MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON JANUARY 14, 2000

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order at 10:30 a.m. on Friday, January 14, 2000, by President Lesly Smith in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Town Attorney John Randolph, Finance Director Jane Skittone, Public Works Director Al Dusey, Town Engineer James Bowser, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Deputy Town Clerk Eichhorn. President Smith led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

The Agenda was approved through motion of President Pro-Tem Wyett, seconded by Councilman McDonald. On roll call the motion carried unanimously.

IV. CONSIDERATION OF FINANCING ALTERNATIVES FOR APPROVED COASTAL MANAGEMENT PLAN

Public Works Director Al Dusey recalled that the Town Council had been given information regarding financing alternatives for the Coastal Management Plan. He noted that the Town would begin to face some timing issues, as Reaches 3, 4, 7 were in final design and permitting, and there was an expectation that award would occur sometime during the summer months; depending upon how the Town Council decided to finance these projects, the process would need to begin very soon; the other alternative would be to delay everything for another year. Mr. Dusey explained that there was a draft resolution concerning a referendum provided in the back up packet, as there was now a tight time line if the Mayor and Town Council should chose to go to referendum; such resolution would have to be passed at the end of the month in order to appear on the March 14th Primary Ballot; the Code of Ordinances restricted such referendums between April 1st and December 15th. He noted that there was a time issue relating to the possibility of litigation with the Army Corps of Engineers, as Reaches 3, 4, and 7 were on a schedule that was on a collision course with the issue of the Erosion Control Line (ECL). It had been the original intent to construct those reaches next winter, and in order to do, the final design/permitting must be done in the near future for award in July/August; in addition, the ECL would be required on those projects. He pointed out that the Town Council could chose to proceed with those projects, ignoring the ramifications of those particular sections with respect to a lawsuit, or wait to do the projects. He noted that within the next 3-5 months the Town would be in the process of establishing the ECL on those projects, and staff would need direction. He reminded the Mayor and Town Council that there were continual permit obligations at the Mid-Town Project, requiring renourishment when 40% of the original fill was lost from the confines of the limits; the project was relatively stable at 30% currently, however, it would be prudent to schedule the renourishment next winter; the alternative would be no renourishment at all, which would require removal of the groins.

Town Attorney Randolph advised that timing was of primary importance in regard to a decision to go with a G.O. bond if a referendum was chosen, which would require action today, or within the next few days. He offered to respond to any questions in this regard.

Town Attorney Randolph addressed the issue of hiring an attorney to analyze the pros and cons of proceeding with litigation with the Army Corps of Engineers, stating that he believed it was possible to pursue the possibility of litigation, while going forward with beach projects; he noted that advice would be needed regarding how the ECL matter should be handled fairly quickly in the litigation process.

Mr. Michael Hole, of Salomon Smith Barney, reviewed the package of material submitted to the Mayor and Town Council as part of the Agenda package for the meeting today, which included the following:

1. Summary of Recommendation and Considerations;

2. Summary of Updated Bond Cash Flow Analysis for both the 2006 and 2010 final maturity scenarios including:
   A. Tax Revenue/Millage Requirement Page;
   B. Estimated Cost to Homeowner;
   C. Sources and Uses Page;

3. Response to letter from Mr. William Cooley which addresses several financing details including bond sizing mechanics, allocation of the various sources of funds and the cash flow dynamics of the program.

Mr. Hole began his presentation with a statement of the recommendation to finance the Town share of the project, which was one series of fixed rate tax-exempt bonds (G.O. or Revenue),and was the least expensive alternative at this time. He explained that he did not recommend variable rate products simply because the Town of Palm Beach had never issued variable rate bonds because it had always desired to know the cost of a project up front. He explained that he also would not recommend splitting the issues into two series for the same reason.

