

TOWN COUNCIL MINUTES OF SPECIAL TOWN COUNCIL MEETING HELD

ON FEBRUARY 25, 1992 AT 5:01 PM

Roll Call

I. CALL TO ORDER AND ROLL CALL. Meeting called to order by President Heeke at 5:01 PM on Feb. 25, 1992 in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilwomen Douthitt and Wiener. (Councilman Ilyinsky was not in attendance.) Also attending were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Jakubski, Mr. Moore, Mr. Zimmerman and Mr. Frank.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE. Invocation was given by Mrs. Peters. Pledge of Allegiance was led by President Pro Tem Weinberg.

Approval of Agenda

III. APPROVAL OF AGENDA. Motion was made by Mrs. Wiener, seconded by Mr. Weinberg to approve the agenda with an item added under Any Other Matters, which will be the consideration of a request for extension of time and related issues with regards to the PEP Reef. Motion carried unanimously on roll call.

IV. PROOF OF PUBLICATION. Mrs. Peters reported the proof of publication has been filed for the record.

Ord. 1-92

V. SECOND READING OF ORDINANCE NO. 1-92.

Mr. Randolph read the Ordinance No. 1-92 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; PROVIDING AMENDMENTS TO ARTICLE 2, SECTION 2.10 ENTITLED "DEFINITIONS", BY REVISING DEFINITION (14) "DOCK"; TO PROVIDE AMENDMENTS TO ARTICLE 4 ENTITLED, "DISTRICT REGULATIONS"; BY AMENDING SECTION 4.10 SCHEDULE A, SCHEDULE OF LOT, YARD AND BULK REGULATIONS, BY REDUCING FLOOR AREA RATIO (FAR) IN THE R-B DISTRICT; MODIFYING FOOTNOTE #23 TO EXCLUDE LOTS FRONTING ON CUL-DE-SACS AND INCREASING ANGLE OF VISION ON LOTS EXCEEDING MINIMUM WIDTHS; MODIFYING FOOTNOTE #3 TO ALLOW PLANTERS OR LANDSCAPING IN PEDESTRIAN WALKWAY; PROVIDING AMENDMENTS TO SECTION 4.10, SCHEDULE B, "SCHEDULE OF USE REGULATIONS", BY ADDING "OUTDOOR SEATING IN CONJUNCTION WITH PERMITTED RESTAURANTS" AS A SPECIAL EXCEPTION USE IN THE C-WA DISTRICT; BY REMOVING HOTELS AND TIME SHARING USES FROM SPECIAL EXCEPTION USES IN THE C-OP DISTRICT; BY CHANGING THE CHARITABLE EVENT EXPIRATION DATE IN THE RESIDENTIAL DISTRICTS; BY ALLOWING OFFICE AND PROFESSIONAL SERVICES AND BUSINESS SERVICES ON FIRST FLOOR IN C-TS DISTRICT AS SPECIAL EXCEPTION USES; PROVIDING AMENDMENTS TO ARTICLE 5 ENTITLED, "SUPPLEMENTARY LOT REGULATIONS", BY AMENDING SECTION 5.17, "EXISTING SINGLE FAMILY DWELLING DEVELOPMENT", BY PROVIDING DEFINITIVE REGULATIONS RELATING TO DEMOLITION OF NONCONFORMING DWELLINGS; BY ELIMINATING SECTION 5.18, "ALTERATION OF NATURAL GRADE" AND BY ELIMINATING SECTION 5.19, "LOT DRAINAGE, GRADE AND TOPOGRAPHY" AND INSERTING A NEW SECTION 5.18, "LOT GRADE, TOPOGRAPHY AND DRAINAGE"; BY AMENDING SECTION 5.47(b), "NUMBER OF BEACH HOUSE BUILDINGS AND SETBACK", BY INCREASING MINIMUM LOT FRONTAGE; AMENDING SECTION 5.48 "SPECIAL EXCEPTION TO HEIGHT REGULATIONS; SPECIAL EXCEPTION STRUCTURES", BY ESTABLISHING NEW REGULATIONS APPLICABLE TO THE R-B DISTRICT; AMENDING SECTION 5.51(b) TO ALLOW TWO STORY ACCESSORY BUILDINGS IN THE R-A AND R-AA DISTRICTS; PROVIDING AMENDMENTS TO ARTICLE 6, ENTITLED "SUPPLEMENTARY USE REGULATIONS," BY AMENDING SECTION 6.21 "SCHEDULE OF OFF-STREET PARKING REQUIREMENTS", BY INCREASING PARKING REQUIREMENTS FOR HOTELS, MOTELS, MOTOR INS AND TIME SHARING USES; PROVIDING AMENDMENTS TO ARTICLE 7 ENTITLED, "PLANNED UNIT DEVELOPMENT", BY AMENDING SECTION 7.10, "PURPOSE", BY REDUCING ALLOWABLE AREA UPON WHICH DENSITY IS CALCULATED; AMENDING SECTION 7.436, "PERMITTED LAND USE"; BY ELIMINATING REFERENCE TO TOWNHOUSES AND HISTORICALLY OR ARCHITECTURALLY SIGNIFICANT MULTI-FAMILY STRUCTURES; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

President Heeke stated he will make the assumption that most people would like to address the FAR aspects in the Ordinance and the first item is Section 1, pertaining to Docks and if there is no objection to that, he will move right on to the FAR subject.

He advised comments will be taken from the public, and asked for each person to identify themselves if they wished to speak and if someone has made similar comments, please do not duplicate that effort. He advised when the audience comments are completed, they will go into Executive Session and questions will be asked of the staff or anyone who has spoken by the Mayor and Council.

Mrs. Patricia Tracey, 244 Nightingale Trail, addressed the Council stating she attended the Town Council meeting on January 21, 1992 and spoke out against this Ordinance and when she left the meeting, she thought the Ordinance had not passed and it was to be sent back to the Zoning Commission, but found that at a subsequent meeting, it was passed due to the threat by the Chairman of the Zoning Commission to resign.

She has secured the minutes of both of the meetings and had a question as to how and why did the Council change its vote and what does it mean about a first reading and second reading. She thought the Jan. 21st meeting was the first reading and Feb. 3rd was the second reading at which time this issue was deleted, but she finds that this particular meeting today is the second reading and the Feb. 3rd meeting was the first reading. She asked what happened to the Jan. 21st meeting?

Mr. Heeke indicated they will answer her questions all at one time.

Mrs. Tracey hoped all understood the implications of the Ordinance, and the biggest elements are the Floor Area Ratio; secondly, the second story can be no more than 50% of the size of the first story; and third, if more than 50% of your home is destroyed by demolition, fire or hurricane, you could not rebuild it in the same square footage.

TAXES: She asked if the Ordinance does pass, is the Council going to decrease their property assessments and taxes, as if this does pass, the properties in the Town will lose a substantial

amount of value, both resale and actual value. She didn't believe that anyone would spend millions of dollars on a piece of property if all they can build is a ranch style home.

