

TOWN COUNCIL MINUTES OF MEETING HELD ON JANUARY 14, 1992

I. CALL TO ORDER AND ROLL CALL. President Heeke called the January monthly meeting of the Town Council to order on Jan. 14, 1992 at 9:30 AM in the Town Hall Council Chambers. On roll call, all elected officials were found to be in attendance. Others attending for all or portions of the meeting were: Mr. Doney, Mr. Randolph, Mrs. Peters, Chief Terlizese, Mr. Elwell, Mr. Jakubiak, Mr. Dusey, Mr. Moore and Mr. Frank.

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

III. PRESENTATIONS

- A. Rotary Club of Palm Beach, Inc. - Donation of Funds for Seven (7) Benches at Mid-Town Public Beach Area - Ralph Schenck and Nancy McDonald representing the Rotary Club presented a check to the Mayor to provide for replacement of seven benches which were destroyed at the Mid-Town Public Beach Area.
- B. Retirement of Daniel M. Kelley, Lieutenant - Police Department - Mayor Marix presented Lt. Kelley with a plaque in recognition of his 28 years 6 months service to the Town.
- C. Retirement of Brian D. Roche, Captain - Police Department - Cpt. Brian Roche - Mayor Marix presented Cpt. Roche with a plaque in recognition of his 24 years 7 months service to the Town.
- D. Retirement of Charles R. Cavalli, Sr., Police Officer - Police Department - Mayor Marix presented a plaque to Officer Cavalli in recognition of his 24 years 2 months service to the Town.
- E. Retirement of Ernest Peele, Equipment Operator I. Streets - Public Works Department - Mr. Peele was not in the room and the presentation of the plaque was put over to the February meeting of the Town Council.
- F. Retirement of Fred E. Thies, Police Officer - Police Department - Officer Thies was presented with a plaque by Mayor Marix for his 10 years 3 months of service to the Town.

IV. COMMENTS OF THE MAYOR - Mayor Marix commented that since this is the first meeting of the New Year, she would like to make a resolution to do absolutely everything she can in her power to reduce the amount of paper work.

V. APPROVAL OF AGENDA

NOTE: Items listed on the "APPROVED AGENDA" will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that certain items be deleted from same and be individually considered.

APPROVED AGENDA (ITEMS VI THROUGH IX) Motion was made by Mr. Weinberg to approve the items on the Approved Agenda. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

VI. APPROVAL OF MINUTES OF NOVEMBER 12 AND DECEMBER 10, 1991

VII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Jewish Federation of Palm Beach County, Inc.; No. 22-92
2. Fraternal Order of Police, Palm Beach Lodge No. 19; No. 79-92
3. American Friends of the Hebrew University, Inc.; No. 101-92
4. Poinciana Children's Theatre Co., Inc.; No. 149-92
5. The Lord's Place Auxiliary; No. 229-92
6. Stop Children's Cancer Palm Beach County, Inc.; No. 237-92
7. Hanley-Hazelden Foundation, Inc.; No. 239-92
8. Guild for International Piano Competitions, Inc.; No. 247-92
9. National Wheelchair Sports Fund; No. 255-92
10. The American Ireland Fund; No. 260-92
11. Beth Israel Hospital; No. 287-92
12. The Auxiliary of Bethesda Memorial Hospital, Inc.; No. 290-92
13. Healthy Mothers/Healthy Babies Coalition of Palm Beach County, Inc.; No. 323-92
14. Friends of the Tibetan Women's Association; No. 332-92

B. Beverage Licenses

1. Transfer of 4COP Alcoholic Beverage License from Joseph Leo Bustani/Property Investment Enterprises, Inc. to Henry Baron/China Food Corporation d/b/a Singing Bamboo 204 Australian Avenue
2. Application for a New 2APS Alcoholic Beverage License for Testa's Hotels and Restaurants, Inc. d/b/a Testa's Service Station, 231 Royal Poinciana Way

VIII. NEW BUSINESS

A. Bid Awards

1. Sealed Bid No. 004-91/92 - One Replacement Road Tractor for Garbage Transfer Trailer
2. Sealed Bid No. 005-91/92 - One Specialized Yard Trash Collection Vehicle

IX. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR DECEMBER 1991

REGULAR AGENDA

X. PUBLIC HEARINGS

Public Hearings

A. Landmark Designation for 241 Banyan Road - Consideration of Resolution No. 1-92

Res. 1-92

Mrs. Peters advised Proof of Publication has been received.

Mrs. Peters gave the oath to all of those who were going to testify during this proceeding.

Mr. Frank explained this property at 241 Banyan Road is a tasteful partial restoration and reconstruction and meets Criteria C - embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous material or craftsmanship; and Criteria D - representative of the notable works of one or more master buildings, designers or architects, whose individual ability have been recognized to have influenced their age and in this case it is Maurice Fatio and Lowry Bell.

Mr. James Svad reported this home was designed in 1929 by the architectural firm of Trainer and Fatio and faces the lake at the end of Banyan Road. He advised it was originally designed in a U shape with the major axis of the home facing the lakefront. He stated over the years a number of architectural elements and about 40 percent of the house was destroyed by subsequent owners and some were replaced with other things and some were removed and never replaced. He advised in the early 1980's this Mediterranean Revival House was purchased by Mr. Bell and renovated it to its original footprint and it now stands as an extraordinary interpretation of Mr. Fatio's architecture, and this house is very worthy of landmark designation.

Mr. Randolph read Resolution No. 1-92:

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

Motion was made by Mrs. Wiener to receive the Designation report as a part of the record as it pertains to 241 Banyan Road. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Motion was made to approve Resolution No. 1-92 to designate 241 Banyan Road by Mr. Ilyinsky, for the reasons that it met Criterion C and D. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

B. Landmark Designation for 323 Brazilian Avenue - Consideration of Resolution No. 2-92 -
Mr. Frank explained this designation is the last commission in Palm Beach of Mr. Mizner and it includes only the embattlement wall on the property and this will allow for redevelopment of the property, however, the embattlement wall which is unique will be preserved. He stated the property meets Criterion B - is identified with historic personages or with important events in national, state or local history; and Criterion C.

Res. 2-92

Mr. Svad reported this property is known as Casa Rosada was designed in 1932 and has a Spanish courtyard theme and there is a large embattlement wall with huge wooden doors and the house is entered from behind that wall with a large courtyard to the left. He stated the architect had a bit of trouble designing the house behind the wall and the house is not of the quality or stature of the houses built by Mizner previously. He stated the house has sustained a lot of structural problems and over the years the walls had to be shored up. He noted the wall is a small scaled down example of the Spanish courtyard embattlement wall and that in itself is worthy of landmark designation.

Mrs. Jane Volk, Chairman of the Landmarks Preservation Commission advised the Council that although this is a Mizner house, it is a very small house on a very large lot and in bad condition, as sometimes Mr. Mizner built more for effect than he did for longevity and she thought this was the case here but they felt it was not fair to saddle someone with a landmarked house in the condition it was on this large size lot. She advised Mrs. Gleitsman, the owner, was happy to volunteer the wall for landmarking and that is important since it preserves the character and the historic charm of this street.

Mrs. Wiener moved the Designation Report be received as part of the record. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Randolph read the Resolution 2-92 by title:

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

Mrs. Douthit moved for approval of Resolution No. 2-91 designating 323 Brazilian Avenue on the grounds that it meets Criteria B and C. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Res. 3-92

- C. Landmark Designation for 301 Worth Avenue - Consideration of Resolution No. 3-92 Mr. Frank explained 301 Worth Avenue presently has the Frances Brewster clothing store in it and has been known as the Bonwit Teller Building, which was the former tenant. It meets Criteria A, exemplifies and reflects the broad cultural, political, economic or social history of the nation, state, county or Town; and Criteria C.

Mr. Sved pointed out this building was designed in 1929 by Architect B. Kingston Hall, originally it was to be the first public hotel on Worth Avenue, however in 1932 was converted to the Mattie Carnegie Store and shortly after that in 1935, Bonwit Teller moved in there which remained there until 1990 and then was renovated by the Frances Brewster people into the condition that it is today. He recalled the Art Jury, a forerunner of the Town's Architectural Commission, when this was originally constructed, stopped the construction as they were not happy with the roof which was designed on this building and a lower roof was later put on this building. He stated this is a Mediterranean Revival structure and has an interesting use of material and craftsmanship on the second story windows, as above the windows is a small transom which is an interesting use of a builder not taking liberty of an architect's design and following it with this creative design. He advised John Volk did a lot of the interior work on the property mostly for Bonwit-Teller and the only renovation that Frances Brewster did was to add the small infill to the entablatures above the windows which enhances the appearance and is very worthy of designation.

Motion was made to make the Designation Report a part of the record for 301 Worth Avenue by Mrs. Douthit, seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Randolph read the Resolution No. 3-92:

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

Motion was made by Mrs. Douthit to approve Resolution No. 3-92 to designate 301 Worth Avenue which meets Criteria A and C. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

XI. OLD BUSINESS

A. Ordinances - Second Reading

Ord. 7-91

1. Ordinance No. 7-91 - 1991 Standard Building Code with Amendments. Mr. Randolph read the Ordinance No. 7-91 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE I A., "BUILDING CODE", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-21 ADOPTING BY REFERENCE THE 1991 EDITION OF THE STANDARD BUILDING CODE EXCLUSIVE OF CHAPTER I ADMINISTRATION; AND AMENDING SECTION 5-22 AMENDMENTS: PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith: PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion was made by Mr. Ilyinsky, seconded by Mrs. Wiener to approve on second reading Ordinance No. 7-91. Motion carried unanimously on roll call.

Ord. 8-91

2. Ordinance No. 8-91 - 1990 National Electric Code with Amendments. Mr. Randolph read Ordinance No. 8-91 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE III, "ELECTRICITY" OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-101 ADOPTING BY REFERENCE THE 1990 EDITION OF THE NATIONAL ELECTRICAL CODE; PROVIDING FOR ADDITIONS AND DELETIONS TO SECTION 5-102 "AMENDMENTS"; AND BY CORRECTING OTHER SECTIONS AS SET FORTH HEREIN; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith: PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

On motion of Mrs. Wiener, seconded by Mrs. Douthit, Ordinance No. 8-91 was adopted on second reading. On roll call, the motion carried unanimously.

Ord. 9-91

3. Ordinance No. 9-91 - 1991 Standard Plumbing Code with Amendments. Mr. Randolph read Ord. 9-91 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE IV., "PLUMBING", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-164 ADOPTING BY REFERENCE THE 1991 EDITION OF THE STANDARD PLUMBING CODE EXCLUSIVE OF CHAPTER I ADMINISTRATION; AND AMENDING SECTION 5-165 AMENDMENTS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith: PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

On motion of Mr. Ilyinsky, seconded by Mrs. Douthit, Ordinance No. 9-91 was adopted on second reading. On roll call, the motion carried unanimously.

Ord. 10-91

4. Ordinance No. 10-91 - 1991 Standard Mechanical Code with Amendments. Mr. Randolph read Ordinance No. 10-91 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 3, ARTICLE V., "MECHANICAL REGULATIONS", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-175 ADOPTING BY REFERENCE THE 1991 EDITION OF THE STANDARD MECHANICAL CODE EXCLUSIVE OF CHAPTER 1 ADMINISTRATION; AND AMENDING SECTION 5-176 AMENDMENTS; PROVIDING FOR SEVERABILITY, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Ord. 10-91

On motion of Mr. Weinberg, seconded by Mrs. Douthit, Ordinance No. 10-91 was adopted on second reading. On roll call, the motion carried unanimously.

5. Ordinance No. 11-91 - 1991 Standard Gas Code. Mr. Randolph read the Ordinance 11-91 by title:

Ord. 11-91

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE IV, "GAS CODE" OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-171 ADOPTING BY REFERENCE THE 1991 EDITION OF THE STANDARD GAS CODE EXCLUSIVE OF CHAPTER 1 ADMINISTRATION; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

On motion of Mrs. Douthit, seconded by Mr. Ilyinsky, Ordinance No. 11-91 was adopted on second reading. On roll call, the motion carried unanimously.

6. Ordinance No. 12-91 - 1991 Fire Prevention Code. Mr. Randolph read the Ordinance No. 12-91 by title:

Ord. 12-91

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 7, ARTICLE II., "FIRE PREVENTION" OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 7-17 ADOPTING BY REFERENCE THE 1991 EDITION OF THE STANDARD FIRE PREVENTION CODE AND THE 1991 EDITION OF THE NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY CODE; PROVIDING FOR SEVERABILITY, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

On motion of Mr. Ilyinsky, seconded by Mrs. Wiener, Ordinance No. 12-91 was adopted on second reading. On roll call, the motion carried unanimously.

Short break was taken and meeting then called back to order by Mr. Heeke. He noted he failed to approve the regular agenda as amended and Mr. Ilyinsky so moved. Seconded by Mr. Weinberg. On roll call the motion carried unanimously.

B. Other

1. Consideration of Future Water Supply Study by James M. Montgomery, Consulting Engineers, Inc. - Progress Report on Negotiations with the City of West Palm Beach and Related Matters by Messrs. William Sundstrom and Howard Osterman.

Future Water
Supply Study

Mr. John Wodraska addressed the Council recalling he appeared before them about eighteen months ago as director of the South Florida Water Management District giving his projection of what the water supply situation would look like for South Florida in the future. He advised them then of the pitfalls of the water conservation programs and the fact at that time they were in the midst of a two year drought. He has left his position at the South Florida Water Management District and is now working with Mr. Sundstrom and Mr. Osterman in helping communities solve their water resource problems and it is in that capacity that he is here today.

Mr. Wodraska advised there are three components of the presentation today, the first being the status report of where they are at this point in time. He recalled in December of 1990, the Town authorized Mr. Sundstrom and DUS Utilities to begin negotiations with the City of West Palm Beach, from which the Town receives its water. He stated the water comes from Lake Okeechobee and from the Everglades Water Shed conveyed along the "M" Canal into two lakes, Clear Lake and Lake Mangonia into the City of West Palm Beach's water supply. He reported ninety million gallons per day is taken from this water shed and thirty million gallons are pumped to the City of West Palm, with eight to ten million gallons per day coming to the Town of Palm Beach. He recalled the Town entered into a thirty year franchise agreement with the City of West Palm Beach, which expires in 1995 and it was suggested they begin planning about where they would be looking for their future water supply. He stated Montgomery Engineering was hired and are examining alternatives, and a little later, the City of West Palm Beach also secured the services of an engineering firm researching how they could position themselves to take care of one of their major clients, the Town of Palm Beach. He stated they also looked at the cost of water and the rate structures and one of the items proposed was coming up with an inverted rate structure. He advised he appeared before the City of West Palm Beach several months ago to object to this rate structure which they felt would put an potential unfair burden on the Town in that the cost of the water was geared towards people who were using higher amounts of water.

Mr. Wodraska stated they requested and were granted the authorization to do a study for the Town to document and find out whether water conservation practices would result as a result of this inverted rate structure, which would change the pricing structure. He commented this is an important cost consideration for the City of West Palm Beach and the Town at what the rate structure will be as the Town of Palm Beach pays approximately 35% of the City of West Palm Beach's revenue.

Attorney William Sundstrom then addressed the Council on where the Town stood with its relationship on the franchise with the City of West Palm Beach. Mr. Sundstrom advised in Dec. of 1990, this Council adopted a motion which authorized the respective organizations to negotiate on behalf of the Town with the City of West Palm Beach to achieve the best water quality of water,

Future Water
Supply (cont'd)

pressure, quantity and assurance of long term availability, keeping in mind the rates to be charged. He stated they were further authorized to negotiate with the City of West Palm Beach towards the development of a joint venture geared towards a Reverse Osmosis system.

Mr. Sundstrom noted additionally they were instructed through the Town Manager to periodically report to the Council as regards their progress. He advised he was not looking for any particular authorization from the Council today but are merely bringing them up to date as to their actions over the course of the last year. He indicated with him today is Mr. Blanton from the Montgomery Engineers.

He advised throughout the course of their discussions with representatives of the City of West Palm Beach through the last year, they introduced the idea of the joint venture Reverse Osmosis facility and consistently espoused the theme that the Town does represent 35% of the revenue generated by the City of West Palm Beach's water treatment and distribution facilities; and that the Town was willing, able and in a position to defray certain elements of the up-front interest costs on a major capital improvement with eventual sharing of that cost between the parties roughly pro-rata to the utilization of the commodity produced, i. e., potable water. He also espoused the theme that the Town did not want to find itself in a position, and they considered it part of their engagement and direction, to protect the interest of the Town and its residents as regards the participation and percentage of the income to be generated by the City's water system from the Town of Palm Beach to avoid any subsidization.

Mr. Sundstrom reported in November, the City of West Palm Beach announced its intention to modify its rate structure, in accordance with its bond covenants, so as to charge and collect revenues for customers utilizing in excess of twelve thousand gallons per day in an inclining or declining block structure, which is referred to as a conservation rate or an inverted rate, which means the more they use, the more they pay. He recalled the Town received notice via Mr. Doney, of the impending of that rate increase. He appeared before the City of West Palm Beach indicating the interest of the citizens of the Town of Palm Beach had not been adequately addressed and a cost of service study had not been prepared. He stated he was confident that the cost of developing or distributing the twelve to thirteen thousand gallons was not any more than producing four or five thousand gallons. He requested the City of West Palm Beach to consider its rate making an interim measure, while they would participate with them in a study, and that is ongoing. He wished the Mayor and Council to be aware of this that there has been a rate increase but it is considered by all parties as an interim rate increase as opposed to a permanent rate increase and has become a major portion of their engagement at this time.

Mr. Sundstrom reported additionally in developing the discussions concerning long term availability and the joint venture Reverse Osmosis, the Water Management District has indicated that the Floridian Aquifer would be subject to the same type of long term regulations as the Biscayne Aquifer and as a consequence, they took the liberty of considering the development of an additional method of carrying out their overall charge, i.e. long term or availability of water and he asked Mr. Osterman to address the Town Council on the idea of aquifer storage and recovery.

Mr. Howard Osterman addressed the Mayor and Council, recalling their charge has been to examine all alternatives that basically fit the pattern or the goals which they were trying to accomplish. He reviewed the goals as it is understood by him :

- (1) A measure of independence for the Town;
- (2) An improvement in the quality of the water;
- (3) A flexibility in the usage of water during times of dry season;
- (4) Dependable supply at all times;
- (5) Cost effectiveness of whatever plan is developed.

Mr. Osterman advised the evidence appears to be accumulating that the Floridian Aquifer itself the source for Reverse Osmosis water, is potentially to be regulated in similar fashion to the regulation of the sufficial supply. He indicated the levels of the Floridian Aquifer have been dropping is an indication there is a finite source there and limited withdrawals in order to preserve the levels may be necessary.

He recalled telling the Mayor and Council a good program is one they will be able to depend on and know that the money spent on this project is well-spent and accomplished what it is intended to accomplish and because of that, he has tried to examine other alternate plans and his remarks will now be on one that they are pursuing concurrently with the plan mentioned earlier; and that is built upon the theory of Aquifer Storage and Recovery. He stated it is a plan by which treated water is assembled during the wet season and stored in large bubbles underground and it is withdrawn and reintroduced to the system at such time as the normal sources of supply are stressed. He likened to a five hundred million gallon storage tank sitting above ground and the fact that this would be below ground is no different as when fresh water is injected into a brackish zone, they do not effectively mix and the fresh treated water creates a big bubble which can be withdrawn and used back in the system.

Mr. Osterman reported how this could be applied in this situation indicating they have been reasoning with the City of West Palm Beach, on a very cooperative basis, and the concept that the Town would own its own utility system here and they would acquire that from the City of West Palm Beach and the distribution system now in place would be owned by the Town, which would enable the Town to buy water from West Palm Beach on a bulk or wholesale basis. He stated the interesting concept is that they can buy this water at a constant rate. He suggested buying ten million gallons per day, when only five is needed, during the wet season and store the excess five million underground to be used as such time as the aquifer begins to be regulated. He believed that water, once stored, would not in any way negatively impact the aquifer and the reverse would be true. He believed water in the wet season is lost to the Ocean, and the system in the wet cannot hold it and it simply flows to the east and eventually into the intracoastal and out to the ocean and he could think of no better plan than to take the water at that point, during the wet season when it would otherwise be wasted, treat it and store it for later use in the dry season.

Mr. Osterman reported that since that water will not be regulated by the Water Management District as an environmental impact on the Aquifer, they believed that stored water could be used as an irrigation supply at all reasonable times. He stated he thought it was a benefit to the City of West Palm Beach as their plant facilities now are geared to deliver fifteen million gallons a day on peak days and that would no longer be necessary, as we would buy ten or eleven million

gallons a day, take the domestic supply of five million and store the rest. He stated the water could come to the Town during off-peak hours. He advised there is a theory in regulation and rate making called "interruptible service" which means the best kind of a customer for a utility to have is one that agrees to get off the line when other people need it the most and that would be the cornerstone of the system he is suggesting.

He stated this means the City of West Palm Beach would get material cost savings, get greater effective use of its plant facility and can rely less on the Aquifer than it does now, and he knows the Water Management District is urging West Palm Beach to get out of the surface water supply and reduce their reliance on that as a source of potable water. He advised the recovery of plant materials they would get would also be an advantage, so he thought the plan was exciting for both sides to justify pursuing this very eagerly.

He reported on the mechanics of the plan, which were illustrated by an exhibit displayed, showing the principal involved would be all water would be treated at the City of West Palm Beach Treatment Facility and would come to the Island on the same basis as it does today, five crossings coming over to the island. He reported at four of those crossing points, the areas are not terribly sensitive and are flexible and there would be a pumping arrangement designed to take water out of the main coming across and send it down into the storage zone. He stated when the dry season occurred, those same pumps would be reversed and it would bring the water up from the storage zone and would pump it again directly into the System. He stated the beneficial effect will be it will improve substantially the pressure problems throughout areas of the Town, without the necessity of tearing up the main lines in order to make them larger and increase pressure at the Plant, because the process by which the water is withdrawn from the storage zone and pushed out into the system will boost the pressures so that will solve that problem.

Mr. Osterman explained these are not unsightly as all they need ultimately a housing for the pump and a supplemental chlorinator that probably runs about twenty by thirty feet and it is low level and can be made to look any way they wanted it to look and the most inconvenienced they would ever be was during the period the well is being drilled over probably a three month period in the summertime.

He stated they are more enthusiastic about this plan than they were about the joint RO program as it contains all of the elements. He indicated they are concerned about the rate movement of the City of West Palm Beach who believe the answer to conservation is to continue to increase the price to large users so that it will discourage them from using more water. He thought that in this community that theory was misplaced as they are not typically as price sensitive as other areas, but they do represent on average the larger user spectrum of the entire system and such a plan, although well intentioned, is not one that would fit into the best format for rate making.