Mr. Hole explained that the current cost differential between G.O. and Revenue Bonds was less than one-tenth of 1%, which was minimal. As a result, the flow down to the taxpayers from a millage impact point of view was also minimal. He noted that he had not presented separate millage figures for Revenue Bonds versus G.O. Bonds because it simply would not change. The millage that would be charged would be used for both the service debt, and a portion of the cost of the project. It was the second $18 million draw in the year 2003 that would be the critical year in terms of cash flow, and avoiding spiking of millage during that year. As a result, the millage would be leveled off, allowing investment of the money so that borrowing a second time in 2003 would not be necessary. The Federal, State, and County reimbursement monies would also be used to service both debt and to pay a portion of the project.

Mr. Hole addressed re-payment of the debt: a 6 year repayment, concluding in 2006, and a 10 year repayment, concluding in 2010. The repayment of bonds by 2006 would require a higher millage to service the debt over a shorter period of time, with a bond size of approximately $20,275,000 based on today's market; repayment by 2010 would increase the borrowing size by $3,000,000; the longer repayment term would give the Town the ability to charge less millage over a longer time, however, the lower millage in the early years before the 2003 year would be insufficient to carry the Town through the second $18 million draw (insufficient by $3,000,000).

Mr. Hole explained the 2006 scenario of the tax revenue required, giving the tax base assumption; the .1092 existing millage currently in place for coastal protection; .2200 mills would be the equivalent millage that would become available next year as a result of the series 1992 G.O. bonds maturing; .1118 mills would occur in 2006, and would become available when the 1993 bonds were retired. He clarified that if the Town was not doing this project, the two amounts of millage related to the bonds, would essentially be passed through as savings to the taxpayers. In addition to the sources from the retiring G.O.Bonds, in addition to the .1092 mills being currently charged, in order to retire the debt and pay the portion of the project, "pay as you go," it would require an additional .288 mills to have it all retired in six years, or in total beginning next year: .62 mills for five years, and then .73 mills in year six. The resulting taxes were also calculated on the chart. He then explained the same scenario based on the 2010 scenario, which would begin with a total millage of .33 mills in 2001 through 2005; .44 mills in 2006 through 2010.

Mr. Hole referred to the chart containing the cost to the homeowner for the life of bonds on the:

2006 scenario: a property valued at $1,000,000 (as determined by the Palm Beach County Tax Appraiser) would pay $3,940 over the total six year program).

2010 scenario: a property valued at $1,000,000 (as determined by the Palm Beach County Tax Appraiser) would pay $3,960 over the total ten year program)

Mr. Hole referred to the chart with all of the sources of funds and uses of funds for the full six years, and explained it in detail to the Town Council for both the 2006 scenario and the 2010 scenario.

Mr. David Scaff, President, First National Bank in Palm Beach, addressed the Town Council, noting that First Union Securities, Inc., had requested that they could be included in the financing for the coastal protection program, and were hopeful that the cash flows required by the project may lend themselves to some bank qualified loans. After having an interim period to work with the Town staff and understand the cash flows, it appeared that First Union Securities was offering a supportive second opinion; that bond financing would be the way to go; he also noted that they were in agreement with the pricing analysis that the differential between G.O. bonds and Revenue bonds were negligible. He stated that his firm would be very happy to work in sharing with the financing of the project.

At this time public comment was heard.

Dr. Sten Lilja addressed the Town Council, stating that the majority of property owners in Palm Beach did not live close to the ocean and questioned if it was realistic to believe that they would be prepared to pay more taxes to protect private beach properties. He maintained that unless private beach owners lived near a public road, (which could be used to justify splitting the cost 50/50 with the Town) they would pay the full remaining local cost for a new public beach, however, would not own the beach because of the ECL concept, which would give the State title to that new beach in front of the home. He also noted that South End beaches may or may not be eligible for funding, and even if they were judged "critically eroded," there would still be special assessments to pay for the difference. If not eligible, the property owners would have to pay for it all via special assessments. He commented that it was most important that such information was provided to residents.

Dr. Sanford Kuvin commented that he believed it was in the best interest of the Town to take a "time out" at this juncture, and not rush to judgment, because even if the beach restoration plan was passed it would not provide storm protection. He stated that he believed the State offer of monies was a Trojan horse and was an attempt to pay for sins of the past in construction of the inlet 60 years ago. He maintained that parking, access, and toilets would certainly be items for consideration in the future of any renourishment projects. He stated that it would be unconscionable, in his opinion, not to put this controversial plan to a referendum, only after residents were suitably informed.