OUR FUTURE: She stated the R-B area is the largest single area encompassing thousands of homes and includes every property on the island which is not oceanfront or in the southern estate section, or commercial, or apartments but is the area where most year-round residents live. She felt if this Ordinance is passed, it would be killing the Town. She thought because of an elitist attitude, that didn't cooperate with the Federal Government and allowed access to their beaches, they no longer have beaches and if they are afraid the larger homes are ruining Palm Beach, she thought the Town would be ruined if this Ordinance is adopted.

Ord. 1-92
(cont'd)

She thought if they really truly believed in the Ordinance, then please place it as a referendum in the upcoming election.

She suggested if the Chairman of the Zoning Commission is threatening to resign, they should let him do so as she thought Gerald Goldsmith who serves on the Commission and appeared at the Jan. 21 meeting to state he wished to rescind his vote he made at the Zoning Commission hearings on these matters. She thought he would make an excellent chairman.

Gerard Asher, 238 North Woods Road, addressed the Council in favor of the proposal. He felt the value of the land in Palm Beach is valued two or three times higher than other areas because of the amenities and restrictions the Council has seen fit to impose and he felt the importance of protecting land values cannot be underestimated and is a fragile thing and not guaranteed in perpetuity. He felt that density taken to the extremes can cause slums and they needed to be very careful to protect the values of the land in Palm Beach and he hoped the Council would continue its efforts to adopt the Ordinance. He felt the purpose of government as established in our Constitution is for the general welfare of the people and they needed to be very careful not to pick out individuals. He believed the general welfare has always been interpreted as the greatest good for the greatest number and for the benefit of the majority without prejudice to the minority and he asked them to go ahead with the Ordinance.

Willie Hutton, President of the Palm Beach Board of Realtors addressed the Council talking on behalf of those members of the Board, most of whom were property owners or residents of Palm Beach and the other owners they represent, they are in opposition to any change as stated as it amends the present Floor Area Ratio in the R-B Zoning District. He stated with all due respect to the efforts of Mr. Grace and the Zoning Commission, they do take exception to what has been proposed. He believed the change in the FAR of 0.45 would be a violation of property rights and result in a dramatic decrease in property values. He noted these same property owners have elected this Council to preserve these rights and values and any change would be a violation of the public trust, and that there be no change in the future.

Dr. John Merey, 295 Bahama Lane, addressed the Council, stating his Floor Area Ratio is 34%. He advised his son has a serious medical problem and they would like to enlarge his bedroom but if this Ordinance would be passed, it would not be possible. He asked them to reject the proposed ordinance.

Gene Barbado, 1280 North Lake Way, addressed the Council, indicating he has forwarded to them various petitions with three or four hundred signatures on them, which show how the people in this Town feel about this. He stated the people in this R-B area are not for the FAR reduction. He believed the taxes would not be reduced by the County. He recalled the statement made at a previous meeting that the Zoning Commission is a servant of the Council. He pointed out the Council is the servant of the citizens and what the citizens say should be strongly considered by the Council. He felt this was an unwarranted, unnecessary restriction and he has read the minutes of the past meetings. He has done several layouts on how detrimental this would be for his property and if anyone wanted to come to his office, he would do the same thing for their property. He felt it was a very complicated issue. He was sorry the spent money on this project through consultants as what the Council should do is listen to the Townspeople. He didn't believe there was a problem as he wouldn't mind living next to a larger house, and the Council seems to want everyone to build smaller homes and in his opinion, is not what the residents are interested in, and he urged them to not adopt the Ordinance.

Harold Scott, President of the Palm Beach Civic Association addressed the Council and he read a statement into the record: "The Palm Beach Civic Association fully supports the efforts of the Zoning Commission and only offers these suggestions as a means of their achieving and strengthening the objectives implicit in their earlier proposals. The Civic Association recently has been charged often with applying pressure on the Town Council to take rapid action and avoid the appearance of indecision by calling for further studies. On this particular issue, it is the Civic Association's suggestion that the matter be referred back to the Zoning Commission for more careful consideration and a more comprehensive recommendation, based upon the following premises:

- (1) No increased density.
- (2) No aesthetic degradation.
- (3) No greater intrusion on neighbors.
- (4) Proportionate green space and a grandfathering of existing residences in the event of replacement.

The Civic Association recognizes at this time feelings on both sides are running high. Information by many is incomplete, misunderstood and rumor ridden. Rather than risk emotion driven decisions based upon incomplete understandings, we suggest a "cooling off" period and during which the Zoning Commission can redefine its proposals, further educate the citizenry as to its objectives and legislative recommendations.

The Civic Association is happy to make available communication facilities to assist this dissemination. The Civic Association believes the Zoning Commission and the Town Council in writing the new Zoning Ordinances should be driven by these basic objectives, namely, Zoning Ordinances that do not contribute to increased population and density. Larger houses generally mean more people. Palm Beach is not only built out - it is also peopled out and trafficked out. Do not materially change the aesthetic ambience and character of existing areas. Our RB areas have today a distinctive character and it should not be disturbed by oversized unharmonized anomalies.

Ord. 1-92
(cont'd)

Do not by virtue of building heights or minimal setbacks create structures that intrude on neighbor's privacies - visual overview, noise, and structural domination are constant concerns. Do not minimize the aesthetic importance of adequate greenspace surrounding each structure. The larger the structure, the larger the greenspace. Changing Zoning Ordinances in all communities are a way of life today. In seeing acceptable community standards, aesthetics and density, zoning from time to time inevitably changes, affecting future investment opportunities and valuations. These, in our judgment, while important are secondary considerations to the maintenance of current community values and tax assessments. In view of our earlier statement that many aspects of this complex issue are poorly understood by many citizens, we urge a period of reconsideration and increased communications. We repeat - the Civic Association is offering assistance in the improving of understanding of this complex issue. Thank you."

Ted Tarrone, 510 Island Drive addressed the Council indicating he was opposed to the Ordinance. He stated his taxes were \$11,000 ten years ago and now are \$36,000 and now they want to restrict him to not having a second story or limit the second floor and he was opposed to the proposal.

Harry Gilbert, 234 Chilean Avenue addressed the Council indicating he was an Designer/General Contractor and has many occasions to meet with the Building Department and he felt he put a lot of effort in his work to make the Town a better place to live. He felt they all wanted a better place but he did not believe any government had the right to choose to limit someone's constitutional right to do as they wish with their properties under the present guidelines. He believed ordinances needed to be changed from time to time, however, he thought they needed to get to the root of the matter as families is where it all starts. He intended to build his family in Palm Beach and doesn't want his home or property to be devalued or for the potential of the property not to be realized for the growth of his family. He knew there were older folks in the Town, but there are also younger folks who would like the opportunity to decide their own fate of their properties and not to be governed as to whether or not a second story may or may not be added. He knew the various boards in the Town go over these matters very stringently and many times, three or four sessions are needed before a set of plans is finally acted upon. He felt the process was working well although perhaps a few homes have been built which are objectionable. He believed typically the Architectural Commission and the Town's Building and Zoning Department are governing the situation. He asked them to not adopt the Ordinance.