Mr. Osterman commented that if the water is drawn as a large user on a bulk sale basis, and on an interruptible and off-peak basis, they would put themselves in a different position and there could be a proper conservation approach through education and utilization of facilities in a most effective manner would be a potential good program for the Town of Palm Beach. He stated they will pursue this alternative eagerly and when they next come back to the Town Council, they will have some definitive recommendations as to how movement towards implementation of the best plan should proceed further.

Mayor Marx asked Mr. Osterman if this type of a system has been used in various other places or are there reasons why it couldn't be used? She always thought the water should be saved when it is raining. Mr. Osterman responded it is a technology that is well known but its effectiveness relies to certain extent on the geology that lies beneath the ground which determines whether the water can be stored and this bubble can be created, but it addresses the point of what percentage of that water can be withdrawn effectively, without running the risk of mixing brackish water. He thought at this point that it is probably going to require a demonstration project, although they are not really sure, which means putting down one well but it is a technology well known with its effectiveness depending upon the underground geology. He did not believe there was anything in the location here in reference to salt water that is a problem, but they have to find the proper zones into which to inject the water so it can be recovered most effectively.

Mr. Osterman stated he failed to cover the point of the enormous potential cost effectiveness that this plan would have, recalling the RO was estimated to be involving approximately forty four million dollars and one of the great things about this particular plan if it proves to be effective as they hope it will, it could be done for a fraction of that cost, probably reduced to some number in the order of magnitude of ten million dollars. He thought those were reasonable estimates and they will be refined in the test program, but he was satisfied to say that the costs will be a bare fraction of what they would be in Reverse Osmosis facilities. He stated the City of West Palm Beach has been enormously cooperative in defining the concept of joint effort in RO systems with them and their discussions ran towards the City building the RO facilities well in advance of its need in order to accommodate the Town and the Town would respond by supporting the capital costs of those facilities on a declining basis, until such time as the overall system of West Palm Beach absorbs the need for that capacity. He believed both plans did have merit and both should be pursued.

Mr. Weinberg advised the Council he is very interested in reducing costs but there must be a pilot project in order to determine if this is a successful project and asked for an estimation of the cost of a pilot project. Mr. Osterman responded if all the Desk Top Studies and the paperwork would be fruitful, they would probably recommend the Town drill a test production well and he would guess that the cost of that program would be in the area of one million dollars and that would be a part of the total project and would not be lost. He advised that all facilities would be fully utilizable in the event that it proved the viability of the concept. He didn't think they would want to go into five major wells without having the comfort of knowing that notwithstanding all of the studies that physically had been put down accomplished what was targeted. Mr. Weinberg asked if he viewed that million dollars as a sort of deposit on the project? Mr. Osterman stated it could be stated that way.

Mayor Marx commented she doesn't know how much water would cost on the amounts that are used normally and they obviously don't know what it would cost with what is being looked at as an alternative suggested. She asked if they had any idea of what the savings would be as she has mentioned that one of the assets of this community is the superb value of a pretty town, and wondered what the potential saving would be per gallon or millions of gallons of one system over the proposed system? Mr. Osterman responded he would have to answer the question more in

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principle than in specific numbers as there are some things they do know - many improvements must be made on the drawing board at the City of West Palm Beach's system. He didn't address water quality but he knows the City of West Palm Beach is making major moves to meet new surface water drinking standards and advanced general standards of treatment, which indicate clearly they are doing what is fully reasonable to be done in providing for that eventually. He stated that capital expenditure will raise the cost of water to everyone. He stated he is obviously against a steepened inverse rate structure as it is not effective and primarily it is more of a money raising tool than a conservation tool. He asked the Council to visualize that the 35% of the entire water production demand of the City of West Palm Beach would be fully addressing conservation, as it was not using any water for irrigation during stressful periods and asked if it would tend to diminish the Town as a revenue source to the City of West Palm Beach as he viewed it would tend to put the Town more on an even keel and he felt to spend ten million as opposed to forty four million, the capital impact alone on the debt service of forty four million is quite substantial and more than that, he cannot put numbers to it, but he hoped this would explain.

Mrs. Douthitt noted they are talking of huge underground wells and she asked how they would be topped off and what would be the cosmetic effect of these things and would they be able to drive over them? Mr. Osterman responded there is no cosmetic effect at all as the bubble would be underground about one thousand feet and it just tends to get bigger and bigger as more and more water is added. He reported they don't know how big it can get before it breaks up as they have to find that out, but the plan should work if a bubble is put in relation to each of the crossings, so they would be spread out and would do the best job of improving the pressures.

Mr. Heeke asked if they would end up with a surplus of water in these bubbles, and if the City of West Palm Beach had some problems with breakage or a drought or whatever, could the Town sell some of that water back to the City? Mr. Osterman asked Mr. Blanton if this was possible? Mr. Blanton advised this would be possible and they could design for it, but they are talking about five million gallons per day whereas the Town uses a minimum of five million gallons per day. He felt the service to the Town would become interruptible, which indeed would help the City of West Palm Beach.

Mrs. Wiener noted that Mr. Osterman mentioned the system was used in various locations and she would be interested in receiving some material as to where these locations are, how long they have been in operation and perhaps through their experiences, the cost could be determined. Mr. Osterman stated they could provide this and what comes to his mind is Charlotte County on the west coast, this storage of treated water below ground has been going on for a number of years and also there is some data assembled by Boynton Beach in a test production program they have completed.

Mrs. Wiener noted they were talking about participating in the West Palm Beach RO situation on a financial basis. Mr. Osterman stated that was proposed as one alternative. Mrs. Wiener asked if what they were now proposing is a part of this situation? Mr. Osterman responded negatively. Mrs. Wiener stated she couldn't understand that this was another side thing which would cost them an additional ten million dollars. Mr. Osterman stated that he evidently didn't make it clear as the two plans are totally separate and totally distinct, as the plan he described, the Aquifer Storage and Recovery (ASR) is designed to capitalize on the existing facilities of the City of West Palm Beach and use that water treated to be stored and does not involve building new Reverse Osmosis plants. Mrs. Wiener asked what happens if West Palm Beach does build a new RO plant, would it not reflect somewhere that the Town as a 35% customer, or will they say since we have our own system, therefore, they would forgive us our cost? Mr. Osterman responded at the present time based on their studies, in the period of time under which movement towards RO would be logically required would be five years from now. He advised if the Town had this Aquifer Storage and Recovery System, they may never need RO, or they may need it, but certainly the date they would need RO would be pushed into the future, however, he could not deny the total cost which West Palm Beach incurs, both in capital and in operations in providing the service to all of its customers, whether bulk or retail, is something that is shared rabidly as appropriate amongst all the customers, so if they are drawn into RO in the future, it will impact the cost for everyone.

Mrs. Wiener asked at what point in time do they feel confident that they and the other consultants would come up with firm definitive suggestions where they could make the decisions based on whatever was presented to them and which will make sense from a financial and conservation point of view and from the supply point of view as the meter is running and she asked if they were half-way there towards the determination? Mr. Osterman responded they were more than half-way through the process of identification and study and there are two alternatives, and perhaps within the next three or four months, they should be able to supply the recommendations with alternatives and the financing necessary for this alternative; and the preliminary negotiations regarding both alternatives and the Town will be asked to make some choices and one of them perhaps may be the movement towards the test program.

Mr. Osterman talked about the expiration of the franchise as they have looked at it as a goal and he suggested that neither the City of West Palm Beach or himself would suggest to the Town that they would be disconnected in any way from the services of West Palm Beach, but they must move diligently towards a solution as if new plant facilities are built they would take the better part of three years to build. He stated one of the advantages of the ASR system is it could be built in a fraction of that time, perhaps in one year. He did want to keep this moving effectively forward towards a good conclusion.

Mr. Sundstrom asked to follow up on Councilwoman Weiner's comments stating in all fairness, it needed to be remembered they have been involved in this process for eighteen months and only a year ago that the level of discussions with the City of West Palm Beach began to intensify and they hired their consulting engineer, CH2M Hill to react to the study of J. M. Montgomery so it has taken most of 1991 for the parties to come into sync so the level of activity was not as great as it will be now. He commented that not only would the Council see them on a more periodic basis now that they are farther along into the study, but their activities as far as the Water Management District will also come to the fore as they had a gentleman's agreement that they would work between all parties as regards to where this is going and the charge obviously was that it is a symbiotic situation and the parties need to work together as neither is independent of the other although they are somewhat autonomous. He stated the South Florida Water Management District would view this as creating a new source of water and would be enthusiastic in that they are taking a major source of stress off of the Biscayne Aquifer, but where they go from here is assuming in the next few months, they do come back to Council and answer their questions definitively, and they identify the option of choice and what it will cost and where it will go and it will be recommended to them that they go the next step and pass the Desk Top Study and into the hard part of it. He

commented at that time they would recommend they go before the Water Management District in what attorneys call a Declaratory Judgment Statement as they would want the District to indicate in a binding letter that if the Town does this, the District will do that as obviously he would not counsel the Town to go into any major capital expenditure program unless it is known what the long term effect will be. He anticipated they would see them on a periodic basis much more than they have in the last year, with updates as they move through this process.

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Mayor Marx asked Mr. Sundstrom if when they started looking at this whole project eighteen months ago, did they at that point have the new system already in mind or is it one of the things that came with study, research and new development? Mr. Sundstrom responded the answer is the latter, as it is an evolving process with the earlier studies identifying Reverse Osmosis being preferable to Desalination, etc., keeping in mind the goals at that time. He reported there have been advances in the theory of aquifer storage and recovery and other coastal communities are moving in the same direction. He reported he is personally involved in a similar situation in South Lee County and Mr. Wodraska has been involved also in similar situations, and the answer to the Mayor's question is they did not have it in mind, but it evolved in the course of their study. Mayor Marx felt it was fabulous as it shows there are other ways to handle the problem.

Mr. Weinberg thought they were motivated by the fact there was a cost circumstance which was rather heavy, as compared to the possibility of saving money in this set-up.

Mr. Sundstrom felt it was a win-win situation for both parties as it takes some stress off the West Palm Beach facilities and puts them in a better position with regards to its consumptive use permits with the Water Management District and saves money for the citizens of the Town of Palm Beach in addition to providing a long term situation which keeps in mind one of the items they were charged with by the Town Council, and that is to allow the Town to have a reasonable amount of water for irrigation purposes. He believed there were many benefits which fall out of this.

Mr. Heeke asked Mr. Sundstrom if there was any action they would like the Council to take at this time? Mr. Sundstrom responded other than to nod that they understood what he is doing and they want them to continue with the process. He stated he is not here yet for the authorization of the Desk Top Studies, etc., but they may well be there one month from now and all he needed today is to have the Council be aware of what they are doing and tell them to keep going. Mr. Heeke stated he was proud of what has been done to date. Mrs. Douthit agreed and stated she encouraged them to continue. Mr. Weinberg believed it was incumbent upon the Council to authorize the continuation of the study which is now going on and he so moved. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

2.a. Consideration of Conditional Permits from Department of Natural Resources for Proposed PEP Reef Project at Mid-Town and Proposed Mid-Town Beach Nourishment Project.

Permits
for PEP Reef

b. Consideration of Study Dated December 23, 1991 by Dr. Robert Dean.

Mr. Heeke observed this is a complicated issue and in an effort to move this along, there is a letter from the Department of Natural Resources (DNR) concerning their budgeting requirements, which requires a response by the Town by the first part of February so he felt the first issue needing to be addressed is to discuss with the representative from DNR if there could be any waiver in the time permitted. He stated it has been explained to him that the State's budgeting process was different from the Town as they are on June 30 year end.

Mr. Kirby B. Green, III, Director of the Division of Beach and Shores of the Florida Department of Natural Resources addressed the Council, advised that when the Department appropriates fixed capital funds, which are the funds which are appropriated to the Town for this project, it is done as of July 1 of each year and the Department has to have those funds committed to the Town within twenty-one months of the appropriation of them. He recalled these funds were appropriated to the State in July of 1990 and that means they would have to be committed to the Town of Palm Beach by April 1, 1992, to meet the requirements or else they would revert back to the General Revenue of the State.

Mr. Green stated their time constraint is they need to know which way the Town wishes to proceed, so the contractual arrangements can be made to commit those dollars and preserve them from being reverted.

Mr. Heeke stated he asked this question on the time frame issue only and having received the answer, he would proceed to the next question, which is the examination of the permit itself which has been issued and the merits and factors that go into that in making a judgment as to which determination the Town will make at this time.

Mr. Heeke called on the agent who secured the artificial reef permit to report on the status of the reef permit. Mr. John Dotterer of Winthrop, Simpson, Putnam and Roberts addressed the Council. He stated three years ago by letter of 2-9-89, the Town Manager at the request of the Town Council sought out a proposal from American Coastal Engineering to design and construct a pre-fabricated erosion prevention reef in the sometime calm and sometime turbulent waters in the mid-town section of the Town of Palm Beach.

Mr. Dotterer submitted a copy of that letter to the Town Clerk.

Mr. Dotterer explained on Feb. 9, 1989, the Town Manager at the request of the Town Council, based upon a meeting held on Feb. 1, 1989, wrote to American Coastal Engineering and sought out a proposal for the construction of a section of PEP reef in the mid-Town section. He advised subsequently there were other meetings in consideration of this question and in August of 1990, there was a meeting of the Town Council at which time a specific proposal was submitted by American Coastal to the Town and a proposed contract for the construction of a four thousand section of reef and the proposal made by American Coastal for \$496 per linear foot or a total of one million nine hundred thousand dollars.

Mr. Dotterer explained because there were no permits from any agency having jurisdiction over the proposed project at that time, the Council voted rather than to proceed with the proposal to construct subject to issuance of the permits at a later time, to commission American Coastal Engineering to act as its agent to apply for permits from the agencies. He entered into the record with the Town Clerk a letter dated 8-16-90 executed by the Town Manager and Mr. Rauch on behalf of American Coastal Engineering advising the U. S. Army Corps of Engineers, the DNR, Florida

PEP REEF
(cont'd)

Department of Environmental Regulation and all other applicable agencies that American Coastal Engineering had been engaged to make the necessary applications for a pre-fabricated erosion prevention reef in the Town of Palm Beach.

Mr. Dotterer advised American Coastal Engineering within two weeks after it was asked to do so, all of the applications for all four agencies (Department of Natural Resources, U. S. Army Corps of Engineers, Department of Environmental Regulation and the Palm Beach County Department of Environmental Resource Management) had been prepared with supporting documentation. He advised three of the four permits were issued rather rapidly and he furnished the Town Clerk with copies.

Mr. Dotterer reported on 10-2-90 the U. S. Army Corps of Engineers issued its first permit for the prefabricated prevention reef and incorporated and made a part of the permit were plans and conditions. He stated that was followed by the issuance of a permit from the Palm Beach Co. Environmental Resource Management Dpt. on 11-1-91 and that was followed by the Florida Department of Environmental Regulation shortly thereafter and copies were submitted into the record to the Town Clerk.

He commented that the fourth and final permit was the one issued by the Fl. Dpt. of Natural Resources and this was a major effort and that took approximately one-and-one-half years to do so and in the process there were many meetings, questions, follow-up questions and a lot of data and information submitted to the DNR, and they were quite thorough in its review of the application and as of 12-31-91, the DNR has issued its permit, which is the fourth and final permit. He stated this was forwarded by Mr. Green under cover letter dated 12-31-91.

Mr. Dotterer advised the Town Manager has forwarded a memorandum to the Mayor and Town Council with a copy to American Coastal, requesting American Coastal Engineering address the Council and report on the conditions contained within the permit and he will do that at this time.

Mr. Dotterer exhibited an aerial photo of the Mid-Town section and the yellow line on the photo indicated the proposed position of the PEP Reef. He stated it has been permitted to be in the corridor of up to a maximum of three hundred feet seaward from approximately where the seawall is located at this point in time.

Mr. Dotterer pointed out the northern boundary would be Barton Avenue and the southern boundary would be Hammon Avenue. He exhibited a drawing describing the design of the artificial reef section. He stated they are massive units, approximately fifteen feet wide, perpendicular to the beach and about twelve feet long that would be parallel to the Beach and they weigh 28 tons each, and a solid piece of concrete with no hollow spaces within them except for the vents on the top to allow the water to flow underneath the very top of the reef. He exhibited models of the represented modules which will be placed in the ocean. He pointed out a characteristic of the modules is they will be placed on the floor of the ocean and the first unit will be lowered into place by a crane as would the succeeding units and what is important about the design is it is massive and a solid cord monolithic unit but also, the succeeding units will be inter-locked with the neighboring units, using a tongue and slot interlocking system. He advised the tongue is also made of solid concrete in a rectangular shape and there is a corresponding slot on each neighboring unit which will be lowered into place by a crane and connected, as will the next unit which will be lowered into place as such. He explained there will be a total of three hundred thirty three (333) units forming a wall as shown on the aerial photo, and it will be four thousand feet long, (4000') and approximately two hundred twenty five feet (225') off shore from the seawall.

Mr. Dotterer stated the advantage to the system is that in order for one unit to move, the whole wall would have to move, as they are all inter-connected, and that would be extremely unlikely.

Mr. Dotterer explained another feature of this proposed system is that if it turns out to be anything like the first one installed in the southern part of the Town, it is expected it would be teeming with marine life and form a natural marine community within a rather short period of time. He exhibited an underwater photograph which showed the southern reef which had been installed on South Ocean Boulevard approximately two years after it was installed. He pointed out it is becoming covered with coral, sponges, sea fans and populated by fish life, crustaceans and other marine communities and he viewed it as an environmental benefit.

Mr. Dotterer believed this reef is the only reef of its kind that has ever been permitted, installed and tested within the State of Florida. He stated he had a letter of confirmation from Mark E. Leadon, P.E., Administrator of the Bureau of Coastal Engineering and Regulation of the Florida DNR dated 9-5-90, which responded to a letter written to him by Mr. Elwell of the Town Manager's office in which Mr. Elwell was confirming that the six hundred foot (600') reef which was placed on South Ocean Blvd. was the only one of its kind and Mr. Leadon confirmed that to the Town and he submitted this letter to the Clerk for the Record.

Mr. Dotterer continued on indicating that to get this far over the last one and one half years has been a major effort on the part of American Coastal and its engineers and scientists who have contributed their time towards this effort. He reported the total amount paid by the Town for this was \$8000.

Mr. Dotterer read portions of the permit issued by DNR at Paragraph 8:

"Section 27, Chapter 89-175, Laws of Florida authorizes the Department to issue permits for pilot projects using experimental technology in areas where the coastline is eroding, the site is suitable for analysis, adequate design theory is available to support the project, the site is environmentally suitable, and the proposed project is supported by an adequate test plan."

at Paragraph 9:

"The applicant, American Coastal Engineering, was able to provide sufficient data to meet the requirements of the statute for an experimental project....."

Conclusions of Law:

"Because of the uncertainty and the risk, this project qualifies as a true experiment under Section 27, Chapter 89-175, Laws of Florida. Special Permit conditions provide adequate safeguards in the coastal system and marine turtles. The potential gain is a new body of knowledge on a class of submerged breakwaters which could prove to be a cost effective means of reducing energy on exposed eroding shorelines and may be valuable when used in conjunction with beach nourishment projects to increase their longevity and is consistent with the Comprehensive Beach Management provision of Section 161.161 Florida Statutes....."

PEP Reef
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Mr. Dotterer refreshed their recollection recalling the Town did have a delegation at some meetings in Tallahassee when this new Statute was passed and it was in pursuance of that, that this permit was granted.

Mr. Dotterer read what the legislative intent of this Statute was:

"It is the intent of the Florida Legislature to encourage the development of new and innovative methods for dealing with the coastal shoreline erosion problem being experienced by the State."

Mr. Dotterer commented that in pursuance of that legislative direction, this permit has been issued. He referred to Mr. Doney's memorandum for comments on some of the conditions of this permit.

Mr. Dotterer stated that American Coastal does not find any particular difficulties with the permit conditions but he would highlight them for the Council:

SPECIAL CONDITION NO. 2A requires that the project be carried out in accordance with the plans and specifications which were approved by the Department as part of this permit. He stated these were the drawings he had before the Council which are more visibly shown by the model he had exhibited. He stated this condition also provides there can be no modification to the project size, location or structural design without prior written notice from the Department. Mr. Dotterer explained this does not cause them any problem.

SPECIAL CONDITION 2B provides that the work authorized under the permit shall be conducted using extreme care to prevent any adverse impacts to the coastal system, marine turtles, nests and their habitat or adjacent property and structures. Mr. Dotterer stated American Coastal also believes this causes no problem and it is expected eventually that sea turtles will find this area to be a favorite habitat as was the case at the beach adjoining the first reef. He exhibited a photograph which showed the turtle nesting tracks on the beach created behind the artificial reef.

SPECIAL CONDITION 2i provides the permit is issued to a specific applicant and is not valid for transfer to any other person unless formally transferred and approved.

SPECIAL CONDITION 2K requires periodic progress reports.

SPECIAL CONDITION 3 is a significant one but American Coastal believes it also presents no problem for the Town. He stated this grants the permit but withholds a Notice to Proceed on the work until certain steps are fulfilled, the first one being a test plan. He didn't believe that any of the prerequisites would be difficult to proceed with as they are normal and the expected in order to move forward with the project.

SPECIAL CONDITION 4 explains the test plan which required setting up a system to determine whether or not this erosion prevention reef will be effective and whether it works as this is a new solution to the coastal erosion problem. He stated a draft has already been submitted of this Plan to the DNR as of June of 1991 so much work has already been done, although it has to be further reviewed and refined and agreed upon with the DNR, but he didn't believe this would delay construction of the project.

Mr. Dotterer addressed the question of the timing of the project, which he considered to be extremely important. He exhibited a diagram which showed the proposed construction schedule. He explained some of the activities must be completed before the next one can begin and some can be performed concurrently. He advised the first step would be the issuance of the contract; second, the mobilization - that is getting together all of the parties who would participate in the performance of the construction of the reef and organizing the effort to begin the construction of the forms. He advised the forms would be large steel structures and this must be completed before the actual units themselves can be cast out of concrete. He advised the casting will be done in a yard on-shore. He indicated that after a certain number of the units have been completed, they can simultaneously begin to be installed in the ocean. He stated additional units can be cast and built while others are being installed. He advised the test plan will take about ninety days and can be done concurrently with the other activities, such as mobilization and construction of the forms so it is not expected that the work on formulating and agreeing upon the test plan, which is necessary to obtain the Notice to Proceed would delay the actual installation of the project and while the timing is so important is a critical issue in the consideration of the project and he would come back to that.

Mr. Dotterer reported the final condition of the Permit is that by accepting the Permit and moving forward with the Reef Project, the permittee, the Town, agrees that the present Beach Restoration Project under Permit No. DBS88-231 which is the Dredge and Fill Permit for pumping sand onto the beach would not be valid as it presently stands. He advised the Sand Pumping Permit was issued at the same time that this Permit was issued by the DNR. He did not believe that American Coastal felt this would present a difficulty since the Reef can be fabricated, installed and lowered into place and subsequently the Town can go forward, when it completes all of its permits for the Dredge and Fill Sand Pumping Project, and only the Army Corps of Engineers Permit remains to be issued and when the funding is secured for the Sand Pumping Project, it can follow behind the

Reef project and backfill the beach behind the reef. He believed this would be beneficial to the Town in several ways. He stated the Town would have to go back and seek an amendment on the Sand Pumping Permit from the DNR to change the configuration of the sand to be pumped and filled onto the Beach.

Mr. Dotterer showed an exhibit showing a gradual, gently sloping profile of where the artificial reef would be located. He advised it has been planned that the sand being pumped onto the beach would be done roughly in a flat dyke out to about 160' from the seawall. He stated if that were done and the design slope of the sand, (10 to 1 sloped down) would interfere with the placement of the Reef so the concept is the amount of sand to be pumped onto the beach could be made more narrow and less would be used and an appropriate slope down to the reef would be used and in that way the reef could help in several ways. He commented that the first way would be that it would buttress the sand, which is pumped onto the beach and help hold it in place as there would now be a rigid structure about six feet high on the outer area of the sand accumulation to hold it in place. He stated the second way is it is expected that because the reef will reduce oncoming wave energy itself, it would add to the longevity of the beach renourishment effort.

He stated the final benefit to be accomplished would be environmental protection and he showed an exhibit which they felt would allow a barrier inshore from the natural communities and protect in part the sand flowing onto the natural coral reefs. He stated after reviewing the conditions, it is not believed there are any difficulties and the permits issued by DNR are fair and feasible to be constructed, pursuant to the terms.

Mr. Heeke interrupted Mr. Dotterer indicating it is now noon and they would break for lunch. He explained the procedure after lunch will be Mr. Dotterer will complete his presentation, then they will hear from Mr. Green of the DNR and after that public comments will be called for on this one aspect and after that they will consider the second permit, which is the sand nourishment and he will call on Mr. Thomas Campbell as the Town's representative to explain that part of the permit and when that is completed, Mr. Green will give his interpretation, after which comments from the public will be received on that aspect. He stated that at that point, the Council will go into Executive Session, after which a decision will be made, after which the next logical step will be taken, depending upon that decision.

Lunch break was taken.

Meeting called back to order at 1 PM.

Mr. Dotterer was called upon to continue his presentation. He stated the next point he wished to address was the need to have the artificial reef. He was sure it was well known to this Council there is a need to do something fast because of the critical and deplorable condition of the shore line.

Mr. Dotterer advised that during the time these applications have been studied by the various agencies, there was the Halloween storm on October 31, 1991 and he exhibited photographs taken showing the waves breaking over the seawall and spray bursting to the top of the tall Coconut Palms. He advised they had a short video of that storm which he would like to show sometime later.

Mr. Dotterer informed the Mayor and Council there were two reasons why he felt there should be urgent action on this matter, the first being presented by the deadline by the DNR, and he understood the DNR had certain time-tables within they have to proceed and that makes it incumbent upon the Council to make a decision as to whether to proceed with the Reef this month. He advised another deadline which is the changing of the Seasons and the blowings of the wind in the Atlantic and he referred to the Scheduling Exhibit he had shown earlier, which had been prepared to allow as many activities as possible to occur concurrently. He noted there are strong windows which blow in the Spring, Winter and Fall but there is a period of time between May and September in which the sea is fairly flat and since the units weigh 28 tons each and are to be placed on barges and taken out of the Inlet into the Ocean and for the safety of the property as well as the men, they cannot perform this operation with seas more than one and one half feet, and if they exceed that, the Coast Guard tells the contractor to go back into the Inlet for his own good, so there is a relatively short period of time which only occurs during the summer.

He felt the scheduling forms a critical path for the completion of the project, with the first step being the decision of the Council to go forward. He advised if the starting date is delayed, the construction schedule will be shifted, and the installation phase would be shifted into the Tropical Storm season and it would be impossible to install the reef until the summer of 1993 and there may be many storms visiting this area during that period of time. He complimented the Town Staff on holding down the damage of the seawall to approximately \$100,000 for the October storm, however, it is still damage that may have to be repaired and replaced again as the Mid-Town section is always being battered. He stated if the Council acts now and goes forward, the artificial reef can come to pass this year and the consultant, American Coastal who has been working on this project for one year and a half for the Town, recommends the Council make a decision today to proceed with this reef project.

Mr. Heeke called on Mr. Kirby B. Green, III, Director of the Division of Beach and Shores of the Florida Department of Natural Resources, (DNR) to comment on the permit as it applies to the offshore breakwater. Mr. Green addressed the Council asking to go back and address several issues raised by the previous presentation. He advised there is still one more authorization from the State needed from the Internal Improvement Trust Fund, who are the landowners - holding in trust the submerged waters of the State for the public.

Mr. Green advised they truly believe the PEP reef is an experimental project, with valid things the State can gain from the review of this project and which the Town can gain. He stated they will be designing a test plan which will help them make decisions on its effectiveness. He recalled in the application process there have been a number of representations made to the DNR about the reef and they wish to test those representations. He reported the Council has before them a Permit which authorizes the construction of a reef system for which they must receive a Notice to Proceed, which will contain a detailed test plan and monitoring plan associated with it. He advised that under the very best conditions, this may be worked out within the next sixty to ninety days, but it may take longer, as there are still issues which need to be addressed.

He reported some of the issues are:

1. the final alignment of the structure;
2. whether it needs to be segmented or one continuous piece;
3. other issues which will need to be addressed in the Test Plan process;
4. additional models will need to be run by American Coastal;
5. a monitoring plan will have to be designed to monitor the installation, after installation, in order for them to continually gather the data they need to properly evaluate.

Mr. Green stated this will be a tedious process to go through. He believed the monitoring plan, probably over a three or four year process, will run about \$100,000 per year. He advised the State will participate in the funding of this cost paying for at least 75%, as they think it is a very important issue they will have to deal with. He recalled he heard it said this morning that perhaps the reef should be put in, and then combine it with the Beach Project at some later date. He advised they have specifically put in a condition into the Permit that says that cannot be done. He stated the reason they have done that is they are designing a Test Plan which will evaluate the reef structure without additional sand in front of it, in order to determine how effective it is. He told the Council if they wished to back up and want to combine the projects, that is an entirely different issue. He indicated they were willing to design a Test Plan to test the effectiveness of the reef system, but it would have to be done over the life of the experiment and isolate it as much as possible, so they can make a determination of how effective the Reef is, so they will resist coming in at a later date after the Test Plan is designed, and the monitoring is in place and after they have made the monetary commitment for that monitoring to start changing factors which may effect the way they view the outcome of the experiment.

PEP Reef
(cont'd)

He wished to clear up the funding issue as they have a February deadline, because they do need to know which way the Town Council wishes to go. He commented if they want to go with the Reef project, they need to redirect some of the funding which is now in the Beach Restoration fund, into a contract with a third party independent reviewer, who will help establish the Test Plan for this project.

Mr. Green told the Council if they told the DNR on Feb. 1, they are going with the PEP Reef, they will take some of the dollars appropriated for the Beach Restoration Project and contract with the University of Florida for development of the Test Plan, the Monitoring Plan and analysis of the data as it is formulated. He advised if they go the other way, and state they will be moving forward with the Beach Restoration, then they will commit the funds to the Town at some future point for the Beach Restoration Project.

Mr. Green advised if the Council wishes to combine the Reef Project and the Beach Restoration Project at some time, they will commit the Beach Restoration funds to them, and some portion of that can be for structural protection. He stated they do have to know which way the Town Council wishes to go, so they can set up the funding agreement with the Town.

Mr. Green stated that basically is the issue before the Council today as far as the Reef project is concerned. He believed one of the things that needed to be identified in the Test Plan, which has not as yet been done, are what are the expectations of the project - are they clearly expecting a reduction of wave energy or are they expecting the system to reduce wave energy and build a beach and at what rate? He reported the information they have been provided at this point indicates that under the best conditions, the beach may build horizontally at a foot to sixteen inches a year and he asked if that is what the Town wants; or are they looking for large amounts of sand for a short period of time to provide protection; or are they going purely for the wave protection. He stated those are the issues which need to be addressed and the expectations they need to establish for the Town and for the project they want. He believed his department could help get the Town there, once the expectations are known.

Mr. Heeke called from comments from the public as to the Reef project.

Mr. Richard Creter, President of Breakwaters International, indicating his firm is a designer, installer and manufacturer of artificial reef systems. He advised he has been desirous of working with the Town for almost seven years on an artificial reef project and has kept in touch with them on that. He has delivered a letter to the Town today along with their brochure and his purpose is to provide additional information to the Council that they are ready, willing and able to be a bidder on the project, based on which avenue they wish to follow.

Mr. Heeke interrupted, stating Mr. Creter's comments would be germane should the Council reach the point of proceeding with the reef aspect, but now he wishes to narrow this discussion to the aspect of the dual permit and whether the Council wishes to proceed in that fashion.

Mr. Creter stated he wished to talk about the reef project as he views them as having two options, and there may be a third provided by Professor Dean, however, the two options before the Council is reef now, or maybe combine the reef later with a sand nourishment project and it would be his recommendation that they combine them, and allow the reef installation and allow the sand nourishment project to take place at some time in the future, however, whichever way they decide to go, Breakwaters stands ready at no cost to the Town to be involved in that process and allow them to bid, which would be advantageous to the Town.

Mr. Heeke asked if his recommendation was to combine the projects to which Mr. Creter responded his recommendation is they modify the permit to allow the reef to be installed a little further off-shore, so it can be anticipated the sand nourishment project would take place at a future date. He knows there is a sand deficit in this area and there may be little sand accumulation from a reef project if it is all by itself, however, a reef will reduce wave energy and certainly that would allow sand accretion to take place. He commented there may be a sand deficit which may not be advantageous for the long run, so they should leave their options open to include later a nourishment project and the reef and the reef location should anticipate that option.

Mrs. Mary Ratliffe, Executive Director of the Palm Beach Civic Association addressed the Council supported the efforts to provide shore protection. She stated they felt the mid-Town Beach Nourishment Project and the prefabricated erosion prevention reef are very necessary. She commented they appreciated the years of study and effort put forth by the Town to put into place the best solution to the severe erosion problem, and they support the decision to get the permitting in place and finally begin working toward the solution. She commented they do support

PEP REEF
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the primary application for the PEP Reef system to create off-shore wave breaking action to avoid the shore line damage, and believed the concept of the Reef was the most cost-effective and ultimately the timely solution to this very vulnerable situation. She stated the Beach Restoration project has their full support as a secondary application and the members of the Palm Beach Civic Association have already begun to urge the legislators to press for Federal Funding to accelerate the formation of an extended beach. She advised they wait the Council's direction to more fully support this legislative action, and further postponement of a decision on this matter will send the wrong message to the citizenry, as well as the State and Federal authorities as this should be the highest priority. She urged the Council to make a decision today on this matter.

Dr. Newman Linn addressed the Council commenting on the location of the reef as from his experience with the reef that has been installed on South Ocean Blvd., if a reef is placed too far away from the shoreline, the reef will not work. He stated on the other hand if it placed too close to the shoreline, that could also create a problem and they know from experience, what location is the best spot for the installation of the reef so there will be no problems.

Dr. Sten Lilja addressed the Council recalling the comments of the American Coastal representatives to urge the early start of this project; how it will be built and a permit has been granted; then Mr. Green states the DNR retains the design control over the reef, further testing, etc. and there is no time period in sight and asked for a clarification of that. Mr. Heeke responded this will probably be addressed later when the Council goes into executive session.

Mr. Louis Prior addressed the Council stating as a member of the public some of the comments made by the DNR representative may reflect what they think but to him it came across almost as a matter of extortion. He stated they must do it their way, in their time table, and spend the Town's money to do so, and he asked the Council not to be dismayed by that attitude and move forward as they think best.

Mr. Creter again addressed the Council stating it does make a big difference in where the reef is placed as to how it will perform, and on the timing, if they go with the reef project alone in the permitted location, the timing can be accomplished in a number of ways. He advised his company has been involved in the casting of units for decades and they will be able to shorten the time frames as presented to the Council today, by when the moulds were produced, they needed a half dozen moulds to manufacture the pieces and they can manufacture the precast units as the moulds are coming off and they do not need to wait until all the steel moulding is done. He reported as far as the installation is concerned and working within a time frame with a summer calm beach, if there is a barge system and a crane allowed to free float, they will have to deal with one and a half to two foot waves maximum and if there is another barge system is utilized, they can install it in the winter, if the time frame is pushed into those months. He advised there are methods of installation and manufacturing that can impact the timing and release some of the constraints they may feel are before them today.

Mr. Robert Miller, addressed the Council, indicating he was speaking not as a representative of the real estate community but as an engineer and he has had experience in building artificial harbors. He advised he did work with groins and there are many of them who wish they had never fallen into disfavor, however, he wished the Council to know that both projects are definitely needed but to do the Beach Renourishment prior to the reef would be putting the cart before the horse as much of the sand will end up on the west side of the roadway and urged the Council to go ahead with the construction first and the renourishment second, however, they should be followed closely as the reef alone would not be enough to afford the kind of protection which the shoreline does need.

Mr. Heeke called for further public comments on the reef project and there were none. He stated the next issue is the alternative permit, which is the sand permit and called on Mr. Thomas J. Campbell, President of Coastal Planning and Engineering to present that concept and the advantages of that plan.

Mr. Thomas J. Campbell addressed the Mayor and Council indicating they are in the process of putting together a Beach Restoration Program and the basic permit just received from the DNR has conditions, and in addition to that they are in the final stages of receiving other approvals. He recalled this year they did get the DER Permit and have just qualified to get the State Lands' approval, to which Mr. Green referred. He advised they soon will be going on the agenda before the Governor and Cabinet to get that approval.

Mr. Campbell reported as a parallel action, they do have a number of Federal approvals to get. He advised they are in the final evaluation of their General Design Memorandum by the Corps of Engineers, and have received from the Corps their last few comments and they have indicated if the comments are adequately addressed, which have now been sent to them, they will send the document off to Atlanta, which is one of the final stages of GDM approval, so they are indeed of the final processing of the Beach Restoration Program, as the DNR is one of the biggest approvals necessary which shows they concur in the design of the project.

Mr. Campbell refreshed their memory as to the scope of the project, as it goes from Barton Avenue to just south of Banyan Road or about 1.5 miles. He advised that based on the latest cost estimates in the GDM, the total cost of the project is 9.3 million, which includes all engineering, monitoring and construction and the Town's share after Federal (5.2 million) and State share, (2.4 million) is about 1.74 million dollars.

Mr. Campbell stated this does leave some monies left in the State account, which could be used to address any contingencies or additional monitoring which may be required of the project. He indicated the full scope of the DNR will be reviewed and they also have the environmental monitoring requirements of the DNR, based on that permit, and they will compare those to what they have expected in the program and how they might differ.

Mr. Campbell exhibited a list of the things which were requested in the DNR permit, and basically they asked for a number of things - some of which were anticipated - and they have been included in the GDM. He advised there are a number of new requirements which do go outside of what they expected, and he wished to go over them at this time.

Mr. Campbell stated they did anticipate the planning and specifications, part of the hydrographic monitoring was in the program, turtle monitoring was in except the DNR did ask for a two year monitoring; the storm water outfall plans were anticipated; derelict structure removal was

also anticipated. He reported the important difference between the program as set out and the changes as required by DNR have to do with an expansion of the hydrographic monitoring which deals with the borrow area and the beach area near the borrow area near the Inlet. He stated the second study for the two year monitoring of turtles is a new requirement. He advised aerial photography is a new requirement - as is beach testing and tilling to determine if the beach is too compact after a period of time, so that turtles can come back up onto the beach; and they have been asked by the DNR to level any escarpments so the turtles can come on the top of the beach.

PEP Reef
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Mr. Campbell believed the largest permit requirement which they hope to change is the potential construction window, as the DNR has imposed in their permit requirement, a window in which the construction would have to take place in the wintertime, avoiding the turtle season. He advised they did negotiate with the DNR and got them to agree if the Federal rule can be changed in that regard, that the DNR would change their permit also, and they have already asked the Corps to ask Fish & Wildlife Service at the Federal level to re-evaluate the beach, as most of the beaches are either very narrow or nonexistent, and he knows they have already committed to other places if the project shows it is not good for turtle nesting now, they have removed that requirement.

Mr. Campbell explained, referring to a graphic exhibit that what he has done is to show the scope of work, the estimate of requirements based on what was in the program and what is the new cost relative to the . . . He showed that basically if they looked at all of the requirements which are different, the hydrographic monitoring, the turtle monitoring, the aerial photography, the tilling and construction window - all of these requirements add about \$104,000 to the overall cost of the project and of that the Town's share would be twenty per cent, or \$20,000 in addition to what has been presented up to this point.

Mr. Campbell felt the important thing to look at was the construction window as the dredgers have told them that construction costs can be as high as thirty per cent higher in the wintertime, however early in the winter, there is little competition so it could be lower. He stated if it does become a standard that everyone is constructing in the winter, there will be less competition but the prices will be higher if everyone does this in the wintertime. He stated the range is from one to three million, although the project has a contingency of fifteen per cent, which would cover up to the extra one million. However, he commented, if it goes to the three million, there will be additional costs to the Town.

He believed the Town's cost share would be 18.6% at the one million, although there would be other contingencies that creep in, and it could be around \$186,000 higher, if they are forced to go into the wintertime. However, he stated if the bids all come in at three million dollars higher, then the Town's cost could increase by about a half million dollars. He stated they do have good feedback that they can positively address the construction window, although it currently is a requirement of the DNR Permit, but they will be working with the Federal government to see if that requirement can be changed.

He indicated with the new data they have submitted with photographs should show Fish & Wildlife that presently there is no good turtle nesting habitat in the project area. He advised it may be helpful if the Council continues to support the Beach Restoration Project to have their assistance at the political level at some point to ask the administration to discuss this with Fish & Wildlife Service. He believed that turtle nest relocation is also a viable method of addressing the concerns about turtles during construction and the re-creation of turtle habitat should outweigh the short term problems which can happen during the construction project.

Mr. Campbell summarized by stating the permit conditions are not too different than what they had up front in the project, and therefore, the project looks good except for the construction window which would change the costs somewhat. He advised they do have enough money as they have up to 3.2 million in State dollars and the current project would only commit to 2.4 million of that amount. He wanted everyone to know there is a potential increase in the cost if they are forced to go to a winter dredging. He encouraged the Council to continue processing the Beach Restoration project as it has been a long process and they are close to the end and many other municipalities would love to be in this position, having gone through all of the processing. He stated it is a good project and there is a quality of sand available and the State does support it, both financially and via permit.

Mr. Heeke called on Mr. Green for his comments on this aspect of the permitting. Mr. Green addressed the Council stating their biggest concern and the Town should have with the permit before them now on the Beach Restoration project is that construction window, as it could add significantly to the cost, and they may have to go back to the Legislature and ask for additional funding to participate in this project. He expounded on the reason the wintertime construction window is in there is the U. S. Fish & Wildlife has indicated their review was of the larger project before it was scaled down, and it did include areas which were viable habitat for sea turtles, so their comments were on the larger project. He advised they have committed to look at this scaled down project to see if they could allow the summer dredge, so they will be working with the Corps and the U. S. Fish & Wildlife and the State's Division of Marine Resources, who is also concerned with sea turtle habitat and marine type issues and see if there is something that can be worked out in this matter.

Mr. Green gave a general statement indicating that from his view that not only in this area, but in most of the areas around the State that are experiencing erosion problems, those problems appear to have been caused by several factors:

1. The way the inlets have been operated in the past - not placing sand on the beach that was of beach quality when they improved or maintained those inlets.
2. As they continued to develop the inlets, improving them with jetty structures and interrupt the flow of sand - part of the problem was the Town was not getting the flow of sand that they were at some time in the past.

He felt that any Plan which addressed erosion issues has to address that deficiency of sand supply in the system, so both the Legislature and the Department for a long period of time have

supported erosion control projects which reinfused the system with sand. He encouraged the Council to continue their consideration of the sand project, even if it is with the PEP reef system as a component of it as he thought they could work together and provide the Town with the type of protection needed. Mr. Green believed the Town could have both in a modified form that will meet the needs of the State in restoring the beaches. He mentioned the fact that both the DNR and the Corps of Engineerings will be looking as they move forward with the project, that if the projects are combined, they would still have to look at the cost benefit analysis and the amount of storm protection which will be provided to the upland structures. He stated if they decided to combine the projects, they needed to combine them deliberately and perhaps some redesign may be needed for both of the projects so they fit together as components of each other, instead of doing one and coming back at a later date and imposing something on top of that.

Mr. Heeke called for audience comments limited solely to the nourishment of sand project, to which there was no response.

Mr. Heeke indicated they would then move into Executive Session and called on Mr. Doney for his comments on behalf of the staff. Mr. Doney asked if the Mayor and Council wished to hear from Dr. Dean, to which they agreed.

Professor Robert G. Dean then addressed the Council, indicating he was a coastal engineer and has studied the beaches of Florida for the last twenty-five years. He referred to the comments of Mr. Green on the impact of the inlets and the erosional stress on the beaches of the Town. He recalled that after the Lake Worth Inlet was cut in the late teens and early 1920's, it did interfere with the sand flow to the beaches, which has led to an erosionally stressed system. He indicated in his study, he was asked to consider the possibility of combining both Beach Nourishment and the Off-shore Breakwater, the PEP Reef system, and the two are not of the same length, one being 8000' and one 4000', which presents some problems, although not major. He stated his report dated Dec. 13, 1991 interpreted the objective of his study to maintain the same beach width with the combination as would result from the Nourishment Project alone. He reported when he did that, it required relocating the PEP Reef system farther off shore, which basically were the considerations presented in his report.

Dr. Dean indicated the valuation of the volumes that were saved by doing that, that is maintaining the same beach width with the PEP Reef system - the combination - indicated there would only be about six per cent volume savings. He stated from that standpoint, it did not appear to be cost effective and the staff has requested and it was included in his original proposal to go back and re-examine the relative benefits of combining the two projects, but keeping the PEP Reef system where it is presently planned and the permit that has been approved. He did that and he will provide the results of that and will supplement his report.