Mr. Eric Gilbertson commented that he found the beach renourishment plan on an unrealistic course, and that the present coastal seawall defense system would protect homes from gale force wind waves; any higher waves would be a disaster unless a 50 foot seawall was built; he maintained that the beach renourishment plan only gave beach property homeowners a beautiful beach at the expense of non-beach homeowners.

Former Mayor Yvelyne deMarcellus Marix commented that she believed that the public expected to vote for presidents, vice presidents, congressman, senators, as well as all types of issues; she strongly urged that the beach renourishment plan be put for referendum.

Mr. Jerry Wilke commented that he strongly supported a referendum on this issue, and urged the Town Council to give it their consideration; he also urged caution regarding losing the rights to recover against the Army Corps of Engineers after beaches were widened.

Mr. Bruce McAllister commented that the project involved Mother Nature as a partner, which meant that it was a dynamic project, and unpredictable; and the monitoring agency would have to stay on top of the project. He suggested that the Town Council should act in the confidence that it reflects the desire of the community to protect the Town and the beaches.

Mrs. Nancy Douthit commented that a blank check was being requested, and that total costs were not known; she suggested that rushing into a blank check decision would be a mistake.

Mr. Ambrose Monell commented that the beach was an asset to the Town, however, it was a recreational asset, and questioned whether such a large amount of money should be spent for a recreational asset. He stated that he believed that the beach issue should be addressed, however, it was not a protection issue.

Mr. Norman Levanthal commented that he was past president of the Residents of Sloane's Curve, and applauded the Town Council for the thorough manner in which they had studied the beach project, and urged the Town Council to act now to proceed with the project.

Councilman McLendon commented that the presence of the sand on beaches did help protect the shoreline; there would be a benefit for the majority of storms, however, there would never be enough beach to protect against a major storm, a Class 4-5 hurricane.

Councilman Shaw commented that there was enough State and Federal interest to support the protection of beaches, and that the Town was at the front line of a commitment.

Mayor Ilyinsky commented that he was pro-referendum, and that the State of Florida had some of the most beautiful beaches in the world, and must keep them up and improve them, however, beaches would not protect against a major hurricane. He maintained that beaches could be renourished for recreational reasons, however it should not be sold to the public on the basis that their homes would be saved because the beach was renourished; he stated that he was one-hundred percent for renourishing public beaches, however to renourish every beach on the island was a terrible waste of money.

President Pro-Tem Wyett established the fact that a certain amount of money would have to be spent (approximately $7 million) even if the complete beach renourishment project was not done, as the Town was required to renourish under current permits. He stated that he believed some type of action was needed regarding the beaches, and that there were no predictions, and eventually some groins would have to be installed.

Councilman McDonald moved approval of the issuance of a 10-year revenue bond to finance the coastal protection plan. The motion was seconded by President Pro-Tem Wyett.

President Smith asked what was needed from the Town Council to start the process for Reaches 3, 4, and 7, as far as the erosion control line (ECL) was concerned?

Mr. Dusey replied that it would depend on the possible litigation with the Army Corps of Engineers – if the Town Council decided to pursue it, there would be a collision course between the issue of the establishment of an ECL for those projects. Currently, the Town was on a course to award reaches 3, 4, and 7 with financing (yet to be approved) for the summer, with construction about a year from now; if the Town Council chose to pursue litigation, the ECL would become an issue, and the Town Council would have to decide whether to do those projects or delay them until the ECL issues were resolved.

Town Attorney Randolph commented that an ECL could be established on public beaches and the Town could still move ahead with any litigation; in the Applegate case the ECL had been established in many places, however, one of the advantages the Town of Palm Beach had was the fact that the ECL had not been located, and great caution should be taken in establishing an ECL prior to going into litigation. He advised that the Town would want to be very careful considering at what step the ECL would be established; the first step in deciding to go forward with litigation would be to get the analysis from the attorneys. He noted that his initial comments in today's meeting had been directed toward any step that the Town Council would take today, and would not preclude going forward with the first step of determining whether it was worthwhile going forward in litigation.

