

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING OF WEDNESDAY, JANUARY 22, 1992 - 5:01 PM

(CONTINUED FROM TUESDAY, JANUARY 21, 1992)

Roll Call

1. CALL TO ORDER AND ROLL CALL. President Heeke called the meeting to order at 5:10 PM in the Town Council Chambers. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilman Ilyinsky, Councilwomen Douthit and Wiener.

President Heeke explained this meeting is a continuation of the meeting called for yesterday at 5:01 PM. He recalled during the approval of the agenda yesterday, there was added discussion of the PEP Reef contract and another item, bond refinancing. He has just been advised that there is also a request for a Charitable Solicitation Permit which has just been filed and it has not been through staff and the request is to add it to Any Other Matters and asked the Council what their feeling was as this event has been scheduled before the next Council meeting.

Mr. Ilyinsky stated he had no objection. Mr. Heeke thought it was premature for them to consider it tonight. Mrs. Douthit suggested they go on with the meeting and consider it later under Any Other Matters.

VII. ANY OTHER MATTERS

PEP Reef

A. Consideration of Proposed Contract with American Coastal Engineering, Inc., for PEP Reef at Mid-Town Public Beach Area.

Attorney Randolph reported there was a complaint filed in the U. S. District Court of the Southern District of Florida and it is a claim for relief filed by Breakwaters International, Inc. vs the Town, seeking an injunction asking the Court to require that the Town go to bid in regard to this project. He indicated the complaint alleges that the Town in taking the action it did, was in derogation of the duty imposed by Section 2.162 of the Town Code and indicated the plaintiff is ready, willing and able to submit a bid for the construction of the reef. He stated the relief is that the Court declare the Town is in violation of this Section, and the Court declare any contract with American Coastal to be null and void and the court award any such relief that may be just and proper.

Mr. Randolph stated he has not received any Notice of a Hearing as of this time. Mr. Doney reported he was served with the summons at 3:55 PM today and has not had a chance to read it thoroughly and he too did not see a hearing date notice.

Mr. Randolph stated tonight's meeting was scheduled to review the negotiations which have been ongoing between staff and American Coastal Engineering in regard to the action taken by the Town and Attorney Lickle is here to go over the letter and the proposed changes.

Mr. Doney believed the best way to proceed is to follow through on the revised proposed contract. He will have some comments and questions as well as the Town Attorney and Mr. Dusey and the items asterisked, the Town Council should act on with regards to assuming certain costs and liability.

Mr. Doney reported he had a telephone conference call with Beth Mitchell of American Coastal and Mr. Kirby Green of the DNR, with regards to clarification of the test program which they need to elaborate upon and clarify also the sales tax issue, as well as assuming the contract is authorized to be signed conditionally, it would warrant a Town Council motion that funds previously appropriated for the Mid-Town Beach Nourishment Project be considered for transfer and reappropriations for this contract for a defined sum.

Attorney Lickle addressed the Council apologizing for the absence of Attorney Dotterer who was called to court. He stated staff and Mr. Randolph have been extremely helpful in the past few days negotiating the contract and he wished to emphasize the need for the reef and the timing process and any delay in the timing would put them past the time schedule they had projected for installing the reef. He has been advised about the filing of the injunction this evening and he was sure the Town Attorney will advise them as to the legalities, and there are two exceptions to the bidding rule, one being the finding that an emergency exists; and the second being the sole source for this type of a product on which they hold a patent. He advised this is the same company bringing the suit with which American Coastal has been in litigation which has been laying dormant for two years, until this time.

He hoped they would be able to continue forward with the Council on the contract negotiations and there are representatives in the room from the pre-stressed concrete company who are ready to go and they too have a critical construction schedule.

Mr. Lickle noted the contract the Council has before them which are marked out are the result of the letter from Mr. Doney dated Jan. 17, 1992 and there will be further refinement, based on what the Council decides here today.

Mayor Marix commented on the summons that has just been distributed to them and it states Breakwater would be able to install the reef before the end of the year and she recalled American Coastal stating it would take nine months and she believed that this was to be in place by September. Mr. Lickle advised the contract has a 270 day clause and for each day they would go beyond that the contractor would pay the Town the sum of \$500 per day, so it is their intention to have this installed by September.

Mayor Marix made the request to see the video prepared by American Coastal on the Halloween Day Storm, as she knows they do have an emergency. Mrs. Douthit stated she has seen the video and it clearly shows there is an emergency as the waves are as high as the palm trees. Mr. Lickle stated the film is rather dramatic and it should be stressed this was in a zero wind condition with waves twenty to twenty-five feet from a storm which was over eleven hundred miles away. Mr.

Heeke asked them to proceed with the contract and they will look at the movie at the end of the discussion on the contract.

Mr. Randolph stated some of the minor items have been resolved but the contract has asterisks for some of the major policy concerns.

Mr. Lickle corrected a statement made earlier that there was a patent on this reef as he has been informed by Mr. Rauch that the patent is pending.

Mr. Lickle referred to the first page which states that American Coastal will proceed with the formation of the forms and the construction of the reef segments and because of the timing, it is imperative the Council move forward with the Notice to Proceed and allow American Coastal to begin construction. He stated they were perfectly willing to wait for installation until the final Notice to Proceed is received from the Department of Natural Resources. He knows the DNR may have conditions to the permit, and he didn't believe they would be onerous and had to do with the testing program. He believed the funding by the State and their deadline of Feb. 1st was met by the Town with their actions of January 14, 1992 and if the Reef were stopped, there may be a likelihood that any funding which might be available for this Reef, up to 75% to which Mr. Green had alluded, and those funds which have been earmarked may go back to the State and he was not sure if that will occur, but that is a potential risk if they do not move forward.

Mayor Marix recalled Mr. Green explained they had to know definitely by Feb. 1st, since he has to make arrangements with the University concerning the testing and those arrangements have to be terminated by April and if the Town did not go ahead with what they were supposed to do by Feb. 1st, they will not get the testing money which she believed was around one half million dollars. Mr. Lickle stated it is two issues, one is the testing money and the other is the monies that were potentially available. Mayor Marix believed the Town stood a risk with regards to them proceeding with the forms to which Mr. Lickle agreed. Mayor Marix asked how the risk money compare to that money we know we will lose. Mr. Lickle stated the best estimate at this point and staff was considerate that under the time constraints, there are two additional items contemplated which were not part of the original bid and which they will discuss later, but what they are actually taking about is a sixty to ninety day period of form construction and completion of several of the segments with an exposure of approximately \$375,000. Mayor Marix pointed out they may also lose the \$500,000 or the test money. Mr. Doney clarified this would be 75% of the \$500,000.