Dr. Dean felt if the Reef was kept in the same place as is proposed, the beach widths for the combination will not be as great as they would be for the Beach Nourishment alone, as there would be lesser volumes included. He believed if it was kept in the same place and the same volumes of sand placed, then the PEP Reef system would be basically buried early in the history of the project as it is so close to the beach so when the volumes of sand are placed, they would bury the PEP Reef system. He stated if the volumes were reduced so the PEP Reef System would buttress the beach, then the resulting beaches would be narrower and this is only on the northern half of the project.

Dr. Dean stated over the 4000 feet where the PEP reef is to be located, the berm widths of the beach, or the top, would be reduced on an average from about 120' to 30'. He stated at the sea level contour, the average widths would be reduced from 160' to 70'.

Dr. Dean advised there would be a volumetric reduction in sand, if they would use the combination in this way. He indicated that over the entire project as now planned, or a million cubic yards, that would be reduced to 340,000 cubic yards, so they are reducing the amount of sand placed on the northern half of the project, so that the PEP reef system is now planned to buttress the profile that is placed landward of it.

Dr. Dean noted there was another aspect and that was numerical models of the computational procedure to evaluate the performance of the combined project as compared to the Beach Nourishment alone and the results of that turns out there would be wave reduction due to the PEP reef system, but because there is a smaller amount of sand placed in the northern half of the project, it turns out the volumetric loss of sand would be less, but the shoreline retreat would be greater, because even with the smaller volumetric loss of sand transported out of the area because it is drawing upon a smaller placed reservoir, so the rate of shoreline retreat will be greater with the combination and with the reduced volume of sand placed in the northern half.

Dr. Dean stated these are the quantitative conclusions of his study and the shoreline retreats would be twice as fast with the combination than without.

Mr. Heeke asked if there was any public comment as to Dr. Dean's statements. Dr. Link commented this concept when it combines the two together, the problem is the beach profile is not a natural one as if they put too much sand on the top of the beach, it would not be natural and that is a big problem they have to consider. He believed the beach profile may be stabilized but he suggested that if they combine the two projects, they must find out what the profile is and then from economic point of view, they can save on the sand, they should do it because the renourished sand sucked from offshore will be too fine and will create more refraction and the sand will be pushed offshore. He stated they don't want to refract the energy from the beach or the reef itself because they have found the refraction force produces beach erosion and scouring around the reef.

Mr. Dusey referred to the alternative to fill the project according to the original plan and then place the reef as a protective device and asked him if he had an opportunity to evaluate the effectiveness of the reef in that combination? Dr. Dean responded he did not look at that possibility. He neglected to mention that if the two projects are combined, and if the PEP Reef is used as something that will hold the sand landward of the beach, it is important that the sand has to be typed and it can't be that sand will drain to the off-shore region as it is surprising how small a gap the sand can take advantage of to float through and get offshore and once the sand gets seaward of the PEP Reef, it cannot return.

Mr. Heeke asked staff to direct their questions to the people who have spoken today, first going to the Sand Permit and then to the Reef Permit.

Mr. Doney asked the first question based upon review of the DNR permits and the questions and the comments today and also from being involved in this for over seven years, there are a lot of issues which are quite complex. He stated one issue which Mr. Dotterer did not address and that is what would be the estimated cost for complying with all conditions of the DNR Permit and the other permitting agencies that were granted.

Mr. Dotterer responded that American Coastal had submitted a turnkey price about eighteen months ago to the Town, which it has held at \$1,984,000. He advised the additional conditions that were referenced in the Permit, their estimate would be somewhere between \$400,000 and \$480,000 additional. He recalled Mr. Green stating they would contribute to a portion of that of 75%. He stated a proposed test plan had been submitted to the DNR about six months ago.

FEP Reef
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Mr. Heeke asked about the permit needed by the Trustees? Mr. Dotterer understood the Trustees to be the Cabinet members and they have already heard and approved the FEP reef by unanimous vote and the Governor suggested the Reef be placed first, so he didn't believe there would be any difficulties in obtaining that approval which would impact upon the summer construction schedule and that can be done administratively.

Mr. Doney asked for a clarification on the amount additionally needed, he asked if that amount was to comply with the conditions in the other permits that have been acquired. Mr. Dotterer stated those conditions, as far as he knew, were included in the original turnkey price, but the DNR Permit had the Test Plan and that is where they see the additional cost occurring.

Mr. Doney asked Mr. Green about his comments on the DNR conditions placed on the two projects and two permits and one issue from the administrative perspective is the Town has an agreement with DNR for the environmental, the sand search and the coastal design engineering for the Beach Nourishment project and to date, we have been reimbursed under our agreement dated March of 1991, approximately \$480,000 and wondered depending upon the decision made here today, and within the next thirty days the staff will be requesting the reimbursement of an additional \$130,000 and asked what the DNR's position would be relative to that funding and that agreement. Mr. Green responded the contract was entered into with the Town for preparation of engineering plans, environmental permitting and sand source studies for the beach restoration project and he didn't want to make this sound like it was extortion as he didn't want it to be that, but if the Town decides they no longer want to pursue the Beach Restoration and they want to pursue the FEP Reef, he thought the Department would look at that as the Town changing its direction and no longer wishes to proceed with restoration and they would ask for reimbursement of those funds from the Town.

Mr. Heeke asked if they had the Governor's approval to do that? Mr. Green responded they have talked to Cabinet aides when the items were presented to them and in that discussion, this was addressed and a number of the aides feel that is the way they should go to ask for reimbursement, however, it has not been taken to the governor and cabinet and before they pursued that action, it would have to be taken back to them. Mr. Heeke stated that study was done and the expenses incurred in good faith and the funds were provided to the Town for that and the reason they may or may not change has nothing to do with that study, or maybe it does, but they are at a point of making an economic decision and they have performed their side of the contract and they should anticipate litigation from the Town if they sought to recover those funds, as he felt they were breaching their side of the contract. Mr. Green stated he understood.

Mr. Doney commented there are many interactions between the Town staff and the DNR and they were extremely helpful during the October storm and he thanked them for that. He asked if the February 1 deadline was flexible to give the Mayor and Town Council additional time to evaluate the issues which are complex. Mr. Green responded he didn't think so as they have to come back and get a cost sharing agreement with the Town for the remainder of those funds and that must be approved by the Governor and Cabinet, so if they are looking at a no later than April 1st to sign the contracts with the Town, they would have to back up at least six weeks before that to have a final negotiated contract which means no later than mid-February, so as far as the commitment of the funds are, they are stuck in that particular time-frame.

Mr. Dusey asked them to try to go back in time and re-establish the Town's goals which were in this process and the two things he recalled, was the Town wanted beach at Mid-Town of some magnitude and second, storm protection. He recalled these were the two primary objects and he thought to assist them in their deliberations, the two applicants could tell them how much beach the Town would be getting and when they would be getting it and what the storm protection would be and when. He referred regarding the levels of the storm would it be two year, five year, fifty year or whatever, as it appeared there was the same range of costs so he thought they may want to ask what exactly they would be getting for that.

Mr. Dotterer responded he believed all speakers have agreed that if the reef was installed, it would cause a substantial reduction in wave energy which will provide the storm protection. He advised the operation of the reef acting alone without any sand renourishment is expected to cause an accretion in order to create a beach, which now does not exist. He stated it is difficult to predict what the width may be as it is a function of many other structures which dot the shoreline in this location. He noted there are similar locations of structures in the first location on South Ocean Boulevard and there has been an accretion of the beach there as it now wider than the adjacent locations, but it is hard to predict exactly what that width would be at Mid-Town.

Mr. Dotterer advised if the suggestion was followed that they made earlier and that was when and if the sand pumping permits are granted and the Federal Funds are secured to do so, that the dredge and fill consultants then take a look at how the width of the sand pumped might be diminished to fit in with the proposed location of the Reef. He stated they had a preliminary look at it and it comes up fairly close to what Dr. Dean reported in his study and the total volume and width of the sand installed would be about half of what it had been designed originally without the Reef. He believed that they are probably looking at a beach, depending upon what the refined design was ultimately reached, of perhaps fifty, sixty or seventy feet. Mr. Dusey asked if that was with the fill to which Mr. Dotterer responded affirmatively. Mr. Dusey asked if he would expect some accretion to which Mr. Dotterer responded affirmatively.

Mr. Dotterer stated there were some questions about the removal of the existing derelict structures which was contained in the DNR Permit and he didn't believe anyone could predict precisely what will happen when and if those are removed and the DNR has not decided which they want removed, if any.

PEP Reef
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Mr. Campbell addressed the Council indicating that when the beach is first constructed, it will be about 200' wide and move to an equilibrium profile within the first year to 140 to 150' and over a period of six years, it will recede to 100' wide and would need some renourishment, so in essence, over the time period over which it performs, it would average about 125'. He advised the storm benefits associated with the project over the 50 year lifetime, would accrue somewhere around three million dollars in annual benefits, although that would not happen each year, but what would happen in the reduction of long term storm damage to the seawall and roads in those areas, it is estimated that from time to time there will be a big storm and there will be damage and costs and the beach will reduce those costs on the average by about 2.9 million dollars per year, so there are substantial storm reduction benefits and the basis of the Federal Funding is based upon how much storm damage prevention the beach provides.

Mr. Dusey asked what design storm would the project sustain? Mr. Campbell responded for total protection, it would be a ten year storm design, but it provides storm protection for greater storms, however, the seawall will get wet, but the damages will be reduced on larger storms.

Mr. Heeke asked the members of Council to ask their questions of anyone who has spoken. Mr. Ilyinsky asked Mr. Campbell if the amount of sand is in direct proportion to the amount of help gotten from breaking up the waves and he asked if this would be in comparison to the artificial reef, asking what happened when the storm of 1928 hit. Mr. Campbell stated there was substantial damage during that storm. He indicated his estimate was based on the Corps of Engineer storm protection analysis, as they have looked at every type of storm that may come in as there have been a myriad of combinations and from that they selected a specific design width that maximized the net benefit to the beach, or cut the costs down over the fifty year time period to the minimum time period, so there will be some damage with the beach in place.

Mr. Ilyinsky asked if Mr. Campbell felt a combination of both the reef and the beach nourishment would offer the ultimate protection to the Town. Mr. Campbell responded it would be beneficial to have both but whether it would be the ultimate or optimum, that has not been evaluated.

Mr. Ilyinsky asked if there was an artificial reef would that in any way change his projections on the ten year protection or would it increase the life of the beach to a twenty year storm? Mr. Campbell responded it may, depending on the location. He stated the difference in erosion rates can be projected based upon how much wave energy could be absorbed by the breakwater, but that has not been done on this specific PEP Reef, although they have looked at that in regard to other types of reefs or breakwaters as part of the GDM, and it appeared that a fill only solution as long as there is a relatively inexpensive source of sand available was the least costly. He stated in essence, they could build a breakwater and a beach, but because of the time value of money, the annual costs were higher trying to protect that sand, than renourishing, but that could change as interest rates decrease, but the Federal interest rate is about 8 and 5/8% per cent. He stated the beach will erode slower with an offshore reef because wave energy would be lower. He stated their portion of the design, the advance fill would decrease and depending on the cost of the reef versus the cost of the sand savings, there would be an optimum solution. He stated this particular reef has not been done by his firm but for breakwaters in general which are somewhat more expensive, it did not bear out.

Mr. Ilyinsky asked if he was talking about the scaled down version to which Mr. Campbell responded he was talking about the PEP Reef, which is less expensive than a conventional off-shore breakwater made out of rock. Mr. Ilyinsky asked how long DNR has been aware of the fact that we had a scaled down version? Mr. Campbell stated since September or before. Mr. Ilyinsky stated he was surprised they haven't studied it as they should certainly been aware the turtles couldn't lay their eggs on top of a rock revetment.

Mr. Campbell explained that was actually the Fish and Wildlife Commission although Tallahassee followed suit in that they can't overrule the Federal decision in that regard but the FEDS have not handled the project efficiently although he has been telling them and it was a slip up basically at the Corps of Engineers and Fish and Wildlife level, not the State level.

Mr. Ilyinsky asked Mr. Green if his Department is encouraging the time to eschew the combination projects at the same time? Mr. Green responded that was not true, what he was saying was whichever the Town wanted to do, or the combination of the two will be supported and they will help them. He advised they have issued the permits for the two independent actions and now if the Town wishes to combine those, they will have to go back and relook at it again and address that issue.

Mr. Ilyinsky recalled the statement made earlier by Mr. Green stating there were a lot of tests almost like it was starting afresh and they may have to take six months or a year. Mr. Green responded he didn't believe it would take a year but it will take some time to decide what it is they are anticipating the PEP Reef is going to do and how they design a Test Plan to monitor that and to analyze the data so they get the right answers. Mr. Ilyinsky asked how did they create a Test Plan for something that they have never seen, commenting that there has been a reef installed across from the DuPont property and he believed the State was outrageous in telling them to take it out. He strongly believed that no-one has disagreed that it is not doing some sort of a job down there and he asked if that was not his test? Mr. Green stated it is not and it was their position and they are holding a hearing on this so he wouldn't go into too much detail, but it is their position that that reef does need to be removed and they will be in hearing on it.

Mrs. Douthit asked Mr. Green if the permits are separate and if the Council went with the Reef and there were 16 to 18 inches of sand per year and the State monitored this for two or three years and did the testing, could they then come back and request the Beach Nourishment project? Mr. Green stated statutorily when they do an experimental project, they have a three year time period to review all the results of that project and at the end of that period, they either say it is being effective and met the goals they were trying to achieve; or no, it isn't and it will be removed. Mrs. Douthit asked if they couldn't leave the Reef but add the sand? Mr. Green responded that was a possibility and after they have gained the knowledge of how it performs, but they wouldn't want to do anything in the interim until there was a good understanding of the way it was performing before it was modified.

Mrs. Douthit recalled hearing Mr. Green stating the test plan may take about six months to formulate and asked if this would inhibit construction of the units? Mr. Green stated the way the permit is set up, the Test Plan and the Monitoring Plan have to be agreed to up front before a Notice to Proceed is issued and they would have to hammer out all the details prior to the work

being commenced. He didn't believe he stated it would take six months. He has talked with the applicant and his attorney and believe they can get the Test Plan worked out within 60 to 90 days, but if for some reason they do run into some monumental roadblock, he wouldn't want to tell them it would be done in 60 days and it would be 120 days, as he wants the Council to make its decision with some knowledge of where the DNR is going.

Mrs. Douthit realized the big question is whether or not they would be getting the Federal monies and with the economy as is, she is doubtful that it may come right now. She believed they were in a state of emergency as a lot of them have viewed the Halloween storm and there are photographs of it to show how monumental it was and it was from a storm which was miles away, so she felt there was a serious and emergency situation at hand.

Mr. Heeke stated he wished the discussion to be limited to the issues which have been presented thus far.

Mr. Weinberg commented he has been puzzled by this situation and thought he may be straightened out today as he sat with these technical people but it hasn't happened. He recalled Mr. Green's reference to the word "expectations" and he asked if they did the Beach Nourishment alone, what would their expectation be; and if they did the Reef project was done alone, what would their expectation be there; and if they had a combination redesign, what kind of redesign is he looking for and what kind of expectation would be there? He stated they will be spending the Town's money and he would like to know what will the cost be and what will they get for what they pay for? Mr. Green responded from the State's viewpoint, as they are trying to manage the erosion problems, their expectations are as to what has been viewed in other areas of the State. He stated expectations of the beach project if they restored the beach would be immediate gratification as one month there would be no beach, and when the construction phase is completed, they will have an expanse of sand in front of the exposed revetment and the seawall. He commented this will provide storm protection and a recreational benefit to the citizens of the community and he knows of other areas of the State where they were in a similar situation with water against the wall and occupancy rates of hotel and motels were down twenty to thirty per cent immediately preceding the project and within six months after the project was complete, the occupancy rates went up to the 85 to 90 per cent range. He believed there was an economic benefit they can derive from a restoration project, outside of the storm protection benefit. He stated there are some downsides - as they have to be concerned with the offshore reefs, as some of the best in the State are located here. He believed they had to take into account the impacts as they have a good coarse sand source with a small fine ratio in it, organic particles so they don't expect them to have a siltation problem, which should help when they look at the off-shore community and what effects the beach project may have on that marine habitat offshore as it will provide a place for sea turtles to nest and these are all benefits and expectations they can get out of the restoration project.

PEP Reef
(cont'd)

Mr. Green addressed the PEP Reef project, stating there will be storm protection benefits as it will reduce wave energy. He felt if in conjunction with that reduction in wave energy, if there is enough sand in the system so that the wave reduction may let some of the sediment drop out, that will provide a beach build, but that beach building is a relationship of how long the reef is, how far off shore it is, how high it is in relation to the breaking of waves, so there is a ratio that has to be looked at when it is designed and placed. He stated they do know a lot about emerged breakwaters, as they have been used for years worldwide and they know a lot about the design parameters used with emerged breakwaters, but there has been very few submerged breakwaters, so there is a whole area of science they don't know about the design and the effects of the submerged breakwaters, which makes the installation of this project attractive to the State, as he believed they can learn about where it needs to be and whether it needs to be segmented and in what water depth it needs to be placed and these will all be considered when the Test Plan is in place. He believed the expectations are a reduction in wave energy and it is projected to be from 16 to 40 percent. He stated they estimated under a certain class of wave conditions that they may accrete from one foot to one and one half feet of sand a year, which means over a long period of time it is possible there could be a beach, however, this is very long term expectation.

Mr. Green stated on the redesign of the two projects that combine the wave reduction portions of the PEP reef with the sand project, stating one of the things Mr. Campbell should look at when he builds the beach restoration project is how long will the sand stay on the beach and at what interval will they have to come back and restore or renourish the beach to maintain it. He stated it was possible with the placement of an off-shore breakwater that the wave energy will be reduced and increase the longevity of the sand on the beach. He indicated they have to look at it economically also and make a decision if the additional longevity of the sand on the beach with the placement of the reef offset the cost of putting the breakwater in, so he believed there were benefits that could be derived, both from the longevity on the beach as if for some reason the type of material that is being used would threaten the off shore system, it could be used as a way to tow that fill and migrate back over the reef system and damage that. He stated they have to weigh the economics and at this point, they are going down two parallel paths with two permits and the consultants have not combined them to look at what the optimum design would be with both of those in place.

Mr. Weinberg asked how long the redesign would take? Mr. Green stated that is a question which needs to be answered by the Town's consultants. Mrs. Douthit asked how long would the permitting of the redesign take? Mr. Green did not believe it would take as long as it has for this one, as they had to start from scratch with these two permit applications and have moved slowly and he believed it would go faster now, if that is the way the Council decides to go.

Mrs. Wiener commented that everyone has their own particular view on this and no-one sitting here lives in a vacuum and have only educated themselves as to what has come back and forth from the State and the consultants and the other people involved in the permitting. She thought it boils down to two general issues, and one is politics and the other is money. She knew it was a big industry out there and they were all aware of it. She felt they were stuck in the middle with a nonexistent beach. She recalled Mr. Green stated the DNR would like to have the reef removed off the DuPont property on South Ocean Blvd. and at the same time, the Governor and the Cabinet have given a permit for a larger reef at Mid-Town and she viewed that as the politics of it, and asked why as the DNR is the scientific end of it and the other is the political end of it, and asked him why?

Mr. Green responded with the first Reef project, the Department didn't understand what really needed to be monitored and what they were trying to tell us was what their product was going to

do. He indicated they developed a very simplistic monitoring plan and in their mind, that when it gets to the mean high water line, then it gets removed and that was the test of what the project did. He stated they are willing to move forward with another project because in review of that project, they felt that perhaps they didn't look at all of the factors they should have looked at to gauge success with that project. He stated with the Statutory language it said they would encourage and move forward with experimental projects as someone is building a better mousetrap out there someplace and they didn't want to cut off those things. He felt if they wanted to move forward with an experimental project, that can be supported because the State can gain information to help make intelligent decisions in the future, however, if the expectation for putting it in is they are going to have a wide beach behind it and a great deal of storm protection from it, it may be their expectation is misdirected.

Mrs. Wiener asked about the combination of the two together and the testing and the other things connected with it, what is happening to the money that has been promised from the State? Mr. Green responded it is sitting in the fund drawing interest. Mrs. Wiener asked if it was earmarked for Palm Beach to which Mr. Green responded affirmatively. Mrs. Wiener asked if she understood then if they do move forward and try to do a melding, they would not have to go back to Step 1, and would not lose the funding as she thought it was supposed to one or another, if they decide to meld there are a number of things they need to do and if we don't let them know by February 1st, the money is no longer the Town's. Mr. Green stated if they decide as a Council they want to combine the projects, what they will do immediately is come back and sit down with the staff and negotiate a cost-sharing agreement that is for a Beach Restoration Project. He stated a component of the Beach Restoration Project can be a structural solution, so they will commit those funds to the Town of Palm Beach with the understanding that they are going to combine the projects and that will save those dollars. Mrs. Wiener felt that was the main event, and saving those dollars which they have worked so hard to get, whatever the solution may be, if the proper solution is a melding, what she was concerned about that if a decision is not made for one or the other today, or by Feb. 1, that we will be without the money.

Mr. Green remarked or if they decide to do the combination today, or by Feb. 1, the State will still commit the money. Mrs. Wiener asked again if the money was there with the Town of Palm Beach's name on it to which Mr. Green answered affirmatively. Mr. Weinberg commented the Town will lose no money. Mr. Green responded the only thing that they are going to lose money on is if they decide to do the PEP Reef project alone, the State is going to commit to monitor that project, so they know how it performs. Mrs. Wiener stated but the rest of the money is gone to which Mr. Green agreed.

Mrs. Wiener noted it has taken us a long time to get to this point and see what their possibilities are and she thought what they have all been talking about is the situation where the two can work together effectively and not lose that money. Mr. Green wished to make it clear that the construction sequence makes very little difference to the State as if the Council decides today they want to combine the projects, redesign them and put in the PEP Reef prior to the Restoration project, that is fine, but they will have established the Test Plan for the PEP Reef in that wait, so they know what is going on and how to judge that. He indicated he was not saying if they decide to go with the combination, they have to go out and put them in within fifteen days of each other.