Mr. Dusey commented that there was a request before the staff of the Department of Environmental Protection (DEP) to interpret the State laws regarding those reaches that were intended to be renourished, but not maintained (Reaches 2, 5, and 8). He explained that the wording of the State law appeared to leave an opening as to whether an ECL was required on those reaches, however, the projects that would be maintained would require an ECL. He anticipated that a response would be received within three-four weeks.

Councilman Shaw advised that he had spoken with Representative Merchant, who was reviewing the material on the beach project, and he had asked her about the feasibility of the Town taking some legislative action in defining the ECL, as well as the requirements for municipalities. He suggested that the Town should seriously pursue the issue.

Mr. Wilke commented that just a few days ago he had phoned Mr. Devereaux, Office of Beaches and Coastal Systems, Department of Environmental Protection, in Tallahassee, and had asked him if he had the authority to waive the ECL in the Town of Palm Beach. He had responded that if it was a beach renourishment plan, the answer was no; he could not waive State law.

President Pro-Tem Wyett commented that he had spoken with Representative Merchant, and she had mentioned that the Governor had a private e-net facility in his office, and read every memorandum that came through it. He urged Town staff to prepare a letter to be e-mailed to the Governor, requesting his intervention and suggestions, and that a delegation from the Town go to Tallahassee to review the ECL issue and interpretation of the law in that regard.

Mr. Gary Lickle, past chairman of the Shore Protection Board, commented that he believed the ECL issue should be pursued, however, if it was established, the property owner would be giving up rights to claim land that was naturally accreted. If a land owner believed that the beach would continue to erode, putting the ECL in now would actually protect a private beach and establish it as private.

Dr. Kuvin commented that Councilman McDonald had made a motion to pass a revenue bond, and noted that a revenue bond would not require a referendum.

Mr. Wayne Dimm commented that the ECL did not exist in any other State and was unconstitutional; he maintained that the law should be challenged, and the State should not be able to claim land. He stressed that the Shore Protection Plan was for a Category 1 or 2 hurricane, and not for a Category 5 hurricane, and urged the Town Council to take responsible action.

In response to President Smith concerning the 19-page sand source draft report, , Mr. Dusey explained that there was a decent sand source in the borrow area used in the past, as well as sand north of the Inlet; there was a huge quantity of sand off of the mid-town beach, however, it would have to be mined. He explained that the sand study had been done to look for sand for the entire Town, and there was a sufficient quantity of sand available.

Dr. Sten Lilja commented that the damage done to the Beach Club by the storm referred to by Mr. Lickle was because the top 3' of the seawall had been removed (to provide a nice view from the dining room) in the area where the wave had come in, and in the area to the north, where the full height of the seawall remained, there was no damage.

In response to Mr. Monell, Mr. Hole responded that there was an element of risk in financing beach projects, and it would be factored into the rating and addressed with the rating agencies; preliminary discussions with them had indicated that on a G.O. basis, with a referendum approval, that referendum voter mandate would require the Town to levy millage at whatever level was necessary to satisfy the debt, whether or not the project was still there. That in itself would be factored into the rating; they had not indicated that a downgrade would be received, however, that was a possibility. Concerning a revenue issue, the Town would not be receiving AAA rating on their own, and that risk had been addressed by proposing to purchase municipal bond insurance; that would, in itself, elevate the rating to an automatic AAA, and the Town would receive the AAA interest rates, because the investors were protected.

In response to President Smith, Town Attorney Randolph advised that the financing of the project would not have to go to bid.

President Pro-Tem Wyett commented that a referendum would not be practical this year, as there was not enough time to educate all of the public, as he believed the electorate was very capable of making an intelligent decision if given the information. If beach restoration was not started until 2003, costs could go higher, and substantial property damage could be incurred. He urged that the Town Council move forward in financing, and requested that Councilman McDonald amend his motion to allow competitive bidding in bond financing.

