1997; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of March 26, 1997 -

The major matters were:

A. Deferrals and Continuations - Major Projects:

- B1-97 Application by Ronald Schram, 1420 North Ocean Blvd., for construction of a new beach house - approved.
- B4-97 Application by Mr. and Mrs. Norman Bahary, 160 Kings Road for change in style from contemporary to Spanish and the addition of a two-car garage - deferred.
- B9-97 Application by Llwyd Ecclestone, 190 South Ocean Blvd., for demolition of garage/staff quarters, addition of a new garage/staff quarters and enclosure of an existing courtyard - approved.
- B10-97 Application by A. Aiken, lot 7.2 revised plat of Island Road Development, for new residence and landscape plan - deferred.
- B27-96 Application by Mr. and Mrs. Richard E. Smith, 1100 North Ocean Blvd., for removal of seagrapes from the construction site - landscaping of area will be accomplished. Motion carried for Mrs. Kinsella to work with the architect to create the best possible landscape solution for the area where the seagrapes were removed.
- B5-97 Application by Mr. and Mrs. Burkhead, 690 Island Drive, to remove and replace an existing two-story wing; remove and replace the pool and deck, and facade changes - approved.

New Business - Major Projects:

- B16-97 Application by James Woolens, 1080 North Ocean Blvd., for demolition of existing residence and construction of new two-story Mediterranean style residence - deferred.
- B11-97 Application by Palm Beach Country Club, 760 North Ocean Blvd., to enclose a 2,100 square foot portion

of existing outside patio area - approved.

- B12-97 Application by Eugene Fagan, 153 and 15 Root Trail, to relocate the front door, add a front window, remove the stone siding and install new wood siding, and change the roof from asphalt shingles to metal tiles - approved.
- B13-97 Application by Kevan Boyles, 240 Miraflores, to add covered entry with engaged columns, free standing columns, and additional trim - denied.
- B15-97 Application by Robert G. Markey, Trustee, 1415 and 1423 South Ocean Blvd., for demolition of existing residence and plans for new residence - approved.
- B17-97 Application by Classic Homes and Remodelers, Inc., 215 Southland Road, for new two-story Bermuda style residence - deferred.
- B18-97 Application by Mr. and Mrs. Beard, 410 Chilian Avenue, for new two-story Mediterranean Revival residence - deferred.

Mr. Wyett made a motion to approve the Major Matters considered by the Architectural Commission at its meeting of March 26, 1997, as so noted in the minutes of the meeting.

B. Variances, Special Exceptions, and Site Plan Reviews

At this time Town Clerk Pollitt administered the oath to all those who would be testifying in the following matters.

Old Business

1. Special Exception No. 43-96 - Sandsong Investments, Inc.; 206 North Ocean Boulevard; located in the R-B Zoning District; to allow construction of a beach house (*Deferred from December 10, 1996, January 14, 1997, and February 11, 1997*)

Ex-parte communication was declared by Mr. Wyett with Mr. Deziel, as well as with many of the neighbors on the street involved, who expressed concern regarding beach access, and by Mayor Ilyinsky with a neighbor on one of the streets involved.

Attorney Randolph noted that when ex-parte communication disclosures were made the person spoken to as well as the subject matter of discussion should be revealed.

Attorney Robert Deziel, representing Sandsong Investments, addressed the Town Council stating that he wished to withdraw the application without prejudice; the wall on the beach would still be built, and before returning to the Town Council the neighbors and their attorney, Mr. Broberg would be notified.

Mr. Deziel explained that his client was in Ireland, and had not yet decided whether he would build the main house.

Mr. Wyett asked if there would be beach access from the street?

Mr. Randolph explained that the easement could not be closed off with a locked gate.

Attorney Peter Broberg, on behalf of some of the residents of Seminole, and surrounding areas, addressed the Town Council, asking if the application for Special Exception and Site Plan, which included the wall, were withdrawn in entirety.

Director of Planning, Zoning, and Building Robert Moore explained that the application showed the Site wall, however, there was no approval process required in order to build the wall, other than a required permit.

Mrs. Smith suggested that the neighboring property owners could perhaps purchase a small portion of the property in order to allow beach access.

Mr. Deziel stated that his client would have a month to decided whether to obtain a building permit.

Mr. McDonald made a motion that the withdrawal of Special Exception 43-96 be approved; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Carol Martino stated that numerous attempts had been made to resolve the access issue with the property owner, however, a temporary wall had been erected.

2. Variance No. 5-97 - Jack Friedman, 901 North Ocean Blvd.; located in the R-A Zoning District; to allow construction of two additions at a height beginning at 7.14' above zero datum (16.69' NGVD) which is the

highest elevation of the crown of the road. *(Deferred from March 11, 1997)* - **Request for Withdrawal per Letter Dated March 26, 1997, from Mr. Michael J. Johnson, Architect, and Mr. Jack Friedman, Owner**

Withdrawn.

3. Variance No. 6-97 - Michael Kalisman, 146 Dunbar Road; located in the R-B Zoning District; to allow construction of an addition thereby expanding a nonconforming accessory building providing no side yard setback in lieu of 15' required, and to allow two entry gates setback 15' in lieu of 18' required. *(Deferred from March 11, 1997)* - **Request for Deferral to May 13, 1997, per Letter Dated March 27, 1997, from Mr. Ronald K. Kolins**

Deferred to the May 13, 1997, Town Council meeting.

4. Variance No. 7-97 - Homa Bahary, 160 Kings Road; located in the R-A Zoning District; to allow construction of an addition with a 28' 2" high tower exceeding the maximum building height plane at a setback of 36' 4" in lieu of 56' 4" required. *(Deferred from March 11, 1997)* - **Request for Withdrawal per Letter Dated March 20, 1997, from Mrs. Homa Bahary**

Withdrawn.

New Business

5. Variance No. 9-97 - Stephen Norris, 9 Lagomar Road; located in the R-A Zoning District; to allow construction of a wall at a height of 9.5' in lieu of 7' maximum allowed.

There was no ex-parte communication declared by any Council Member.

Raworth Wall, of Newlands' Design Group Inc., representing Mr. Norris, addressed the Town Council stating that the request was for an extension of a balustrade going east along the property line, which was a 9'6" wall, of which 2'6" was the balustrade extension. He exhibited photographs of the area in question, as well as a plan of the area under review. He noted that the reason for the variance request was because of the terrible difficulty in getting to the rear of the property.

Director of Planning, Zoning & Building Robert Moore reported that there were no objections from staff, however, there was a question regarding the restoration of the wall on the adjacent property that had come down by mistake.

Mr. Wall replied that would be reviewed and addressed before a permit was issued.

Mr. Moore stated that would have to be resolved before a building permit was issued.

Mr. McDonald made a motion to approve Variance 9-97, contingent upon a satisfactory resolution of the wall in question; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

6. Variance No. 10-97 with Flood Variance - Gerald Tsai, 1000 N. Lake Way; located in the R-B Zoning District; to allow construction of replacement roof from mansard to flat thereby increasing the volume of a nonconforming structure. A flood variance is requested to allow major improvements to a residence that has a finished floor elevation of 7.3' NGVD in lieu of 7.5' minimum required.

Ex-parte communication was not declared by any Council Member.

Attorney Peter Broberg, on behalf of Gerald Tsai, addressed the Town Council, stating that two variances were being requested.

Raphael Saladrigas explained that the existing footprint of the building would be maintained; the walls would be straightened from 67 degrees to 90 degrees, so the cubic content ratio would change from 3.95 to 4.05. Based on the current zoning, there was nothing that could be done with the footprint, which would actually decrease along the west wall. The green space would be increased.

Director of Planning, Zoning & Building Robert Moore gave staff comments: There were no objections; these were the minimum variance requests, and it was recommended that a Hold Harmless Agreement be a condition of granting the variance for the flood elevation.

Ms. Joan Alleman, 991 North Lake Way, addressed the Town Council, stating that her residence was directly across the street from the proposed building. She noted that it had been her understanding that a variance ran with the land, and she asked the opinion of Mr. Randolph in this regard. She stated that the proposed residence would have much more bulk and more height. She suggested that this item be deferred in order to allow her the opportunity to seek legal counsel in opposition to Variance 10-97.

Mr. Saladrigas explained that the overall maximum height of the parapet would not be any higher than it currently was; the lower levels were being brought up to that height. The height from the finished floor to the top of the parapet was currently approximately 16'6"; the new parapet would not exceed that.

Architect Ken Brower stated that any views that were captured from across the street would not be affected by the proposed variance. The current maximum height of the top parapet would not be exceeded. Some of the other surrounding parapets that were slightly lower would be brought up to that height.

Mrs. Alleman stated that the view would be sacrificed for decorative construction. She explained that she had received the notice concerning the construction last week, but had not been able to get in to the Building Department to see the plans until yesterday.

Mrs. Smith noted that Mr. Brower did not know of her concerns until now, so there had not been an opportunity for discussion.

Mr. Brower agreed, stating that he would be happy to discuss the plans with Mrs. Alleman in detail.

Mr. Moore explained that the overall height of the building was within code; the only issue that was before the Town Council was the conversion of the mansard roof of the garage to a flat roof with parapet.

Mr. Saladrigas stated that it seemed as though Architectural Commission issues were being discussed, rather than the issue at hand, which was the variance to straighten the walls of the garage.

Mr. Broberg stated that the house had become nonconforming because of a change in the Zoning Ordinance and the request was minimal. He explained that the request before the Town Council was simply to approve a house that currently had 3.92 cubic content to go to 4.02 cubic content in an area where 4.5 cubic content was allowed.

Mr. Moore explained that only the garage area where the mansard roof was located needed a variance.

Mr. McDonald made a motion to approve Variance 10-97, contingent upon the Indemnification Agreement being executed with the hardship being the change in the Zoning Ordinance, which rendered the property nonconforming, and all of the requirements of the Town Zoning Code 10.13 were met; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

7. Variance No. 11-97 - Mr. & Mrs. Robert Rapaport, 790 South County Road; located in the R-A Zoning District; to allow construction of a one-story addition to a residence allowing 26.83% lot coverage in lieu of 25% maximum allowed.

Ex-parte communication was declared by Mr. Shaw with Mr. Deziel; by Mr. Wyett with Mr. Deziel, and Mr. and Mrs. Rapaport.

Attorney Robert Deziel, representing the applicants, addressed the Town Council, exhibiting photographs and Site Plan, stating that a view easement had encumbered the property for nearly 70 years. It prohibited any construction on the green space area, and any construction on the one story, which was a hardship. In addition there was the hardship concerning the front facade of the structure, as it was designated an historic landmark. The property was currently built out at 51% of its buildable capacity under the Town Zoning Ordinance. The applicant would like to raise that to 71%.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police Department: no comment; Fire Department: Major renovation over 10,000 sq. ft. requires fire sprinklers (domestic system); Comprehensive Plan: Does not meet criteria for granting a variance; Building Department: Could be built to code with awning for open loggia; Town Manager: Additional information requested on hardships.

Mr. Deziel responded that the loggia area was 58' wide and 16' deep, in excess of 900 sq. ft., and the variance needed was approximately 823 sq.ft. He noted that there was a zoning provision (5.31c) that would permit building with an awning without coming before the Town Council for a variance. The problem was that the home was of landmark quality, and the renovations on the lake facade would not match the presentation on the east facade; architecturally it was an aesthetic issue.

Mr. Shaw made a motion to approve Variance 11-97 with the condition that the loggia area would never be enclosed and would always remain as a covered hard roof patio area, with deed restriction, that all of the provisions of Section 10.13 had been met, and with the hardship being the view easement which restricted where the second story could be built; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

8. Special Exception No. 6-97 - 1st United Bank, 180 Royal Palm Way; located in the C-TS Zoning District; to allow continuation of an approved Special Exception by approving a name change (merger with Island National Bank) pursuant to Footnote 3 of the Schedule of Use Regulations.

President Smith declared a Conflict of Interest regarding Special Exception 6-97, as she was a director of Island National Bank.

Attorney Peter Broberg, on behalf of Island National Bank, addressed the Town Council, stating that there were two locations for Island National Bank in Palm Beach (180 Royal Palm Way and 285 Sunrise), and as of April 1, 1997 the bank was merged into First United Bank, and pursuant to Footnote 3 the applicant must come before the Town Council on Item L of the Special Exception in order to prove the Town serving requirement. Mr. Broberg submitted proof certified by an independent accountant, Carrier and Co., showing that both sites were in excess of 50% Town serving.

Mr. McDonald made a motion to approve Special Exception 6-97

Director of Planning, Zoning & Building Robert Moore stated that the documents submitted by Mr. Broberg were related to the existing Island National Bank, and it was necessary to address the intent of the new bank to continue the Town serving condition.

Mr. Broberg responded that the survey by Carrier and Co. had been done on April 4, 1997, which was three days into the ownership by First United, so the documentation was in reference to the new bank, First United. He noted that First United would provide Town serving documentation on an annual basis.

Mr. McDonald made one motion to approve Special Exceptions 6-97 and 7-97 (see below) with the condition that the Town serving documentation be provided as required; seconded by Mr. McLendon. On roll call, the motion carried 3/0, as Mrs. Smith had declared a conflict of interest, and Mr. Wyett was out of the room.

9. Special Exception No. 7-97 - 1st United Bank, 285 Sunrise Avenue; located in the C-TS Zoning District; to allow continuation of an approved Special Exception by approving a name change (merger with Island National Bank) pursuant to Footnote 3 of the Schedule of Use Regulations.

President Smith declared a Conflict of Interest regarding Special Exception 7-97, as she was a director of Island National Bank.

(See Special Exception No. 6-97)

10. Special Exception No. 8-97 - Palm Beach Public School and the Baptist Church in Palm Beach, tenant, 240 Coconut Row; located in the R-B Zoning District; to allow the Church to hold educational activities and worship service on Sunday mornings from 9 to 11 a.m. in the School's gymnasium and to allow off-site parking for church services on the School property on the east side of Coconut Row.

Mr. Reid Moore, representing the applicant, addressed the Town Council, stating that parking was the main issue in this request. He noted that there were eight parking spaces on the school site adjacent to the gymnasium, with an additional seventeen sites within the school complex.

Mr. Shaw stated that he understood there would be more than only Saturday or Sunday use.

Mr. Moore replied that the original application made for the Baptist Church was for usage of the Brazilian Court, which had been approved by the Town Council several years ago. That information had been attached to the application. The present request was only for Sunday mornings between 9:00 and 11:00 A.M. for up to 50 people.

Director of Planning, Zoning & Building Robert Moore gave staff comments as follows: Police Department: Concern with impact on parking on Seaview and Four Arts; Fire Department: No comments; Comprehensive Plan: Should have agreements with the Four Arts for parking in excess of the required parking provided with the school; Public Works: No comment; Town Engineer: No comment; Building Department: Town serving must be addressed; parking on street should be addressed, and should really be eliminated in some way; Town Manager: Concurs with comments above. Mr. Moore noted that numerous letters of concern from residents on the 400 block of Seaview had been received; the musical accompaniment for the religious services must be addressed; the impact of a religious house of worship on the area must be addressed; the Town serving requirement must also address the increase of parishioners from 20 to 50, whereas at least 50% of them must be Town residents or work in the Town.

Mr. Reid Moore responded that there was enough legal parking on the immediate site of the school, and the applicants would pledge not to use the on-street parking of Seaview; the gymnasium was fully enclosed and the musical activity would not be offensive.

At this time Town Clerk Pollitt administered the oath to anyone who would be speaking to this issue, and had not been previously sworn.

Mr. William B. Turner, 429 Seaview Avenue, addressed the Town Council, objecting to Special Exception 8-97, with the major concern being the traffic that would result.

Mrs. Dorothy Wood Letts, 419 Seaview Avenue, addressed the Town Council stating that residents were trying to keep a

nice, quiet neighborhood, and one more facility would increase noise and traffic.

Mrs. Barbara Davidson, 424 Seaspray Avenue, addressed the Town Council, stating that her home was directly across from the school and noise from the building could easily be heard. She commented that the use of the school every Sunday was making a commercial venture out of the public school, and she strongly objected to Special Exception 8-97.

Mr. Peter Van Andel, 417 Seaview Avenue, addressed the Town Council, stating that his home was directly across from the door of the gymnasium. He noted that he had written two letters, and he pointed out three succinct points:

1. The neighbors cope with the traffic connected with the Four Arts, and the public school, and did so willingly. Sundays were a relief, and this request would disturb the quiet time.
2. Parking would be a problem.
3. The noise from the music could be heard by the neighbors.

Mr. Van Andel specified that there was a list of standards that were required to be met in order to grant a Special Exception, and if any one of them were not met the Special Exception could not be granted. He cited two of those requirements.

- 6.40(D), that the use would be compatible with the adjoining development. He commented that he did not think that was true.
- 6.40(G), that the use not result in substantial noise impacts on adjoining properties, and properties generally in the district.

Mrs. Pauline Schwab, 423 Seaview Avenue, addressed the Town Council, stating that backing out of the driveway was already difficult, and she objected to the traffic that would be created by this request.

Mrs. Polly Earl, 209 Seaspray Avenue, addressed the Town Council, stating that she had lived next door to a home where prayer meetings had been held for several years, and it was extremely disruptive. She stated that she believed the Town should protect residential areas from these types of things.

Mr. Reid Moore responded that parking would involve only Coconut Row, the building had been designed for the use being requested, and the music would be noninterfering.

Mrs. Smith asked if the church had looked into using the school cafeteria across the street for services?

Mr. Reid Moore responded that the matter had been negotiated with the school, and the gymnasium area had been suggested by the school, however, the cafeteria would also be acceptable to the church.

Mr. Shaw made a motion to defer special Exception 8-97 in order to provide the church an opportunity to present a comprehensive plan which would include parking, and the times of use of the facility; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

11. Special Exception No. 9-97 with Site Plan Review - Four Seasons Resort, 2800 South Ocean Blvd.; located in the R-D(2) Zoning District; to allow construction of a pool cabana bar and grill to replace existing facilities.

Mr. Lyon Sachs, Co-Owner of the Four Seasons Resort, addressed the Town Council, explaining that the request was basically a cosmetic treatment, as the current facilities were makeshift, and the proposal was to construct a proper enclosed grill facility, completely upgrading the appearance of the area. He exhibited photographs of the existing structure for Council review.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: The Coastal Construction Control Line (CCCL) would be adjusted in the near future; Town serving requirements would need to be addressed; staff had no objection to the proposal.

Mr. Wyatt made a motion to approve Special Exception 9-97 with Site Plan Review; seconded by Mr. McDonald. On roll call, the motion carried 4/0, as Mr. Shaw was out of the room.

12. Special Exception No. 10-97 with Site Plan Review and Variance - First Union Bank, 1070 North Ocean Blvd.; located in the R-A Zoning District; to allow construction of a residence on a lot 120.91' wide in lieu of 125' required, and to allow the building height to be measured from 17.6' NGVD in lieu of 7.5' NGVD per Sec. 2.10(11) of the Town Zoning Code.

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, stating that in 1994 the Town Council had approved a similar request for this piece of property for the same point of measurement reference.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: The overall height should not

exceed the height of the property to the south, and should be reduced by 4', however, he understood that a change to the original application had been submitted in this regard.

Mr. Brindell responded that the actual roof height requested was 47.6', whereas the house to the south was 48.8'.

Mr. Moore stated that there would then be no objections to this application, as long as the height did not exceed the house to the south.

Mr. Brindell submitted for the record the Variance Application of 1994, a copy of the April 12, 1994 Town Council Minutes wherein the Variance was granted; a letter of April 18, 1994 which memorialized that in an affidavit from Kim Gerand addressing all of the various Special Exception and Variance criteria in support of the application.

Mr. Brindell addressed the hardship involved, which was that the crown of the road was approximately 5.9', and the ground level on the property sloped up from the road to a point of about 16.2', so the hardship was the natural contour of the dune at that point. He explained that the original house on the property had been torn down and had an elevation of 17.64'.

Mr. Wyett expressed concern that the house looked too massive for the size of the lot.

Mr. McDonald suggested that in the future the applications indicate whether a trustee was the applicant, so that the Town Council would be clear as to the name of the applicant.

Mr. McDonald made a motion to approve Special Exception 10-97, finding that it met the provisions of Section 10.13 of the Town Code; seconded by Mr. McLendon. On roll call, the motion carried 4/1, with Mr. Wyett casting a negative vote.

13. Special Exception No. 11-97 with Variance and Site Plan Review - Jim Keenan, 230 South County Road; located in the C-TS Zoning District; to allow expansion of an existing SE use (brokerage firm) from 1,828 sq.ft. to 1,982 sq.ft. The variance requested is to continue said use on the ground floor with frontage and entrance directly onto the sidewalk along a roadway.

Mr. Gene Pandula, on behalf of Quick & Reilly, the tenant at 230 South County Road since 1976, addressed the Town Council. Recently a contiguous space in the building had become available, which offered a better floor plan arrangement. The proposal was to delete approximately 780 sq.ft. at the initial location, and acquire approximately 920 sq.ft. at the new location. It was not the intent to increase square footage, however, the space available allowed extra room.

Timothy Frank, Planner/Projects Coordinator, gave the following staff comments: Comprehensive Plan: Should demonstrate Town serving; Building Department: Must address Town serving; no objection to the Variance although it was a difficult area for retail; Town Manager: Concurs with comments of Robert Moore.

Mr. Wyett made a motion to approve Special Exception 11-97, to include all conditions of Section 10.13 of the town Code; seconded by Mr. McDonald with the condition that the Town serving requirement be met.

Mr. Brindell responded that he would now submit documents for the record that indicated 82% of clients met the Town serving requirement.

On roll call, the motion carried 4/0, as Mr. McLendon was out of the room.