Mrs. Douthitt asked if they went ahead with the forms and the DNR had a change in heart, they would not be throwing the money away, as the forms could be used next year. Mr. Lickle responded the ultimate risk would be if the DNR would prohibit it. Mayor Marix didn't think they could at this point as the Town has the permit. Mr. Lickle agreed they would have some serious legal problems if that should happen.

Mr. Heeke asked what if the DNR made some modification to the design of the forms? Mr. Lickle stated that issue has been thought about by American Coastal but the reef has been tested, designed, and permitted and studied and they do not want DNR to have any hand in redesigning this reef. Mayor Marix pointed out DNR has permitted this one. Mr. Lickle stated in telephone conversations with Kirby Green, he reiterated there were no design changes. Mr. Doney stated he did have a long conversation with Mr. Green yesterday and he needs to discuss this. He indicated that trying to detail specifically and all inclusively something of this technical nature is difficult.

Mr. Heeke thought the issue of how much a change DNR might require to his way of thinking was important as to whether there are forms prepared and units constructed that could ever be used. Mr. Lickle stated that is the issue although they don't expect and it has been represented there will be design changes to the units themselves, but the conditions discussed as possible changes by DNR had to do with the testing program.

Mr. Doney advised the conversation which he and Beth Mitchell had with Mr. Green related to two items - one is the test plan and potential modifications which it may create relative to the permit which has been received with the Notice to Proceed withheld until the test plan is completed. He stated the second item related to funding.

He asked Mr. Green the question if there would be any modifications to the design as currently permitted and Mr. Green's response was at this time it was his opinion there would be no change to the initial installation, however, as a result of the test plan and American Coastal Engineering along with the DNR engineers and the University of Florida who is contemplated to be the third independent party to do the testing and monitoring, it's contemplated that the test plan could or may result in modifications and the DNR may need to add contingencies as they will be doing tank tests. He stated Mr. Green did not know what those contingencies might be, since the test plan is not fully developed and the results must be evaluated. Mr. Doney advised that Mr. Green mentioned there are several concerns, one being the sea turtle concerns and that issue must also be evaluated. He stated another issue is the monitoring issue as the University of Florida contemplates there will be a local environmental consulting firm who will do the field sampling, and he knows American Coastal Engineer would like to perform that monitoring themselves.

Mr. Doney continued on stating the reason the staff is offering this as a policy consideration is initially the draft contract has language which states: "including all modifications to permit" and the staff's view is looking at this from a contract administration perspective and also what they believe will best represent and protect the Town's interest and they felt with the unknowns associated with the test plan, there could be obligations which could translate into costs, or in the field design modifications and if the Council elected to accept the unknown factor of that, they should be informed of the alternatives.

Mr. Lickle asked if it was fair representation on his part that Mr. Green has indicated there will be changes to the design of the reef prior to installation and all of these are contemplated to be conditions with regards to the test planning program and possible modifications in the field after the installation? Mr. Doney responded it was Mr. Green's opinion that it would not change the initial installation, however, he did go on to say there could be in-the-field modifications required as a result of the Test Plan. Mr. Lickle responded this first paragraph goes up to installation and they tried to reduce that risk by verifying with Mr. Green yesterday that there were no changes anticipated, so this is a timing function of when will DNR issue their final Notice

FEP Reef
(cont'd)

to Proceed. He felt in the interim in order to meet the scheduling, they wish to fabricate and construct the segments.

Mr. Doney advised the staff had put in the earlier draft contract that the Notice to Proceed would not occur until issued by the DNR and if the time table previously identified is to be met, they are looking for the Town Council to issue a Notice to Proceed at this time.

Beth Mitchell recalled in the conversation Mr. Green stated they would need 60 to 90 days and she was concerned about that and pointed out to him they had been working on this for a year and a half and they have conducted the tank tests and done many other things. Miss Mitchell stated Mr. Green's response was that he wanted the University to review the material submitted by Dr. Dean and he did not indicate it was cut in stone that they would perform this tank test, but it was an option. She recalled when they talked about the potential modification, they were looking at three issues:

1. The potential for horizontal movement.
2. The interlocking system.
3. The turtle concerns.

She felt the first two have led them to believe there was a potential for some modification, but there would not be any fundamental changes to the forms or to the location of the reef, the depth of water, or how the reef will operate. Mayor Marix recalled when Mr. Green was at the Town Council meeting, he was asked if he thought any of these modifications would be serious, and it was her recollection that he made it clear they would be minor.

Mr. Doney did not recall the word "minor" being used but he does know yesterday during the phone conversation, he did not anticipate the initial installation as designed would need to be modified and that is the key point. Mr. Doney felt the uncertainty which in his role as the Department Director of Beaches and Shores, he is qualifying his comments as there are engineers in DNR who will have to review this and what there could be changes as to the scouring, and the tank testing, and that type of additional permit conditions cannot be identified now, nor can the cost be identified, so he viewed this as an unidentifiable which American Coastal is looking for the authorization Notice to Proceed at this time. He also understood that it was American Coastal's position that the additional cost which may arise as a result of additional permit conditions and the test plan would be asking the Town to assume those costs and asked if that was correct? Mr. Lickle responded they would be asking the Town to assume some of those costs, if they are minor in nature. He stated American Coastal is willing to assume any pre-conditions prior to installation that are not any material changes to the structure itself, and he wished to emphasize that they can represent that a lot of the risk they were talking about previously should be diminished by the fact that everything that Mr. Green is talking about is after installation. Mr. Doney agreed that they are post-installation costs. Mr. Lickle stated the risk period they are talking about is prior to installation and he didn't expect any changes, although there is one thing they all can agree on and that is the DNR does have a Wish List and will always come up with conditions and that is nothing new. He noted later in the contract, American Coastal is willing to assume the responsibility for realignment of the reef if it should come misaligned, so long as the misalignment is not caused by either DNR requiring a realignment after it is installed, or by catastrophic seas or weather conditions.

Mr. Weinberg asked if he was saying that would then be the responsibility of the Town? Mr. Lickle responded they would hope at that time the Town and American Coastal would be on the same side of the fence and could work with DNR to come up with a reasonable solution. Mr. Weinberg asked if he was speaking of post-installation difficulties which may arise to which Mr. Lickle responded affirmatively. Mr. Weinberg asked if they were presenting a product and asking the customer to pay for it if it did not function properly? Mr. Lickle stated that was not the case. He commented that everyone does realize this is an experimental project but it has been permitted, and it has been tank tested and field tested and all of the results are out and it is representative of what it can do, but for a catastrophic event. Mr. Weinberg responded he does understand catastrophic but ordinarily post installation problems may arise and they are presenting the product and after we own it, they state we should pay for some additional charges as it is not functioning as it should. Mr. Lickle apologized if he represented it that way, noting that American Coastal will assume responsibility for any defects in workmanship or any misalignment or straightening of the reef if caused by normal conditions. He noted if catastrophic conditions occur, or if DNR decides they want to change the entire project, then that would be the responsibility of the Town, but the smaller modifications were to be taken care of by his client.

Mr. Doney qualified the representations made by Mr. Green in the telephone conversation as one risk that needs to be considered by the Town Council in discussing this is that Mr. Green did state "in his opinion" the actual detailed scope of work for the test plan and if it should result in something else which is considered more than fundamental, he would not want the Council to think he misrepresented what was told to him by Mr. Green as it was based upon Mr. Green's opinion as of yesterday and he cannot offer specifics and that won't be able to done until the test plan is completed.

Mr. Doney talked about the funding eligibility noting inasmuch as it is considered by DNR to be an experimental project, Mr. Green confirmed that the estimated monitoring costs which could change, depending on the test plan, but are estimated at \$100,000 per year for five years, or a total of \$500,000 with under the current State funding formula, the State would participate in up to 75% of the monitoring costs or \$75,000 per year. He advised the second part of the question regards the State's position relative to funding and the cost of installation and construction and Mr. Green's response were that in his opinion at this time he did not believe his Department would request that the funds previously appropriated by the Legislature be utilized for funding of the installation and construction costs for this project. He pointed out Mr. Green did indicate, however, that if American Coastal and the Town wanted to formally make this request of DNR, the State would consider participating in the installation and construction costs, however, the State would need to, through the Comptroller's Office need to look at the emergency criteria issue and the competitive bidding and sole source issue and Mr. Green wanted that to be clear.

Mayor Marix asked if the 75% deal expired by Feb. 1st? Mr. Doney understood that the Feb. 1 deadline was that the Town had received two conditionally issued permits by the DNR and in order that the DNR could meet the State budgeting time tables as far as allocation of previously appropriated funds, there was a 21 month deadline from the Department's perspective that they had to meet in order to have a commitment from the Town as to which project would be the Town's

PEP Reef
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choice. Mayor Marix believed that someone asked the DNR if we could go beyond that February 1st deadline, without losing the \$400,000 of monitoring monies and Mr. Green responded that it was a firm date. Mr. Heeke believed that was the reason they moved forward on the project. Mayor Marix knew if they delayed in any way, those monies would be lost.

Mr. Dusey recalled the February 1st commitment was that they had to decide by February 1st what they were going to do and once that was decided, DNR would take that money and commit it to that project. He stated if the Town chose the reef, the State would commit to the monitoring money; and if it were the fill, they would commit the fill money. Mayor Marix agreed. Mr. Lickie believed the money was earmarked for one particular project. Mr. Heeke agreed but stated it would only be for one fiscal year at a time, and if there were an overlap, they would be confronted with the problem of keeping in the budget.

Mr. Doney advised the Mayor was in receipt of a letter dated Dec. 4, 1991 from Mrs. Virginia Wetherall, Executive Director of DNR which states: "Concerning funding, if the Town is going to move forward with the proposed beach restoration project, DDS88231, the funds originally appropriated in July, 1990 must be committed by the end of February, 1992, therefore the Department needs a decision from the Town regarding whether to move forward with a contract to commit the remaining FY 90/91 appropriation for the proposed restoration project." Mr. Weinberg pointed out this is for the beach restoration project. Mr. Doney pointed out the decision had to be made on the beach restoration. Mr. Heeke recalled the monitoring money was also a part of this.

Beth Mitchell of American Coastal Engineering clarified that Mr. Green explained the deadline was due to the fact that he needed time to negotiate the contract with the University of Florida for the monitoring plan and the deadline of February 1st gave him the time to do that and have the funds committed, so it wasn't just a matter of the Town making a selection, but allowing him time to negotiate the contract.

Mr. Heeke reported if the Notice to Proceed is issued by the Town at this point, and the forms are prepared and some of the units are built and there are changes made, the Town has bought those forms and units constructed if they can't be used. Mr. Lickie agreed, noting that the segments as designed are what has been permitted and hopefully they will not be affected. Mr. Heeke believed admittedly it is a guess that that risk would be in the neighborhood of \$375,000, and asked Mr. Lickie if his client would be willing to split that risk with the Town?

Mr. Lickie responded American Coastal has been involved in this project for over four years and the cost to the Town has been \$8000 and perhaps in the spirit of going forward, some of the risk can now be shared between the Town and American Coastal. Mrs. Douthit commented that the existing design has been permitted and the modifications were referred to as "after installation", so she sees that there is a chance, but the possibilities are quite remote. Mr. Heeke felt if it was remote for the Town, it also is remote for American Coastal and that is why he asked if they would be willing to share? Mr. Weinberg pointed out American Coastal is experimenting. Mr. Heeke stated the Town is also. Mrs. Wiener pointed out they are but with the taxpayer's money. Mr. Lickie advised there is a need here and the Town needs the reef and American Coastal has designed it but now needs the assurance that the Town is behind them in this contract. Mr. Heeke commented he doesn't disagree with the timing as he felt there is a serious time problem, otherwise he would have voted a different way on the bidding aspect.

Mr. Lickie consulted with his client and advised the Town that American Coastal will split the cost and share the risk, if the modifications would require changes. Mr. Heeke thanked Mr. Lickie stating he does not anticipate that this should happen, and it is remote, however, he also realizes they are dealing with some unknowns.

Mr. Lickie understood the next step would be for the Town to issue a Notice to Proceed, assuming the other factors of the contract are worked out and American Coastal will be moving forward with the construction. He stated if for any reason DNR causes any change to the structure of these segments and they become unusable or they have to be redone, American Coastal will share one-half of that cost.

Mr. Doney indicated his interpretation of the sharing of the risk would be that as a result of any further conditions which would evolve as a result of the Test Plan up to and including the Notice to Proceed, if there were permit conditions that translated into modifications and cost, it would be shared on a fifty-fifty basis. Mr. Heeke agreed as did Mr. Lickie. Mr. Randolph clarified that it is not just the design, but after installation if there are changes required to be made, that would be fifty-fifty cost sharing also. Mayor Marix and Mrs. Douthit pointed out that is not correct as this sharing is only up to the Notice to Proceed from the DNR. Mr. Heeke believed that Mr. Doney was referring to the field modifications. Mr. Doney agreed. Mr. Lickie pointed out this was field modifications prior to installation. Mr. Heeke believed an in-field modification would be when the units are already placed in the water. Mr. Lickie clarified that does come up later. Mr. Lickie understood this the cost-sharing was prior to issuance of the final Notice to Proceed by DNR and if there are cost modifications that are incurred, that would be shared fifty-fifty and the in-field matter comes up later in the contract. Mr. Heeke agreed that in-field is after DNR issues their Notice to Proceed.

Mr. Randolph advised that means the Town has not only paid 50% for forms already made, which no longer fit the design, but presuming they wish to move forward with the contract, the Town in addition would pay 50% of the cost to refabricate to which Mr. Lickie agreed.

Mayor Marix again asked to see the video as if they get a serious storm, there will be more than a million dollars spent for repairs, or maybe ten million, as she doesn't know what they are going to have and it may be there won't be a big storm and maybe they won't have to pay for a reef that they can't use. She stated there are all kinds of "maybe(s)".

Mr. Lickie stated they are hoping the risk is diminished on what they are talking about, as it is in the hands of DNR.

Mr. Weinberg gave an example that when you buy medications, they add the research price for the past twenty years to the cost, and in this case, we are getting a price for a product which is experimental and they are saying if it doesn't work, the Town will have to share in the cost of it and he didn't view that as good economics. Mayor Marix did not agree that what was being said and she saw this that if the DNR asks for something different, prior to issuing the Notice to Proceed. Mr. Weinberg viewed this as American Coastal's responsibility to meet the government

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PEP Reef
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standards and he didn't believe it was the Town's responsibility to pay for their experiment. Mayor Marix responded it is the Town's responsibility to protect our citizens, pointing out American Coastal does not have to build that reef this year and it will cost them just as much money to build it next year and probably more, but the Town is the one with the problem. Mr. Weinberg responded if there is a major storm, they are protecting 1500' and twelve miles of the Town remains unprotected, and he doesn't see the great emergency. Mayor Marix corrected him stating it was 4000'. Mayor Marix pointed out other places in the Town don't need this kind of protection and if there were money and permits, they would like to protect the whole Town, but one of the good things about this, if it does work out, she would hope it would be protection for other needy parts of the State. Mr. Weinberg stated they would be part of the experiment to which Mr. Heeke agreed. Mrs. Douthit pointed out the reef off of South Ocean has been proven successful. Mr. Lickie agreed it is at a stage where it has been tested and proven as much as it can be. Mr. Weinberg pointed out it is still called an experiment by the State agencies.

Mrs. Wiener recommended they move forward on the contract as they can argue forever on the different points of view are, or on whether it is an emergency or not. Mr. Heeke agreed noting the pros and cons have been heard. Mrs. Wiener felt there was no point in going over and over these items as that is not the way to do business.

Mr. Lickie stated the next item has been resolved as it was the inclusion of the plans and specifications, and this has been submitted as Exhibit A. He stated the Town Staff wanted to see this set of plans. Mr. Doney noted it is Sheet 1 of 1 and other attachments. Mr. Lickie responded they will satisfy staff with that item. Mr. Doney reported the concern was that any and all specifications should be attached to the contract.

Mr. Lickie proceeded to Page 2 with the next highlighted item being the ability of American Coastal to proceed once the Notice to Proceed has been issued by the Council and he believed that item was resolved.

Mr. Lickie proceeded to Page 4, Article III, Section B, which is a catch all stating if there is work that is required beyond the scope of the contract. He explained the scope of the contract being the construction, fabrication, installation of the reef and taking care of it by alignment issues however if there is something else the Town would require that American Coastal would perform that on any type of basis that the Town commissions on some unit pricing with time and materials. Mr. Doney stated at this time that is an unknown, so if staff and American Coastal disagree, it will come back to the Council for a determination. Mr. Heeke viewed the key word as 'mutual', to which Mr. Lickie agreed.

Mr. Doney referred to Page 4, Article 3, Subsection A, as that item may change as we proceed further into the contract, to which Mr. Lickie agreed noting that Town staff suggested if there were any items that were not considered in the original August, 1990 bid, that those items be flagged and a cost estimate submitted. Mr. Lickie advised American Coastal has agreed to stick to the originally bid price for construction, fabrication and installation, although there are some additional requirements, such as removal and/or realignment issue as result of catastrophic conditions or the result of DNR instituting changes. Mrs. Wiener asked for a clarification of "catastrophic" as she thought that was the purpose of this reef, to help the Town in times of severe emergency.

Mr. Lickie responded that is correct but the primary purpose is beach erosion control and in addition to that there would be storm protection, which is a relative word. He thought it was tested up to a fifty year storm but nobody really knows what would happen in a Category 3 hurricane, for instance. He commented it is not known if the buildings on A-1-A would be standing and that simply is the point. He knows the reef will still be there but whether it will be completely aligned is not known.

Mr. Lickie proceeded to Page 3, Item C, and American Coastal will guarantee the project against poor workmanship or faulty materials for a period of thirty-six months, (extended from twelve months) and correct any defects appearing during this period once the Town notifies them of the defects. He indicated the next paragraph talks about the re-alignment issue, with American Coastal making changes to realign the reef which would occur through natural shifts, however, if the misalignment is a result of catastrophic seas or weather conditions or as a result of changes or modifications by the DNR, after installation, any changes would be performed at the Town's expense on a time and materials basis.

Mr. Weinberg asked who will determine the absence of the presence of defects? Mr. Lickie responded the Town will do so and it is presumed that this would be something before the DNR commences monitoring the reef through the University of Florida and if they see any defect, it would be brought to the Town's attention, who would bring it to American Coastal's attention.

Mr. Doney advised the role of the Town is one of contract administrator and they will provide notification to American Coastal, upon the notification from DNR. Mr. Heeke noted there is a schedule of monitoring which will be ongoing during this three year period after the installation of the reef, and he didn't think the Town should duplicate that effort if it is being performed adequately. He felt if it is sensed during that process that whoever is doing the monitoring is not doing a capable job, they then might want a dual monitoring, but it is not anticipated at this time.

Mr. Randolph asked to be heard on the question raised by Mr. Weinberg in regard to whom determines defects, and the answer was the Town, wondering if it was presumptively assumed that in the event the Town advises of a defect, that it indeed is a defect and it will be corrected and there will be no argument as to whether or not it is a defect? Mayor asked how they would know it was a defect? Mr. Doney stated the Town's base of knowledge would be the written notification based upon the monitoring completed by DNR through the University of Florida and perhaps a local environmental firm who will do the field data collection. Mr. Randolph suggested the language should be clarified to reflect "as determined by DNR" or something to that effect. Mrs. Wiener agreed. Mayor asked if the University is doing it and the DNR would that be considered a cross-check? Mr. Doney responded the University will be doing it for the DNR, but the DNR will be reviewing the data collected and making an evaluation of it from a coastal engineer perspective. Mayor Marix asked if Dr. Dean of the University would be involved? Mr. Doney responded that has not been yet confirmed. Ms. Mitchell addressed the Council indicating in her conversation with Mr. Green yesterday, he advised it was not yet known about who would be doing what as the

University is primarily set up to review and there will be a third party outside of DNR, and American Coastal Engineering who will actually be doing the field testing.

Mr. Randolph advised it is his understanding of what has been said that if there was a notice of a defect, it will be corrected and he thought the language needed to be clarified. Mr. Lickie advised he will work up the language to be mutually agreeable.

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Mr. Lickie stated in order to insure the continual performance of American Coastal, there will be a surety bond in an amount which will be agreed with staff on what the cost will be. Mr. Doney advised that is one of the items they wanted to know about as he understood the cost of the bond should be in an amount to exceed an amount to be determined, and this will be an additional cost above the 1.9 million. Mr. Lickie envisioned this to be handled in two different ways - one, American Coastal through the Town that it would be the Town's responsibility on a time and materials basis if held without the scope of this and secondly, if held within the scope, a surety bond could be had to make sure they performed, however, the surety bond was not contemplated in the 1990 bid and will be an additional bond and the cost is estimated to be around five thousand dollars.

Mrs. Wiener asked if that would cover the entire project time to which Mr. Lickie responded it would be for this surety bond for a time period of thirty six months. Mr. Doney advised a payment and performance bond is required for the amount of the contract. Mr. Lickie advised that is another issue coming up.

Mr. Lickie proceeded to Page 5, Item D, indicating if the removal of the reef was required by DNR, the cost would be approximately \$350,000 and that was not contemplated in the original bid for construction and that could be done on the basis that the Town realizing it must be removed, it would be an additional cost; or it could be bid into this contract with a surety bond.

Mr. Dusey advised he felt this whole paragraph was unnecessary as if the Town is going to pay for it, a surety bond would not be needed, and if the reef needed to be removed, the Town could contract with anyone to do so, and he believed it was proposed they would remove it at their expense. Mr. Lickie advised this was not envisioned in the original bid.

Mr. Doney asked if the estimated cost also included restoration of the bottom area? Ms. Mitchell responded at this time it would be difficult for them to restore anything as there is nothing there to restore, but the estimate was based on \$1000 for 330 units. Mr. Doney believed there was a related issue that is pursuant to condition 3.4 of the PEP Permit states that "written assurance acceptable to the Department that the permittee will remove the structure and restore any damaged area to pre-installation conditions, if necessary, at its own expense, upon the Department's written notice that the project is causing an adverse impact to the coastal system, or upon completion of the experiment, unless the Department grants a permit to let it remain in place. Such removal shall be accomplished within 120 days of Notice, or the end of the test unless the Department agrees in writing to a longer time." He believed attention needed to be also given to 3.5 and 3.6 which addresses the removal of any derelict structure and in that language states "a surety bond or other financial assurance acceptable to the Department's staff, which provides for the completion of this plan." He felt that means DNR will require a surety bond for this item.

Mr. Lickie felt they may or may not require the bond, as if the Town takes on that obligation, he doesn't think it would be necessary. Mr. Ilyinsky asked what would happen if the barge rolled over in the inlet and the forms are dumped into the sea. Mr. Lickie responded that would be American Coastal's problem. He reported what they are talking about has nothing to do with the installation.

Mr. Weinberg indicated the Town is paying American Coastal to lay down an experimental reef and if it doesn't function, is he saying the Town would have to pay for American Coastal to remove it or someone else to remove it? Mr. Lickie responded that could be incorporated into the bid for the complete installation and theoretically the removal of same, or it could be presented as an item where the Town would assume that responsibility and they could reduce the contract price at this point. Mayor Marix felt if the price was 2.1 million and they would include the taking away, they would have made an extra profit.

Mr. Doney asked Mr. Randolph about the language and the discussions they have had on whether the surety bond could be deleted asking him if he concurred it could be deleted? Mr. Randolph responded the reason this first came up is because from a staff level, they were not willing to make the decision that the Town will take the risk of removing the reef so negotiations were started by saying the staff felt if it had to be removed, the cost would have to be born by the contractor and if that were going to be the case, they would want to see a surety bond in order to see that that would indeed be done. He agreed with Mr. Dusey that if it were not going to be the job of the contractor to do it, a surety would not be needed. He believed if they were requested by DNR to remove the reef, they could go out to an independent party for removal at that time.

Mr. Weinberg asked if it is removed because of a defect, would it be the Town's responsibility or a shared responsibility? Mr. Lickie responded a defect would be covered under the Warranty section of the contract. Mr. Weinberg believed a defect should be defined. Mr. Lickie responded if it would be construction materials of segments of the reef that were found to be defective, that would be their responsibility. Mr. Weinberg asked under what conditions would it be removed - because DNR doesn't like it? Mr. Lickie stated they would have to have more of a reason other than they don't like it. Mr. Weinberg asked why they would want it removed? Mrs. Douthit stated it would be strictly a gamble. Mr. Heeke felt if the results were not what they had expected them to be, that could be a reason. Mr. Weinberg believed that could be determined as a defect. Mr. Lickie felt if DNR determined it was an endangerment to the environment, that would be a reason. Mr. Weinberg stated defective performance in his mind would be a defect. Mr. Lickie stated he did not believe they could cross into that, as this is an experimental project and there are no ultimate guarantees. Mr. Heeke felt an option which could be considered by the Council is to put in a number and see if they agree to it. Mrs. Douthit felt they shouldn't be agonizing over it as it may never happen. Mr. Doney stated that was fine if the Town Council was willing to assume that risk.

Mrs. Wiener felt either way, the Town would have to pay for it as if she is dissatisfied with someone's product, she would no longer be giving them her business, and she didn't think it needed to be discussed any further as it will either happen or it won't happen.

Mr. Lickle agreed to remove that particular paragraph.

Mr. Heeke referred to the next item, which is on Page 6, Item D. Mr. Lickle believed that went with the thirty-six months guaranty which was discussed earlier. Mr. Randolph noted this was discussed and he wished to be sure that upon final payment, after the thirty-six months, that they were not releasing them from any claims arising out of Article VII to hold us harmless from any damages which may occur in the patent suit, and he felt that item should continue after the thirty-six months. He believed that was their intent with the new language and they are saying that Article VII will continue after the thirty-six month period. Mr. Lickle agreed Article VII is a fully indemnifying paragraph and will be left in the contract.

Mr. Lickle went to page 10 and he thought that should be left up to arbitration or the court, whatever the Town decides. Mr. Heeke stated there is always mediation. Mr. Randolph recalled there was language in the draft which was not agreeable and that is why this needed to be resolved. Mr. Dusey advised the Standard Form Contract states the Town is the final determination of disputes. Mrs. Wiener thought that would be fine. Mr. Heeke agreed. Mr. Dusey advised all of their contractors do agree with that item. Mr. Randolph stated a determination needs to be made if the Town is not the final determinator, whether they will go to arbitration or the court. Mrs. Wiener felt if the normal contract states the Town is the determinator, why would that be changed as long as people get along, there would be no problem and if there is a problem, it would land in court, so she didn't see what the problem was all about? Mr. Dusey stated this is on all of our contracts and usually staff administrators this fairly and there are no problems. Mr. Heeke asked if this foreclosed the option of going to court? Mr. Dusey didn't believe it would. Mr. Lickle indicated he would work this out with Mr. Randolph and come up with some suitable language.

Mr. Lickle advised the next item is termination, page 11, Article XIII, indicating that his client would prefer not to have the termination provision and if the Town wishes to have it remain, he would like to see it to be without cause and American Coastal be paid on a per unit basis, as per the Schedule B up to the date of the termination. Mayor Marix asked if this was stopped in the middle by American Coastal and the DNR wants the reef removed, then where would we be? Mrs. Douthit didn't believe the sharing monies would be available in that event. Mr. Randolph stated the same problem would remain if it were terminated for cause because at any time this is terminated with or without cause, there could be half a reef being placed and it would have to be removed. Mayor Marix felt if it were for cause, there would be a good case made for them to remove the reef. Mr. Lickle believed that would be a legal issue as if it is for cause, it would presumably be a breach of contract. Mayor Marix thought if it were to be removed, with or without cause, and the Town stops it, what would happen? Mr. Lickle suggested this should identify if it is with or without cause and if it is with cause, there would be a breach of contract. Mayor Marix asked if it was without cause, who would remove the reef? Mr. Lickle stated he would think it would be the Town's responsibility without cause. Mayor Marix suggested they be more specific. Mr. Randolph asked if that would be after a determination is made and the Council considered whether or not to cancel this without cause and they know when that is done, they may be looking at an expense. Mr. Randolph stated it was his idea to put this clause in the contract because there are so many unknowns as to what will happen with this as it is an experimental project and if somewhere along the line, the Council decides they do not want to go forward with the contract, there should be a provision whereby they can pay the contractor for everything he has done and get out of the contract. Mayor Marix agreed with that. Mr. Randolph explained if this clause was not in the contract, the Town would have to prove they are in breach of the contract in order to terminate. Mayor Marix agreed but thought it would then be the Town's responsibility to remove the reef. Mr. Randolph did not believe that should be put in the contract, however, he was not sure if this was terminated for cause, the language should be modified.

Mr. Lickle explained the next item is that if the termination provision does remain, they need to calculate the cost of risk to the Town prior to May 1st and that concludes the contract, with the exception of the schedule and Exhibit B which is submitted for Council's knowledge on how American Coastal plans to build the units in the various phases.

Mr. Heeke felt some of these matters were policy matters. Mr. Doney indicated there were two items which the Council should address and one was the issue of the sales tax and the other is the amount of the performance bond. He wished to clarify the schedule of unit costs.

Mr. Lickle responded on the sales tax issue, the contractor has to pay tax for the sub-contractors and that was not contemplated originally. He advised the staff has requested the performance bond be for the entire contract and the surety bond was not included also, and the estimated cost is \$25,000. Mr. Heeke felt there was enough of a risk here already and he would like to have them take out a Surety Bond. Mr. Randolph pointed out an additional surety bond is needed for paragraph C on Page 5 in the event the DNR should issue an order requiring realignment and an amount is needed for that paragraph. Mr. Doney pointed out the amount is undetermined at this point.

Mrs. Wiener asked Mr. Lickle who was their insurer? Mr. Lickle stated under the terms of the contract, it will be a company acceptable to them and to the Town.

Mr. Dusey pointed out there is another bond in the event the reef is defective, and an amount is needed for that also. Mr. Lickle believed that was to be covered under the removal bond which included any realignment. Mr. Randolph stated a proper amount needed to be provided to cover defects. Mr. Lickle stated that has not been determined as yet and apologized for the fact these numbers are not yet available as there wasn't time to finalize all these items.

Mr. Doney asked to focus on Schedule B, the Schedule of Unit Costs. Mr. Dusey asked with regards to the construction of the forms, recognizing it is a newly designed reef and also that it is an experimental project and forms must be made and the Town will share in the cost of the forms, but he believed what they were doing is paying for the construction of the forms and he believed the Town would have an interest in those forms for future years in some way, either by retaining them or negotiating an agreement with American Coastal that if the forms are used again, the Town would be reimbursed. Mayor Marix thought they could be rented out to other people.

Mr. Lickle felt as to the forms themselves, they would be owned by American Coastal and they would continue to be used. Mr. Heeke suggested perhaps there could be some amortization if they are used again in the future, as that would be a cost which would not be later incurred if they used the same forms. Mr. Lickle thought perhaps some kind of a rebate could be put on it. Mrs. Douthit thought it was something that should be thought about. Mr. Dusey stated they will

negotiate this with some value. Mr. Heeke stated it isn't the desire that the Town wants to own them, but to recover the cost for the fabricating of them, as we would no longer have a need for them.

PEP Reef
(cont'd)

Mayor Marix thought possibly they could be used in some other part of Town, if the project is successful. Mr. Rauch informed the Council they only can be used for thirty or thirty three units and they would have to be remade and they would have no value as they have a very limited lifetime. Mr. Weinberg asked if they had rebars in them to which Mr. Rauch responded affirmatively noting they would be using number six rebar and a combination of concrete and steel. Mr. Lickle suggested a determination be made as to what value there is in these forms, after they have been used.

Mr. Heeke asked if all the points Mr. Doney wanted the Council to address have been touched on? Mr. Doney responded they have and depending on the Council's desire on the issues that were left up to the Town Attorney and staff to negotiate with American Coastal did the Council wish them to come back at a future meeting? Mr. Heeke believed the issues could be administratively handled with regards to the amounts of the bonds, and unless staff during the period of negotiation felt uncomfortable with something, they can always bring it back to the Council, but he believed they had received the guidance they needed to proceed.

Mr. Heeke asked about the video. Mrs. Wiener felt the majority of the Council agreed to go with this project and she saw no need of watching the video.

Mr. Doney asked to be heard and asked Mr. Randolph if the Council does authorize conditional approval, based upon the condition and negotiations are left with him and the staff, if he was comfortable with the items on construction cost negotiation of the forms, the surety bond renegotiation and the insurance costs; and also that Mr. Randolph has the opportunity to approve the contract as to final form and sufficiency. Mr. Randolph felt there were some items unresolved and he understood that policy decisions would be made and Mr. Doney would be doing that. He confirmed he was not comfortable with such items as to who owns the forms and the Town would want to recover costs as to fabrication. He didn't believe any of the staff would be comfortable making a decision as to what amount they would be willing to accept and that may be something that needs to be brought back to the Council, unless there was some further direction given.

Mr. Randolph advised the major matters discussed at the beginning of the meeting are policy decisions made on this, but many of the other decisions such as a cancellation clause for cause and without cause, he can work that out.

Mayor Marix heard Mr. Rauch state the forms don't have much value as they take quite a beating. Mr. Lickle felt it was determined that the forms have little or no value, they need not come back but if Mr. Dusey is not convinced they have little or no value, they could possibly put a special price on them, such as ten per cent of the value of the contract or something like that. Mr. Weinberg asked if they could be reconditioned? Mr. Rauch did not believe so. Mr. Heeke noted they are talking about \$138,000 approximately and Mr. Rauch has had experience with this product and states they have little useful life after the project is completed, so he thought at this point, he would be inclined not to spend the staff's time on it. Mr. Rauch advised if any of them should need repair, they would be able to do so.

The video on the storm of October 31, 1991 at the head of Worth Avenue and some shots along North Ocean Boulevard was shown.

Mrs. Wiener asked if what they were viewing was the kind of catastrophic disaster they were referring to in the event the reef didn't work? Mr. Lickle stated that was a hard question to answer but he did know the smaller version of the reef at the south end did withstand some heavy seas and it did pretty much remain in line. Mrs. Wiener stated that was not the point as she would expect them to have a more clear-cut answer as to what would happen in the event of a storm of this type. Mr. Rauch explained the reef did very well in this particular storm.

Mr. Weinberg asked how high would the units be to which Mr. Rauch responded they are six feet and the water is normally nine feet at mean low tide. Mr. Weinberg asked how that would behave if there was a twenty foot surge. Mayor Marix stated the reef is not buried. Mr. Rauch responded at the high tide, it would be in nine feet of water and the low tide it would be six feet. Mr. Weinberg asked what effect this would have on a twenty foot surge to which Mr. Rauch responded it would provide approximately a fifteen to sixty per cent wave reduction on the average.

Mr. Doney asked for clarification about the specific items considered here today and whether or not Mr. Randolph was comfortable with them. Mr. Heeke recalled Mr. Randolph stating he was concerned about a few items only. Mr. Randolph felt all the items, except for the major policy items which the Council needed to decide upon, could be worked out at the staff level with Mr. Lickle but if any of them felt uncomfortable with what is worked out, they will bring it back to the Council.

Mr. Heeke referred to Page 1 with respect to splitting of the cost between the Town and the American Coastal Engineering in the event there was any material changes to the permits by the DNR up through the issuance of the DNR Permit, and Mrs. Wiener so moved. Seconded by Mrs. Douthitt. On roll call, the motion carried unanimously.

Mr. Heeke believed the item on Page 2 with regards to Time of Completion has been covered in the motion just made.

Mr. Lickle asked if staff and American Coastal were able to work out the other detailed items, would it be possible for them to proceed and if staff is not comfortable, it can be brought back to the Council.

Mrs. Wiener pointed out the Council was put on notice tonight there was a Hearing on this subject about awarding the contract set for the 27th of January and she would like to know what jeopardy would the Town be in if they proceeded with the execution of the contract? Mr. Randolph responded if they entered into the contract, particularly with this Notice of Proceeding, they may be looking for some liability of payment to the contractor, but he really didn't know what the risk would be at this time. Mrs. Wiener asked Mr. Lickle if he would be willing to wait a few more days? Mr. Lickle felt it was a risk issue and Mr. Randolph can advise you as to what will be proper, however, it was his understanding there would be a hearing as to whether or not an

injunction would be proper and if the injunction is granted, a bond would be posted in an amount to protect the Town against conceivable damage which resulted in the failure of this project to go in.

Mayor Marix asked who would post that bond to which Mr. Randolph responded Mr. Creter would post the bond for an amount to be determined and that would be an arguable issue and would be determined by the Court.

Mr. Randolph believed they are only talking about a matter of days and he was not sure how that would effect the emergency nature of this, but it seemed to him it was responsible action to determine what will happen at the court proceeding prior to entering into a final contract.

Mayor Marix asked if the paper work could be worked out and they entered into a contract, could they make it "subject to" whatever will happen at the Hearing, so they won't have to come back to the Council.

Mr. Randolph read the summons which stated a contract would be declared null and void and he really didn't know what that meant unless the Judge was going to make the determination of whether or not a contract should not be entered into, and it is up to the Council if they wish to enter into the contract before the Hearing Date. He advised there is one thing that they don't know is whether or not they could have the contract ready for execution prior to the date of the hearing but they could vote to direct staff to get together with the contractor and make the corrections as designated tonight but the question remains if this is completed prior to the date of hearing, whether execution should be allowed. Mr. Heeke felt if they entered into a contract prior to the Hearing and if the injunction was granted, would that force the Town to go to competitive bidding and they already have a contract? Mr. Randolph stated he does have a lot of research in preparation for the hearing as the Court has asked them to respond in writing one hour before the Hearing.

Mrs. Wiener felt it would be highly imprudent to have the contract executed before the Hearing. Mr. Heeke suggested they prepare the contract and hold the execution in abeyance. Mayor Marix asked Mr. Lickie if he could wait a few more days to which he responded he had no quarrel with waiting a few extra days. Mayor Marix felt this was one of the most important matters to come before the Town Council and perhaps a meeting could be set for late Monday after the Hearing so they can proceed.

Motion was made by Mrs. Douthit that the Town Council authorize staff to proceed with the finalization of the contract with all the language in order with the items incorporated which were discussed this evening and after the Hearing on January 27, 1992, the Town Council hold a Special Meeting. Seconded by Mr. Ilynsky. On roll call, the motion carried 5-2 with Mrs. Wiener and Mr. Weinberg voting against the motion.

After discussion the Council decided to hold a Special Meeting to proceed with the negotiations on the contract and Mr. Weinberg so moved. Seconded by Mrs. Douthit. On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion indicating she was happy to come and meet and make the contract as favorable as possible to the Town, however she voted against this issue all along and now continues to vote against this issue.

Motion was made the Special Meeting be held at 9 AM on Wednesday, January 29, 1992 in the Town Hall Council Chambers by Mrs. Douthit, seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Doney indicated a motion will be needed to reappropriate the funds for the PEP Reef project. Mr. Heeke felt it should come up at the Special Meeting.

A-1-A - PALM BEACH COUNTY - President Heeke asked the Town Attorney if he had any information on the action the County has taken on the properties in the south and along the Old A-1-A Highway? He knew the County had requested a deed from the State and wondered if it had been recorded as yet? Attorney Randolph stated he was not aware whether or not it has been recorded. Mr. Heeke suggested he advise the Council whether this is a slander of title to the Town's property or a cloud on our title and the property owners in that area, and asked if the Attorney would bring this matter back to the Council. Mrs. Douthit asked about adverse possession? Mr. Heeke was sure that would be all part of the research which the Town Attorney will do on this matter. Attorney Randolph advised there has been a great deal of research done on the A-1-A issue and the position that he has taken is that he has not seen anything that determines that the strip of land is owned by the County. He advised they took the position that nothing had ever been done by the State to give it to the County, and as a result of that the County asked the State for a Quit-Claim Deed and he will research this further and report to the Council.

MORE FAVORABLE INTEREST RATE ON BONDS. President Heeke advised the Mayor received a letter from Jim David at Smith Barney and there are representatives here tonight for a presentation. Mr. Jim David, Vice-President of Smith Barney addressed the Council indicating with him were Michael Hole and Richard Ellington to answer any questions the Mayor and Council may have. He advised the Town of Palm Beach is one of Smith Barney's highly prized clients and they have represented the Town as its financial advisor in bonding matters since 1956. He told the Mayor and Council they don't neglect them in between the times they see them, as they have worked with the staff and make themselves available to staff when there are any questions and several years ago when they were considering some seawall work, the staff called them and they worked with them on how to finance that project. He advised these services are performed on an on-going gratis basis. He advised they constantly do monitor the market and we now see interest rates at a new low and their refunding analysis has found some of the issues, particularly the 1980 issue can be refunded. He indicated they have all been handed an analysis of all the existing issues.

Mr. Michael Hole addressed the Council noting the last time the Town went to the market was 1986 and they at that time followed the process of refunding a portion of the 1985 bonds which were at fairly high interest rates. He indicated the top three issues were in 1973, 1975 and 1980 which are carrying higher interest rates than today's rates which range from 3.0% to 5.8%. He stated there was on a hand-out two columns which he called their attention to, which were Total Savings and Present Value Savings, noting since 1985 the Sewer Project, could produce approximately \$500,000 in total savings if they were in the market today with 1992 Bonds. He stated these savings would be spread from now to the year 2000. He stated the 1973 and 1975 issues are also candidates for refunding. He indicated they are analyzing this now and believe the savings would

PEP Reef
(cont'd)

A-1-A
Palm Beach
County

More favorable
interest rate
on bonds

be somewhere around \$600,000 total savings. He advised they will be looking at these issues along with the Bond Counsel if the Town Council decides to proceed in this matter and requested authorization from the Council to proceed with this analysis.

Mr. David addressed the Council requested authorization for Smith Barney to work with the staff and Bond Counsel to begin preparations to go into the market, and they will come back within three to five weeks. Mr. Hole advised in the event the interest rates would drop to an unacceptable level, there would be no obligation.

Councilwoman Douthit left the meeting at 7:47 PM.

Mayor Marix asked what the cost would be to save the \$500,000 or was that a net figure? Mr. Hole responded this was after all costing.

Mr. Weinberg asked where they think the interest rates would be going as opposed to what the Town is now paying? Mr. David stated that was a hard question to answer, but what he hears is this is a fairly fragile market and there is not a lot of underpinnings and secondly, one of the things they are seeing, is there is a large calendar of corporate re-financing and they are refunding some of their higher debt at lower costs so that is taking some of the monies away from the tax-exempt market, so it is difficult to know if they are at an all-time low, but they think they are at levels that are accessible to lock into now and the savings will be substantial.

Mrs. Wiener stated she would like to see them move forward in this direction. Mr. Heeke called for a motion. Mrs. Wiener moved that Smith Barney be given the opportunity to explore and analyze the possibility of refunding the bond issues the Town of Palm Beach now has outstanding. Seconded by Mr. Weinberg.

Mayor Marix asked if this was a motion to explore? Mrs. Wiener responded it does have to be put together. Mr. David believed what he heard was to authorize Smith Barney to proceed to putting together the documentation to go forward to the market, but that they would come back to the Council before they did that. Mayor Marix commented that she feels responsible for this as this was her idea, and is in favor of it, but wondered if it should first be considered by the Finance and Taxation Committee to which Mr. Heeke recalled there was a question raised at the Retirement Board whether or not bids should be sought for some other bond underwriter and there is pluses and minuses to that, one of which is how long is the interest rate going to be available and how much time this procedure would take. Mrs. Wiener thought this would all take time and they needed to move forward on this now. She stated if the Finance & Taxation Committee did meet on this and made the determination they should go to bid, would everyone get the same opportunity at the same moment?

Mayor Marix responded she didn't mean to go out to bid and she was joking as the past few meetings were spent on that subject. Mr. Heeke advised it would be a request for proposal from various underwriters as to what they would be presenting. Mrs. Wiener believed Smith Barney has been taken care of the Town and are involved with it and are familiar with the market and she viewed this as there are some things that are reasonable and some things that are not reasonable and she had no problem with the motion if they wanted to have the savings unless the rest of the Council felt differently. Mr. Heeke stated he had great confidence in Smith Barney as he does with several other underwriters, and they have demonstrated their willingness to help the Town.

Mr. Weinberg called for the question. Mr. Heeke recapped the motion: "authorize them to proceed with putting together a package but they would come back to this Council before they proceed further." On roll call, the motion carried 4-0 as Mrs. Douthit had left the meeting.

CHARITABLE SOLICITATION PERMIT NO. 333-92 - PILCHUCK GLASS SCHOOL. Mr. Bruce Halander addressed the Council appreciating the opportunity to present his problem, as he was late in submitting an application for a fund-raising event he would like to hold on Feb. 7, 1992 and requested conditional approval as all information has been submitted although it has not had a chance to move through the various Departments. Mr. Heeke suggested since there is a special meeting called for January 29, 1992 that this item be scheduled as staff has not had the time to look at the application, to which the remainder of the Council agreed.

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:59 PM.

Grace T. Peters
Town Clerk

Interest
Rate on bonds
(cont'd)

Char.Sol.Permit
333-92 -
Pilchuck Glass
School

Adjournment