Councilman McDonald accepted the amendment to the motion to approve the financing plan, with competitive bidding in the bond financing. He clarified that by competitive bidding he intended it in the sense that there would be competitive entities bidding on providing the financing to the Town.

Mr. Hole explained that the bond issue would be the least expensive financing alternative; this was a structured financing, where debt service would rise and fall in sync with the outside cash from the State, County, and Federal governments, as well as the millage that was building up; this was a complicated financing from a cash flow prospective like none other that the Town had seen before.

Mr. David Scaff commented that First Union would be very happy to work together with Salomon Smith Barney in this endeavor, as the only two firms that had been involved in the issue.

Mr. Hole explained that there were two ways to sell bonds to actually lock in the interest rate: one was referred to as a competitive sale and one was referred to as a negotiated sale. The competitive sale would not employ the services of an investment banker; the Town staff would put the structure together and simply put the issue out to bid on a certain date that had been advertised for all underwriters, nationally, to bid for those bonds as structured by the Town. The negotiated sale would retain an investment banker ahead of the sale, based not on the bond rate, but based on that firm that could ultimately bring in the best interest rate. He explained that in the competitive sale, no underwriter would spend any time pre-marketing, raising demand, creating demand for an issue unless they knew they were already hired, and they would not know if they were hired until the bid was placed on the bonds themselves; in that manner, the underwriters would be allowed to essentially price the bonds, and to put the interest costs on the bonds themselves, as opposed to the negotiated sale. The negotiated sale would allow the banker to be retained to structure the financing, to pre-market, and establish the demand. In addition, a date certain would not be required with the negotiated sale, as opposed to a competitive sale.

Mr. John White, First Union Securities, Inc., commented that he worked with Mr. Hole often, and noted that he had recently prepared a paper on competitive versus negotiated sales in Florida, and he suggested that his firm work with Salomon Smith Barney in a joint venture in financing the project.

President Smith asked how the money would be supplied for the summer projects planned?

Mr. Hole replied that the plan of finance was completed, which was usually what was done after he was formally hired. All that was now needed was implementation, on either a G.O. basis or a revenue basis; under the motion at hand he was prepared to move forward with a negotiated sale to meet the schedule and have money in the bank prior to June 1st, to provide for the necessary $18 million draw.

Councilman Wyett withdrew his suggestion to include competitive bidding, amending the motion of approval made by Councilman McDonald.

Dr. Lilja suggested that the project be drawn up as an ordinance, in conformance with projects done in 1962; he referred to ordinances No. 1-60 and No. 6-60.

After further discussion regarding the establishment of an ECL, President Smith suggested that the ECL matter be put on the Agenda for the February Town Council Meeting as a discussion item.

Councilman McDonald suggested that in regard to the financing of the project, Salomon Smith Barney be selected, and that they be directed to involve First Union on some basis, which they could determine.

Mayor Ilyinsky commented that the Town had always done business with Salomon Smith Barney, and their record with the Town was pure. He explained that he was not suggesting that other banks would not have a chance to discuss the issues with the Town, and that dividing the financing procedures would be enormously complicated; he explained that he saw no reason to have two tiers of responsibility in this issue.

Councilman McDonald responded that, although he did not totally disagree with the Mayor, in this situation First Union had come with a proposal and had given input into the process, which may have resulted in a reduction of the cost of financing. He suggested that Salomon Smith Barney would be the lead firm, and it would be up to them to establish the involvement of First Union.

Mr. Hole commented that the decision of who would underwrite the issue would be the decision of the Town Council; if the Council determined that two firms would participate, the typical participation as co-managing underwriters would be that Salomon Smith Barney would take the lead position, do all of the structuring, be the primary contact with staff, and be the bankers at the table. When the bonds were ready to market, the co-managing underwriter, the other firm, would then work with Salomon Smith Barney in selling the bonds, and they would then be compensated by receiving the commission on the bonds they sold.