Mrs. Wiener asked if they move forward on the PEP Reef and after considerable more conversation through the months, they decide they will not do the Renourishment, what happens moneywise? Mr. Green asked for a further clarification on the question. Mrs. Wiener stated that Mr. Green stated earlier if they do the two together, there will be no problem and the money is there for the Town and if the Council decides to do the PEP Reef first and after the months of negotiation and the Town Council finds they are not as financially able as they need to be for this, it is determined they will not go forward with the renourishment, what happens financially? Mayor Marx clarified that Mrs. Wiener means if the Town just does part of the combination, would the State still be willing to give the Town the remainder of the three million dollars allocated? Mrs. Wiener further expounded on her question stating if the Town decides to do the PEP Reef first, and then after some period of time, it is determined the Town will not move forward with the sand renourishment after all, will the entire PEP Reef project be funded by the State? Mr. Green stated they will fund the monitoring portion of that.

Mayor Marx remarked there has been conversation about expectations and she would like to tell them hers - she thinks they will have another dreadful storm and awful damage and expecting to have an unforeseen disaster and she is unhappy about this whole performance as for seven or eight years, they have been discussing sand and reef and now we are down onto a major deadline and when she says deadline, she means the possible future of the Town, and now they are talking about combining them. She felt if there was any combining feasible, which it probably was, someone should have started working on that before. She stated at this point they see worse damage after every storm, because they are less and less protected and recalled when the huge rocks had to be put in to save the road. She stated she wished she could see the movie they had about the Halloween storm, but they have all seen the damage that happened without a storm and she didn't believe they could wait any longer. She realizes they do stand to lose some State monies, except for the monitoring if they go with the PEP Reef, but no-one has yet told her where the Federal Funding is at this point, but one thing she knows is they don't have it. She felt they are risking the Town's future or many of its properties discussing whether they want to do this or that, but they don't have the money for the "that", so she thought they should be discussing the "this", which happens to be the only thing they can afford.

Mayor Marx asked Mr. Green if they would have any problem if some of the preliminary set-up preparations were commenced while the State was designing their Test Plan. Mr. Green responded that would be of no concern of the State's whatsoever, so they could go all the way up to the point of being ready to mobilize and go out and start construction, once they mobilize to construct, that is where they think the Test Plan needs to be in place and everything needs to be ready to go at that point. Mayor Marx stated if they were guessing everything went alright and they were talking about a sixty day test, that would overlap quite a lot with up to the mobilization point, but the point she is trying to get to is, if, and she knows they would be as helpful as they possibly could be, is how much time the testing took and if it went over sixty days, the Town would be equally understanding of what it is they were trying to do, but her question was they might be able to still get this thing started this summer, as she dreads to think of what will happen if there was a storm and she would hate to sit here and think she hadn't done all she could as Mayor and perhaps there could be some overlapping time, going on a basis of perhaps seventy-five days for the State's preparation.

PEP Reef
(cont'd)

Mayor Marix went into her second question, as when they talk about where the turtles go or don't go, and she knows that turtles don't normally nest on rocks, but part of the area to be renourished does have some sand on it and that is why she is not convinced that we will get that window that Mr. Campbell needs, as she knows on the two ends of the project area, there is some sand and she presumes the turtles do go there. Mr. Green stated the U. S. Fish and Wildlife and the Division of Marine Resources will look at that issue and they are aware of where the turtles nest, but he understood the way they will look at that issue is how much nesting occurs on the small pocket beaches and if they think there are lighting concerns, the relocation would be done anyway or if the beach is so small, the nesting will not survive, they would relocate, then they would allow the Town to dredge within that window. Mayor Marix stated they should get back to the fact that the Town doesn't have the money to dredge the sand, and she believed the Town should take up Mr. Green's offer of helping to pay for the monitoring of the Reef, and work as quickly as possible to try and get this in this summer, because other areas have been declared disaster areas. Mr. Green stated Nassau County's beach was declared a disaster area. Mayor Marix did not think the State wanted to go on and declare disaster areas, but she does believe the storm pattern has changed and it is up to the Town to do all they can.

PEP Reef
(cont'd)

Mr. Heeke stated he had a lot of the same questions which have already been addressed but he had one which he wished to have Mr. Green answer and that was the funds which the State committed to pay for certain studies which were mandated and had to be completed by the Town on the Sand Renourishment, which was roughly \$480,000 and asked leaving aside the legal issues, if the Town went with the PEP Reef Permit alone, the State would recoup the funds committed for the sand and could reallocate those funds and wondered if that should not have some influence on Mr. Green's thinking as the Director on the funds that have been previously expended by both the State and the Town of Palm Beach? Mr. Green responded it very well be, recalling he did react to the comment made earlier as it was presented to him. He stated he has had some discussion with Cabinet Aides and they posed that question as to what the Department will do about the monies already expended and he believed they would not ask for reimbursement lightly but go through the thought process and try and make a reasonable decision on it. He stated they might not ask for reimbursement, but at this point, that avenue is still open.

Mrs. Douthit reminded Mr. Green the Town was very grateful for those monies, but the Town itself has laid out colossal amounts of tax-payer's dollars on these searches and studies and the State has helped them with some, but not the whole amount. Mr. Heeke believed the DNR's position is commendable in being willing to look at something experimental as an alternative, as he knows that is not an easy decision as there are risks inherent with any project of this nature, however, the Town is also running the same risk and it may be a bit more immediate as the water is a bit closer to us, and all of this should be considerations in the DNR's efforts.

Mr. Heeke stated he assumed that if the Reef project were voted on, that Mr. Green's message to his staff would be there is a press of time because of the construction window and the steps that are necessary for the Town to take, not merely the Testing and Monitoring program, but their efforts would be directed towards expediting that process? Mr. Green responded he would make that commitment to the Town. Mrs. Wiener stated he is making a commitment to help expedite this matter, yet his comment on the other reef was to get it removed. Mr. Heeke felt that was a different matter altogether. Mrs. Wiener did not agree, stating she was trying to get to the bottom of that. Mr. Green responded it looks like they are 180 degrees on the two actions and he clarified that they felt the first PEP Reef experiment was not tested correctly as there were too many issues that may have effected the way that performed, as there were seawalls in the immediate area, remnant groins in the area and they may all have attributed to the way that it reacted. He stated they were also concerned with the ability of that unit as it moved under storm events. He pointed out this Reef proposed at Mid-Town has been completely redesigned and the units are heavier and more dense and he thought that some of the concerns they had have been addressed in this redesign. He believed what they missed in the first testing, from experience they can learn in setting up the Test Plan for the new project and it is absolutely consistent with the State's position that they need to be looking at experimental projects and try to learn something from them.

Mr. Green pointed out they have changed configuration, weight, monitoring plan and test plan so the issues can be addressed which were not addressed in the first test. Mrs. Wiener asked if he was saying that he believed from what he has seen and from the changes that have been made that they are now in a position they are going in the other direction and that this proposed project is probably a good project? Mr. Green responded it is a good experimental project and he has tried to explain what they feel are the benefits of that project - if everything works.

Mr. Heeke reminded all that Mr. Weinberg has to leave shortly and called for further questions before they get to the final deliberation.

Mr. Doney understood that if the Town Council voted to have the PEP Reef Project installed and it was done and then if the Council wished to proceed with the Beach Nourishment project, the funding eligibility as far as the State and Federal fundings are concerned, would drastically change and in some cases, although it is an unknown, what impact this would have on the State and Federal funds? Mr. Heeke responded this is probably something that no one can answer at this point and Mrs. Wiener's question is at the heart of that as if we go just with the Reef, they are going to lose the State Funding, and at the present time, we have no Federal Funding. He believed if the combination plan is chosen, they are still in the State funding but have no idea of what the Federal requirements would be. He believed the bottom line conclusions are this is an experiment and the Town will be digging into its own pocket for either of the projects, and there is no way around it, except maybe with the savings if they went with the Reef, the Town may be able to get Mr. Green through his good offices and contacts to have the State reconsider about assisting with further funding, but at this point, it is sheer speculation.

Mrs. Douthit remarked that if the Council decides on the combination, and the redesigning and redoing and all of the other things they would have to do would probably add on another two years and vastly more investigative monies. She believed they had already expended one million dollars on the investigative studies and by altering anything, they would have to spend more.

Mayor Marix reminded all that if they did all that, they would still have to get Federal fundings as it would be a very expensive project, and the way she is looking at it is what can be done to try and find a better solution for our fellowman, from an experimental point of view, but to do what we must do for our residents and have something that will last for quite a long time.

Mr. Heeke called for further comments and there being none, he called for a motion.

Mrs. Douthit stated on the grounds of economies, she would move that the Council go with, not only on the grounds of economies but on the grounds of timing which she considered emergency-wise, that the Council go with the PEP Reef alone. Mr. Heeke asked for a clarification asking if that motion be worded the permitting authorizing an artificial reef? Mrs. Douthit agreed. Mr. Heeke summarized the motion: "that we proceed with the conditional permit authorizing the artificial reef" and asked if that was correct to which Mrs. Douthit agreed. Mr. Ilyinsky seconded the motion.

Mr. Heeke asked Mr. Randolph if the motion was as broad as it can be to which he agreed.

Mrs. Wiener commented that with all these things and paper they have received are all bottom lines as they have in front of them the two permit situations, one that was sent to Coastal Planning and Engineering which was a Notice to Proceed withheld dated Dec. 31, 1991 as the results of all of this and under the Conclusions of Law, No. 5, it states: "the proposed project will provide storm protection for upland properties and public recreational beach area." She referred to the letter sent to American Coastal Engineering, dated 12-31-91, Notice to Proceed Withheld and under the Conclusions of Law, No. 1, it states: "because of the uncertainty and the risk, this project qualifies as a true experiment under Chapter 27 of the Laws of Florida." She thought the decision today is does the Council feel to commit large sums of money for an experiment or do we commit a larger sum of money for something that has a stamp of approval? She stated she is not an expert on this and she didn't believe any of them were and they can only do the best they can and attempt to find the truth in their own ways.

Mr. Heeke stated her comments were well put and she clearly identified the issue and that is that this is an experiment.

Mayor Marx agreed it was experimental and they are going to be committing monies to it but they are not saying when it becomes timely to go with sand as well, after the testing, if it is needed, but the fact is that they cannot commit larger sums for some other project since they simply don't have them.

Mr. Randolph asked for a further clarification on the statement of the President on the motion being broad as it was, as in making the motion to go forward in regard to a permit for the Breakwater Reef, are they, in making the motion, recognizing any proprietary interest in anyone to that particular reef or are you simply going forward with a permit for a Reef as described in the Permit? Mr. Heeke responded the reason he asked the question is that he didn't feel there was any proprietary right in this permit application, and he reserves the right to change his opinion after he hears any further discussion, as then they will enter into another area and he didn't want this motion to impede that discussion or future decisions. Mr. Randolph stated he wanted to be sure that was clear on the record.

Mr. Heeke asked if the motion maker and seconder agreed with his interpretation of the motion to which they agreed. Mr. Weinberg asked again to hear the motion. Mr. Heeke stated the motion is acting only on the permit, not implying American Coastal has a proprietary right in that and that may be the only project and it doesn't limit them from considering whether or not this is going to be bid and strictly is on the reef aspect of the motion.

On roll call, the motion carried 3-2 with Mrs. Wiener and Mr. Weinberg voting against the motion.

Mr. Heeke asked what the next procedure should be and called on Mr. Randolph for his comments. Mr. Randolph believed the question is, in pursuing this whether they needed to make a decision at this point whether they needed to go to bid although he was going to frame his comments in regard to either the renourishment project or the reef, and he viewed the law the same in both instances. He advised that had they chosen to go forward with the renourishment project or the reef, they have an Ordinance in place that provides for public works projects in excess of \$10,000, they shall go to bid. He believed there were many reasons for having such an Ordinance, one to ensure the taxpayers they are getting the best value for their money; two, attempt to prevent fraud and collusion; and third, to be fair to those who have similar products. He didn't know if they needed to make the decision today as to whether to go to bid and whether that would be required at this point of the State, as what they have done, they have made the decision required by the State by Feb. 1st, in order for them to move forward. He stated this is not a new issue and it has been raised several times as this has been considered and at some point, they will have to make a decision as to whether or not they would go to bid. He has tried to be consistent with the decisions he gives to the Council, but every matter is different in some respects. He recalled there was a question similar to this when they were giving consideration to going forward with a Reverse Osmosis Plant for the Town as there were private interests who wished to present the Town with what they called a turnkey operation. He advised at that time that he felt the Town needed to go to bid with regards to that particular project and what has subsequently happened, is a consultant has been hired and they went out for requests for proposals and an engineer was selected to look at various ways of approaching the problem. He recalled the engineer is studying various ways and the last step that would be in that case would be whatever way is undertaken after consideration is given as to what is the best way, then they would go to bid presumably for whatever was chosen.

Mr. Randolph advised there are many considerations to be made in these matters as if in the Reverse Osmosis matter, the proposal comes back from the engineers to go with a particular system and there is only one company which has that particular system and the engineer advises that is the best system, that is the type of thing considered under the law an exception, as it would not necessarily serve the public interest to have to go out for bid. He indicated in the letter he addressed to them for their consideration in regard to this matter, he has outlined the types of exceptions that can be considered in making a determination as to whether or not they need to go to bid. He reported one of the common exceptions is an emergency and he has told them the case law which describes the emergency and one which requires an immediate rectification of a problem, which would justify them avoiding the bid process.

Mr. Randolph stated another exception is the Sole Source Exception and where a particular product is only available from one source and having looked at those products, the determination is made that that is indeed the product they want to achieve the goal they are seeking, a determination can be made to go with that source. He advised that in those particular instances

regarding sole source, the case law he has seen in Florida where a city has gone to bid and the bid responses that have come back were only one because that was the only source, the city chose that particular source. He doesn't know if all of the questions have been answered to make a determination at this point to go to bid as some of the questions that need to be answered is if there is a patent on this particular process and if not, is there a patent pending. He advised if there is a patent pending, is that exclusive to the person who has applied for it, or may anyone give consideration to building towards those specifications during that process. He felt other questions that needed to be answered is if this is going to be studied and changes made, is the Town going to want to enter into a contract, even though someone says they have a patent on a particular product, when indeed, there may be changes that come about, which there may not be a patent on. He heard Dr. Dean state today that perhaps the vents need to be closed in order to make this a more effective system. He wondered if the vents were closed, is there a patent on that system which might also come out of the studies that are conducted by DNR. He believed other questions which need to be answered if the State is going to involve themselves in the project, to what extent will it go beyond simply the study phase or will they involve themselves in financing the reef itself and if they do finance the reef, what considerations will the State enter into in deciding whether or not to go to bid. He thought they needed to inquire as to the conditions and if the State spending its money on the project would be whether or not the Town goes to bid. He indicated his comments are not exclusive to this particular reef, but are general and are the same comments he would make had a motion been made to go for Beach Renourishment, and they would have the same considerations as to whether or not to go to bid in regard to the methodology that is implemented.

Mr. Heeke believed everyone can now appreciate why the motion was made in the form it was made and also, they are not taken lightly there may be other purveyors available to provide this type of a device and it behooves the Town to give consideration to all of these factors.

Mr. Heeke called for the comments on this subject from the public.

Mr. Dotterer addressed the Council indicating that American Coastal Engineering would not presume and does not wish to suggest to them their own decision as to whether or not this should go to bid as that is the province of the Council, but would like to address the special circumstances which exist, which are relevant under the legal advice given to the Council by their attorney. He believed the special circumstances are two:

- (1) Urgency
- (2) Uniqueness

He spoke on the question of urgency recalling he had shown the Council earlier the schedule of construction and the limiting factor is the window of time during the middle of the summer when it can be installed. He thought great difficulties will be presented if it is not built during that very short window and they need to get the construction started around the first week in May. He stated they are on the edge of the critical path now in order to be able to accomplish that. He recalled American Coastal was very rapid in its prosecution of the permits, and did everything within its power to get them filed within two weeks and will continue to do everything possible to shorten the schedule, but realistically, they understood under the Town's usual bidding procedures, there are many steps to be followed stating, specifications must be prepared; advertising; formalizing into an invitation suitable to the Town; publishing it in a newspaper for two successive weeks; allowing the bidders time to prepare their responses and submit them to the Town's staff; receive the responses and evaluate and review them, judging the qualifications of the bidder to actually perform this work compare the pricing and the scheduling and make the determination who is the lowest responsible bidder. After all of this, the Town Council receives the report and studies it and the bid is awarded. He has been told this usually takes from six to eight weeks to accomplish this. He felt if this construction schedule would be extended, they would be at the time when the tropical storms approach the shores of Palm Beach and any meaningful delay would mean it could not be installed this year. He thought if it could be started immediately, they could get the reef installed. He recalled a year and a half ago, he had submitted a draft of an agreement which contained all of the elements he thought were necessary and that could be finalized with the Town attorney very quickly.

Mr. Dotterer stated this was the first issue and whether or not there is an urgency here that the time it would inherently take to go through the bidding process makes it impractical to get the Reef this year and therefore, whether it would or would not be in the best public interest to go through the bidding process on this project, and part of that is the assessment of what is the threat of the danger occurring if the whole project gets postponed for a year and is built in 1993, what could happen in the interim.

Mr. Dotterer reported the second issue is the question of uniqueness. He recalled earlier today the four permits that have been issued were submitted to the Clerk, three of those permits specifically describe the project as a prefabricated erosion prevention (PEP) reef, which is a name for which a trademark application has been filed by American Coastal. He indicated all three of these permits, the Army Corps of Engineers, the DER, the DERM as well as the DNR have specifically provided in the permits it must be built according to the approved plans and specifications. He exhibited the approved plans and specifications which the agencies have approved and all of the permits, including the DNR which took the longest to acquire specifically say there can be no deviations from the plans and specs and if there is, it had to be approved first by the DNR before it could move forward. He believed there was also language in the DNR permit that it could be revoked, if there is a departure from the approved plans and specs. He stated this is the PEP reef which has been approved and incorporated by reference into all four of the agency permits.

Mr. Dotterer stated the Town could go back to the agencies and request the permits be modified, however based on their experience in how long it has already taken, it seems extremely unlikely that all four agencies would concur and agree to a single modification which would have to be supported by sufficient test data in time to get the project going and have it installed this year. He felt the two issues were tied together, the uniqueness and the urgency.

Mr. Dotterer reported he has very little knowledge of the patent laws, but has today with him, Mr. Dale DiMaggio of the Malen, Haley firm in Ft. Lauderdale whose practice is limited to patent law and asked that he be heard. He wished the Council to know that a patent application has been filed by American Coastal for this product and it is pending. Mr. Heeke asked that the comments of the patent attorney be held in abeyance and perhaps the Council may have a question of him in the executive session.

PEP REEF
(cont'd)

Mr. Heeke called on Mr. Kirby Green with regards to the condition on the permit about no deviation. Mr. Green addressed the Council indicating he again has to go back to the Test Plan as they enter into a whole new phase with this application as they have to figure out all of the impacts and the way they will address those impacts and design the Test Plan. He reported one of the issues they will be looking at is how will this scour around the reef. He recalled on the other reef they were on a rock base and this area, they are someplace between twelve and fifteen feet of sand base that the Reef will be sitting on top of. He stated the way it is designed, it is not supposed to scour around it, but if it starts to scour, it will begin to sink and his Department has to have some provisions which address how that will be rectified during the test and it may be, that in the modeling at the very beginning before they get their Notice to Proceed, that the Department finds it a fact, and they would have to put the units on a foundation of some type to keep them in place and keep them from sinking, that would cause a modification of the Permit and it won't be a big deal, as they will be discovering these items during the testing, but there will be modifications that may have to come along as a result of the way they do the Test Plan, and of what they learn about it between now and when the Notice to Proceed is finally issued. He advised if they do decide to go with a completely different unit, then they will have to analyze all the things surrounding it to make a determination if they are reviewing the same things they should be reviewing as far as impacts are concerned. He stated that if this PEP is the unit, they are only going to be talking about minor things, if anything, as far as getting it stable and if they need to do something to keep it from moving around, they may have to make a modification there, but there will be no major modifications that he is aware of at this time.

Mr. Weinberg asked if they would be judging the strength of the tongue and groove set-up? Mr. Green responded they would and also of the entire structure, but that will be one of the components, as one of the questions they had on the other reef was the movement of the reef. He stated they specifically designed that connection to address that concern and now the question is how effective is it? Mr. Heeke asked Mr. Green if he had any other comments he would like to make which would help the Council in their deliberations about whether to go to bid or not? Mr. Green responded at this point, he thought the Council had made the decision as far as his Department is concerned and he will go back and be in contact with the University to do the monitoring and the study and obtain a contract with them so this will not be held up more than is absolutely necessary. He stated he would be willing to help them out in whatever way they can to get it through.

Mr. Creter addressed the Council stating they have a third patent on reef systems, a submerged reef system, which has just been allowed and it is his opinion and his attorney's opinion that they could indeed build this very system as proposed within the patent that has allowed, which would allow them to be a bidder. He prefers to install a sectional reef, which would be of the same density and weight but an improved design which has a better interlocked system and scouring elimination means which has been tested through the University of Delaware through a six month test, showing that the units are extremely stable and interlock and in fact, there are no wave flows in nature which would overturn the units.

(Mr. Weinberg left the meeting at 4 PM).

Mr. Creter stated this is the reef system that he would prefer to install off of Palm Beach if they were allowed to bid, which would have the same cross-sectional area and reduce wave energy by similar means. He proposed that they would as a company, while they are considering whether this should be bid or not, as there are issues here about patents which he didn't think the Town Council should concern itself with at this point and should eliminate themselves from that consideration if the project is put out to bid. He assured the Council his Company is ready, willing and able to immediately obtain a modification to the existing permit which would allow the improvements he has just discussed and they could file that modification within a matter of a few days and they could keep the existing permit which would allow both companies to bid on this project. He thought the need of urgency and time frames are important and it would be a consideration that they would want to get the reef system installed before the end of this year, as proposed by American Coastal, and some of the things listed in the time frame presented today he thought could be shortened, i.e., the manufacturing and installation process that would allow that to be done, even if they are bidding the project, perhaps ninety days from now, once the modified permit could be in hand. He proposed piggybacking on the existing permits, and would show some changes in the structural design which he considered to be enhancements to the system and they would have the documentation to support those enhancements and all of this would be done at no cost to the Town of Palm Beach. He was confident that if the project were put to bid, the Town Council would be saving the taxpayers of Palm Beach hundreds of thousands of dollars.

He recalled there was a discussion about the patent and he has one of his patent attorney in the rooms, Mr. Richard Gresalki who would address the items on uniqueness. Mr. Gresalki addressed the Council noting one of the most important things which should be understood with respect to the bidding process and how patents may play into this is that today, anybody could build this particular reef that American Coastal proposes the Town put off its shores, as Mr. Dotterer had indicated to the Council, there is a patent pending. He stated a lot of people here have been picking on the DNR for taking two and one half years, he recalled American Coastal's first patent was filed in 1984 and it took four and one half years to get it. He stated by the time you get out of the patent office, there may be a very narrow protection which may merely cover one hole in the middle of the reef, so in terms of consideration on the bidding process, they should not consider the patent problem at all. He advised they do have a patent allowed by the patent office and that means they now have to print the patent and that usually takes one or two months. He stated it is his belief that their patent dominates what they have before them and that may be a problem down the road.

A short break was taken.

Meeting called back to order by the President.

Mr. Heeke called on Mr. Dotterer who introduced his patent attorney, Mr. Dale DiMaggio who asked to clarify the patent questions that came up on the PEP Reef, and exhibited models which showed the PEP Reef installed across from the DuPont property on South Ocean Boulevard on which they received a patent for American Coastal in 1989. He advised that based on the testing, and monitoring and research on that reef, it has now been permitted by the DNR. He reported that not only do they have a patent pending on that, but they have indicated they are going to receive a patent by way of a Notice of Allowable Subject Matter and they are working with the examiner on defining what are the most important features of that reef, which he can tell the Council are the

curvature of the beachward face; the seaward face; the general geometry of the unit and the rearward beachward loading of that unit for stability. He stated they are not receiving a narrow patent as this will be a second generation of fairly broad scope and it will issue and is just question of time. He knows when any patent is pending, that right cannot be enforced but once it issued that device is proprietary one hundred per cent to American Coastal Engineering and no-one could manufacture, use or sell that reef without a license from American Coastal to do so.

Mr. Heeke recalled at one time one of the members of his firm represented one of Mr. Dotterer's clients and he had a conflict of interest but he didn't believe that was the case and asked Mr. Dotterer to comment on that fact. Mr. Dotterer recalled his representation of the company has been limited to the presentations before the Council and the DNR and was not aware of any other legal representations prior to that time but called on American Coastal to answer that question. Beth Mitchell from American Coastal addressed the Council stating that they have not had any legal services from Mr. Heeke's law firm since May of 1989, however Mr. Igoe does remain on the Board of Directors for American Coastal Research, which is a non-profit corporation which is strictly to study marine enhancement devices.

PEP Reef
(cont'd)

Mr. Creter advised the Council they could avoid the entire patent issue by putting this out to bid and they should not be involved in that issue.

Attorney Gresalki again addressed the Council noting the patent right is not the right to make but a right to exclude, so if a particular patent invention is held, they could exclude one from making something within that domain, however, if they have a broader invention, such as for a reef, he could exclude everyone from making a reef generally. He stated if he had a reef on a narrower concept, with grooves for instance that dissipated wave energy, then he could stop anyone from making that type of a reef. He commented he could not do anything about someone who makes a reef with holes at the top, for instance, so it is important to realize that Mr. DiMaggio mentioned he had a patent on this particular reef, that doesn't mean that Mr. Creter's patent will not dominate that broad concept and exclude them from making their own reef system and that often is the case in patent law.

Dr. Sten Lilja addressed the Council informing them he has a problem with the bidding process as he has been an engineer all of his life and has designed factories and acted as general contractor and has an idea of what is required when they are going to bid. He heard Mr. Green state clearly that the reason for DNR's approval of this PEP Reef is it is experimental and the DNR will take advantage of it and be involved in how it will be built. He didn't believe the Council had the minimum of perimeters to give this out to bid and he would hate to see the Town staff expending their effort and the Town spending money to go through the bid process, as there will be considerable changes, at best, during the six months period from now and he wanted to point out the last thing that Mr. Green stated was not until they had gone through and decided what can be changed will there be an authorization at the earliest, six months down the line and it could be longer. He felt in the meantime, there is no contractor that would do any preliminary work until they are sure it will be acceptable. He felt they didn't have sufficient perimeters to send out to bid and they shouldn't be wasting their money on that.

THE FOLLOWING IS A VERBATIM TRANSCRIPT OF THE NEXT PORTION OF THE MEETING:

MR. HEEKE: Okay. I think we'll then go into Executive Session. So we can ask questions of anyone who has spoken; we can also - the staff can offer their comments if they have any concerning our bidding - the mechanics of it - and the like. No one is leaping forward over there.

PEP Reef
Verbatim
Transcript

MR. DUSEY: I guess the basic question I have is a legal one and when that question is answered we can lead you to what I think is the process, but if we were to have to prepare plans or specifications - of some magnitude, we would need assistance in doing so, I believe. And that would require the Competitive Selection Process by State Law - kind of protracted or a rather long process that we probably don't want to go through but I think we would have to - if we are going through a bidding process, we need to develop plans and specs.

MAYOR MARIX: Mr. Heeke, I'd like to ask him a question. It seems to be, as I said before, these plans are rather exact and very precise, we've been told that we were given a permit for exactly what that thing is up there. If Mr. Green's organization wants, for whatever the reason is to make minor adjustments, he said that's his prerogative and he might do that, but I cannot see why you would now go through the other competitive negotiations act or whatever, to hire an engineer to draw the pictures which are up there right now. If they are different than the ones up now, the permit becomes invalid - so that's something I'm not following in the whole discussion. Now the other thing that I don't follow quite well, I'll bring that up later, but that - I don't understand why we have to now - we've all agreed it's probably an emergency and if not, I'd like to go look at that movie, and then we'll know it's an emergency. But if we've agreed it's an emergency - we don't now start hiring engineers, do we? We're going to make specifications - it mustn't be like that or the whole project stops.

MR. ALBERT DUSEY: If you decide you don't need to bid it - and you can do that, I believe, then we don't need to go through a process. If we have to go through a bidding process, I believe we need we need assistance in putting those specifications together. I'm not suggesting you have to do that, though. I'm not an advocate of that....

MAYOR MARIX: ...No, no, I know you're not - but what would the engineer do? Put specifications together - there sitting up there on the permit basically.

MR. DUSEY: Generally speaking, you don't build a two million dollar reef on a handshake. You need to have some very particular specifications as to how you set these;....

MAYOR MARIX:But the DNR's told us what we can do.

MR. DUSEY:where they are set; the strength of the concrete; manufacturing; - all kinds of things that you normally would want to tie the contractor into, to make sure you are going to get something for your two million dollars.

Continuation
of PEP Reef
Verbatim
Transcript

MAYOR MARIX: But isn't that what we have already wasted all of this time for American Coastal to design, draw, submit, change, rewrite, rewrite, rewrite, reanswer and rewrite to the DNR so that we get it the way the DNR wanted, and they've now given us a Permit.

MR. DUSEY: We would certainly use all of that information and we would duplicate or replicate exactly what they say they are going to do, but I still think I need Coastal Engineering's assistance to put a bid document together. I don't say it has to be elaborate, but I think I need it.

MRS. DOUTHIT: Well, you are talking about a breakwater - would you go back to American Coastal for the information - who do you go to?

MAYOR MARIX: They have to advertise it.

MR. DUSEY: If you go on a general - more of a generic - you don't say PEP Reef, I would think we would then want to go to a performance specifications, saying we want something in place at this location, that'll do these things - reduce wave energy by this amount - it'll do this - it'll do that. And then that opens the bidding to a broader spectrum of bidders, I would suspect. But I am not saying you need to do that either.

MAYOR MARIX: But any changes this fellow does dream up - or any different locations we put it in, puts us back into the delay situation, with having the permits altered.

MR. DUSEY: It needs to go back to all the permitting agencies, that's correct.

MR. HEEKE: Al, isn't there a way of bidding this in reference to the permit that your bid should comply with the permit as issued?

MR. DUSEY: I believe you can do that. Yes. In fact, you probably would enclose the permit and indicate it has to be to these specifications - this location...

MR. HEEKE: Doesn't that - I mean, we're not redesigning - or I wouldn't think we would be.

MR. DUSEY: No, we are not redesigning - that's correct.

MR. HEEKE: We are not interested in that or bids that would come in with modifications - or would we?

MR. DUSEY: We would not redesign it at a staff level - I guaranty you that. We would not do that. We will probably - sounds like we would get other bidders and then you have to do evaluations on those bids - as to whether or not they meet the specifications.

MRS. DOUTHIT: Well, now, doesn't the DNR tell us where to put it - or is this a designer's prerogative?

MR. DUSEY: The permit says it'll be in a certain location.

MRS. DOUTHIT: Well, yes - it's just depending on where we want it placed - I'd think that was the utmost importance for its maximum effective bid - I wouldn't want to see it placed where it would be less effective.

MAYOR MARIX: But isn't this what American Coastal has been working on now for weeks and weeks and weeks - the best place to put it? I mean who are we to say to someone is there another one? But if it's different, we still have to go back for permits, so we are on a run-around train trip here.

MR. DUSEY: I am not saying from a staff level, we want to do any of those things, Mayor.

MAYOR MARIX: No, I know you're not.

MR. DUSEY: But if you are going to bidding - bidding requires certain things to be done. You can't advertise in the paper and say, please build a reef - here you go...it's got to be very specific, it has to have certain specifications to it.

MAYOR MARIX: I thought that's what those were.

MR. HEEKE: Does the permit contain specific specifications to refer to it?

MR. DONEY: Mr. Heeke, I think it was described, as I understood it, by Mr. Green today - after this pilot test program, I mean the test program and that evaluation and that negotiation process only then would you have something that you could bid upon. Correct me, if I'm wrong.

MR. DUSEY: It sounded that way and he's talking perhaps in segmenting the reef - breaking it up.

MRS. DOUTHIT: I suggest we call the Cabinet - I think we are being stone-walled again.

MAYOR MARIX: I think we are stone-walling ourselves a little bit. I think we really want to get back to the various and sundry conditions that constitute a bid and the questions that the staff and the Council has - to try and clarify that.

MR. HEEKE: Mr. Randolph, do you have any - could you offer us any assistance here?

MR. RANDOLPH: Well, I think the - you know, the question is first, whether you need to make a decision today on whether to go out to bid or not - I think that has been answered - at least from the State's level - and the State has indicated that you have given them all of the information necessary for them to move forward by the February 1st deadline. I think the other consideration that needs to be kept in mind is from what I understand, they're going to be studies made in regard to this particular reef and its effect. And, even if there is a patent which exists, and I understand there's not - there's a patent pending - but even if there were a patent today, which existed for this particular reef - the

question I have - is the product that comes out of the study going to be a patented product which will allow you not to go to bid. And I don't know the answer to that question. It may well be that the ultimate suggestion that is going to come out may be entirely different - not entirely, I guess, the statement that was made by Mr. Green that they anticipate only minor modifications, but who knows. So the question is - will it be sufficiently different so as to no longer be a patented item and therefore allow anyone - perhaps a marine contractor - and there are several in this Town to go bid on the particular product. So, you know, it is difficult for me to see how you can go to bid on these particular specifications when the ultimate product that comes out and is recommended may not be the same as this.

Continuation
of PEP Reef
Verbatim
Transcript

MAYOR MARIX: Then the date of the emergency is really upon us - cause that's really what we are up against. We could go on another four or five years and spend another million or so - it wouldn't matter. If we did not by so doing jeopardize the residents of this Town and their properties. So it's like - I was talking to you a while ago and I said if my house is on fire - the emergency lasts about two hours. By then, either it's burned down or the Fire Department's put it out. In Palm Beach, they probably put it out. But other things, are much longer emergencies because they have to be prepared for much longer - to build a reef and get it all squared away and put it into the water and make it work - is much longer than my house burning down. We are, as far as I am concerned, in a state of emergency and as I said why not go back and look at the movie, if you don't believe it. It was an emergency. There's nothing to stop it from coming back. It's up to us to prepare as quickly as we can to defend ourselves as best we can.

MRS. DOUTHIT: Well, that I am in total sympathy with. I just don't know - I just feel I'm being stone-walled. Cause now we're down to the point that if we should elect to go to bid - you don't have the information to even write the bid.

MAYOR MARIX: I'd discuss the emergency nature.

MR. HEEKE: Mr. Dotterer?

MR. DOTTERER: Thank you. Much reference has been made to Mr. Green's organization, the DNR, which is clearly an extremely important agency with respect to the future of this project. However, I would like to remind the Council that American Coastal has obtained on its behalf, four separate permits, one, two, three, four from four separate agencies. Two are from the State. One is the from the Federal Government and one is from the County. Now, believe it or not, these are very, very precious pieces of paper and they are very, very difficult and time consuming to obtain in the first place. The Corps of Engineers' permit that we've been seeking for the dredge and fill project began in 1987. It is now 1992 and we still do not have that permit. They are very hard to come by and there's a lot of effort and time that goes into them. Now, each one of these prescribe that the reef be a PEP reef, except for the DNR Permit. And each one of these, including the DNR Permit specify that it must be this PEP reef, or the permits need to be amended. Now, ladies and gentlemen, these are the scientific reports (holding up same) that are based on wave tank testing; mathematical theory; computer modeling - that went into satisfying all four of these separate agencies that this product has a likelihood of working and that a permit will be issued for it. This is (holding up) Volume II of the information that was submitted in support of obtaining these permits, especially the DNR Permit. It is a lot of work. It is a lot of effort and it's most of all, a lot of time. And so, what this Council needs to do, we submit, following the excellent exposition of the law on this subject set forth by Mr. Randolph - is that it needs to look at this schedule, which is a reality of a schedule and we can't change when the weather changes - when the winds - when the tropical storms come upon us - that is set by nature and we are left with that no matter what happens - no man can change that. What Council needs to do is look at this - we are here on January 14th, 1992, today, and we decided to go forward with the Reef project. Now the question is, what happens if we decide to open this up to bids in general. How much time will that extend the schedule? How much time will it take to get to that point? From what we hear from staff, nobody really knows exactly for sure - they said that it takes six to eight weeks in the normal case, but they are not really sure what it would take in this case, because they think that they need professional assistance from an outside consultant to even get started. So what this Council needs to do, is to look at the combined factors of urgency and uniqueness and make a judgment and make a finding as to whether, in the real world, it is realistic to think that we can dispense with what these permits say, after the year and a half that we went through to get them - not only did it cost you \$8000, but it was a year and a half. And how much time and what will realistically happen in the real world, if we open it up and put it out to bids. Will we meet this window - it begins in May - is that a reality if we go through the bidding process, and, as a result of that we have to go back to the agencies and request permission for them to amend their permits before we can even start and it is very doubtful that any contractor who is fiscally responsible would even begin fabricating the forms, which is a big expense, until he knows these agencies have approved the permits. So that's the judgment, and that's the decision that you must make in order to decide whether it is realistic to think that this project, which has been in the works now and studied by this Council, beginning in 1988 five years ago, can realistically happen this year, otherwise. Thank you.

MR. HEEKE: Mr. Greter?

MRS. DOUTHIT: Mr. Heeke, I wanted to ask Mr. Randolph a question.

MR. HEEKE: Alright why don't you do that.

MRS. DOUTHIT: Now, if we should put this out to bid and something comes up and they copy his plan that has been approved or whatever has been written up and they go by that - do they then have to go through all this permitting process all over again, because this is the reef of theirs that is permitted by the DNR and if a different person goes out for this, does it have to get all these permits all over again?

MR. RANDOLPH: Well, keep in mind when this was first presented to us from PEP, that it was made very clear that they were presenting this as an agent for the Town, and that they, after they received the permit for the Town, would not make a claim that they had any

Continuation
of PEP Reef
Verbatim
Transcript

proprietary interest and that indeed, if we decided we wanted to go out for bid, that they would not stand in the way of that. So I would think that it is the Reef itself, not the name "PEP" that has been permitted and if there are modifications to be made in the permit, it would simply require an amendment to the application or the DNR itself would require an amendment to be made. So, I don't think it would necessarily require a lengthy process, but I can't guarantee it. It might. If somebody comes in with a totally different thing that is going to require more studies to be made than have already been made in regard to this one, then yes, it would be rather lengthy, but if there are minor modifications which come about, as a result of the studies, I can't imagine that that would be a lengthy delay.

MAYOR MARIX: Mr. Heeke, can I say something to Mr. Randolph? Umm, with all due respect to all the nice people who are involved in this thing, my one concern is how quickly and how efficiently can we protect the public from what I consider, an emergency, and that is my continuous bottom line - we cannot fool with our residents' well being.

MR. HEEKE: Mr. Creter?

MR. CRETER: Thank you, Mayor and Council, for your patience. The permits that have been bounced around here quite a bit in conversation, are going to be modified anyway by Mr. Kirby. We already heard that. There are going to be some minor adjustments - he's concerned about scouring. There are some enhancements that have already been proven with the reef that we are proposing - that deal directly with that scouring effect. There's no question in my mind - and I think if we listen to Mr. Kirby - he's going to want a few changes - modifications to the permit as it currently exists. But they are not going to be significant. And the changes that I would be proposing are not significant because the cross-sectional area - the performance of the reef - the reduction of wave energy is all going to be very, very similar. In fact, it will be almost unnoticeable as far as the overall performance of the Reef. There will, however, be the enhancements that I'm proposing - that would be adjustments to the permit, a longevity factor - we are using a microsilica concrete which has ten times the impact strength of normal concrete which is proposed within the specifications. We would be using an interlocking design that interlocks the units three ways together - these units are only interlocked in a tongue and groove which is only one mechanism for locking the units together - these are minor subtle changes which will mean a lot for the longevity of the Reef system. The permits that were mentioned - the three permits that were already in hand - took American Coastal Engineering about two - a little over two months. We've obtained permits from the Army Corps. of Engineers from DEC in New York on numerous occasions - from DEP in N. J. on numerous occasions for reef installations. Our permit firm has dealt and deals continually in Florida and knows the players in DNR. Knows the people down here in this region in the Army Corps of Engineers. The Corps of Engineers permit is almost a procedural application - they have had a lot of experience and the regions in New York and in Philadelphia with our systems with submerged reef systems - through the data that we provided them and it would not be a lengthy process to obtain those three permits. In fact it was only a two month process for American Coastal Engineering. The sixteen month process to obtain the permit for this particular reef - the PEP reef as it has been called. Primarily took time because this State - DNR - needed to accept the concept of a submerged reef. And they were still looking at the results in trying to determine the results of the reef that was installed - the 600 foot reef off the DuPont property. And indeed, some of the people within DNR had some problems with that. And I think that added to the length in time. What we are looking at here is a modification - a minor modification - which we could undertake immediately - within days - it would not change or hamper the bidding process. You could bid that particular reef with a note that modifications required by DNR would be acceptable. Because we know they are going to happen anyway. And that would open the bid process. You've got the data you need - the specifications you need - the location is not going to change - all of that is really right before you today. And we can do this and be involved in this process - to allow it to be bid at no cost to the Town. There would be no \$8000 charge. There would be no charge at all. It will save your taxpayers hundreds of thousands of dollars by putting it out to bid. And you could also consider having a penalty clause that if the reef is not installed by the end of this year, there would be a penalty everyday that it is not. This could be part of your bid package also. To protect yourself. Because it is an emergency. Thank you.

MAYOR MARIX: Mr. Heeke, may I ask Mr. Creter a question?

MR. CRETER: Yes.

MAYOR MARIX: How much is your reef per foot?

MR. CRETER: A typical five hundred foot section would be about six hundred dollars. We are looking at four thousand feet here. There is extreme economies when you go into a four thousand foot section....

MAYOR MARIX: But you say they're basically six hundred a foot?

MR. CRETER: In the northeast, \$600 a foot net is the cost of installation and in the northeast it is fifty per cent greater than it is down here in Florida and the Gulf.

MAYOR MARIX: So how much are you saying it would be in Florida?

MR. CRETER: It'll be a saving of a couple of hundred thousand dollars off the two million price you have right now. I would certainly would not want to give you a price that it would be bidding, but....

MAYOR MARIX: No, I was trying to compare it to the price we've been given.

MR. CRETER: ...but I guarantee you you would be saving a couple - more than two hundred thousand to three hundred thousand dollars. And you could put conditions on it that it would be installed this year, because it is an emergency situation. The permitting process is a minor piggy-backing. There are going to be minor modifications to the

permit anyway and your bid would allow the modifications to the permit are anticipated and would be acceptable within the bid.

MAYOR MARIX: Can I ask one other question?

MR. CRETER: Sure.

MAYOR MARIX: How many underwater ones have you built and how far out were they?

MR. CRETER: We have no submerged systems - the submerged systems that we have had tested - it's gone through a series of tank testings at the University of Delaware - six months testing - that testing has indicated that the reef reduced wave energy by thirty to thirty-five per cent and also indicates that by doing that, it reduces erosion by the same percentages and that is extremely stable to both waves and flows - in fact, wave energy acting upon the units tend to make it more stable and wave flows and long waves - there is no wave flows in nature that would overturn the units. There are very good data that has been provided both to the DNR from the University of Delaware and the Army Corps of Engineers already. The system that is here before you, that has been permitted, was in the DNR permit has never been installed yet either. This is a different system that was installed off the DuPont property.

Continuation
of PEP Reef
Verbatim
Transcript

MRS. WIENER: Can we go on?

MAYOR MARIX: I know that.

MR. HEEKE: Thank you, sir. Are there any other questions by members of Council?

MR. ILVINSKY: I don't know. Can we meet out of the sunshine? Oh, Mr. Randolph says we can't meet out of the sunshine.

MAYOR MARIX: No, I asked him to watch the movie. I still think that the time frame, I am not convinced that going out to bid, getting that person that Mr. Dusey said quite rightly we would have to get. All these things that we are not going to lose our emergency time - that's my biggest worry. I'd like to see the movie.

MR. HEEKE: I think we have heard several people say that this is an emergency. Mr. Creter did, and Mr. Dotterer did.

MRS. WIENER: I'd like to - talking about emergencies - I have here what the Town attorney tells us is the legal description of emergency and I'm wondering if you would enlighten me, for sure, Mr. Randolph, whether within that legal discussion of what the State of Florida considers emergency, whether it falls into an emergency of not. I'll take care of that right away. Then we can move forward.

MR. RANDOLPH: I really. I will go over what the case law talks about in emergencies.

MRS. WIENER: Yes.

MR. RANDOLPH: It says that the emergency exception can be utilized only where there is a clear and immediate emergency. In this vein, it has been stated: "An emergency which will warrant dispensing with advertising for competitive bids must be present, immediate and existing, and not a condition which may or may not rise in the future, or a condition which reasonably may be foreseen in time to advertise for bids. The officers of a municipality cannot defeat the provisions of the Statute requiring competitive bidding by declaring an emergency where none exists." The bottom line, however, I think it is up to the - it is really a fact finding determination of the governing body as to whether or not an emergency exists which fits within that definition.

MR. ILVINSKY: May I ask a question of Mr. Dusey, Mr. President?

MR. HEEKE: Yes.

MR. ILVINSKY: How long do you think those sea walls would last if that storm had lasted another two or three days, like it did back in '81.

MR. DUSEY: There's a lot of speculation there, but the fact that conditions were there that would stress it to the utmost. We had flooding on the backside, then the ocean receded, it was very wet, and I would have thought, quite honestly, that if it were going to fail, it would have failed then.

MAYOR MARIX: But we had no wind.

MR. DUSEY: The wind doesn't affect the loading on a sea wall - it's the water. All the conditions were ripe for a failure and I don't understand why it didn't, quite honestly.

MRS. DOUTHIT: Well, with those words of Mr. Dusey, stating that it was a miracle that it didn't go out at Halloween - I will bite the bullet and would move that this be considered an emergency, and we therefore, turn it over to American Coastal without the bidding. Is that a proper motion?

MR. RANDOLPH: I think you need to be a little bit more specific as what you mean by "turning it over to them". You would ask them to propose a contract to you for consideration and execution by the town? Or you would go ahead and dispense with bidding with the intent being that you would award a contract to American Coastal Engineering for construction of the permitted reef for whatever design comes from that permit, and that a contract be proposed by them to be submitted back to you for final consideration?

Mayor Marix: Which would automatically include time frames, I suppose?

MR. RANDOLPH: Well, at that time, you would have to review the contract and make a determination as to whether you want to execute it. You would have an opportunity to review it.

MR. DOTTERER: I have one with me today.

Laughter

MRS. DOUTHIT: Grace, can you write out a lovely motion? I move that as per the DNR and the assorted permits....

MAYOR MARIX: I think I would put in in view of the emergency.

MRS. DOUTHIT: Yes, the emergency is the only thing in the world that prompts me to do this. Because I do consider it an emergency and I consider the time frames and all of that an emergency. We have got to get the ball rolling. If we are going to do it. And we have to do something. Hence, my motion.

MR. HEEKE: Do you need any more clarification? Okay, the motion is we proceed with negotiating a contract with American Coastal Engineering for the installation of the Reef, pursuant to the permits issued by DNR, et al, on the basis that an emergency exists - I guess you were using primarily, the danger to the sea walls.

MRS. DOUTHIT: Yes, the dangers to the seawalls which are our protection for the infra-structure under our streets for the many - certainly multiple hundreds of people living on that coastal strip.

MR. HEEKE: That, I think, is the motion - does that sound like what Mrs. Douthit....

MAYOR MARIX: I think maybe the maker of the motion might consider adding in there that in view of the extended time to secure against these emergencies, in other words, it's an emergency that takes a lot of time to protect against - and I think maybe that should be included somewhere - it's not like you can fix it in five minutes. I think you want to bring in the fact that to contain this emergency situation is very time consuming.

MR. ILYINSKY: I think that Mr. Randolph said it as well as anybody.

MR. RANDOLPH: But don't ask me to repeat it. I think Mr. Heeke summarized the tenor of what I explained.

MRS. DOUTHIT: Yes. The grounds are perfectly clear.

MR. RANDOLPH: I understand in giving your reason - those that you just discussed, are taking into consideration the fact that this will save time because it has already been permitted.

MRS. DOUTHIT: That is precisely it. And it takes months and we do have an emergency situation. Everything could go tomorrow. God willing, it won't. And it's going to take months to get this repaired - and let's proceed.

MR. ILYINSKY: I'll second for discussion.

MR. HEEKE: The motion has been made and seconded.

MR. ILYINSKY: I want to be sure that we get this in a proper motion.

MR. HEEKE: As I understand the motion, and I hope you would correct me - is that the elements of the emergency that you are concerned about are several - one of which is the condition of the seawalls is unknown and in order to protect them, it is a time consuming process. Once all final approvals have been obtained and further delays may well prevent the installation of a protective device during the upcoming storm season. And I believe that was what your motion was aimed at.

MRS. DOUTHIT: Indeed.

MR. HEEKE: Is there any discussion on this issue?

MRS. WIENER: Yup.

MR. HEEKE: Yes ma'am.

MRS. WIENER: It reminds me a little bit of the time I sat here when reverse osmosis was a very hot issue. And a gentleman got up, and he said "We all know it's not going to rain anymore." And everybody nodded their heads in agreement and thought that was wonderful and I heard him say it and I started to laugh. Nobody knows what is going to happen. I do not write the legal opinions for this Town - I'm not the Town attorney - I merely read what he writes. And one of the things he says here - which concerns me very much - in discussing the bid requirements: "an emergency which will warrant dispensing with advertising for competitive bids must be present, immediate and existing and not a condition which may or may not arise in the future". By that I consider "may or may not arise in the future - a serious heavy storm." That's my comment. "...or a condition which may reasonably be foreseen in time to advertise for bids." And now the part that concerns me the most "....the officers of a municipality cannot defeat the provisions of a Statute requiring competitive bidding by declaring an emergency" and I just read to you what the State considers an emergency. "cannot defeat the provisions of a Statute requiring competitive bidding, by declaring an emergency when none exists." Talking about having a major storm which may occur in ten years - in two years - it is not a present condition and I feel very strongly that if I were to vote for this, I would be circumventing the rules of the State of Florida, which I have been sworn to uphold.

MR. HEEKE: I think the word "emergency" lends it-self to many interpretations.

MRS. WIENER: It's very clear here.

MR. HEEKE: One of those is preparing to prevent a worsening situation.

MRS. WIENER: It's not an emergency under this requirement.

MR. HEEKE: Well, I am saying there are some requirements considerations of the word "emergency" that I think each situation is going to have to stand on its own merits. The case law is helpful. But here, I think, we are looking at a factor of what it takes by way of time to have something in place.

MRS. WIENER: There is no provision in the Statute.

MR. HEEKE: But we know we are approaching a storm season within certain months from historical data. The severity of the storm certainly can vary - or storms. We have had some significant storms in the months of November and some in September. I think these are the acts or the conditions that delaying until the storm is off-shore cannot be solved by deciding at that point not to go to bid or to go to bid, because of obvious reasons. I see, I guess in short, that the definition of "emergency" is not necessarily that restrictive and you must consider all of the circumstances that are present today. And are reasonably expected.

Continuation
of PEP Reef
Verbatim
Transcript

MAYOR MARIX: Along that line, Mr. Heeke, I'd add that most airplanes, I believe, have emergency exits, as do ships - many, many buildings - those exits are not put up when emergencies are there - they are put up so that when the emergency comes, the people are protected.

MR. HEEKE: Are there any other comments?

MRS. WIENER: I would be curious to know, since we are the owners of the permitting - we are the permittees - how long would it take for someone to take a copy of that and come up with a figure? I mean I don't understand what all the fuss is about. It would seem to me that any valid firm that does this kind of work should be able to do it in three or four or five days. These are the plans. This is the material that's been proposed - and that's the end of the story.

MR. HEEKE: The problem that I was having is Mr. Dusey's concern about not being able to draft a bidding specifications about going to outside consultants - and thereafter, properly evaluating the bids that came in. He tells us he does not feel comfortable within in his own sphere of experience to be able to advise us.

MRS. DOUTHIT: Why don't we call for the vote - it has been moved and seconded.

MRS. WIENER: I think you ought to call for the vote because the vote is there - I'm just merely underlining my feelings on it.

MR. HEEKE: Mrs. Peters, the vote please?

MRS. PETERS: Mrs. Douthit?

MRS. DOUTHIT: Yes.

MRS. PETERS: Mr. Ilyinsky?

MR. ILYINSKY: Yes.

MRS. PETERS: Mrs. Wiener?

MRS. WIENER: No.

MRS. PETERS: Mr. Heeke?

MR. HEEKE: Yes.

(END OF VERBATIM TRANSCRIPT)

End of
Verbatim

Mr. Heeke stated Mr. Doney has mentioned to me there is very little remaining to be done to complete the project for the Sand Permits for Federal Funding and he asked Mr. Doney to expound on this. Mr. Doney commented that his reaction at this point is based upon the decision just made and Mr. Dusey and he will need clarification so they do what the Town Council wants, however, the DNR Permit will now be moot and the DER Permit which is also mutually exclusive will also be moot and if they acquire the fourth permit and if they have to go back, they might be in a better position.

Mr. Campbell addressed the Council stating the permits are off track now, but they do have the approval of their funding ratios, which is the General Design Memorandum approval at the Federal level, and if they go forward and approve that, those ratios will be locked in and if they don't give them the document which has been prepared with the changes requested, that will stop that process and that really is the most costly process they have been in. He suggested if this is approved, the Federal Funding will be locked in at 60% and they will still need an appropriation to achieve that, but it would have an approved GDM behind them. He suggested they take the document which has now been prepared in response to their last inquiries and submit it and let them review it. Mr. Heeke understood the cost was modest.

Mayor Marix stated she heard Mr. Doney state the permits are moot and she thought that that didn't happen until the Notice to Proceed is issued. Mr. Doney stated they will become moot as Mr. Green will attempt to reallocate certain dollars of monitoring costs towards the Reef Permit in lieu of the Beach Nourishment project.

Motion was made by Mrs. Douthit that Mr. Campbell's firm be authorized to continue the permitting process at the Federal level. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Doney asked if the American Coastal people can now come back to the Council with their proposed contract. Mr. Heeke stated it should be reviewed by staff. After discussion, it was

decided to hear this matter under Any Other Matters at the Town Council meeting scheduled for January 21, 1992 at 5:01 PM.

3. High Tides and Wave Damage of October 31, 1991 - Progress Report on Restoration Work and Related Items.

Mr. Dusey reported the benches were included as a cost, but since they are now being reimbursed, it will be subtracted from that account. He advised the stairs were reconstructed at Gulfstream and in order for the lifeguards to occupy their building, authorization is being requested to repair the interior of the lifeguard building in the amount of \$4000 which will be from the Emergency Repair Fund. He advised the Cowboys of the Sea Monument plaque is missing and he believed they may have been lost in the storm and they will need to be duplicated. Motion was made by Mrs. Douthit to authorize the repair of the Lifeguard building in the amount of \$4000 with the funding coming from the Emergency Repair Fund. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mrs. Wiener noted a Letter to the Editor was published in the Palm Beach Post on January 12, 1992 where a resident complained bitterly about the lack of progress made by our employees restoring the area and she would like to make a motion which underlines the Town Councils' confidence in and praising the Department of Public Works and all other members of staff who were involved in putting this altogether so quickly, which she viewed as a wonderful job, and after a letter like that, she wished to go on record that the Council supports the staff and the work they have done. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

XII. NEW BUSINESS

A. Other

1. Consideration of Request for De-designation and Permission to Remove a Specimen Ficus Tree Located at 326 Via Linda by Mr. G. Steven Brannock, Counsel. Attorney Brannock addressed the Council, noting he represented Mr. & Mrs. Houvnanian of 326 Via Linda who wish to remove a ficus tree on their property which straddles his property and the neighboring property of the Applebaums. He advised the Applebaums are constructing a home on their property and felt the tree would pose a threat to their property and their landscape architect agreed who has brought this to the attention of the Town's horticulturalist, Mr. Haele who has found the tree is alive and growing but several parts of the tree are rotten, it is severely out of balance and the removal of the rotten part of the tree would add to the instability and while it doesn't impose an immediate problem, it would be a threat if there was a storm. Mr. Haele feels the tree is beyond salvaging because of its condition and there are other ficus trees on the specimen list in the Town and he agrees this would not be a major loss.

Attorney Brannock requested the Town Council to allow the de-designation of the tree and authorize its removal.

Attorney Michael Buckner, representing the Applebaums, addressed the Council noting that Mr. Dusey has also reviewed this and has provided a memorandum to the Town Manager which shows the staff is in agreement with the findings as stated by Mr. Brannock. He reported the Applebaums did not bring this request to the Council as ninety per cent of the root system is on the Houvnanians' property but the major part of the canopy is on the Applebaums' property.

Motion was made by Mr. Ilyinsky that the specimen tree be de-designated and the authorization be given to the property owner to remove the ficus tree which is located at 326 Via Linda. Seconded by Mrs. Douthit.

Mayor Marix noted from the pictures, it looks like it might have been helped along as it looks like it was heavily pruned and perhaps it was not done properly and now it has hurt it very badly. Mr. Dusey advised his first memorandum to Mr. Doney raised the issue that the Ordinance does not address the issue of proper trimming of the historic and specimen trees.

On roll call, the motion carried unanimously.

Mr. Heeke advised he will address the matter raised by Mr. Dusey under Any Other Matters about trimming of historic trees.

2. Presentation by Representatives from the Palm Beach International Airport to Summarize Noise Abatement Procedures and the FAR Part 150 Study Update Report. Lisa Waters, Noise Abatement Officer for Palm Beach County Department of Airports addressed the Council distributed information to the Mayor and Council which she stated summarized the status of the noise environment as it is measured by LDN, which is the FAA's required measure of noise impact. The graphics show the 1985 Study in comparison to the updated study to date. It contains operations, land use and population data and on the bottom is how this information impacts the Town of Palm Beach. This graphic also shows a forecast for 1996.

She summarized that in 1985 the Dpt. of Airports submitted to the FAA a Noise Exposure Map and Noise Compatibility Program Documentation. In 1986, that program was approved by the FAA and Palm Beach International Airport became the sixth airport in the nation to have such a program. She stated this put into place a number of Ordinances, actions, land use policies which have achieved some success in reducing the impacted area from noise from airplanes operating into and out of Palm Beach International Airport. She stated the 1991 study is an update to the original Part 150. She commented that when the process is started, the FAR Part 150 requires that every five years they must revisit it and update it and that is what she is doing today.

Ms. Waters reported this program is a rather lengthy scoped project with a very large budget and consulting team. He stated they have on hand ERMH, an acoustical consulting firm from Boston, an economical forecasting firm, SHNE, a local consulting firm, Kinley Horn, and a Land Use Planning Firm of LPA working on this project. She stated included in a packet provided earlier was a listing of the project scope and what this update included and there was a listing of the individuals very important to this project, which is the Citizens Committee, or the technical

advisory committee and the Town has Councilman Weinberg and David Jakubisk on that Committee. She indicated public involvement is a key element in the Part 150 Program.

She exhibited a map which showed the noise impact on the existing environment, for 1991. She explained the exhibit which showed 141 acres of residential property and 288 individuals, 160 dwelling units which are impacted today. She stated in 1985, these figures were close to double.

She indicated they are forecasting 1996 conditions with existing policies going into effect, which is a new National Noise Policy and it shows a reduction in the Noise Contour Line and impact on Palm Beach with 71.2 residential acres and 180 individuals and 100 dwelling units which are estimated.

She reported on another forecast which is an attempt to reach their 100% stage goal reduction and in a recent lawsuit, this was a settlement reached. She stated that policy will reduce the impact on the Town of Palm Beach dramatically, as well as on other areas and there will be no individual remaining with the LDN contour line. She stated the graphics do not illustrate the entire story as on Jan. 27, the Department of Airports is conducting a workshop between the hours of 4 PM and 8 PM at which time the general public is being invited to come in and talk with the consultants about how these contours were developed and what the impact is on the various communities. She wished to let them know they are issuing newsletters, running public notice, and providing the Town Manager's Office with full documentation so that any who wish to view this may do so.

She concluded by stating the status of the program is at a major milestone and all of the documentation will be submitted to FAA within the coming months and they will proceed to the alternatives analysis, which will move forward and develop methods of reducing the size of these contours even more through operational land use and airport layout changes.

Mr. Heeke announced that Councilman Weinberg is very aware of the status and the results do speak for themselves. He stated they were concerned about the back-sliding on the settlement of the litigation and what would ultimately come out of that and these results reported today are very encouraging.

Mayor Marix noted there were two forecasts and asked what is going to determine which way they will go? Mrs. Waters responded the reason for the two forecasts is Congress passed an Airport Noise Policy recently and it mandates the Dpt. of Transportation and FAA come up with a Stage 2 Phaseout. She stated Palm Beach County has their own Stage 2 Phaseout but there is certain language in the Legislation that may, at the risk of losing all of the airport's Federal funds and other economic impact, if they were to implement a policy calling for a 100% Stage 3 reduction, it may be illegal in terms of the new national policy. She indicated the reason they developed the two sets of contours was to address both of the possibilities. She noted if they could estimate what a 100% Stage 2 Reduction would be in terms of impact, they would not know whether they could legally do that without risking loss of Federal funding and that is something that if the local community decides that is the way they wish to go, then it will be challenged in court.

Mayor Marix asked if anything was addressed in all of this documentation the problems that would come forth if the airport is doubled in size? Mrs. Waters asked if she was referring to the number of gates to which Mayor Marix responded affirmatively. Mrs. Waters reported the number of gates were called to expand sometime ago, however, the Dpt. of Airports in the County is involved in another study determining whether or not they needed to do that. She reported that from looking at what is happening with the airline industry as a whole, there are fewer and fewer airlines operating and whether or not they need to add additional gates is not obvious now as there appears to be no need. She stated Delta and United Air have been very cooperative and there is no other airport in the State that has the fleet mix of quiet airplanes as does Palm Beach County and there are not many airports around the country of their size that compare. Mayor Marix referred to the expansion of air travel to New York, non-stop and South America which can always come back. Mrs. Waters stated with the economy as it is, the airport is down right now in terms of operation and numbers of passengers. She advised the airline industry itself is still trying to figure out how they are going to comply with the national noise policy as it calls for phasing out of airplanes and purchasing new airplanes and few carriers have the capital in order to comply so a lot of the major carriers, such as Delta, are hoping their competitors will be eliminated.

Mrs. Wiener asked how they were doing on the fanning? Mrs. Waters responded this is a major issue of this study as it augments the impact overall of airplanes flying into and out of the airport. She stated it does still exist in the same framework as it did in 1985. Mrs. Wiener asked why? Mrs. Waters responded because it was part of the program developed with the Part 150 and in order to change it, a study must be done which they are doing right now.

Mrs. Wiener recalled that following some of the meetings of the litigants, it was her impression that this was going to be something that was going to be seriously addressed. Mrs. Waters responded the litigation's settlement agreement states that a number of facts must be considered as part of the Part 150 process, and an example would be methods of reducing the 65 LDN Contour Line to on airport property; expansion of the fanning procedure to equally distribute noise levels; and all of these conditions felt underneath one big condition which was those things must be studied as part of the Part 150 process. She explained what is important about the Part 150 process is the airport sponsor is mandated and required to get public input. She thought what would happen is they would have people on both sides of the issue and those in the impact area that is straight out and those in Palm Beach would be adamantly against the stopping of the fanning; but those who are in the areas impacted by fanning will want it stopped immediately.

Mr. Heeke thanked Ms. Waters for bringing the Council up to date on this particular matter.

3. Consideration of Comments by Mrs. Barbara Hoffstot, Chairman, Preservation Foundation's Town Hall Square Committee. Mrs. Polly Earl of the Preservation Foundation addressed the Council indicating Mrs. Hoffstot had to leave the meeting due to the late hour, and she would like to read Mrs. Hoffstot's letter into the record:

"I have come today here to tell you how the Preservation Foundation views the Town Hall Historic District. I am not here to ask for anything from you but your attention. A year ago, the Preservation Foundation decided to concentrate its attention on the Town Hall Historic District. There is, as you well know, much to do in preservation throughout the Town, but we felt that concentrating on one area would be easier and quicker and make more of an impact than to

FBI Noise Abatement & FAR Part 150 (cont'd)

Preservation Found - Town Hall Historic District

Preservation
Fund -
Town Hall
Historic
District
(cont'd)

spread ourselves all over the Town. To this end, we formed a Committee of people particularly involved in this area. On our Committee, we have first the honor of the Mayor's presence, we have the Garden Club's President and the Chairman of the Garden Club Committee for the planting of the Mizner Memorial Park. We have a representative of the Civic Association; and of the Chamber of Commerce; and of the Landmarks Preservation Commission; of the South County Road Merchant's Association; as well as an architect skilled in preservation. We are very happy to have the attention of your Building Official to whom we can go for advice and warnings of pitfalls. The Preservation Foundation wants no surprises nor do we want to give any surprises. We want everyone in the area, including yourselves, to know our ideas and we wish to hear the ideas of all the residents of Palm Beach, as well as those closely associated with this District. We would like to start slowly in offering to you one, two or three suggestions - receive your blessing and proceed to implement them. We would like to go on doing this until the District is perfect - a real jewel to be admired by all who pass by. When we are finished in this one District, we would hope to continue area by area throughout the Town. We firmly believe that if we produce wonderful results, public enthusiasm will be produced, which can only lead to further public participation. There you have the thinking of the Preservation Foundation, and after I have given your review today, I will return to my Committee, ask them for their three highest priorities, return to you to learn of your ideas and hopefully gain your position to proceed."

Mrs. Earl then referred to a map exhibited of the area in question, noting there is a key which shows mail boxes, palm trees, planters, and everything existing in this area. She stated it is Mrs. Hoffstot's intention to go over this map with her Committee members and will overlay with items they feel should be introduced to help beautify the area and hopefully there will be participation from the merchants, the owners, the townspeople which will help enhance this historic district.

Mr. Moore advised the Preservation Commission is studying the planning aspect of the Historic Town Hall District which is due shortly from Adley, Brisson and Engman.

Mid-Town Beach
Nourishment
Project

4. Mid-Town Beach Nourishment Project - Consideration of Request that State DER Retain Project in the Public Works Program for the Army Corps of Engineers for FY94. Mrs. Wiener moved that the Town Manager be authorized to request that the State Department of Environmental Regulation retain the project of the Mid-Town Beach Nourishment in their Public Works Program for the Army Corps of Engineers for Fiscal Year 1994. Seconded by Mrs. Douthitt. On roll call, the motion carried unanimously.

Donation to
Boy Scouts from
Confiscated
Funds

5. Consideration of Request to Make a Donation to the Boy Scouts of America from Confiscated Funds Pursuant to the Florida Contraband Forfeiture Act. Chief Terlizze addressed the Council, indicating he had received a request from the Boy Scouts of America to make a donation to them from the confiscated funds they have pursuant to the Florida Contraband Forfeiture Act, and he has checked this out with the Attorney General's Office and the Town Attorney and he had received authorization. He stated it would be used in the Scout's drug prevention programs and the Chief couldn't think of a better use to put to these funds which are taken from drug dealers and emphasized these funds were not tax dollars.

Mrs. Virginia Boyce Lind addressed the Council, indicating her father was one of the founders of Boy Scouts and she objected to government money being given to a discriminating organization which the Boy Scouts of America have become as gay boys are refused membership.

Mr. Winterfield addressed the Council suggesting it might be beneficial in the future to identify the specific purpose on the agenda.

Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthitt that this request to make a donation to the Boy Scouts of America from Confiscated Funds Pursuant to the Florida Contraband Forfeiture Act be authorized in the amount of \$5000.

Transfer of
Ownership of
Certificates
of Public
Convenience &
Necessity re:
Alibi Taxi
& Palm Beach
Limousine

6. Consideration of Request by Mr. Louis Ioime to Transfer Ownership of Certificates of Public Convenience and Necessity and Related Permits of Alibi Taxi and Palm Beach Limousine to John Campagnuolo of Park Taxi, Inc. Attorney Peter Broberg addressed the Council gave a background of what has transpired up to this point, noting Alibi Taxi has four permits and a stand on Worth Avenue came in for renewal and was told that since they didn't have cars for each of their permits, the request would be rejected, even though this was allowed in the past. He stated Alibi had acquired Esplanade's permits and a stand at 150 Worth Avenue and came in with his check to pay for same and that too was rejected. He stated at a meeting in November, Mr. Weldon came in asking for a permit above the fifty limit and by a quirk of scheduling, his request came onto the agenda before Alibi's and somehow the numbers were turned around and Mr. Weldon got two permits and that left six permits which were to be allocated and two permits which would have to go above it, but Council felt to be fair to Mr. Ioime and the way things used to be done, they allowed him to January 1 to come in and put eight cars on the eight permits he now controlled.

Mr. Broberg explained what has happened is the investor that was coming in to take over the Esplanade, felt the Town Council's action by allowing the two extra permits over the fifty, had taken away any value to any of the licenses. He felt when there was a ceiling on the number of permits allowed, there was a market for them, but since there is no longer a ceiling, there no longer is a market and the investor backed out of the deal. He stated before Jan. 1, 1992, Mr. Ioime came in and asked to assign the eight permits to Park Limousine and that couldn't be accomplished before January 1, due to timing and vacation schedules and when Mrs. Crozier came back from vacation, she stated she couldn't do it as it is two permits above the limit and that is why they are back at the Council table. He requested Council to allow Mr. Ioime who has an interest in the eight permits, to transfer the permits to Park Limousine, which would make 52 permits.

Mayor Marix recalled they couldn't go back to the fifty as this is all here because of the mistake the Town made originally and this was the way they were issued, so she was interested in the statement stating when they took away the ceiling, there was no value anymore and she didn't view that as a true statement, recalling they allowed the 52, because of the Town's mistake. Secondly, when they state they want to transfer the permits of Alibi and Palm Beach to Park Taxi, are they amalgamating all of them unto one owner? Mr. Broberg stated the registration and cars will be to Park Limousine. Mrs. Wiener asked if this meant Park Taxi would now have twenty

permits. Mr. Broberg stated they would be eligible for twenty permits. Mayor Marix asked if they could get all fifty two or was there a limit as to how many each company could have? Mrs. Crozier reported the Ordinance doesn't address any individual holding but just there should be a cap of the fifty permits.

Mr. Broberg suggested the Zoning Commission give attention to this Ordinance at the next Zoning Hearings as it needed to be updated.

Mr. Heeke noted Mrs. Crozier has two suggestions in her memorandum of January 10, 1992 and they were that one, the current owner approves of the transfer and secondly, that Mr. Campagnuolo be required to complete all necessary documents, have all six vehicles registered, inspected and all fees paid within ten days from the date of the approval and that he fully comply with Article XIV "Taxicabs" of the Town Code. Mr. Broberg stated he had no problem with this except for the six vehicles as he would like to see that figure be eight.

Mrs. Douthit wanted to see it remain at 50. Mrs. Wiener reminded last month they raised it to 52. Mayor Marix recalled the Town was issuing these permits without the cars to back them up as long as people paid the fee, and she knows they raised it to 52, but she hoped that eventually it could return to the fifty. She didn't believe that because the Town makes a mistake, that they should be unfair to anyone.

Mr. Jack Campagnuolo addressed the Council, indicating he didn't believe the Town needed 52 permits, as he has been in business in this Town for a long time and believes the 50 permits can support the needs. Mayor Marix asked if he would be willing to give up two of the permits he owned in order to maintain the fifty permit level to which Mr. Campagnuolo responded affirmatively.

Arthur Weldon of Aristocrat Limousine addressed the Council and objected to the transfer of the permits from Alibi Palm Beach Limousine to Jack Campagnuolo of Park Taxi and requested that one of these permits be issued to Aristocrat Limousine as Alibi did not comply with the deadline date in the ordinance of Nov. 1, 1991; secondly, at the Nov. 12 Town Council Meeting, Alibi requested an extension of time to Jan. 1, 1992 in order to comply by obtaining the necessary vehicles for the permits and he has not complied with that provision. He felt if this transfer was allowed, they would have a monopoly situation.

Mrs. Wiener recalled when Mr. Weldon came before them, he stated he was going to be in the Esplanade and not on the public street. Mr. Weldon responded he is complying with that. Mrs. Wiener believed based on that the consideration was given, and now he is saying he wants to be on the street. Mr. Weldon stated what has happened in those two months is the Town Council stated to Alibi, they should get the eight cars and the eight permits would be theirs, and they evidently couldn't get the financing for that, so he didn't comply with the Town Council's request and this now leaves everything open.

Mr. Heeke noted they are now back to the fifty permit limit, which is what the Town Council wants and he understands there is a car for each permit, and that was one of the concerns the Council had - the trading of permits. Mayor Marix asked if they were going to give up the two permits, they also were giving up two cars. Chief Terlizese stated they would have random inspections and would be checking the vehicles against the permits and the titles. Mrs. Crozier stated in conjunction with that, they will be required to produce the vehicles in order to get the permits.

Mr. Heeke felt in the November meeting, there were difficulties in the permitting process which the Town Council recognized and gave relief and now we have heard today, they are now back with the fifty permits.

Mrs. Wiener moved that the request of Mr. Louis Ioime to transfer ownership of the Certificates of Public Convenience and Necessity and Related Permits of Alibi Taxi and Palm Beach Limousine to John Campagnuolo of Park Taxi, Inc be approved with the proviso that the recommendations to produce written documentation that Mr. Joseph Acquasotta (current owner of Palm Beach Limousine) approves the subject transfer and that Mr. Campagnuolo be required to complete all necessary documents, have all six vehicles registered, inspected and all fees paid within ten days from the date of approval and all provisions of Article XIV "Taxicabs" in the Town Code of Ordinance are fully complied with; and additionally, Town Council accepts the statement made today that Mr. Campagnuolo is reducing his request by two cars and there will again be a fifty permit cap. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously for approval.

XIII. DEVELOPMENT REVIEWS

- A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of December 18, 1991 - Excerpt Available in Town Manager's Office

Motion was made by Mr. Ilyinsky to receive the report. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

The major matters were:

- B28-91 - Courtyard revisions for Love Realty, 238-40 Worth Avenue. Approved.
- B65-91 - Site Wall/Landscape Plan for C. Claude Mimun, 1144 North Ocean Blvd. Approved.
- B50-91 - Revisions to residence of Mr. & Mrs. L. F. Larsen, 1070 North Ocean Blvd. Approved.
- B59-91 - Revisions to residence of Ben and Sondra Tabakin, 1431 N. Ocean Way. Approved.
- B79-91 - New residence for Michael Burrows, 1495 N. Ocean Blvd. - Approved conditionally.

- B. Variances, Special Exceptions and Site Plan Reviews

New Business

1. Variance No. 66-91 - Nina Berkow, 16 Sloan's Curve Drive; to allow construction of a second floor addition on a residence that is 25' from the front property line in lieu of

Continuation -
Transfer of
Ownership of
Certificates
of Public
Convenience &
Necessity re:
Alibi Taxi
& Palm Beach
Limousine

Major Matters
Architectural
Commission

Var. 66-91

30' as required for a two-story. Said addition would provide a 1.2' building setback for each 1' of building height in lieu of 1.5' required. PUD-B District. Mr. Moore reported this application may be looked at as if it was in the R-B District, as that was part of the agreement of the PUD and staff has no objection to this request. Mr. Heeke noted the angle of vision is relatively minor. Mr. Ilyinsky moved for approval of Variance No. 66-91. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

2. Variance No. 1-92 - Alfred Taubman, 958 North Lake Way; to allow construction of a second story addition at the northeast corner of the residence providing a side yard setback of 14.25' in lieu of 15' required; and to allow a one-story addition at the northwest corner providing a 10' side yard setback in lieu of 15' required. R-B District. Attorney Robert Deziel addressed the Council stating he is requesting a nine inch variance at the front of the residence and at the rear of the residence they need a five foot variance on the north property line. Mrs. Douthit stated the house is so incredible now and these additions may help and from the front, it cannot be viewed from any other property due to the high hedge and she was willing to approve both the variances. Motion was made by Mrs. Douthit to approve the nine inch variance. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Deziel pointed out there are two hardships, one being the irregular shape of the lot and secondly, the architectural integrity of the structure as the way the house is laid out, North Lake Way slants off in a northwesterly direction quite severely that right now, there is a 30' setback at the northeast corner of the property and creates a 85 foot setback at the southeast corner of the house. He believed when the house was constructed, the irregular shaped lot caused the home to be pushed back towards the lake and the house was built in a north-south direction right on the then existing Town setback requirements. He stated the second hardship is the design of the house.

Mr. Ilyinsky moved the variance be approved for 5' on the north side of the property.

Mr. Moore stated the staff has no objection to the variance that was requested for the garage and there was an explanation of it but he believed the attorney needed to address why the one story addition cannot be built from an architectural standpoint at the required fifteen feet. Mrs. Wiener noted the hardship is the irregularly shaped lot. Mr. Moore pointed out this would not increase the footprint of the house, but in applications similar to this, the Council has asked why the addition could not be built with the proper setback.

Mr. Moore pointed out there was a letter of objection. Mr. Deziel responded when he got the letter of objection, he walked down the street to the home of the objector to get an idea of what he was thinking about, and the letter addressed a traffic problem, rather than a structural problem so he thought it was fair to see, that whatever problem the objector has did not address the actual variance. He believed a second letter had no objection. Mrs. Wiener noted there was another letter of objection. Mr. Heeke stated he voted for the first variance as he could see the hardship but on this one, he was having a problem.

Jeffrey Smith, the architect, addressed the Council, indicating that this house was designed in 1978 by Richard Meyer, who is an internationally known architect and his work in the public and private sector has received numerous awards. He stated this addition will be an in-fill addition and was always contemplated to have this addition. He stated if this was put anywhere else, it would be devastating to the architectural integrity of the house.

Mr. Winterfield addressed the hardship question was not brought up on the prior variance and was passed with minimal discussion so it seemed to him illogical to linger over the hardship question on this particular application, however in the abstract, he questioned both the basis of hardship as the irregular lot shape is understandable but this should be before the lot was developed and since there is an existing house and to grant a variance is to acknowledge the owner has an inherent right to expand upon the house. He felt on the question of architectural integrity - that was not a hardship.

On roll call, the motion carried 3-1 with Mr. Heeke voting against the motion.

3. Variance No. 2-92 - Herbert Pheneey, 101 Banyan Road; to allow construction of a pool pavilion providing a 1.26' rear yard setback in lieu of 15' required. R-A District. Attorney Deziel addressed the Council on behalf of Mr. Pheneey, following up the hearing last month to try to save the pool pavilion. Mr. Moore stated they have no objection to the variance as this would permit the property to remain visually in tact. On a motion of Mr. Ilyinsky, the variance was approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

4. Special Exception No. 2-92 With Variance - Merrill Lynch, Plaza Center Building, 249 Royal Palm Way; to allow applicant to occupy 8,000 square feet for financial institution purposes providing 32 off-street parking spaces in lieu of 40 required. C-OP1 District. Attorney James Brindell addressed the Council on behalf of Merrill Lynch and the proposal is to allow them to move their offices from South County Road to Plaza Center. He stated approximately 65% of their clientele are residents of the Town and the Plaza Center does include financial institutions. He pointed out the space which his client proposes to occupy was previously occupied by a financial institution and the grandfather period which expired on Nov. 30th was three days after Merrill Lynch agreed with the owners of the property to proceed with their lease on their space, subject to getting the Town's approval.

Mr. Brindell stated an analysis of the parking in Plaza Center was done and there is a logical mix of tenants, including attorneys, financial advisors and property managements, plus architects, insurance and banking institutions. He pointed out the types of tenants they have have a lot more spaces per individual so the demand for parking is considerably less than the generic code might assume. He advised the landlord have committed to provide 40 spaces in the garage at all times during the lease for Merrill Lynch. He thought to deny the variance would have hardship impacts, one on the building owners as to the use and with respect to his client, it precludes them from going to a logical location.

Mr. Moore stated the use would be of low intensity and a financial use and they are actually providing the required number of spaces by way of the least, so he has no objection.

Mayor Marix asked what would be moving into the location that Merrill Lynch would be vacating to which Mr. Brindell responded he did not know. Mayor Marix asked how many spaces they needed now in the old location. Mr. Brindell responded they have approximately 35 employees and they use the spaces behind the building on the surface lot and rent several across the street.

Mr. Ilyinsky moved Special Exception 2-91 with Variance be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

C. Other

1. Consideration of Request for Modification of Sloan's Curve FUD-B by James McCartney Wearn, Attorney. Mr. Moore recalled this item was postponed to this hearing from the Zoning Commission hearing and the Zoning Commission did recommend approval of Mr. Wearn's request and additional information has been received.

Sloan's
Curve FUD-B

Maurice Shawson of 13 Sloan's Curve Drive addressed the Council, which is one of the townhomes. He is an original owner and is well aware what this Council and predecessors went through to create this beautiful development known as Sloan's Curve. He stated there are three phases and the one in question here is Phase 3, where he lives. He stated the applicants wish to put in one of the single family lots an office and a parking lot. He stated only 23 homes exist there and 15 are townhouses and there already is a full time manager and one other full time employee with part time landscapers and it is his strong belief that they do not need to have an office on this property and he objected to that and a parking lot as they have managed for eleven years adequately without such a structure. He stated there has been discussion about the possibility of business being done in this eventual office and he submits there will be no way they can monitor if there will be businesses run in there or not. He felt there was provision for a Conference Room and offices and the manager is a registered realtor and he felt it was imprudent and totally unnecessary to create this type of a structure and a parking lot within this lovely community. He didn't believe it was properly aired before the homeowners.

Mayor Marix recalled hearing this application before? Mr. Wearn stated all of these matters raised by Mr. Shawson today were raised before the Zoning Commission and were fully aired and discussed. He stated the matter was considered to be premature to be before the Zoning Commission and the Council. He stated when he was retained a few years ago, he recommended it be withdrawn based upon the objections and at that time there was not a majority in the Association in favor of it. He stated they currently have addressed all of those concerns and now out of a total of 23 residents, 21 are in support of this project. He recalled a number of them were here earlier but they had to leave.

Mrs. Douthit noted she did not find Exhibit A in her back-up material. Mr. Wearn advised the lot was identified and it is the only lot that was undeveloped.

Mr. Ilyinsky asked Mr. Shawson if he feared for the noise that might be generated and unnecessary hustle and bustle? Mr. Shawson stated he felt it was totally aesthetically inappropriate and unnecessary to have for the needs of the community as he has lived there for over eleven years and without bothering the honorable Council and he knows Mr. Wearn is a highly reputable gentleman so he is not questioning but he would like to see it in signature form as one of the reasons it has taken the number of years to get to this point is because of the internal politics.

Mrs. Douthit finds it distressing to think that this could be used for business purposes as this is a residential zone. Mr. Wearn responded it will contain a conference room to be used by the Association and there will be an area for a secretary with a telephone and this is also for the conduct of the Association's business. He stated it is not an area conducive in its design to be used for business purposes. He pointed out the Zoning Code does provide for accessory uses in the R-B District, but not involving the conduct of business. He stated this property is not to be used in violation of any zoning provision and the clear intent of the use is not to use it for that and he doesn't know what more he can say and do to satisfy the Council in this regard. He advised the Association has passed a rule unanimously that provides that the building shall not be used for any business purpose, which are prohibited by the Town of Palm Beach Zoning Code and anyone feeling that that portion of the Code is being violated shall contact the Town's Code Compliance Officer. He stated at any time the Town's Code Compliance Officer is invited to come in and see if business is being conducted.

Mrs. Wiener asked where the Association was doing its business the past eleven years. Mr. Wearn stated from a mobile phone and from garage space which has been allowed to be used and innumerable locations out of a vehicle in order to conduct the business in an orderly fashion.

Mr. Shawson advised the Mayor and Council that the Association has rights in Phase 2 for office and various needs which were provided by the original developer, Sandy Weinstein. He stated his objection is not only the business objections but whatever is said about the property is what it is going to be and there is no way the Town can monitor it, and also it will be an eyesore and an aesthetic change to the neighborhood.

Mr. Wearn stated this is a minor modification which converts what would otherwise be a single family residential use with another family and it would not have more traffic being generated than would be generated by one family. He stated in lieu of that there is an accessory use that doesn't require any zoning change as this accessory use provides service for this area just like every other condominium or association has its own separate accessory area for maintenance and for the conduct of association business.

Norman Levanthal, President of the Association, addressed the Council, indicating there were seven or eight of their residents here earlier and they support this effort and it was adopted unanimously at their annual meeting, provided it would not be used for office space.

Mrs. Douthit noted it is being lavishly landscaped. Mr. Wearn agreed there will be a bermed area all the way around, so the only place you can really look into it, is perpendicular to the entrance area.

Mr. Ilyinsky believed the Zoning Commission approved of this and it will be limited to this use and he moved for approval.

Mr. Heeke passed the gavel to Mrs. Wiener to chair the meeting and seconded the motion as he believed the Homeowners Association has the right to make their selection and determine how the property will be used and it was unanimously voted on by the Homeowners Association and the majority rules.

Mrs. Wiener stated she did ask Mr. Shawson where he lived as this may have made a difference in the way she feels about it, but it is a considerable distance from where his townhome is located. Mr. Shawson stated it is only twenty or thirty yards from his property and he still feels it is against many other people's interest. Mrs. Wiener did not feel the other people felt that way as it was unanimously approved.

On roll call, the motion carried unanimously. Mr. Moore advised there will have to be a resolution developed and will come before the Council at the next meeting.

XIV. COMMUNICATIONS FROM CITIZENS

Mr. Adrian Winterfield addressed the Council, requesting the Charitable Solicitation Ordinance should be revised with regards to the events held in the homes as he didn't believe there should be any limit, as it might be easier to be more frank about the nature of certain functions, as there are many receptions held in honor of a Chairman of a Ball or for certain benefactors and these events should not be excluded from the definition of a Charitable Solicitation. He recalled just recently an organization had a national political figure speak at the home of a Palm Beach resident and the organization which sponsored him was on the list today to receive a Charitable Solicitation Permit and that event was not included as a fund raiser.

Mr. Winterfield asked about Bank Julius Baer, which shows an address of 45 Coconut Row and the law office in which the representative of the office of the bank is requested to be domiciled is a non-conforming use and he felt this was the expansion of a non-conforming use. He stated if the State authority which has jurisdiction over banks finds that a representative's office required authorization, then the Town has no choice but to accept that categorization and obviously banks and financial institutions are not authorized in residential zones. Mr. Moore stated he tried to call Mr. Winterfield on this subject yesterday but was not able to but the partial update is they are holding up the occupational license application which has been processed and has been in contact with the applicant and he will have a meeting with Mr. Randolph to consult on the non-conforming issue. He has received a definition of what a representative is by Florida Statutes provided by the applicant through his attorneys and this matter will be studied and no license will be issued if there is a violation of the Zoning Ordinance. Mr. Heeke stated he had a lot of problems with an attorney with activities which are not for the practice of law in an area of this nature and the fact that business could be permitted to be there by a State or Federal agency still must comply with local zoning laws. Mr. Moore advised the law office has been there since 1979, and there have been other businesses which have been in and out of that area and one of the problems is the 1300 square feet regulation and they would allow it to be split into two but they will look at all of the aspects before the license is issued.

XV. ANY OTHER MATTERS

PILINGS TO BE INSTALLED AT PHIPP'S OCEAN PARK: Mr. Moore noted the Town Engineer, Mr. Bowser has identified a problem at the lifeguard stand at Phipp's Ocean Park and has asked for permission to waive the Noise Ordinance to proceed with the construction of the Lifeguard Building and it would be in the middle of the park. The contractor is Murry Logan and he would need to drive pilings and estimates the time needed would be one day. Mrs. Wiener requested it not be on a weekend to which Mr. Moore agreed, stating it would be 9 to 5:30 on a weekday. Mr. Ilyinsky moved the Noise Ordinance be waived to allow for the pilings to be installed at the Lifeguard Building at Phipp's Ocean Park for one day only. Seconded, by Mrs. Douthit. On roll call, the motion carried unanimously.

BOND REFINANCING: Mr. Doney stated based on information initiated by the Mayor, Mrs. Crozier has spoken to Smith Barney and it does appear to be the opportune time to go through the refunding of several of the outstanding bond issues and a proposal will be before the Mayor and Council at the February Town Council Meeting.

SELECTION TEAM FOR COMPETITIVE CONSULTANTS NEGOTIATION ACT SELECTION FOR CIVIL ENGINEERING AND ELECTRICAL ENGINEERING: Mr. Doney advised his recommendation would be to have Mr. Weinberg serve on the Selected Team for the Civil Engineering consultants and Mr. Ilyinsky served on the Selection Team for the electrical engineering, to which the Council agreed.

COUNTYWIDE PLANNING COUNCIL: Mr. Doney stated next week at the January 27, 1992 Municipal Meeting at 10:30 AM in Juno Beach, this whole issue of the Palm Beach County's action will be discussed. He advised the day prior to that there will be a meeting of the municipal attorneys in the County on the legal issues.

CHARITABLE SOLICITATION ORDINANCE AND THE HISTORICAL AND SPECIMAN TREE ORDINANCES: Mr. Heeke suggested these matters should be referred to the Ordinance, Rules & Standards Committee. Mrs. Douthit thought it should go to ORS but she wanted to know what sort of thing he would like to be applicable and appropriate for the Historic Tree Ordinance. Mr. Doney did not believe the Town Council wanted to hear every request for trimming and he suggested there be a requirement in the Ordinance which would allow the Town Manager, the Town Forester and the Garden Club to consider these requests and approve them. Mr. Heeke suggested that be something that Mr. Randolph would bring us in an ordinance revision as he wasn't sure that needed to go to ORS to which Mr. Doney agreed.

XVI. ADJOURNMENT There being no further business, the meeting was adjourned at 7:25 PM.

Grace T. Peters
Town Clerk