Michael Burrows addressed the Council indicating he has been living here for almost 40 years and back in those early days, his houses were approximately 2500 to 3200 square feet. He recalled people at that time came to the Town for two or three months and the need for larger homes has been changed by those who live here who now stay here year round and they have families. He stated parts of those homes do include garages, which could use up 600'. He didn't believe they wanted to see a house where people were parking outside simply to defeat the concept proposed and so they could have more space inside.

He stated he has been at the biting edge of some of the hysteria that has come upon the community, the terrible fear of overpopulation, overbuilding, etc., and he thought they have seen the end of that and didn't believe there would be any more apartment buildings being built. He felt that what they are dealing with and needed to consider is the homesite for what makes up the population of most of the people who do live here. He believed there were many people in this Town who lives on a 10,000 square foot lot with a nice house on it and they want to live their lives here but as their families are growing, some of the houses will be torn down. He thought they needed to let those homes be built on the lots, and he thought what they should be most proud of is most of the people in this area love their homes and have landscaping around them so there should be no harm for a house to remain as it has been when a majority of that house will be encircled by a hedge on three sides. He felt perhaps they needed to put this to a referendum which may ease some of the pressure.

Mr. Philip Englehart addressed the Council recalling the prior sessions he has been trying to cover some of the issues which have surfaced and what impresses him most tonight, having seen the progression since early January, is the audience which has grown in size dramatically and he is sure the Council is affected by those numbers. He heard the discussion about two emotional issues: (1) one the fact that a proposal may be viewed by different segments of the population in a different way; (2) that is of the public notice and public discussion and open debate, which are fundamental issues. He has mentioned there was a possibility that this matter was not brought to the forefront of public knowledge sufficiently before it was debated here. He was taken by surprise by some of the provisions of the Ordinance. He felt as each week has gone by and more and more people have left these Chambers and talked to their neighbors, and circulated petitions, and the Shiny Sheet articles is the first time in his opinion that all of the residents in the Town have had an opportunity to understand what was about to happen to them. He believed they were entitled to that knowledge, whether they agreed or did not agree, and he thought it was as much a duty of the Mayor and Council to very judiciously pursue alternatives to the ordinances in good faith, but at the same time to make sure there is never a perception of the wool being pulled over the public's eyes. He emphasized the importance of the size of the crowd here tonight as this certainly makes a point that with knowledge, the number of people in this Town who are very concerned about this issue and have come to present to the Mayor and Council the visible numbers. He urged them to allow the Ordinance to die without the change in the FAR. He suggested a Workshop be held to discuss this matter further and allow everyone to have a chance to speak and this be done before there is a dramatic change made, as he knows there would be a large financial impact on many people if this FAR provision is adopted, and it is only fair that the residents of the Town do have a chance to voice their opinions and this doesn't transpire under any cloak of secrecy.

James Nemec, 1438 N. Ocean Blvd. addressed the Council clarifying what the proposed zoning intended to do. He has done a lot of research on the various zones of the Town, R-B and R-BB and if this is passed, it will reduce the ability of anyone to build on their property and 1125' which will be lost. He stated in addition to that the setback lines are extended to seventeen and one half feet on each side, which is another reduction of 35' on the property. He pointed out the height will be reduced from 35' to 25' and the garage space question is another matter. He felt to alleviate the 3.75 FAR, they would have to build in the garage space and that just isn't fair. He was sure their taxes would not be reduced because the Council says they have to cut down on what then can build. He felt they were depriving the citizens of the full use of their property as well as the full value of their property, which is taking away their rights to use their property to a full extent and then being taxed for it.

Toni Hollis, Realtor for twenty-three years, addressed the Council, stated she was very happy to see all the people in the audience to protest this proposed Ordinance as usually there is not that much attention paid to these items, and she knows they would not have been able to build the beautiful Mizner homes they now have as landmarks, if this provision had been in place years ago.

David Jacobson, List Road, addressed the Council and has been in the same house for 21 years. He reported he did canvass the neighborhood and asked his neighbors if they would attend this meeting and most of them were unaware that their houses would be affected by the planned change in the zoning. He thought if a notice was sent to every household in Palm Beach explaining what this provision will do to them, i. e., if they wanted to build a second story what would happen under the existing and the new zoning, they wouldn't have the room in the Council Chambers to contain the people who would be protesting. He believed most of the people in the Town did not know what was happening and he believed if the Civic Association would poll the members of his Association, the statements he made today would not be the answer they would be getting.

Janet Gordon, 1260 N. Ocean Blvd. addressed the Council stating the Town has grown very much over the years she has been a resident and in some instances it is alright, but in other instances, a little too much. She felt the problem facing them is aesthetics and taxes. She thought they couldn't stop people from living in a lifestyle that they wish to live in and if they want to develop their homes in a class manner, they should be allowed to do so. She did believe there should be some boundaries, but on the other hand they should be allowed to do what they want as she didn't believe anyone did not have pride in their homes, even if they are tiny. She hoped they realized the dollars on their property for now and for later and when something is developed nicely, everybody benefits.

Robert M. Grace addressed the Council, indicating he was a resident of the Town and suggested the Zoning Commission be given some type of an award for civic awakening as they have gotten people out to this Town Council meeting. He wished to make a few remarks and separate them into what he believes are facts; and secondly, a matter of opinion and then a brief conclusion.

FACT: He stated it is a fact that a Floor Area Ratio study was done on all new homes constructed in the RB District between 1986 and 1991. He advised there were 33 homes constructed and only three exceeded the FAR of .40 and only four exceeded a FAR of .35. He didn't believe most of the people were aware of that statistic. He stated it is a fact that the north end of Palm Beach has for at least 40 years, been an area where young families raise their children and have managed to do this comfortably in homes which have a FAR of less than .375. He stated it is a fact that architects and real estate agents generally receive a compensation which is a percentage of the price of the transaction and since floor area of a house is a very significant factor in the construction contract price, or the real estate sales price - there is a natural reason for these two professions to be in favor of large floor areas.

He stated it is a fact that if a developer buys the house next to you, tears it down and builds a larger house and then sells it, the assessed value on your same old property and your taxes are going to do up. He commented it is a fact that Donald Trump received a reduction of millions of dollars on his Mar-a-Lago assessment because two Commissions of this Town denied his proposal for development.

OPINIONS: Mr. Grace stated it was his opinion when he became a resident forty-two years ago, that it was a privilege to live in this Town and that still remains his opinion. He was taught that with privilege goes responsibility and what that means to him in respect to living here is that one must be sure to preserve the unique qualities here so that those who follow, will also be able to enjoy those unique qualities. He felt the opposite of this approach is demonstrated by Mr. Trump who likes for himself the privilege of living at Mar-a-Lago but when it is his turn to move on, he wishes to destroy it so that it will not be there for the future. He advised a certain buyer for Mar-a-Lago does exist who will pay Mr. Trump much more than what was paid for the property. He felt Mr. Trump has no excuse for destroying what now exists.

He advised the number one yardstick for measuring the quality of a Florida community is - "does it present an appearance of being physically and structurally overcrowded - has greed taken over or is it being held in check?" Mr. Grace believed greed was apart of the human race since Day One and it can destroy Palm Beach. He hoped the Council would strive to dampen rather exploit that greed.

He commented on a letter dated 2-12-92 from Eugene Lawrence which expresses the feeling the Town should encourage young families to live here. He recalled he said the same thing to the Council at the last meeting he appeared before the Council. Mr. Grace stated he believed the greatest discouragement to young families will be the higher taxes that the mansion culture will bring to Palm Beach properties, especially in the R-B Districts; also he did not believe that the houses with the high floor area ratios are the houses that young families live in.

He recalled the presentations made before the Landmarks Commission and the Zoning Commission by the Trump representatives were so badly done as to be disgraceful from a professional point of view and he wondered if this was intentional so as to obtain the denial and have the assessment reduction, which was an action that was already in progress. He stated it was his opinion that the action of the Town Council in reprimanding the Landmarks Commission for not being more cooperative with Mr. Trump was totally uncalled for.

CONCLUSION: He stated to take action to reduce the Floor Area Ratio in the R-B District to .40 or .375 is necessary to preserve an uncrowded structural appear and in that District and the existing numbers have shown it is fair. He didn't know how big a sacrifice it would be to comply with what 91% of new construction is doing and to comply with what at least the same percentage of all R-B construction has done.

Mr. Grace stated it was a mistake of his to interject a personal plea into the Council's decision making process and this was an act born from frustration rather than intelligence and the fact is he no longer finds it a rewarding and happy experience to work under this Town Council. He indicated he has handed in his letter of resignation from the Zoning Commission to Mr. Doney earlier this evening which is effective immediately.

Charles Hickman, List Road, addressed the Council stating as someone who has bought a home in the north end and attempted to improve the home, he knows his situation is not particularly unique

Ord. 1-92
(cont'd)

in that there are a number of homes in the middle blocks of the north end which are older homes and many of which are resided in by the original owners. He advised the homes in their current situations are adequate for the existing owners, but when it comes time to put a young family there, the inevitable tendency is to bring the home to current standards, such as enlarging closets or remodeling bathrooms or kitchens, etc., and it will be very hard to do that under the existing regulations, let alone more stringent regulations.

He stated the statistics were alleged originally to be inaccurate in their base study as they looked at a group of homes that were not representative of the majority of the homes in the north end; and he presumes the statistics presented by Mr. Grace on new construction are true, but the new construction bears a small proportion to the total existing and the FAR that are there would in many instances be exceeded if the current ratios were reduced, so it was not fair to say that making the revision would not harm anyone because most of the homes are already in compliance. He felt further study be given to this and then a Workshop meeting be held, at least with respect in getting the statistics right and making the decisions based on what the reality is with regards to those points.

Adrian Winterfield of Brazilian Avenue addressed the Council indicating he was not sure that what is happening tonight would qualify as a second reading as Fl. Statutes require that Ordinances be in writing and he didn't believe that was the case as the provision with regards to the change in FAR was in writing at the last meeting. He knows it was read and it was passed but that portion was not in writing.

He stated the Ordinance would not take effect even if this is considered as a second reading, for 31 days. He invited their attention to Article XI of the Zoning Ordinance which refers to the power of referendum and this evening there has been a great deal of talk with regards to petitions and whether or not they were intended to request a referendum and whether or not they complied with the requirements he does not know, however, this is a possibility.

He talked about the substance as he has told them numerous times that the Floor Area Ratio is not an appropriate subject matter for a Zoning Ordinance as there is language in the ARCOM Ordinance which gives that body authority to disapprove on the basis of disproportionate size and therefore he cannot understand why the Architectural Commission does not exercise this authority but he strongly believes it is there for them to do so and it would be far more appropriate for ARCOM to have control as each case should be judged on its own merits. He felt if the neighbors of the proposed property do not protest, why should the applicant be deprived of the right to build a house he wishes to build, merely because a magic figure has not been complied with. He felt they should establish the guidelines and impose stringent regulations for exceeding the guidelines, but do not include it within the Zoning Ordinance itself.

He commented on Section 5.17 which has been amended and the language has been changed at least twice and it is still not clear what is intended and he suggested they read it carefully and make certain that they are in accord with the latest change, which he didn't believe was discussed at a public meeting.

Dr. Sten Lilja, 1330 N. Ocean Blvd. addressed the Council indicating he has listened to Mr. Scott and Mr. Grace and all the others who have spoken tonight and he will not add to their reasons to try and preserve this Town and will limit his remarks to his observations, one of which is the group opposed to the change were not properly informed as to the facts, as he heard references to R-BB, which he believed was already referred back to the Zoning Commission. He heard comments about second stories which he didn't quite understand. He pointed out that the people working for them have brought out these recommendations and those people are the staff, the Zoning Commission and the consultants and also to some extent, the Civic Association who has spent a lot of time looking into the facts. He thought that it would be futile to state these people do not know what they are talking about as they are all professionals and have spent much time to give the Council their best recommendations.

Joel Martino addressed the Council indicating he was speaking for his family who own three homes in the Town. He stated he was confused on the matter of taxation and after talking to several people he is under the impression that if the County needs more money, they would try and get it from the assessments in Palm Beach, as they are now only assessing the homes at a portion of what they could legally be assessed at, and he felt lowering the FAR to .375 may not make that much difference when the County or the State needs more money, and the people in this Town will have to continually endure the higher taxes.

He stated another matter is if the FAR is lowered to .375, he wondered if these people who wish to build the larger mansions might not buy two lots, as he knew that has happened and larger homes are built and some of those homes have been objected to, because of their overwhelming size, so they may be promoting the building of the larger homes by making it necessary for a mansion builder to buy two lots to build a larger home. He thought some of the homes in the north end recently built were objectionable, he believed their appearances could have been substantially improved had adequate landscaping been planted around the perimeters.

Gene Barbato, 1280 N. Lake Way addressed the Council again noting the unspoken people have signed the petitions and he asked the Council to pay attention to that as there are several hundred. He believed that Mr. Grace has done a tremendous job with his service to the Town and when you are battling one thousand and get struck out once, he shouldn't be red cheeked about that and he thanked him for his service to the Town.

David Jacobson addressed the Council again noting that with the changes in the Ordinance being addressed tonight, most of the houses in the north end would become nonconforming and any changes that any homeowner would want to make, would have to be heard by way of a variance before this Council. He also wished to comment on the remarks Mr. Grace made about greed which he believed was implying that the people here speaking in opposition to his proposals were those thinking about greed and Mr. Jacobson thought he was very much mistaken.

Philip Englehart again addressed the Council indicating he hoped they wouldn't let Mr. Grace's remarks put pressure on them as he knows Mr. Grace has performed extremely well but he thought that given his remarks at the last meeting, if he thinks the personal sacrifice might be something worth giving up to get this Ordinance passed, that the Council not let that get to them. He also wanted to let them know he was firmly opposed to the passage of this Ordinance as it stands and he hoped they do away with it in its present form and start afresh with the involvement of the residents.

Ord. 1-92
(cont'd)

He noted one issue has come up and has not been adequately addressed was that under and all circumstances at any time, no matter what the current Ordinances are, that anyone presently living in a home in the Town that would undergo the severe hardship of any act of nature, specifically a hurricane, that it be an absolute guaranty they have the right, without question, to at least rebuild the home they currently live in and if possible, he would like to have that addressed in the Executive Session and by motion, if possible, have this without condition and question and should be the absolute right of any resident to make sure they can move back into a home in the same configuration it was before a hurricane and he asked them to give consideration to that.

Ord. 1-92
(cont'd)

Mr. Heeke called for further comments and there being none, declared the Council was now in Executive Session. He heard a number of questions and one of them was on first reading and he called on the Town Attorney to address that, as well as what will happen in the event of the destruction of a home by a so-called Act of God, fire, hurricane, etc. and if someone lived on a 50 foot lot, as he does, and a home was demolished, could it be rebuilt on the same footprint?

Attorney Randolph advised on the issue of the first reading and second reading, indicating the Fl. Statutes require there be an advertisement between first and second reading of an Ordinance and further require that certain public hearings be held, particularly in regard to zoning matters. He reported these two advertised public hearings were held and two quarter page ads were placed in the newspaper. He stated after the first reading of the Ordinance, there was a substantive change as the Council redressed the issue of Floor Area Ratio from the way that many of them thought it was first going to be addressed and it was put on First Reading again, so that it couldn't go into effect at second reading at that particular meeting. He stated the reason they are all here and having an opportunity to address this again is that it was required to go on second reading again and that is why the last meeting was called a First Reading, since there was a substantive change made in the Ordinance and it is now on Second Reading tonight. He believed the requirements of the Statute have been met as he believed it was in writing the night it was read as First Reading and it was sufficiently placed on First Reading at the last meeting. He stated if there is any question as to whether or not that was an adequate First Reading, this matter could be put to a Third Reading.

Mr. Moore addressed the question of nonconforming residences being rebuilt in the event of a storm. He read the section from the Ordinance which states when fifty per cent or more of existing floor area of a nonconforming building and/or structures destroyed by fire, or other Acts of God or acts of the owner thereof, such building and/or structure shall not be rebuilt, unless rebuilt as a conforming building and/or structure. He reported in 1983 this section was segregated when uses, buildings and structures were separated in the Ordinance. He stated this issue will be brought before the Zoning Commission's next hearing for the Act of God and the Fire portion but not the acts of the owners.

Mrs. Douthitt understood this was strictly if more than fifty per cent was demolished. Mr. Randolph responded in the event that does occur, a variance would have to be received from the Town Council. Mayor Marix noted it could be rebuilt after permission is received. Mr. Randolph responded that was correct or they rebuild it in a conforming fashion without coming to the Council.

Mr. Heeke believed the next number of questions should probably be addressed by Mr. Brisson and the staff, the first would be a comparison of what size is .45 vs. .40 and .375 - and what can or cannot be built. Mr. Brisson advised in the R-B District, there is a 0.45 FAR which allows a 4500 square foot building on a 10,000 square foot lot, which would include a garage or basement. He stated under the .40, in the event the FAR was reduced to .40, they could build a 4000 square foot building and there is no limitation on the second story, other than the overall maximum coverage allowable on the first story.

Mr. Brisson advised if they go to .375, they could have a 3,750 square foot building which would include the garage and it could be in any number of configurations.

Mayor Marix knew people were confused about this, but she wanted to stress a couple of things as she heard several people state they were unhappy they were not going to be able to build a second story and she thought that was a misunderstanding. She heard others state they would have to use their garage for a bedroom and she wanted to be sure people were aware of the fact that that is illegal and a garage has to be built to house cars. She felt the confusion is very serious and everyone that comes here to make their points knows how important it is but what is really troubled about is where some of the information was obtained as they just can't use a garage for a bedroom and a second story can be built. She felt this was a great emotional issue.

Mr. Heeke asked for discussion on the setback requirements. Mr. Brisson stated there is no changes in the setback and reference to the setback restrictions were in the R-BB District, which has been eliminated. He commented there are no changes to the setbacks than what are presently now in the Ordinance.

Mr. Moore stated there are some in Section 5.48 which addresses extra height and that would require additional setbacks.

Councilwoman Wiener commented that her views on this are well-known and she didn't believe the citizenry were all that confused as they are intelligent and it has been in the press recently. She asked what year the FAR went into effect? Mr. Moore responded it was in 1991. Mrs. Wiener summarized that prior to the FAR, a 2 story home could be built and it could be 5000 square feet with 2500 downstairs and 2500 upstairs. She believed that in order to solve the problem of these large boxy homes being built, it was believed by the Zoning Commission that there be a slight reduction, so that the homes would not look like boxes, and the FAR was put into the Ordinance in 1991 and now this year they want to reduce it from .45 to .35, which is almost a twenty per cent reduction. She understood that zoning must be for the public good and perhaps she doesn't understand the public good but if her next door neighbor can only build a house that is 3500 or have a house that is 4500, she doesn't understand the public good. She recalled they also talked in terms of density, and mention was made of greed, profit, and mansion culture - and all of that is to keep us busy but the fact of the matter is whatever the percentage of the FAR is, that will tell them what they are allowed to build on their property and she sees no difference with a house sitting on a piece of property at 4500 than she sees at 3500 and doesn't believe there have been so many vast errors made that they need to take such a drastic step as reducing the size of homes that can be built by almost twenty per cent.

Ord. 1-92
(cont'd)

She stated she has heard a lot of talk about people who build to the maximum and she asked they examined the other side of that coin and say people are building what they are permitted to build. She mentioned that some people come before the Council and request to build larger and something quite different than what is permitted and very often, they are granted that permission. She thought they needed to take into account the number of homes which would be affected in this Town under this situation this is a very serious matter. She stated she has been ringing the warning bell on this for over a year and those who are here tonight are not here at her behest as she doesn't know them personally and this is probably the truest thing that was said by Mr. Grace about the public awareness. She strongly believed that going in the direction of smaller homes and not permitting the footprints of the past would be a serious changing of the Town.

She told them there has been the ring of conservatism and she has been a conservative all of her life and this to her means "less government", as she views it a difference between regulation and restriction and about what is the public interest and what are the thoughts of a tiny minority. She has been opposed and will continue to oppose any reduction from the .45.

Mayor Marix believed the problem came up because anyone who drives up North Ocean Boulevard will see a couple of terrifying examples of what can be built and what it does to their neighbors and this could happen to other residences proposed to be built up there. She recalled a retaining wall was built at one of those homes almost to the height of the neighbor's roof and she didn't think that was appropriate.

Mrs. Douthit wondered if they could do a survey and see what the FAR is in different areas of the Town, as she heard mention of Everglades Island and the north end and they do a survey and examine what the FAR's are and as they exist and see what that would mean in terms of reduction. Mr. Moore responded the figures that are available currently for new construction and existing construction are in the possession by microfiche from the County on each person's property in the R-B District and are on record with them by way of this microfiche. He stated it will take some time to have this data put into a computer program to run the test data which the Zoning Commission has requested. He believed it can be done, however, it will take some time. He stated the question will become a policy issue as once this is found out, some will like the sampling and some won't, as the existing FAR is less than .45 considerably by sampling and it has been reverified. He stated the County's error was discovered as well as one of their own, but the County does have this information available and they can do what Mrs. Douthit requested, but it will take time. Mrs. Douthit thought it would put it into a better perspective. Mr. Heeke thought they would then have a sampling of each neighborhood in the R-B District. Mr. Moore stated they can give the current configuration of the FAR's in the various neighborhoods and submit them to the Zoning Commission for their consideration next Zoning season.

Mayor Marix asked Mr. Moore could give the FAR of Mr. Hickman's home who spoke earlier to which Mr. Zimmerman responded it was approximately 30% of the 11,000 square feet.

Councilman Weinberg stated he believed the Council that governs the least, governs the best and in 1992, they do have the most beautiful community in the country with the current zoning policies and problems can be handled by the granting of Special Exceptions and Variances or the denial of same and he felt they needed to regulate and not restrict and he will vote against the FAR section of the Ordinance No. 1-92 as being too restrictive.

Mrs. Douthit asked him if he wanted to stay at the .45 to which Mr. Weinberg agreed. Mrs. Douthit asked if he would compromise and go to a .40? Mr. Weinberg did not believe any change was necessary at this time. Mayor Marix asked how Mr. Weinberg would propose to stop another house like Mimun being constructed? Mr. Weinberg didn't believe every blister and cancer could be kept out of the Town as there are circumstances which cause things like that to arise, but he was sure they could be worked on if they were alert to the subject at the appropriate time. Mrs. Wiener felt also it was a matter of philosophy as it was like in school if someone cheated and the whole class was punished, and now they are trying to restrict all of the people in the Town. Mayor Marix noted the house they are talking about was basically allowed to be built at that size and they are considering today if that regulation should be altered so that someone else couldn't do it in the future; and she too believes this is the best Town in the world, but she is worried about the direction it is going in and she believed that was what they were trying to solve as there is a great deal of confusion on just what they are trying to do here.

Mrs. Wiener commented that based on the confusion and the recommendations made, she will remake a motion which she made two meetings ago that this matter of the Floor Area Ratio be sent back to the Zoning Commission for further study in the new Zoning Season next Fall. Mr. Heeke asked if her proposal was not to change the FAR at this time and send it back to the Zoning Commission with the complete study that Mrs. Douthit asked Mr. Moore about? Mrs. Wiener stated she would like to know what the price tag is on that before she agreed to it. Mr. Moore stated that he couldn't give that to her but before the May meeting, they would have the figure for them.

Mr. Heeke announced there is a motion on the floor by Mrs. Wiener to refer the FAR aspect of the proposed ordinance to the Zoning Commission. Seconded by Mr. Weinberg. Mr. Heeke noted there were some figures mentioned by Mr. Grace that in the R-B District since 1986, when there was a 5000 square foot limitation on a lot which was 10,000 square feet and asked if he was correct? Mr. Moore agreed. Mr. Heeke asked if from 1986 to date, there were 33 new homes constructed, and only four of them exceeded .375? Mrs. Wiener asked for the dates of the recent construction? Mr. Moore responded it was 1986 through 1991. Mr. Heeke asked if they had any figures on someone who was remodeling and not a complete new construction? Mr. Moore responded they would have to comply with the two story maximum .50 or .45 in 1991. Mayor Marix advised if they had any idea on the remodeling of an existing home, how high they went? Mr. Moore stated he did not have that information and that would be quite labor intensive to come up with this type of figure.

Mrs. Wiener called for the question. On roll call, the motion to call for the question did not pass with a vote of 3-2 with Mayor Marix breaking the tie and voting against calling for the question.

Mr. Heeke announced the discussion will still go on on the motion on the floor. Mr. Heeke asked if the study would give them the complete FAR of each structure, that would be the current FAR to which Mr. Moore agreed. Mr. Heeke asked if this would take into account any house that was involved in a remodeling, so representative figures could be compiled. Mr. Moore responded not for the portion that was remodeled. He stated if they wanted the total FAR after the remodeling.

that would be no problem, but they couldn't give the breakdown of the area before and after the remodeling.

Mayor Marix noted the total figure could be compiled to which Mr. Heeke agreed. Mr. Weinberg asked what they would do? Mr. Heeke felt at that point it would be known what the trend was on size of houses and how many would be under .45. He thought there would probably be 30 to 40 a year on remodeling, some lesser than others, however, it would give them an indication of the nature of the problem, if a problem exists.

Mayor Marix stated she had a problem here as they were voting on a very serious matter and it is a complicated matter and her concern was that people don't understand exactly what they are voting on and she wished there was some way they could be made to understand as there has been a lot of misinformation out there on this matter. She would like to wait until all the information is compiled but if they have to vote now, they have to vote now.

Mr. Heeke stated they are running out of the Zoning Season, so that is another problem and Mr. Moore has stated this information requested, will take some time to compile. Mr. Moore stated they don't want to rush this as he wanted the information to be accurate.

Mr. Heeke felt he understood the issue but was also concerned about the misinformation that the public now has. He didn't believe everyone does understand and there is confusion. He didn't think the limitation of .40 would be that bad for a year considering the fact they have had 33 homes since 1986 with only three exceeding the .40.

Mr. Heeke didn't know what the problem might be on the remodeling if there are 30 to 40 homes a year and he was troubled with voting on a restriction when he didn't feel comfortable with the information of the public and secondly, the unknown on the remodeling. He believed a limitation needed to be imposed, perhaps in the neighborhood of .40. Mrs. Douthit stated she would be willing to put it in a form of a motion that they put it at .40 for this year only and then having this issue go back to the Zoning Commission with the added figures.

Mrs. Wiener pointed out a motion with a second is already on the floor to leave it at the .45. Mr. Heeke did not believe a second motion was made as Mrs. Douthit simply stated she would be willing to make one.

Mayor Marix asked what the time frame was with regards to having a second zoning season? Mr. Randolph stated April 30th is the last day of the Zoning Season. Mr. Moore reported he could not do the entire R-B study before that time frame and he would need until next season to finish it and put it together, and have it analyzed by the computer company with the results being given to the Zoning Commission for their consideration at the public hearings.

Mayor Marix asked if ten per cent is a little bit thin as a percentage of all the R-B, what kind of percentage could the Building Department produce by April 30th, which would give them some answers, perhaps 25%. Mr. Moore stated the Council would have to make a decision as to what they would want as a normal sampling, as ten per cent is just that. He stated it would take time to analyze this and do a correct job in the different neighborhoods and he didn't think it could be completed before the April 30th date.

Mr. Heeke indicated he was troubled about the amount of information the public feels they have or do not have presented to them. He recalled 33 new homes have been constructed in a five and one half year period which have been less than the present Ordinance, and the only problem they don't have an answer to is the remodeling statistics. He thought that information was needed before they are too restrictive.

On roll call, the motion carried 3-1 with Mrs. Douthit voting against the motion.

Mr. Randolph was called on by President Heeke to read the Ordinance no. 1-92 by caption with the deletion of the FAR. Mr. Randolph read:

V. SECOND READING OF ZONING ORDINANCE NO. 1-92.

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; PROVIDING AMENDMENTS TO ARTICLE 2, SECTION 2.10 ENTITLED "DEFINITIONS", BY REVISING DEFINITION (14) "DOCK"; TO PROVIDE AMENDMENTS TO ARTICLE 4 ENTITLED, "DISTRICT REGULATIONS"; BY AMENDING SECTION 4.10 SCHEDULE A, SCHEDULE OF LOT, YARD AND BULK REGULATIONS, MODIFYING FOOTNOTE #23 TO EXCLUDE LOTS FRONTING ON CUL-DE-SACS AND INCREASING ANGLE OF VISION ON LOTS EXCEEDING MINIMUM WIDTHS; MODIFYING FOOTNOTE #3 TO ALLOW PLANTERS OR LANDSCAPING IN PEDESTRIAN WALKWAY; PROVIDING AMENDMENTS TO SECTION 4.10, SCHEDULE B, "SCHEDULE OF USE REGULATIONS", BY ADDING "OUTDOOR SEATING IN CONJUNCTION WITH PERMITTED RESTAURANTS" AS A SPECIAL EXCEPTION USE IN THE C-WA DISTRICT; BY REMOVING HOTELS AND TIME SHARING USES FROM SPECIAL EXCEPTION USES IN THE C-OFI DISTRICT; BY CHANGING THE CHARITABLE EVENT EXPIRATION DATE IN THE RESIDENTIAL DISTRICTS; BY ALLOWING OFFICE AND PROFESSIONAL SERVICES AND BUSINESS SERVICES ON FIRST FLOOR IN C-TS DISTRICT AS SPECIAL EXCEPTION USES; PROVIDING AMENDMENTS TO ARTICLE 5 ENTITLED, "SUPPLEMENTARY LOT REGULATIONS", BY AMENDING SECTION 5.17, "EXISTING SINGLE FAMILY DWELLING DEVELOPMENT", BY PROVIDING DEFINITIVE REGULATIONS RELATING TO DEMOLITION OF NONCONFORMING DWELLINGS; BY ELIMINATING SECTION 5.18, "ALTERATION OF NATURAL GRADE" AND BY ELIMINATING SECTION 5.19, "LOT DRAINAGE, GRADE AND TOPOGRAPHY" AND INSERTING A NEW SECTION 5.18, "LOT GRADE, TOPOGRAPHY AND DRAINAGE"; BY AMENDING SECTION 5.47(b), "NUMBER OF BEACH HOUSE BUILDINGS AND SETBACK"; BY INCREASING MINIMUM LOT FRONTAGE; AMENDING SECTION 5.48 "SPECIAL EXCEPTION TO HEIGHT REGULATIONS; SPECIAL EXCEPTION STRUCTURES", BY ESTABLISHING NEW REGULATIONS APPLICABLE TO THE R-A AND R-AA DISTRICTS; AMENDING SECTION 5.51(b) TO ALLOW TWO STORY ACCESSORY BUILDINGS IN THE R-A AND R-AA DISTRICTS; PROVIDING AMENDMENTS TO ARTICLE 6, ENTITLED "SUPPLEMENTARY USE REGULATIONS", BY AMENDING SECTION 6.21 "SCHEDULE OF OFF-STREET PARKING REQUIREMENTS", BY INCREASING PARKING REQUIREMENTS FOR HOTELS, MOTELS, MOTOR INNS AND TIME SHARING USES; PROVIDING AMENDMENTS TO ARTICLE 7 ENTITLED, "PLANNED UNIT DEVELOPMENT", BY AMENDING SECTION 7.10, "PURPOSE", BY REDUCING ALLOWABLE AREA UPON WHICH DENSITY IS CALCULATED; AMENDING SECTION 7.436, "PERMITTED LAND USE", BY ELIMINATING REFERENCE TO TOWNHOUSES AND HISTORICALLY OR ARCHITECTURALLY SIGNIFICANT MULTI-FAMILY STRUCTURES; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Heeke asked the Council to look at Section 5.17 as Mr. Winterfield had raised a question about that section. Mr. Moore reported the words that were added were "exterior renovation" and

Ord. 1-92
(cont'd)

"exterior reconstruction" on page 3 seven lines from the bottom. He stated after the earlier meeting, there was some confusion about whether the renovations were interior or exterior, so they added the language. Mr. Heeke asked if anyone had any comment on this section and there was none. Mr. Heeke called for discussion on other sections of the Ordinance and there was none.

Mrs. Wiener moved for the adoption of Zoning Ordinance 1-92 on second reading as read by the Town Attorney. Seconded by Mr. Weinberg. On roll call, the motion carried 3-1 with Mrs. Douthitt voting against the motion.

Short break was taken. Meeting was called back to order by President Heeke.

VI. ANY OTHER MATTERS.

Zoning
1070 North
Ocean Blvd.

A. 1070 NORTH OCEAN BOULEVARD. Mr. Moore advised a survey was given to them of the slab that is currently in existence and compared it to the original which was before the Council earlier and they originally had 4578 square feet and a garage area of 815 square feet, which has been removed and an additional portion of the slab was removed which totalled 815 and the requirement was made by the Council when they negotiated with them, they have removed the 506 square feet which was on the north and south property lines and their actual removal of slab not authorized was 815 square feet or approximately 20% of the slab was removed since they were before Council and got a clarification on the modification two months ago. Mr. Moore indicated he has stopped the job and it appears there was more than that removed, however, they have furnished a registered surveyors survey which confirms they have removed 815 square feet. He asked if they wished to job to remain stopped and bring the principal to the Town Council meeting of March 10, 1992.

Mayor Marix believed they were being "took" again. She thought that they allegedly said that they knocked the whole house down except for the two walls which were propped up, and they did that because it was generally thought as long as they kept the same floor slab area, they would still be in compliance. She recalled they came back before the Council and after conversation, we did allow them to keep the nonconforming setback as long as the slab was there. She stated they now have taken 815' of the slab away so as far as she is concerned, they should build according to the Code, as they knocked the whole house down and then taken away 20% of the slab. Mr. Heeke agreed noting the argument made to the Town Council was they needed that slab and here they are removing the slab and he too thought it should be build to Code. Mr. Moore commented he is hearing them say they want the applicant to come back to the Council.

Mr. Heeke asked if it was the Council's consensus to have them come back to the Town Council meeting, to which the Mayor and Council agreed.

Mrs. Wiener asked Mr. Moore how this could have happened? Mr. Moore responded they got a front end loader in there and started digging it up and were under the assumption that they could do that, which was not the case and the job was stopped.

Contract with
American
Coastal Eng.

B. CONTRACT WITH AMERICAN COASTAL ENGINEERING CO. FOR MID-TOWN PEP REEF. Attorney Lickie addressed the Council indicating all of the insurance requirements are in place with the exception that the cost of the insurance for American Coastal is higher than what they had thought it was and the problem today is with the bonding. He stated in today's environment getting the bonding is considerably more complicated as more references are needed and more collateral is required and it is due to the nature of this problem, as it is unique and they have nothing to go by. He advised he has contacted over 12 companies. He noted the bid price which was given as an estimate has been exceeded, as it was estimated at approximately \$25,000 and it is has come in as high as \$54,000 and as low as \$44,000 and those are the parameters at this point in time.

Mr. Lickie indicated they are here to have the Council consider amending Exhibit "D" to allow for the additional cost, which is the Town's obligation. He indicated everything else seems to be in place and ready to go.

Mayor Marix asked what decision is made as to whether it will be \$44,000 or \$54,000? Mr. Lee Breedlove, Slaton Insurance, addressed the Council, indicating they have been working very diligently and they have not as yet been able to secure a firm rate as there are different rate structures and the variance depends on what happens in the next few days, as the company has not given them the actual rate price and has just quoted the minimum and maximum. He stated when they were first quoted the price on the bond, it was \$40,000 which was subject to different parameters, however those parameters have changed somewhat, which required underlying collateral and bonding and that is where the price could have gone to the \$54,000 level. He has been successful in having the company potentially agree to a different rate structure for the bond, which would bring the cost down and that is where they are now, classifying the bond in a different pricing band and they are still in negotiations with the bonding company.

Mr. Lickie advised during these negotiations, they have submitted additional letters of credit, which will be used as a form of collateral to the company and they are hoping to be able to reduce the price with additional letters of credit submitted. Mayor Marix felt they needed to have the bond as they had to have the reef and this is important together with the timing. Mr. Heeke stated it is something the Town requires and is necessary.

Mr. Heeke asked if they approved the amount, he asked what would that do with their negotiating position with the bonding company. Mr. Breedlove stated they would still be in negotiations with the \$40,000 to \$44,000 knowing that \$54,000 is tops, but they will go for the lowest pricing then can possible get, keeping in mind the uniqueness of the project does limit their position of strength.

Mr. Heeke asked what would happen if the Council were to approve part of it? Mrs. Wiener asked if the cost should be shared? Mayor Marix stated she didn't believe in cost sharing on this, knowing that the price on the reef has never been altered, in spite of the other rising costs. Mr. Lickie stated he hoped that would be born in mind and also their insurance costs for their portion have exceeded far what was originally quoted and they are absorbing them, and he felt they were bearing their burden. Mr. Weinberg asked how long the bond would be in effect? Mr. Lickie responded the bond will run during the completion of the project and for twelve months thereafter and after that it would drop down to \$250,000 for an additional 24 month period.

Mr. Breedlove stated the bonding company accepts this as a financial responsibility and will guarantee the completion of this project and it can be looked at credit being applied for with the

bonding company. He felt they were all sensitive to what the banks and savings and loans have gone through in these times, and bonding has always been on the same level.

Mr. Doney asked to clarify a statement made by Mr. Lickie about the insurance as further documentation has been requested by our Risk Manager, Barbara Martinuzzi, and it has the additional policies have not been received as yet. Ms. Martinuzzi indicated she has received a fax stating they can comply with some of the provisions, but she hasn't received the documentation.

Mr. Lickie advised they have received word from the insurance company that they will issue the policy.

Mr. Doney suggested that condition should be made a part of these proceedings that it will be subject to the approval of the Risk Manager. Mr. Lickie advised the Town still has the right to approve the insurance package and the bond forms. He stated all the details have been ironed out. Mr. Doney asked if Mr. Randolph if any further sections of the contract would need Town Council authorization, in the event anything needed to be amended. Mr. Randolph didn't believe there was anything that needed to be amended as the insurance was to be provided within fourteen days or the Town may, at its option, upon written notice declare the contract null and void. He believed they wanted to extend that period, but he didn't believe it required an amendment to the contract, to which Mr. Lickie agreed so long as there is no resolution to terminate.

Mrs. Douthit asked how much of an extension would be needed? Mr. Lickie advised this is in the hands of the bonding company. Mr. Breedlove stated he believed it would be about a fourteen day time frame.

Mr. Heeke felt when a contract is negotiated, they have to be fair on both sides and he didn't want to put either side in unfair positions. He stated he didn't like the increase but understands there is nothing that could be done as they couldn't shop for the bond until they actually had a contract. He asked if there was any way they could pick up a part of the bonding premium? Mayor Marx commented when she sees what monies are spent on at different times in this Town, which are far less important than this and knowing how questionable their margin of profit is, she felt the Town could afford it better than they can.

Mrs. Douthit moved that the time period be extended until the March 10, 1992 meeting and Exhibit D be amended to show the amount of bond premium he which was shown as \$25,000 be increased to a maximum of \$44,000 and the funding for same should come from the Undesignated Funds. Mrs. Douthit felt if more monies would be needed, they can come back to the Council.

Mr. Heeke noted the motion is that the Town will authorize the extension of time to obtain the insurance until the March 10, 1992 meeting and with the top cap at the moment of \$44,000 from the Undesignated Fund Balance of the Capital Improvement Fund and if they need more money, they will come back to the Council. Mr. Randolph advised the motion would anticipate an amendment to Exhibit D, Item One, to raise the amount of the Security Performance Bond to \$44,000, to which the Council agreed. Mr. Lickie commented this would be with the option that if it does exceed the \$44,000 they would come to the Town Council meeting on the 10th to relate the final figure.

Mr. Doney clarified that the funds were specifically funds which were to be transferred to the Capital Improvement Fund from the previously Town Council appropriated Funds for the Beach Nourishment Project to which Mrs. Douthit agreed.

Motion was recapped by Mr. Heeke to grant the extension to March 10, 1992 authorizing the estimated bond premium under Exhibit D, Paragraph One, to \$44,000 to come from the Undesignated Fund Balance from the Capital Improvement Funds.

Mr. Heeke handed the gavel to Mr. Weinberg to chair the meeting. Mr. Heeke then seconded the motion.

Mrs. Wiener indicated she had asked Mr. Lickie a question on this before the contract was signed and now he alludes to a very limited profit. She recalled her question at an earlier meeting was if the profit was in the ten per cent area, plus two per cent and Mr. Lickie could not assure her of that, and she assumed the figure would be higher, since they are not having bidding on this item, and she doesn't feel the margin of profit is a narrow margin. Mayor Marx recalled what was said was it wasn't the Town's business what the profit was. She assumed when a price doesn't go up on something for several years, that there must be rather little profit. Mr. Lickie addressed the Council recalling his response was that American Coastal is apparently in business to make a profit and he hoped there would be one, however, it is not known what the ultimate profit will be until it is finally installed, as already there are costs which are over-runs that is eating into the profit projected.

Mr. Weinberg asked if it was correct that the bonding company was having trouble with this because of the credit rating of American Coastal? Mr. Lickie responded the collateral has been raised and is there and they are ready to go forward. Mr. Weinberg asked if they presented collateral to the bonding company to which Mr. Lickie responded affirmatively. Mr. Weinberg asked if it was sufficient? Mr. Lickie stated it is sufficient to get the amount of the bond. Mr. Heeke explained it is pricing and what the premium should be under these circumstances.

On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion.

Mr. Doney asked a question about the secondary bond which is contained on Exhibit D. Mr. Lickie responded once the main bond is issued, there will be no problem with the secondary bond as twelve months after the project is complete, the bond drops from 1.9 million to \$250,000, and it will be a moot issue at that point.

VII. ADJOURNMENT. There being no further business, the meeting was adjourned at 8:20 PM.

Grace T. Peters
Town Clerk

Contract with
American
Coastal Eng.

Adjournment