Town Manager Doney commented that Salomon Smith Barney had always provided prompt, quality service in investment banking; First Union had also provided a very good banking relationship. He suggested that clarification of the split between the two proposed firms may be necessary.

Town Attorney Randolph responded that it was not necessary to disclose specifics of the split, and the process had been explained by Mr. Hole correctly.

President Smith asked that the original motion of Councilman McDonald be read by the Clerk. Deputy Town Clerk Eichhorn read the motion as follows: A motion was made by Mr. McDonald, seconded by Mr. Wyett to approve a revenue bond on a 10-year financing plan as proposed by Salomon Smith Barney. Mr. McDonald accepted Mr. Wyett's amendment to allow competitive bidding in bond re-financing. Mr. Wyett then withdrew his amendment concerning competitive bidding.

President Smith asked Town Attorney what would have to be determined today, on the basis of the motion made by Councilman McDonald?

Town Attorney Randolph advised that a vote would be needed on the motion, after which time staff would move forward with the investment banker, with bond counsel, with Mr. Dusey, with Ms. Skittone and put together the documents that would be needed to be brought back to the Town Council.

President Smith asked Mr. Hole if he believed, on the basis of the motion, that he would be consulting at all with First Union?

Mr. Hole responded that the motion being considered was to adopt the plan of finance; he suggested that it may be appropriate to have a second question dealing with who would be the investment banker and who would be the bond counsel.

President Smith requested that, before the question was called, Mr. Hole read his recommendations into the record. Mr. Hole read his recommendations as follows: The recommendation is a revenue bond financing, not exceeding 11 years (because it was actually 10 ½) to be issued through a negotiated sale. The amount would be brought back in the form of the Bond Resolution, and that would occur at a future Town Council meeting. He explained that it would be best not to include the amount of bonds in this motion, because that would be included in the Bond Resolution that would be brought back at a future meeting. He noted that he had indicated an estimated number of $23,275,000, which was interest rate sensitive, and that all documentation would be processed in several months.

On roll call the motion carried 4/1, with President Smith casting a dissenting vote on the basis that she strongly supported a referendum.

Town Manager Doney suggested that there needed to be absolute and clear understanding by the Town Council and the Mayor as to what reaches would be pursued, the timetable, and all details of the project.

President Smith suggested that Town staff prepare a press release with all specifics of the project, since the beach projects for reaches 1-8 had been approved previously, and that it be prepared for the February 8, 2000, Town Council Meeting for review of the Town Council. Mrs. Smith also requested that a beach project update be provided at each monthly Town Council Meeting by Public Works Director Dusey.

President Pro-Tem Wyett moved approval of the employment of Salomon Smith Barney, as the lead investment banker; that they employ First Union Securities to be in the marketing program, and that Edwards & Angell, LLP be used as the bond counsel. The motion was seconded by Councilman McDonald.

Councilman Shaw commented that he thought it was wrong to designate one person as a co-sales person to deal with one subcontractor out of all of the financial institutions. He maintained that Salomon Smith Barney would use their discretion if they thought it appropriate for them to look for subcontractors; if they did not feel that was necessary, that was the way it should be; he stated that he did not approve of the system as it stood, and obviously his vote would be no.

President Smith agreed with Councilman Shaw regarding preferential treatment, and that other local banks may be interested as well, and that they would be blocked out by the designation of First Union Securities.

Town Attorney Randolph advised that Salomon Smith Barney could accomplish the financing by themselves, as they had indicated, however, it was a policy matter for the Town Council to determine whether they wished to see any other institution involved.

Town Manager Doney commented that if the Town Council was interested in having a second opinion to give the Town Council the comfort of knowing that the financing was being properly handled, the choice could be made to utilize existing professional services.

On roll call the motion carried 3/2, with President Smith and Councilman Shaw casting dissenting votes.