14. Special Exception No. 12-97 with Variance and Site Plan Review - CPS Properties, 312-322 Royal Palm Way; located in the C-OPI Zoning District; to allow construction of a third story addition, new front facade, and landscaped islands in parking lot at a front setback of 2' in lieu of 5' required. - **Request for Deferral to May 13, 1997, per Letter Dated March 27, 1997, from Mr. Charles W. Millar, Jr.**

Deferred to the May 13, 1997, Town Council meeting.

15. Special Exception No. 13-97 - Interoffice of Palm Beach, Inc., 125 Worth Avenue; located in the C-WA Zoning District; to allow office use on the third floor and, further, to allow occupancy of 6,614 sq.ft. in lieu of 2,000 maximum permitted by special exception on this third floor. - **Request for Deferral to May 13, 1997, per Letter Dated April 7, 1997, from Mr. Gregory S. Kino**

Deferred to the May 13, 1997, Town Council meeting.

16. Site Plan Review No. 3-97 with Variances - Ed Cury, 110 Hammon Avenue; located in the R-C Zoning District; to allow construction of three multi-family units. Variances requested are to provide west side yard

MINUTES OF THE TOWN COUNCIL MEETING HELD ON APRIL 8, 1997

setback of 13.5' in lieu of 25' required, to provide east side yard setback of 13' in lieu of 25' required, to allow a rear yard setback of 20' in lieu of 30' at Unit C, and to allow privacy walls at a height of 9' in lieu of 7' maximum allowed.

(This item was heard at a time certain of 4:30 P.M. Please see XI. NEW BUSINESS D. Other, immediately following Item 3.)

C. Other

1. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction Work, by Mr. Robert E. Deziel for Ms. Sydel Miller, 1415 and 1423 South Ocean Boulevard

Attorney Robert Deziel, on behalf of the applicant, addressed the Town Council stating the request for the waiver of the Town Code of Ordinances would allow demolition of the existing structures on the south half of the property prior to the May 1 permitted date.

The reason for the request was that the Coastal Construction Control Line was pending, and the construction scheduled was being adjusted to accommodate that. The architect on the project had spoken to the neighbor to the north, the Picowers, and agreement had been made that no demolition or construction would be done on Friday, Saturday, or Sunday. The neighbor to the south, Rod Stewart, was out of the country until the end of the month, and if any objections were received from neighboring property owners they would be addressed.

Mr. McDonald made a motion to approve the Waiver to Section 12-51 of the Town Code; seconded by Mr. Wyett.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Staff recommended approval as long as there was no objection from the Picowers or the Stewarts.

Mrs. Smith asked if the extenuating circumstance to the application was the fact that they had to have the footprint in by a certain date in order to accommodate the Coastal Construction Control Line adjustment?

Mr. Moore responded that was correct--the house would also have to be permitted in order to meet the June 16, 1997 deadline.

On roll call, the motion to approved carried unanimously.

XV. ANY OTHER MATTERS

There were none.

XVI. ADJOURNMENT

The meeting was adjourned at 10:20 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn
5/1/97

ADDENDUM:

Please note page 18. At the Town Council Meeting of May 13, 1997, the following statement was made by Mrs. Smith: "on page 18 of the same minutes it says on the Status Report of the Water Franchise Agreement that Mr. Randolph stated the meeting was held between Mayor Graham and Mayor Ilyinsky, and I do remember that I was there, and I didn't see you, Mr. Mayor. That would be on page 18 of the April 8th minutes, if we're going to go through and make all these corrections, not that it makes any difference to me."

SE/6-4-1997

SE 7-97

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

LAST NAME—FIRST NAME—MIDDLE NAME <i>Smith, Betsy Sleetford</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Palm Beach Town Council</i>
MAILING ADDRESS		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY	COUNTY	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED		NAME OF POLITICAL SUBDIVISION:
		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.

Your responsibilities under the law when faced with voting on 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

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must 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:

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must 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 must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- You must disclose orally the nature of your conflict in the measure before participating.
- You must 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 must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

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 loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

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

I am a director of Island National Bank

Re: 285 Sunrise Ave.)

4-8-97

Date Filed

Signature

L. S. Sente

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, 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 \$10,000.

SE-6-97

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MAILING ADDRESS		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY	COUNTY	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED		NAME OF POLITICAL SUBDIVISION:
		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

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For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

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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:

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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 loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

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

I am a director of Island National Bank.

(Re: 180 Royal Palm Way)

4-8-97

Date Filed

Signature

1884 S. Swartz

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