Town Attorney Randolph then addressed the litigation issue: He noted that responses had been received from Attorney Stouck and from Attorney Gordon Harris, of Gray, Harris & Robinson in regard to how a response would be prepared for a $35,000 proposal regarding pursuing a suit against the federal government for losses related to the impact of the Lake Worth Inlet. He noted that this was not a decision to go forward with litigation, but was a decision to simply allow an attorney to submit an analysis as to the pros and cons of litigation, and to perhaps incorporate within the proposal their advice in regard to the manner in which the placement of the ECL should be handled. He explained that he asked each firm whether they would be interested in a proposal whereby the $35,000 would be divided amongst them, and then have the Town Council make a decision as to which firm would be chosen, however, neither of them had considered that as an option. The option of them teaming up was also offered, however, both firms were interested in the position of lead counsel, and would want the Town Council to name the lead counsel, who would determine how the other attorney would be used.

President Smith asked if there were other law firms in the State of Florida that had experience in similar cases, and if there was the possibility of reducing the sum of $35,000 by asking each firm to prepare a proposal for a lesser amount?

Town Attorney Randolph replied affirmatively, and noted that there were local firms that were qualified. He explained that neither of the two firms involved to date had believed it was appropriate to divide the $35,000 and have each of them do a portion.

Councilman McDonald noted that there was a learning curve on a beach restoration case for anyone without experience.

Mr. Lickle commented that he was concerned with what rights, if any, the Town would be giving up by proceeding with the renourishment project pending a lawsuit; he suggested that it was a procedural issue that could be researched by any law firm, and then the Town Council would at least have a memorandum that would note the items being given up versus the items and damages that could be recovered. He suggested that this could be accomplished at a lower cost.

Town Attorney Randolph commented that both of the firms in question had been concerned with the placement of the ECL regarding litigation, and the effect it would have on the case in respect to damages. He added that there were many issues involved in litigation, and that the Town Council would want all information before going forward.

Mr. Bill Guttman commented that he believed the Town Attorney should be delegated with suggesting a law firm that could both research the merits of the case and potentially litigate the case.

In response to President Smith, Town Attorney Randolph advised that his law firm would be capable of preparing a procedural memorandum regarding the effects of the placement of the ECL, before the actual memorandum of law was prepared and presented. He advised that he would not be comfortable making a recommendation today as to the choice between the two interested law firms, nor could he give a final decision of whether it would be sensible to go with other law firms, as the two firms interested were very fine law firms. He acknowledged that he would accept direction to prepare a memorandum regarding the ECL matter in the interim period of time, or be given authority to ask the law firm of Gray, Harris & Robinson to do such a memorandum. He estimated that preparation of such a procedural memorandum could be prepared for the February 8, 2000, Town Council Meeting, and that he would advise Town Manager Doney if more time was needed.

Councilman McDonald moved approval of authorizing Town Attorney Randolph to either prepare a procedural memorandum, or request another law firm to prepare a procedural memorandum concerning the effects of placement of the ECL, to be presented at the February 8, 2000, Town Council Meeting, unless Town Manager Doney was advised otherwise. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

In response to President Pro-Tem Wyett, Public Works Director Dusey advised that construction was planned for Reach 8 in 2003, depending on combination of projects and obtaining State funding.

President Pro-Tem Wyett suggested that the Town Council direct that Reach 8 be moved up to be done as soon as possible.

Mr. Dusey replied that if it was the will of the Town Council to expedite Reach 8, he would do an analysis and report what would be necessary. He noted that it would affect the payment schedule and the financing plan approved earlier today; permitting and design of Reach 8 for the Town portion was estimated at $7 million; there would be sections of Reach 8 involving the County.
He suggested that he work with Mr. Hole to obtain information for the February 8, 2000, Town Council Meeting.

President Pro-Tem Wyett clarified that he was requesting that Mr. Dusey proceed with Reach 8 from a permit point of view as soon as possible.

Councilman McDonald suggested that the plan be left as it was currently, as the financing plan that was passed today, and Mr. Dusey could proceed with exploring permitting functions.

Mr. Dusey explained that the next budget cycle had Reach 8 scheduled for design and permitting.

V. ANY OTHER MATTERS

There were none

VI. ADJOURNMENT

The meeting was adjourned at 3:20 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk