TOWN'S COPY

MEMORANDUM

TO: MAYOR AND MEMBERS OF THE PALM BEACH TOWN COUNCIL

FROM: WILLIAM O. COOLEY
8 WINDSOR COURT

DATE: 12/10/12

RE: SHORE PROTECTION ISSUES/WOODS HOLE GROUP PEER REVIEW

I am sorry I could not attend in person; please allow these remarks and exhibits to be placed in the record.

Aubrey Consulting, Inc., now Woods Hole Group, completed a peer review of the 1998 Comprehensive Coastal Management Plan ("CCMP"). The CCMP called for a $100 million sand dumping plan without regard for the near-shore environment.

That peer review, which was highly critical of the CCMP, stated:

> **"An extremely aggressive, unprecedented set of shore protection projects have been recommended in the CCMP update. Over fifteen million cubic yards of beach replenishment and forty-six T-Groins, costs over one hundred million dollars have been recommended to manage the shoreline over the next thirty years....A plan of this magnitude essentially is unprecedented. Consequently, strong conclusive scientific and economic information should be provided to defend expenditures of this magnitude."**

That scientific and economic information was never provided and the nearly $100 million was wasted. It washed away. The sand is gone and the $100 million is gone.

The peer review, referring to borrow areas concluded;

> **"Offshore sand investigations completed to date show that much of the offshore sediment is relatively fine-grained compared to native beach sand"**

The Town then spent another $450,000 for another sand investigation report, which produced the same result, and then went ahead and ignored all of the criticisms of the Aubrey Consulting peer review, and then wasted millions of dollars pumping silt and sludge on the beach, only to see it wash away in record time. In doing so, it killed the near shore environment.

In the resulting push-back by the Town and its consultants, Aubrey relented and put its OK on the project – providing the Town used "adaptive management" (an active commitment to improve future projects based on the performance of previous projects) on all its projects going forward.

The term or practice of "adaptive management" was not used in future projects in Palm Beach. In fact, neither the term nor the meaning of the term was even known to your current Shore Board until I mentioned it to them at a meeting a year or so ago.

The fact that Palm Beach is sand starved is because the Lake Worth inlet jetty cuts off the natural sand flow to the south. The beneficiaries of this inlet are inter-state and inter-national commerce, recreational boaters from all over the east coast, and the Port of Palm Beach.

Yet, Palm Beach taxpayers have to bear the burden of fixing this mess from which all others benefit.

The Town has wisely sued the U.S. Corps. The Town should not settle this case for the promise of a few yards of sand to be dumped occasionally on the shore. This case should be carried out to the end and the U.S. Corps should be required to solve the problem they have created. The taxpayers of Palm Beach should never be asked to pay another dime for the sand starvation caused by the inlet, when those benefitting from that inlet do not contribute at all.

I realize that what I say will have little impact on the outcome of the beach renourishment project, but I would be remiss in not offering the highlights of nearly 14 years' worth of correspondence on this matter. Please see the enclosed.

In summary, the promise of free sand has been used in Palm Beach as a political tool to secure votes from the south-end. That should not be the determining factor in beach renourishment. Little thought has been giving to the destruction to our near-shore environment, only to getting these sand projects going in time for the next election.

My suggestions for shore protection:

1. Quit dumping sand on the beach for political reasons.
2. Construct "hard" shore protection cures (i.e. sea walls)
3. Devise a method of paying for the improvements that puts the burden on payment on those directly benefitting from the improvements (i.e. assessment districts).
4. Do not settle the lawsuit with the U.S. Corps until the Town secures a guarantee that all future money that will be spent correcting the sand starvation caused by the inlet will be paid for by the Federal Government.

Thank you.

3/25/99 - RJD

ITEM FOR 4/20/99, 5:30 P.M. SPECIAL TOWN COUNCIL WORKSHOP
AT ST. EDWARD'S PARISH HALL
(Re: Comprehensive Coastal Management Plan Update)

xc: Mayor and Town Council
Former Shore Protection Board Members
Dusey - Please review and contact Mr. Randolph (in particular), others, and me, if needed, and respond directly by letter to Mr. Cooley by 4/9/99 (if possible), and follow-up with other actions, as required. On letter of response, please cc: everyone receiving a copy of this note and me.
xc: Randolph Thanks, RJD
Elwell
Somers
Pollitt (original)

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33411
844-0612

March 23, 1999

Robert J. Doney, Town Manager
P.O. Box 2029
Palm Beach, Florida 33480

Dear Mr. Doney,

Enclosed please find a copy of a letter that I have sent to Mayor Ilyinsky and the members of the Town Council. Enclosed with those letters is a list of 12 questions that I have regarding the proposed beach restoration project.

I have attended the first two informational meetings but will be out of town for the third meeting on the 20th of April. Would you please have the appropriate town staff member(s) look at the enclosed questions and provide me with answers to them. I would really appreciate that.

Also, would it be possible to have both the questions and the answers made a part of the record of the April 20th meeting.

I know you folks are all very busy but I would appreciate a speedy reply to these questions as the answers may lead to other questions that could be explored prior to the meeting on the 20th. Thank you.

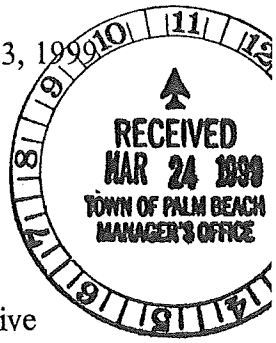
Sincerely,

William O. Cooley

enclosures

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480
844-0612

March 23, 1999



Honorable Paul R. Ilyinsky, Mayor
P.O. Box 2029
Palm Beach, Florida 33480

Dear Mayor Ilyinsky,

I have attended the two workshops held by the Town Council on the Comprehensive Coastal Management Plan and have found them informative. The Mayor, members of the Town Council, and the staff are to be commended on their efforts to seek a solution to this problem.

My wife Judith, and I live on Tradewind Drive and are purchasing a lot on Windsor Court, the site of the former Graham Eckes Academy, upon which we plan to build our new home.

We will be out of town on April 20th and will be unable to attend the third workshop. I have a few questions that I would like to have answered before the meeting on the 20th and, if possible, have the questions and the answers made a part of the record of that meeting.

You will note that I question whether or not the Town has considered an action in the U.S. Court of Claims to recover the damages that have been caused to Palm Beach from those who directly benefit from the construction and maintenance of the Lake Worth Inlet.

By way of background, I own 33 acres of commercial property in Minnesota. I was denied the use of my property by the U.S. Corps of Engineers. I brought an action in the U.S. Court of Claims. We had a five week trial and are awaiting the judges decision.

The lawyer whose services I use in Washington, D.C., practices exclusively in the Court of Claims and I have asked him, at my cost, to research the question of a claim against the Federal Government by the Town. He has been quite successful in "righting" wrongs caused by a careless federal bureaucracy including representing Glendale Federal and ten other Savings and Loans in their actions against the government.

In the Glendale Federal case, he won the "entitlement" action before the Court of Claims and it was upheld by the U.S. Court of Appeals and the U.S. Supreme Court. The decision from the Court of Claims on the damages portion, which is expected to be $1.5 Billion, is expected the first week in April.

In short, if these improvements are needed, which I believe some are, the Town may wish to explore having those who have <u>caused</u>, and those who <u>benefit</u> from, the problem, rather than those who <u>suffer</u> from the problem, pay for the correction of the problem.

Sincerely,

William O. Cooley

enclosures
cc: Robert Doney, Town Manager
(similar letters to all Town Council members)

William O. Cooley
233 Tradewind Drive
Palm Beach, FL 33480

Questions:

1. During the presentation by the Town personnel, it was stated that Dr. Strong considered four different formulas or programs for funding the proposed improvements and that two of the four were recommended; (1) an ad valorem-tax increase, and (2) a combination of an ad valorem-tax increase and an assessment for benefitted property owners. **What were the other two formulas or programs that were not recommended?**

2. I believe Dr. Strong also conducted (or had conducted) a survey of those using the beach in Palm Beach to assist in determining a method of distributing the costs of the beach improvement. **How large was the sample? What was the outcome of that survey?**

3. At the informational meeting held at the Four Seasons Hotel, Mrs. Douthitt (sp?) stated that the beach improvement would expand the size of the current beach and make a "twelve mile public beach." While I don't believe the entire 12 miles of shoreline will be turned into " public beach" I would like to know: **How much public beach will result from implementation of this proposal?**

4. My wife and I live on Tradewind Drive and see cars and trucks parked on Tradewind Drive with their occupants walking toward the beach with their towels and coolers. Our street only gets a fraction of the "beach traffic" that other streets to the south of us get. **Have any studies been conducted or projections made indicating the amount of increased traffic and additional parking problems that would be caused if the beach improvements were completed? If so, what were the results? If not, shouldn't this be a part of the process?**

5. In the presentation by the Town staff at the Town Hall, the statement was made that "the sand starvation to the south" was a "man made problem." It was caused by the dredging of the Lake Worth inlet in 1924. **Who dredged the inlet and who maintains it now?**

6. Assuming the answer to #5 above is the United States Government, the next question is: **The dredging and maintaining of the cut was and is done for the benefit of whom?**

7. To the extent that the answer to #6 above is persons or businesses **other than** property owners of Palm Beach: **What has been done to see about having those who directly benefit from the dredging pay for the damage and maintenance?** (i.e. Port of Palm Beach; the shipping companies)

8. To the extent that the answer to #6 above is "the benefit is to the general public" or " a benefit to interstate commerce" or "the general public welfare:" **What effort has been made to make a claim against the Government of the United States to pay for the damage to Palm Beach that their action in creating and maintaining this inlet has caused?**

9. **Has any consideration been given to making a claim against the U.S. Government by filing a suit in the U.S. Court of Claims in Washington, D.C.?**

10. The Sunday, M arch 21, 1999, Palm Beach Daily News quotes Gerald Levy as saying that "...property owners in Palm Beach would pay $75.00 per $100,000 of taxable property value for seven years." Assuming an assessed valuation of $4.954 Billion for Palm Beach and a town mill levy of 4.7528 mills, a $75.00 per $100,000-in-taxable-valuation additional tax would constitute a 15.8% increase in the town mill levy for seven years. This 15.8% increase would raise $26,011,136 over that seven years (assuming the valuation remained stable). The question; **Are these assumptions correct?**

11. Various figures as to the cost of the construction and maintenance of the proposed beach front improvements have been advanced from time to time along with estimates of the increases in ad valorem taxes needed for repayment of a bond issue to finance the construction. At the informational meetings, the cost of the total project, over 30 years, including maintenance, was estimated to be $108,500,000. Assuming, (1) that bonds will be issued to pay for capital costs, (2) that yearly maintenance will be paid for from the general fund, and (3) the project cost over the 30 years is $108,500,000: **What will the project cost per $100,000 of valuation, per year for each of the 30 years, for, (1) bond repayment, and (2) maintenance?** (please disregard the homestead exemption for this calculation).

Regarding question 11, would you be so kind as to express the answer in the following format:

Year	Capital Expenditure in dollars	Maintenance Expenditure in dollars	Millage Increase for bond debt service	Millage Increase for maintenance	Dollars for debt service	Dollars for maintenance	Total Dollars
2000	$_____	$_____	_____mills	_____mills	$_____	$_____	$_____
2001	$_____	$_____	_____mills	_____mills	$_____	$_____	$_____
2002							
2003							

and so on for the 30 years

12. **Assuming bonds were sold for capital costs of the project and the capital portion of this project were paid for over 10 or 20 or 30 years, is there any guarantee from the engineer or the contractor that the improvements will last as long as the repayment obligation on the capital borrowed to construct the improvement?**

3/31/99 - RJD

ITEM FOR 4/20/99, 5:30 P.M., SPECIAL TOWN COUNCIL WORKSHOP

(Re: Comprehensive Coastal Management Plan Update)

Please bring a copy of the noted Reports in Mr. Dusey's 3/26/99 letter to the 4/20/99 Meeting.

xc: Mayor and Town Council
Former Shore Protection Board Members
Dusey
Randolph
Elwell
Somers
Pollitt

TOWN OF PALM BEACH

Public Works Department

RECEIVED
MAR 30 1999
TOWN OF PALM BEACH
MANAGER'S OFFICE

March 26, 1999

Mr. William O. Cooley
233 Tradewind Drive
Palm Beach, Florida 33480

Dear Mr. Cooley:

Your letter, with attachments, of March 23, 1999, has been referred to me for reply. I will attempt to respond to your extensive list of questions as follows:

1. (a) A special assessment district would be established to allow a tiered assessment with beachfront properties paying most and lakefront properties the least and others, in-between, paying in-between.

   (b) A special assessment district would be established and properties would be charged based on some formula to distribute benefits. This alternative is only limited by the imagination.

2. A copy of the report is attached which addresses this question.

3. At the time of construction, an erosion control line (ECL) is established based upon the location of the elevation of mean-high water on the beach. If the beach is owned by a private individual, all the land west of the ECL remains private. All the land created by the sand filling project east of the ECL becomes public. This is because the State owns all land east of the mean-high water elevations and any sand placed on State lands is public land.

4. No studies were made regarding increased traffic and additional demand on parking. If parking becomes a problem, the Police Department will address it. If parking is controlled, traffic will be controlled. It is quite surprising that the beach guests are parking on Tradewind Drive given the lack of access to the beach because of the private ownership of land east of Ocean Boulevard.

5. Army Corps of Engineers.

6. Port of Palm Beach.

7. The Port of Palm Beach is cooperating with the Town and Palm Beach County to require the Army Corps of Engineers to fund the improvement to the sand transfer plant at the inlet and, to date, has been very successful.

8. The Shore Protection Board considered the litigation strategy and decided to defer such consideration to observe ongoing litigation with the Corps at another inlet in the State with similar issues.

9. See #8.

10. Together with anticipated State funding, the $26 million would fund the 10-year program.

11. Assumptions - Bonds will be used to pay for capital costs and bonds will be used for maintenance. The required annual revenue was estimated at $3,615,759 which would translate into a 0.8211 millage rate for the entire program. A pro-forma has not been done and the specific information you request is not available.

12. No. The question of bond term will be considered by bond counsel if the Town gets that far.

Also attached for your use is the final economic report which may answer other questions you have.

The purpose of the public meetings being held by the Mayor and Town Council is to gather information on what the community believes should be done and what they are willing to support financially. I do not believe the Town is suggesting an all-or-nothing approach. Your input, and that of your neighbors, is very helpful to the Town's elected officials as they consider this very important issue.

Very truly yours,

Albert P. Dusey

Albert P. Dusey, P.E.
Director of Public Works

APD/mjm

Attachments

c: Mayor & Town Council, w/attachment
Former Shore Board Members, w/attachment
John C. Randolph, Town Attorney, w/attachment
Peter B. Elwell, Assistant Town Manager, w/attachment
Cheryl A. Somers, Acting Director of Finance
Mary A. Pollitt, Town Clerk
PW File, w/attachment

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM, BEACH, FLORIDA 33480

April 19, 1999

Councilmember
P.O. Box 2029
Palm Beach, Florida 33480

RE: BEACH RENOURISHMENT PROJECT.

Dear Councilmember ,

Please accept my apologies for taking more of your time but I believe this matter requires additional comments. I have attended the first two workshops held by the Town Council on the Comprehensive Coastal Management Plan and have written two letters to the town staff that included a series of questions regarding the shoreline problem, the proposed remedies, and the costs involved. Mr. Dusey has answered one of my letters and I believe you have been forwarded copies of that correspondence. I await his response to the second letter.

I will be unable to attend the third workshop but would request that my comments as expressed in this letter be made a part of the record and considered by the Town Council.

Based on the information I have received to date, I would like to express my opinion and make a few recommendations.

1. The problem of a "disappearing" beach is caused mainly by an action taken by the Federal Government for the benefit of the general public. It would be grossly unfair to ask the tax payers of Palm Beach to pay to correct a problem created by the U.S. Corps of Engineers for the benefit of the Port of Palm Beach (and other interstate and international commerce).

2. No additional local tax money should be spent by the Town of Palm Beach on correcting this problem until and unless the Town of Palm Beach has first made a demand on the Federal Government to do one of the following:

   a. Correct the problem immediately at their sole cost.
   b. Authorize the Town of Palm Beach to correct the problem and agree to pay for the cost of correction from the federal treasury.

3. If the Federal Government refuses to do one of the above, the town should file a lawsuit seeking an injunction that would require the government to fix the problem and/or pay for it and file an additional suit for damages in the U.S. Court of Claims. It is important that this demand be made before any more money is spent by the town and that the federal government be given a chance to cure the problem and/or mitigate their damages.

4. Based on the information available, answers received from the town staff, the statements made by "experts," and published reports and statements, it appears that:

a. There is no agreement on the necessary scope of the project.

b. There is no agreement on the "best" technology of beach renourishment or whether or not the proposed improvements will survive as long as the term of the bonds which are sold to pay for the improvement.

c. There is no agreement on a method of paying for the improvement.

d. There is no accurate estimate as to the cost of any portion of the proposed project and a "pro forma" setting out the costs of construction and maintenance over the life of the project has not been created.

e. There has been no consideration given to the traffic and parking impact on the Town of Palm Beach, or the additional cost for police and life safety personnel, that will result from doubling or tripling the size of the public beach and the resultant increase in numbers of those 93.7% of the beach users who are non-Palm Beach residents.

Based on the preceding facts, the suggestion that the town proceed with a $108,000,000 public expenditure, or for that matter a $108.00 public expenditure, can most charitably be described as "reckless." What would happen in the private sector if a hundred million dollar expenditure were proposed and the proponents didn't really know the actual cost of the project, whether or not the project would work, or had sought out alternate sources of funding?

A fine job has been done in defining the problem of beach erosion but more work needs to be done on the open questions before committing Town of Palm Beach tax dollars to an expenditure of this magnitude. I would suggest one more short round of deliberations by the appointment of an "Implementation Commission." This Commission would take the work that has been completed to date and add to it the answers to the "unanswered questions" such as (a) exact costs of the proposed project(s) including capital and maintenance and secondary costs, (b) the impact on the town as a whole by the additional traffic, parking and life safety problems that will occur by the increasing of the public beach by double or triple, and (c) alternative sources for funding the proposed improvements.

With the answers to these, and questions raised by others, the Town Council would be in a better position to make a recommendation to the residents of the Town of Palm Beach as to the size of the shoreline improvement and the amount, if any, of town tax dollars to be used.

Thank you for your consideration.

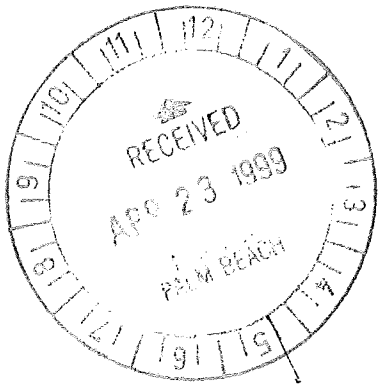
Sincerely,

William O. Cooley

4/22/99-RJD

Re: CCMP Update
(Letter dated 4/21/99, from Mr. Dusey to Mr. Cooley and letter dated 4/19/99, from Mr. Lickle to Mr. Cooley)

xc: Mayor and Town Council
Former Shore Protection Board Members
Dusey
Randolph
Elwell
Somers
Pollitt



TOWN OF PALM BEACH

Public Works Department

FAXED 4-22-99

April 21, 1999

VIA FACSIMILE (301) 365-0033
AND FIRST CLASS MAIL

Mr. William O. Cooley
233 Tradewind Drive
Palm Beach, Florida 33480

Dear Mr. Cooley:

I am writing in response to your letter of April 5, 1999, concerning the proposed Comprehensive Coastal Management Plan Update. My response is presented in the order of your questions as follows:

1. The Shore Protection Board instructions to Dr. Stronge was to develop a financing plan whereby the Update would be financed 100% within the Town with the thought that any funds received from Federal, State or County government would be an extra bonus. If you disagree with this philosophy, I recommend you bring that to the attention of the Mayor and Town Council.

2. It is not possible to supply the specific information you seek since these projects have not gone through final design and permitting. It is possible that a "public beach" will be created from the north end to Widener's Curve and then from Sloane's Curve to the southern Town limits.

3. No.

4. The Port is located in Riviera Beach. What is considered fair or unfair is subjective and varies from individual to individual.

5. The Port has been successful in pursuing Corps of Engineers' funding.

6. Port Canaveral - Federal Court

7. You originally had asked if the seven year proposed funding scheme could work and the answer was yes. State funding is project dependent and not allocated on an annual basis in equal amounts. The State funding would flow over a 10-year period. If state funding doesn't materialize, the Town would have to decide whether to reduce the scope of work or raise taxes.

8. The 0.8211 mill assessment will fund the 30-year program without state funding. I am sure you are capable of calculating percentages.

9. Maintenance refers to renourishment which occurs approximately every eight years for each reach, and involves substantial capital expenditure.

10. If you believe a pro-forma would be valuable to the Town and its residents, it is suggested that you recommend to the Mayor and Town Council that they pursue same.

I think you have the misconception that Town staff is advocating this project, a particular financing scheme or any other position taken by the Shore Protection Board. We are trying to assist the Mayor and Town Council in determining what is acceptable to the community, involving both the scope of the project and the financing methods.

Your opinion is important to our elected officials, and I hope you will provide same.

Very truly yours,

Albert P. Dusey

Albert P. Dusey, P.E.
Director of Public Works

APD/mjm

c: Robert J. Doney, Town Manager, w/attachment
P.W. File

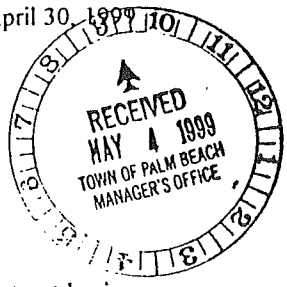
5/5/99 - RJD

ITEM FOR 5/11/99 TOWN COUNCIL MEETING
(Re: CCMP Update - Resolution No. 16-99)

xc: Mayor and Town Council
Former Shore Protection Board Members
Dusey - For your further actions, as needed. RJD
Randolph
Elwell
Somers
Pollitt

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FL 33480

April 30, 1999



Albert P. Dusey, P.E.
Director of Public Works
Town of Palm Beach
P.O. Box 2029
Palm Beach, FL 33480

Dear Mr. Dusey,

Thank you for your April 21 response to my letter of April 2. I regret not having your answers before the workshop meeting on April 20 so I might have considered your answers in drafting my April 19 letter to the Town Council. I would like to ask you to clarify a few of the answers contained in your April 21 letter.

1. My question #4 and your answer #4. Allow me to restate that question. Is the following statement correct: "An agency of the Federal Government dredged and maintains the inlet for the benefit of the Port of Palm Beach, which is located in Riviera Beach, and the property taxpayers of Palm Beach are being asked to pay to correct the damage." Is this correct?

If so, is it now, or has it been in the past, the policy of the Town of Palm Beach to request tax dollars from the property taxpayers of the Town for payment of obligations of the state or federal government? For example, the "middle" bridge; what portion of the replacement of the middle bridge is being paid for by Palm Beach property tax dollars?

2. My question #6 and your answer #6. We have been unable to find the case in Federal Court to which you refer. In your March 26 letter to me you stated that "The Shore Protection Board considered the litigation strategy and decided to defer such consideration to observe ongoing litigation with the Corps at another inlet in the State with similar issues." Would you please ask somebody who is "observe(ing)" this ongoing litigation for a case cite, i.e. the name of the Plaintiff, a case number, and in which Federal Court it is being observed.

3. My question #7 and your answer #7. You are correct, in my first letter I asked about a seven year projection, you, however, gave me a "10-year" answer. Further, I did not interpret your answer as a "yes" to my question #10 which was, "Are these assumptions correct?" I would appreciate an answer to my question #10 of my March 23 letter.

Additionally, your March 26 answer to my March 23 question #10, was, "Together with anticipated State Funding, the $26 million would fund the 10-year program." I then asked you in my April 2 letter, "how much State funding are you anticipating?" To which you answered, "State funding is project dependent and not allocated on an annual basis in equal amounts." So forgive me if I seem confused, but how is it you can tell me on the 26th of March that $26 million in property tax dollars "together with anticipated State funding" will fund a 10 year program and

then tell me on April 2nd that you don't know how much state funding you were "anticipating?" Please tell me how much state funding you were "anticipating" when you answered my question #10 in your March 26 letter.

In your April 21 letter, you then go on to say, "The State funding would flow over a 10-year period. If state funding doesn't materialize, the Town would have to decide whether to reduce the scope of work or raise taxes." I think what you said here is that "you anticipated state funding but you don't know how much you anticipated...but if there are state funds they will flow over a 10-year period...but if there are no state funds received the project will be cut back or property taxes will be increased." Do I have that right?

4. My question #8 and your answer #8. Regarding my ability to calculate percentages, thank you for your confidence in my elementary math skills but it isn't the math calculations to which I was asking for your concurrence. I was asking if my assumptions as to the Town mill levy, and the 1999 Town capital improvements budget were correct. If these are correct, then my long-division works. I apologize for asking you to make this leap, please let me rephrase the question.

QUESTION: Is the 1999 Town of Palm Beach town mill levy 4.7528 mills? Is the Town of Palm Beach 1999 Capital Improvements Budget $2,433,000? If not, please correct these figures.

I notice that you have requested the Town Council to adopt Resolution No. 16-99 at their May 11 meeting. I would appreciate an answer to the questions in this letter as soon as possible so I might send a letter to the Town Council prior to that meeting based on my having received answers to all my questions.

I appreciate your additional consideration of these questions. Hopefully, this will be the last time I will have to bother you on this issue. Thank you.

Sincerely,

William O. Cooley

cc: Mayor and Town Council
Robert J. Doney, Town Manager

RECEIVED
MAY 4 1999
TOWN OF PALM BEACH
MANAGER'S OFFICE

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FL 33480

May 5, 1999

Honorable Paul R. Ilyinsky
Town of Palm Beach
P.O. Box 2029
Palm Beach, Florida 33480

Dear Mayor Ilyinsky,

On March 23, I wrote a letter to you regarding certain questions I had on the beach renourishment question, and asked why no consideration had been given to making a claim on the Federal Government to pay for the damage they have caused to the Town of Palm Beach shoreline. In that letter I mentioned that one of the lawyers whose services I use in Washington, D.C. (regarding litigation of my claim against the U.S. Corps of Engineers) had filed a claim against the Federal Government on behalf of his client, Glendale Federal, in the U.S. Court of Claims, and that a decision was expected the first week in April. That decision was issued on April 9, and an award was entered against the government in the amount of $908,000,000.00, in favor of Glendale Federal. A copy of the decision is enclosed for your review.

The situation in Palm Beach is parallel to this. The Federal Government, for the benefit of the general public, has caused great harm to the Town of Palm Beach. I believe it is proper for the Town to consider methods of curing the beach erosion problem, and to direct and control the implementation of the repair, and seek outside sources of funding. However, it is wrong for the Town Council to look to the property tax payers of the Town of Palm Beach to pay the vast majority of the cost of attempting to correct this problem.

Before the Town takes any additional official steps, such as adopting proposed Resolution No. 16-99, the Town should consider an overall strategy, including possible litigation against the Federal Government, and be absolutely sure that the adoption of Resolution No. 16-99, or any other fragmented action, does not obviate the ability of the Town to make a claim against the government in the future.

In the alternative, if you feel that the Town Council must pass a resolution at this time, please consider modifying No. 16-99 to include language which would allow the Town sufficient flexibility to adopt a course of action which may be substantially different from the CCMP Update. Otherwise the Town may be bound to a course of action which could be to the extreme and ongoing financial detriment to the residents. The CCMP Update is a tentative and incomplete proposal to manage the shorelines of the Town for the next thirty years and anything, including Resolution No. 16-99, which could restrict the Town from alternative courses of action would be irresponsible. At a minimum, this Resolution should lay the blame for this mess at the feet of those responsible, the federal government.

I have posed a series of questions to Mr. Dusey. The answers I have received make it clear to me that the Town Board, while meaning well, is walking into this morass unarmed with facts. The Town Council has no idea what this project will cost, where it will get the necessary funds, if the technology is sound, or if the proposed improvements will even last as long as the term of the bonds which may be sold to raise the money to install the improvements.

If this were the private sector and a "Board of Directors" was about to embark on a $10- $50- or $100 million expenditure, and had no precise idea what it would cost, where the money was coming from, or if the "cure" would work, I suggest to you that the Board of Directors would be fired and subject to shareholder action. Would you agree?

I have written you three letters and have received no response. I don't know if my letters are reaching you or not. I am enclosing a stamped, self-addressed envelope for your convenience. Would you please jot me a note and acknowledge receipt of my letters? Thank you.

Additionally, I have received a letter from Garrison Lickle and have written him a response. I am enclosing a copy of that response for your review. It may be helpful in your decision making process.

Finally, I notice in Mr. Dusey's April 26, 1999 memorandum to Mr. Doney that he concludes, "We do not believe there were any substantial comments presented at the public meetings...." That is an insult. I'm sure that the hundreds of citizens who took their time to make comments, sign petitions, and send letters, will be glad to know that nothing they said was heard, taken seriously, or made any difference to Mr. Dusey. I hope you don't share his opinion.

I would strongly urge you not to pass Resolution #16-99 until, and unless, you have considered its impact, along with the impact of any of the actions you have taken to date, in mitigating the Federal Government's responsibility to pay for, or reimburse, the Town of Palm Beach for money it has or will spend to correct a problem caused by the action of an agency of the Federal Government.

Sincerely,

William O. Cooley

enclosures: (3)
Glendale Federal Opinion
Copy of letter to G. Lickle
Return envelope

cc: Robert J. Doney, Town Manager
Albert P. Dusey, P.E.
John C. Randolph, Esq.

TOWN OF PALM BEACH

Office of Mayor and Town Council

MAYOR LESLY S. SMITH

COUNCIL
JACK McDONALD, PRESIDENT
SAMUEL C. McLENDON, PRESIDENT PRO-TEM
WILLIAM J. BROOKS
NORMAN P. GOLDBLUM
ALLEN S. WYETT

September 15, 2000

William O. Cooley
233 Tradewind Drive
Palm Beach, FL 33480

RE: Palm Beach Coastal Management Plan

Dear Mr. Cooley:

This is in response to your letter of September 6, 2000, wherein you expressed your concerns regarding the Town's Coastal Management Plan.

In regard to the borrow areas applicable to the proposed Phipps Ocean Park Project, the Town's consultant has assured staff that the sand they intend to use is at the depth and quantity identified in the sand source study. There is no proposal currently to excavate to a deeper depth. Borrow Area 3 is under environmental review because it contains small quantities of gravel sized and cobble sized coral pieces. The permitting process may result in buffers in Area 3 from rock outcroppings that could reduce available sand but this is not of any consequence to the overall program.

You suggest that the sand source will result in turbidity problems but both borrow areas have a very low percent of silt. There is sufficient sand in Borrow Area 4 to construct the project and the consultant has considered the quality of the sand in this location in its design. Permitting continues and we believe that permits for the Phipps Ocean Park Project will be issued.

The development of the Coastal Management Plan was based on historical erosion rather than a snapshot of the beaches on any particular day. The overall effect of the program is the additional placement of a very large quantity of sand in the system which today is sand-starved. The bypassing of sand at the Inlet can help stabilize our beaches but is of insufficient quantity to reestablish a healthy coastline. The Corps, State and Town have studied our beaches ad infinitum and it has been determined that now is the time to act.

In regard to the funding for the project and the relationship of the project funding to the FY 2001 Town budget, Town staff in conjunction with the Town's financial advisors for the 2000 Revenue Bonds adjusted the cash flow forecast adjusting for the anticipated payment of $18,342,000 for the project from the original November 1, 2000 date to November 1, 2001; increased construction costs by 4% to adjust for inflation due to the anticipated delay and deferred the receipt of the anticipated grant revenue of $8,026,000 from June 1, 2001 until June 1, 2002. These adjustments resulted in a projected deficit of approximately $53,000 in the third year of the cash flow forecast.

Town staff and the financial advisor have recommended that we leave the current budget as is in light of the fact that there is too much uncertainty at this point to make adjustments this early in the project. If there are surplus funds remaining in the later years of the project, adjustments to the non ad valorem funding can be made at that time.

In regard to the ECL issue, litigation is definitely one of our options, but it has not been formally acted upon by the Town Council. The Town Council did request that I explore alternatives with the Florida DEP and the end result of this effort was an agreement that DEP would support the establishment of the ECL at the point where the design berm reaches the mean high water line. In most cases, this agreement will result in the upland property owner receiving ownership of more sandy beach than they currently own, which many believe is a good deal. I certainly respect your right to disagree and I understand the argument you make. However, the Town Council has accepted this agreement in principle and, I believe, thinks it is in the best interest of its residents. Public hearings will be held on this matter.

Regarding the potential lawsuit against the Federal Government, the Town Council has taken no formal position on whether or not to sue the Federal Government regarding Town beaches at this time. They chose to leave this issue open as we continue to negotiate with the Corps of Engineers. Our latest contact appeared to be positive. However, as you suggest, we may get nowhere. For this reason, the potential for the Town to sue the Federal Government regarding Town beaches is still a definite possibility depending upon the actions of the Federal Government.

It has been my experience that the Mayor and Town Council in this community, over the years, have used litigation as a last resort. We are not quick to pull the trigger but are readily able to decide when litigation is appropriate.

Thank you for your letter of September 6th and your continued interest in this important issue.

Sincerely,

Lesly S. Smith

Lesly S. Smith
Mayor

LSS/cao

cc: Town Council
John C. Randolph, Town Attorney
Albert P. Dusey, Director of Public Works
Thomas G. Bradford, Assistant Town Manager

H:\BRADFORD\Cooley-PB Coastal Mgmt Plan

9/30/99 - RJD

ITEM FOR 10/26/99, 9:30 A.M. SPECIAL TOWN COUNCIL MEETING
(Re: CCMP Update - Letter dated 9/28/99 to Mr. Cooley)

xc: Mayor and Town Council
Former Shore Protection Board Members
Dusey
Randolph
Skittone
Pollitt

TOWN OF PALM BEACH

Public Works Department

RECEIVED
SEP 29 1999
TOWN OF PALM BEACH
MANAGER'S OFFICE

September 28, 1999

Mr. William O. Cooley
233 Tradewind Drive
Palm Beach, FL 33480

Dear Mr. Cooley:

Thank you for your letter of September 27, 1999, concerning the Canaveral Inlet litigation.

I'm quite sure that the Town Attorney, John Randolph, will be advising the Mayor and Town Council regarding the Port Canaveral Inlet litigation and the implication, if any, for the Town at the Special Meeting on October 26, 1999. Having witnessed both the speed of the court system, and the time the Corps takes to implement anything, I believe that your proposed course of action could easily take ten years until the Town sees its first grain of sand. This may be the action the Mayor and Town Council wish to pursue.

I am unsure of the source of your information which would lead you to believe that "state, federal or public funds" will require the construction of hundreds of public parking spaces, public access, etc. I hope you can attend the Special Meeting on October 26, 1999, when a representative of the State Department of Environmental Protection is scheduled to be in attendance to fully explain the State's position on these issues.

In the Question and Answer Booklet, I have already factored in anticipated State funding, based on the parking and access that currently exists and the rules that are in place at the State level at this time. I don't think anyone has proposed the provision of additional parking or access.

Thank you for your interest in this important Town issue.

Very truly yours,

Albert P. Dusey

Albert P. Dusey, P.E.
Director of Public Works

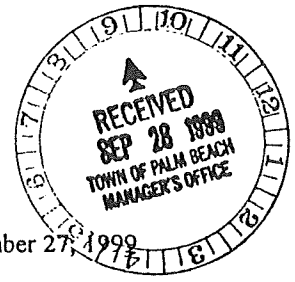
APD:ms
c: Robert J. Doney, Town Manager, w/Attachment
John C. Randolph, Town Attorney
Public Works File w/Attachment

MAILING ADDRESS: Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480 • (561) 838-5440
LOCATION: Suite A • 951 Old Okeechobee Road • West Palm Beach, Florida 33401 • Fax (561) 835-4691

9/28/99 - RJD

ITEM FOR 10/26/99, 9:30 A.M. SPECIAL TOWN COUNCIL MEETING
(Re: CCMP Update)

xc: Mayor and Town Council
Former Shore Protection Board Members
Dusey
Randolph
Skittone
Pollitt
Mr. W. Cooley



WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

September 27, 1999

Albert P. Dusey, Palm Beach Director of Public Works
360 South County Road
Palm Beach, Florida 33480

RE: Your September 9, 1999 Memo "CANAVERAL INLET - CORPS OF ENGINEERS"

Dear Mr. Dusey,

A copy of the above referenced memo sent by you to Town Attorney, John C. Randolph, has been forwarded to me (a copy of the memo is enclosed for your convenience).

While I am heartened by the contents of the first paragraph in which you state that the cost of mitigation of downstream erosion caused by the navigation project at the Canaveral Inlet is being paid by the federal government, I am less than pleased with the second paragraph.

Somehow I feel that I have failed to articulate my thoughts on this subject, or possibly you have not grasped the thrust of my argument. Please allow me to clarify my position. In your memo you incorrectly state my position being "...that we litigate with the Corps of Engineers at the Lake Worth Inlet, **rather** than pursue beach restoration projects" (emphasis added). On the contrary, my position is that the Town of Palm Beach should do **both**.

The Town Board, with input from their professionals and the community, should determine an "appropriate renourishment program," a program that will correct the problems of beach erosion caused by the creation and maintenance of the Lake Worth Inlet. Then, a demand should be made on the U.S. Corps of Engineers/Federal Government, to implement that program. If the government says OK, let them proceed **with that specific program.** If the government says NO, then file suit in both U.S. District Court (to attempt to force them to make the improvements) and in the U.S. Court of Claims, to seek money damages which the Town can use to make the improvements.

I feel confident that the "appropriate renourishment program," upon which the Town Council will ultimately decide, **will not** contain the construction of hundreds of public parking spaces, public access easements to the beach, miles of new public beach, and all of the disruption that Palm Beach will incur should Palm Beach decide to renourish the beach using state, federal or public funds.

In a sentence; my interest is in **both** seeing the beach renourished, and in having the cost of that renourishment paid for by those having caused the damage --- the federal government.

As far as dollars and cents are concerned, this is the single most important action you or the Town Council will deal with in your/their tenure. If the financial/legal aspects of this project are not undertaken correctly, the unfortunate result will be the shifting of the cost of this improvement from the federal government to the Palm Beach property tax payers. This will be an unnecessary several hundred million dollar property tax burden for Palm Beach....please do not make a mistake.

Best wishes,

William O. Cooley

cc: Mayor and Town Council

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

October 14, 1999

Albert P. Dusey, P.E.
Director of Public Works
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

RE: Your letter to me of September 28, 1999

Dear Mr. Dusey,

I am in receipt of your letter to me dated September 28, 1999, a copy of which is attached for your reference.

I find the response contained in your letter to be "flip" and insulting. If the Town Council is depending on you to "sell" the beach renourishment program to the taxpayers of Palm Beach, I might suggest that you cut down on the adversarial rhetoric and stick to the issues.

Two points; first, you continue to misstate my position, please stop doing so. My September 27, letter to you clearly stated my position. In it I stated, "...my interest is in both seeing the beach renourished, and in having the cost of that renourishment paid for by those having caused the damage --- the federal government." You then write back to me in your letter of September 28, and state that "...your (my) course of action could easily take ten years until the Town sees its first grain of sand." Again, misstating my position. RENOURISHMENT OF THE BEACH AND ASKING THE FEDERAL GOVERNMENT TO PAY FOR THE DAMAGE ARE NOT MUTUALLY EXCLUSIVE. THEY CAN BOTH BE DONE. DO YOU UNDERSTAND?

Second, regarding my source of information that "state, federal or public funds will require the construction of hundreds of parking spaces, public access, etc." I believe that you were present at the Town Council meeting of August 10, at which I quoted my source for that information. It comes with poor grace that now, nearly two months later, you question my source. Either you weren't paying attention to the public testimony on August 10, or you didn't care. Please tell me, which was it?

My source is a September, 1995, publication of the Florida Department of Community Affairs, titled "Public Access to the Florida Coast," authored by Stephen Holland, Jeffry Wade and Richard Hamann. At the August 10th meeting, I stated that I quoted from page 37 of that publication. If this information is incorrect, you should have said something before two months had passed. Is this information incorrect? If my source is incorrect, please provide me the correct information now, and let's not wait until the October 26 meeting.

The Town of Palm Beach has spent millions of dollars of tax payers money, if not tens of millions, fixing a problem that was caused by the federal government. Not only should no more Palm Beach tax payer money be spent to further the cause of international and interstate commerce, not to mention convenient passage for the Casino Boat, but the funds that have been already expended should be recovered from the federal government.

I have spent quite a bit of time in and around municipal government, and until now, I have never seen a matter of public interest mishandled to the degree that this issue has been mishandled. I believe you are unaware that the staff's job **isn't** to create a mess like this and then hand it off to the policy makers to solve. The staff's job is to solve problems like this **before** you ask the elected officials to put their collective necks in the noose of public controversy.

You should be very thankful that you work for people with such a sense of humor, because in any other town or city I am familiar with, if this kind of mess made it as far as it has, and the elected officials were placed in the no-win position in which they have been placed, you sir would appropriately be looking for other employment.

This project is going no-where without public consensus. My suggestion to you, Mr. Dusey, is that you try to solicit public support for a project of reasonable size and stop picking fights with citizens who merely want to have their input considered and who are trying to be helpful in finding solutions to this proposed major public expenditure.

Please respond to the sentences after which you see "question marks." Thank you.

Sincerely,

William O. Cooley

RECEIVED
OCT 15 1999
TOWN OF PALM BEACH
MANAGER'S OFFICE

cc: Robert J. Doney, Town Manager

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

October 21, 1999

Mayor and Members of the Town Council
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

RE: SHORE PROTECTION FUNDING PLAN

Dear Mayor and Council Members,

First of all, thank you for the time and effort you have expended working on behalf of the citizens of Palm Beach on this very complicated and important issue. We appreciate the difficulty of the decision facing the Town Council regarding shore protection; how much, when, where, and how best to pay for the improvements. I recognize there are several schools of thought on each of the foregoing elements of the shore protection plan, therefore it is my hope that the following suggestions will provide some assistance in reaching a solution to the problem.

We are now approaching a time for action, a time when consensus must be reached, and a plan developed that can gain wide public support. To that end, I would like to offer an outline of a plan that would hopefully receive support from the Town Council and the citizens of Palm Beach. However, before any plan is adopted or another dollar of Palm Beach tax payers money is spent, the Town Council should officially adopt a Resolution stating that it has determined that the problem of beach erosion facing the Town of Palm Beach is a direct result of the interruption of the littoral flow of sand caused by the construction and maintenance of the Lake Worth inlet, and that any funds that have been spent to date, and that will be spent in the future should and must be provided by, or reimbursed by, the federal government. The Town should make a specific demand for financial assistance and/or labor and material assistance to be provided by the U.S. Corps of Engineers. Such labor and material assistance should be in strict accordance with a beach protection plan adopted by the Town Council. If an affirmative response is not received from the federal government, law suits should be brought by the Town of Palm Beach against the Federal Government to assert and preserve the claims that Palm Beach rightfully has against those creating and benefitting from the disruption of the natural shore line.

Additionally, the Town must take a pro-active roll in informing our congressional delegation of the problems facing Palm Beach and the millions of dollars that must be spent to cure the problem caused by the federal government. Palm Beach's shore line problems are no less pressing than those of other communities who, according to Internet stories, have had projects and studies funded by the federal government in the Water Resources Development Act of 1999, including projects and studies in:

Brevard County, Florida
Lee County/Captiva Island Florida
Ft. Pierce, Florida
Broward County, Florida
Nassau County/Amelia Island Florida
St. Augustine/St. Johns County Florida
Indian River County, Florida
Lido Key, Sarasota, Florida
Miami Beach, Florida
Little Talbot Island, Duval County, Florida
Port Everglades, Broward County, Florida
As well as projects and studies in Delaware, New Jersey, South Carolina, California, Texas, New York, and Virginia.

There is no reason whatsoever that the property taxpayers of Palm Beach should pay one more dollar, not to mention the $6 million dollars slated to be spent this year on the Midtown and Phipps Ocean Park beaches, or the $50 to $300 million being proposed for beach restoration (depending on whose numbers are used) to cure beach erosion problems caused by the federal government. I question both the wisdom and the legality of expenditures of local Palm Beach property tax dollars to pay obligations of the federal government that should rightfully be paid for from the federal treasury.

Spending local property tax dollars to solve problems rightfully belonging to the federal government, without first having exhausted all means of having the federal government pay to cure the problem it has created, is wrong. It is no different than levying a property tax in Palm Beach to pay for new post office, federal building, or interstate highway. You shouldn't, and can't, use local property tax dollars to pay for federal obligations.

Now, assuming that the foregoing efforts have been made to, (1) obligate the federal government to pay for or construct/install the beach front improvements, or to (2) find funding in an upcoming federal appropriation bill to construct/install or reimburse the Town of Palm Beach, and interim funds are needed to provide immediate repairs and/or to engage in long-range planning and design, I would suggest the following plan.

First, the plan must be "affordable." One could argue the definition of "affordable," but for the purpose of this letter, I would like to suggest that a referendum be proposed whereby voter approval of a .3 of a mil general levy that would be dedicated and restricted for use in repaying principal and interest payments on bonds that would be sold by the Town of Palm Beach. The proceeds of these bonds would be used exclusively for shore protection projects. Thus a home valued at $1 million would pay $300.00 per year and a $3 million home would pay $900 per year which would be dedicated to a "shore protection project(s) fund." This levy could cease upon the federal government's recognition that paying for the shore protection program is their obligation.

If this 3/10 of a mil limit were to be set by a referendum, it would give the voters the comfort of knowing that, except for emergencies, this amount would not be increased without voter approval.

As you are aware, .3 mils will produce in excess of $1.5 million per year and this amount will increase as inflation and the effects of new construction increase the valuation of real property in the future. The funds produced by the .3 mil levy would be restricted for use to pay debt service exclusively on any shore protection projects.

In addition to the funds provided by the .3 mil levy, an amount which must be at least equal to the funds taken from the "shore project protection fund" for each project undertaken would be required from other sources. These other sources could be from special assessments for the directly benefitted property owners. Additionally, funds should be sought from county, state and federal sources, provided conditions attached to such funds, if any, are not adverse.

Funds raised from the ad valorem taxes (bond proceeds) should not be used until and unless the matching funds from other sources (i.e. special assessments, county, and state contributions) are available to be concurrently disbursed.

With consensus on this ad valorem fund, the Town could then proceed to develop a strategy to raise the rest of the necessary funds for the highest priority beach projects from other sources. Without a primary fund, provided by the ad valorem tax, the array of possible projects and schedules will be very difficult to agree upon within the community. The decision on project priorities will continue to be a function of many difficult and ever-changing considerations including political compromises, available outside economic help, the effects of future storms, and a host of other issues. However, with a known and available capital resource provided by the ad valorem fund, there is a starting point and a basic economic framework in place.

The Shore Protection Board developed an "ideal" Plan, without regard to cost. While their goals of solving all of the beach front problems without the hindrance of fiscal restraints is a laudable planning goal, it is now time to allow fiscal reality to play a part in this process. To quote from the Peer Review, which is now a part of the CCMP, "a plan of this magnitude essentially is unprecedented." The plan as recommended by the Shore Protection Board is too big, too expensive, too tightly scheduled, and too risky to manage efficiently. We need now face reality. That reality should be an amount of money that can be generated fairly, comfortably, and quickly, to provide the basis with which to fund the most necessary projects, with the majority of the remainder of the costs coming from benefitted property owners.

This vehicle will allow the planning process to proceed and the most necessary shore protection projects to be constructed while the legal and legislative process continues. Hopefully the federal government will recognize their liability in the near future and the .3 mil levy can be rescinded.

While I know that much debate on this issue will follow, it is my sincere hope that this offering, this proposed plan, will help in "turning" the debate from planning and analysis to "action."

Sincerely,

William O. Cooley

cc: Robert J. Doney, Town Manager
Garrison duPont Lickle, Esq.
Joel Martino

Oct. 30, 1999

Beach erosion suit settled

By Aaron Davis
FLORIDA TODAY

The federal government will pay $5 million to beachfront property owners from Cape Canaveral to Melbourne Beach under a landmark settlement signed Friday.

The settlement ends a seven-year battle over erosion caused by Port Canaveral.

Since the Army Corps of Engineers built the port in 1954, some beaches south of the inlet have lost more than a football field's length of sand because the inlet's jetties have cut off the natural southward flow of sand.

Congress and the Corps plan to begin a $138 million beach renourishment project south of Port Canaveral next fall.

In that sense, Friday's settlement is historic.

"This may be the first time the Corps has provided a monetary settlement where they are already planning to renourish the beach, to our knowledge," said Mason Williams, one of the lead attorneys for the residents.

The Corps could not confirm whether it ever had provided monetary damages in addition to beach renourishment.

The $5 million, which does not include lawyer and expert fees, will be divided between more than 300 beachfront owners next year to help them regain some of the property value lost over the years to erosion.

How much each landowner and beachfront tenant gets will be determined by a calculation of: how close one's property is to the southern jetty, how much beachfront land they own, how long they've owned the property and whether or not erosion has crippled any structures.

"The bottom line is everybody is going to get some money," said Mason Williams, one of the lawyers with Gray, Harris & Robinson who has spent most of the 1990s working on the case.

Williams said every property owner should get at least $5,000 from the settlement, excluding condominium owners, who may get less.

One of the lead plaintiffs in the suit was Don Applegate, who lost hundreds of feet of beach in front of the home his family bought in 1959. Winning the lawsuit has been a life goal.

In 1974, Applegate and his mother were upstairs in their Cocoa Beach home when the walls started popping and cracking. Seconds later, the front room gave way and slipped into the ocean. Soon the whole house was gone.

"I wish we still had the house," Applegate said, "I'm glad it's over, but the money can't bring the house back."

Besides the money, officials say the plaintiffs can claim part of the victory for spurring the major beach renourishment project scheduled to begin widening the area's shoreline 100 feet next fall.

"It's a day to celebrate," said Gordon "Stumpy" Harris, a chief lawyer for the property owners. "Because of this lawsuit, and everyone's efforts, the (government) will have to keep putting sand on the beach long after we are all dead and gone."

Residents agree the sand is the most important part of the victory.

"The sand is all we really wanted. That's what's going to save us from hurricanes," said Mayor Rocky Randels of Cape Canaveral. "This is really good news. You have some happy, happy residents in Cape Canaveral and Cocoa Beach today."

The beach renourishment is not officially part of the settlement signed Friday, said Jacquelyn Griffin, spokeswoman for the Corps of Engineers.

That's because the Corps has not directly admitted the county's erosion is its fault - even though internal Corps memos presented during the trial support the notion the port's jetties have blocked the flow of sand as far south as Melbourne Beach.

"You've got to wonder why they'd settle and give us $5 million if that wasn't the case," Williams said.

Whether or not the Corps admits fault, it has been directed by

Congress to begin a $138 million beach renourishment project in November 2000. The project will begin near Cape Canaveral beaches and proceed southward.

The combination of continued pressures from local congressmen and the lawsuit prompted the Corps to strike a deal, according to most people associated with the case.

As a bonus, the Corps probably will have to pay a larger portion of the beach renourishment tab than the 57 percent federal contribution President Clinton set earlier this year. State and local governments will pay the remaining 43 percent.

That's because U.S. Rep. Dave Weldon, R-Palm Bay, has gotten legislation passed that requires the Corps to review studies it has conducted on the port and decide whether it should pay a larger chunk of renourishment costs.

"One of the big benefits of this settlement is that now the Corps has little incentive not to be more forthcoming and admit the inlet's guilt in causing some of the erosion." Weldon said Friday.

Lawyers for Brevard County's beachowners said they think the review ultimately may force the Corps to pay as much as 70 percent of the beach renourishment bill.

Although that won't be an admission of guilt by the Corps, the move indirectly will lay responsibility for much of Brevard's erosion on the Corps.

The settlement has given those involved in a similar battle along Brevard's southern border renewed hope.

There, a group of Indian River County taxpayers, known as the Downdrift Coalition, is suing the Sebastian Inlet Tax District Commission.

Their civil lawsuit claims the inlet's jetties are causing erosion south of Sebastian Inlet.

Coalition President Bob Bruce was encouraged to learn of the settlement with the Corps of Engineers.

"I think it's probably going to have an affect on our lawsuit," Bruce said. "The processes (of erosion) are the same no matter who the owners of the jetties are."

Although that case has yet to be decided, Friday marked the end of what Williams called a "seven-year odyssey of litigation."

"This was really a lifetime achievement that will benefit the people of Brevard County for decades," he said. "I just can't wait to pop that champagne cork when the sand starts flowing."

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12/12/99

Restore ense of feds, not the rights of property owners

By W

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of the
cur-
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business on South County Road to have to pay for the beach improvement at the same tax rate as the property that directly benefits from sand. There should be a benefits test, and a special assessment levied for a portion of the improvement gainst benefitted properties. To the tent that the improvements bene- he rest of Palm Beach proper- hat portion, and only that por- the cost should be paid for eneral fund.

uestion of submitting the he voters for a vote has ted. The mantra voiced by osing a referendum on this been, "This is too compli- the voters to understand." we, idiots? We are asked amend the U.S. Constitu- Florida Constitution, the arter and the like, but supposed to be able to d the question of who y the cost of dumping sand ach. Because of the dispro- requirement for payment non-benefitted property he question of funding this ent should and must go to

rights

econd point we have s that no beach improve- uld cause the loss of any right to the Town of Palm to any oceanfront property he current plan requires olishment of an Erosion Line running generally south along the present gh-water line. Any addi- ch created east of that line ne the property of the state a for use by the public. s that mean? It means that t property owners, who have the right of "accre- the ability to have their increase or recede with the so their property is always "oceanfront"), will lose that property right to the state of Florida. Their easterly property line will be defined by a survey line and to the extent that new beach is added in front of their property, *they will not own that beach.* They will *no longer have oceanfront property*, they will lose that property right to the state.

It is well-settled law that if a private party has property rights taken by the government, the property owner must be compensated. Here is a case where the town will be giving away the oceanfront property owner's rights to the state by allowing the creation of an ECL. Not only will there be no compensation for the loss of rights, the oceanfront property owners haven't even been informed about the ramifications of their losing their vested "oceanfront" status.

Additionally, once the town allows the creation of an ECL, the town and the oceanfront property owners no longer own the oceanfront. They will lose their standing to make a claim for damages to the federal government, as they are no longer the damaged party. They have given their rights — and that status — to the state.

Even though the Town of Palm Beach will have given the ownership of the oceanfront to the state, the town will still be required to pay for a portion of the cost of maintenance going forward. However, from that point forward, the cost of getting state assistance carries a high price tag for the quality of life in Palm Beach.

Public access

The state regulations require the town to provide easements for public access to the state's newly acquired "public beach" and up to 100 parking spaces per mile of beachfront for public parking for those who wish to use this new public beach, and the construction and maintenance of public toilets and the like. Those items will have to be paid for from the town's budget and from the local property tax payers' pockets. Not only does the ECL take the oceanfront from the landowners and the town, it then requires them to pay for the cost of public improvements, so the public can gain access to this new beach.

The Palm Beach Shore Restoration Plan should include these three elements:

- Do not allow creation of an ECL.
- There should be federal help in paying for damage caused by the federal government, through negotiation, an appropriation, or last, by litigation if necessary.
- Payment of the beach renourishment should be paid partly from the general fund and partly from an assessment against directly benefitted property owners and submitted to the voters for approval.

Those of us who have been engaged in "this side" of this debate haven't been doing it because it's fun. We have done so because there is a very large land grab about to take place. Property rights are about to be lost or given away and because an unfair method of paying for a massive *federal* improvement is about to be *levied against all property owners in the town.*

This isn't about "putting sand on the beach," this is about fundamental property rights and taxing fairness. These are not simple issues, and the solution to them doesn't lie in merely "putting sand on the beach" and by "financing it from the general fund." A misstep in this process at this point will cost present and future Palm Beach taxpayers tens, if not hundreds, of millions of dollars and a way of life.

■

William O. Cooley is a Palm Beach resident.

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

December 30, 1999

Michael G. Hole, Director
Public Finance Department
Salomon Smith Barney
Suite 801
777 South Flagler Drive
West Palm Beach, FL 33480

RE: Proposed Funding For Coastal Protection Program

Dear Mr. Hole,

Thank you for the time you spent with me on the phone on the 27th and the follow up letter. I now have a better understanding of the proposed cost of the financing of the bonds. Please allow me to restate it, to make sure I have it correct.

1. The two $18 million figures that you mentioned at the Council Meeting were "draws" and not bond issues. This $36 million figure ($18 million x 2) is a combination of state and county funds, and town funds (both bond proceeds and cash on hand).

2. The Town's cost share of the project is to be $24.3 million.

3. The $24.3 million will come from a $20 million bond issue and $3.3 million cash on hand, plus additional to be raised from levy in F.Y. 2000.

4. The total cost of debt service to retire the $20 million in bonds (assuming a 3% growth and a 2006 maturity) would be .64 mils until 2004, and .75 mils until maturity.

Please let me know if these figures are not correct.

I believe I can see where the problem lies. I noticed what seemed to be some frustration on the part of some during this process insofar is it has been hard to determine the actual costs of the project. The word **"additional"** seems to be causing a problem.

For example, we sat through one meeting with the Town's share of the **cost** of the project being reported as being "an additional $21 million." It begged the question, in addition to what? After some discussion, it was determined that the Town's share of the project was actually $24.3 million. It was $21 million in addition to the funds in the bank.

The same is true with the answer to the question, how much will it cost a homeowner per year to retire the bonds? The answer we ***heard*** was "an additional .31 mils." Again, in addition to what?

Put yourself in the position of the consumer (Palm Beach tax payer). If you went in to the car dealer for the purpose of buying that new Mercedes S500, and you asked the price of the car, and the dealer told you it is only $4,000 additional, you'd have a difficult time making the decision of wether or not to buy the car. It would only be when you found out that the price was $4,000 in addition to the 1998 sticker price of $80,000, that you could make an informed decision.

So, just as a friendly suggestion, I'd drop the "additional approach" when advising the Town Council as to the cost of the project, and tell them the total cost. I think the folks (both the citizens and the council) would like to know the "sticker price" on this project.

Likewise, when the newspaper prints the story and informs the citizens that the cost of the beach project is to be .31 mils, or $310.00 per million in valuation (because that's what they ***heard***), it is not really correct. The actual cost of beach renourishment will be $640.00 per million of valuation for four years and $750.00 per million of valuation for two additional years.

Or to express it another way, the total cost for a homeowner (using the 3% growth assumption), depending on the valuation of their property will be something like:

Property Valuation	Total Cost to Retire Bonds for Beach Renourishment
$ 500,000	$ 2,030.00
$1,000,000	$ 4,060.00
$2,000,000	$ 8,120.00
$3,000,000	$12,180.00
$4,000,000	$16,240.00
$5,000,000	$20,300.00

This is the kind of information, in my opinion as a former elected office holder, that the policy makers need in order to make a decision on a matter of this importance. I look forward to seeing the "sources and uses" schedule. Thank you for your time and have a happy holiday season and New Year.

Sincerely,

William O. Cooley

cc: Mayor and Council
Robert Doney, Town Manager
Albert Dusey, Director of Public Works

Give Verbatim copy to Bill when becomes available

Claudia Brandner, 315 Garden Road, spoke regarding the drainage issue on Garden Road. She requested that the work be done quickly and worried about insurance coverage on the properties. She said that beginning in fiscal year 2002 is too late.

Leslie Shaw, 318 Seaspray, reported the Town's water shortage (watering) schedule is in conflict with the County's schedule. (He passed out a schedule showing the differences.)

Neal Fisher, Root Trail, said, speaking to the issue of feral cats, that civilization is judged by the way its animals are treated, and it is important to look at both sides of the issue in attempting to resolve it. He expressed concern regarding Councilman Goldblum's activities with attempts to stop the feeding of feral cats, and suggested anyone pre-disposed to a decision would recuse themselves from the decision making process.

William Cooley, 231 Tradewind Drive, said it was difficult to be critical of the beach renourishment project without seeming to be critical of the individual Council Members and Mayor. He requested that his comments not be taken personally. Mr. Cooley said he believed the Town Council received bad advice, and as a result, the Town is faced with a mess that is also known as the beach renourishment plan. He requested the Town Council take a step back and take a new look at the entire plan. He said the wrong people are paying for the plan; the taxpayers of Palm Beach did not cause the problem and yet are being asked to fix it. The federal government, the Port of Palm Beach, and the State of Florida are the responsible parties. The plan is misconceived–it is too large and does too much damage to the near shore environment–and the long-range effect of the erosion control line will have a negative impact on the quality of life in Palm Beach. The short term effect of the ECL will be the Council's participation of taking valuable property rights from ocean front property owners. Mr. Cooley said the financing scheme is wrong, and the $23 million in bonds that just had to be sold last year at 5.36% because the rates were going up would ~~not~~ now be priced at 4.36%. He said the Town is paying millions of dollars too much in interest.

Mr. Cooley said that the consultants will probably be advising the Town to re-issue the bonds because of the lower interest rates. He said if it is done, the experts should not be paid twice for giving bad advice. He said one of the basic rules for public financing is to match the life of the bonds with the life of the project, and eleven year bonds were sold for a project with a life of eight years. Taxing inland property owners for sand that is on the beach was, in his opinion, wrong. He suggested taxing districts.

Mr. Cooley questioned the erosion control line resolution that will be heard later in the meeting and a Town staff member's ability to give away the Town's right to seek legislative change to bad law. He said the beach renourishment program is a mess, and there will be 120 hearings and on-going disputes and no sand where it is needed. He said it was time to step back, take another look at the entire project, get a community consensus on beach renourishment, and proceed with hast to renourish areas that are in dire need and spread the cost of that renournishment in an equitable manner.

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480
844-0612

April 8, 2000

Mayor Lesly S. Smith and Members of the Town Council
360 South County Road
Palm Beach, Florida 33480

(via Federal Express)

RE: ADOPTION OF BOND RESOLUTIONS

Dear Mayor Smith, President McDonald and Members of the Town Council,

The purpose of this letter is to request that council action on the two bond resolutions for financing of the beach renourishment project(s) be laid over until such time as the Town Council determines whether or not to make a claim against the federal government.

I understand that there are two major undertakings being considered to solve the erosion problem. First, a demand that the federal government take responsibility for the erosion caused by the inlet. Second, a scheduled effort to start placing sand on the beaches as soon as possible. These two major undertakings will require very careful planning and co-ordination. The timing of the steps will be of critical importance to avoid seriously compromising the success of either or both efforts.

As I have stated in several previous letters; prior to authorizing any expenditure of Palm Beach taxpayer dollars, the Town should first make a request, a demand if you will, on the federal government for funds to renourish the beach.

There are two reasons for this. First, it would seem only fitting and fair that prior to asking your constituents to pay $36 million to solve a problem acknowledged by all to be caused by the federal government, you first ask the responsible party to pay the bill. Secondly, if the Town does decide to litigate against the government, the Town will have a difficult time claiming reimbursement for the $36 million without first giving the government an opportunity to mitigate their damages.

If you do not make the demand on the government **before you authorize the expenditure** of thirty-six million property-taxpayer-dollars, you will hear as a part of the government's defense, "Your honor, we can't be liable for repayment of this thirty-six million dollars...the Town of Palm Beach never asked us to solve this problem...they just went ahead and spent the money. If they had only asked us! We had excess sand from a project in the area, and we would have given it to them."

Has anyone from the Town of Palm Beach asked the federal government for funding?

When Speaker Hastert was in Town two weeks ago, was he asked to support this request?

Has anyone asked the Palm Beach County Congressional Delegation to author a bill requesting funds for sand for renourishment to be placed in the federal budget?

Has the Erosion Control Line (ECL) question been put to rest? If not, what is the hurry to sell these bond? Ten miles of new public beach will destroy the quality of life in Palm Beach, and creation of the ECL may have a negative effect on Palm Beach's standing in a federal lawsuit.

I requested an opportunity to appear before the Palm Beach County Legislative Delegation meeting on February 17, 2000, to ask that a bill be introduced by them that would eliminate the requirement for an ECL in the case of beach renourishment caused by a man-made inlet. (See item 14 on the enclosed Agenda.)

It was a very lonely day, as nobody from the Town of Palm Beach attended that meeting. I appeared alone at the podium on a stage with a dozen legislators in front of an auditorium full of people and attempted to explain why Palm Beach should be exempt from creation of an ECL. I don't think I did too well, as no bill has been introduced.

Has anyone from the Town of Palm Beach asked our legislative delegation to amend Florida Statute 161.141 to exempt municipalities down drift from navigational channel maintenance or dredging projects from establishing an ECL?

Additionally, based on information contained in the "Offshore Sand Source Investigation," report attached to the January, 2000 Mid-Town Beach permit application, there is less than 1 million cubic yards of available sand within the identified Borrow Areas for that project that meets or exceeds the native composite grain size of 0.395 mm. As a result a substantial overfill factor of 2.0 to 3.0 is possible. In lay terms, the costs could run two to three times the original estimates.

Regarding the Phipps Ocean Park application; the original design called for 1.16 million cubic yards of sand. However, attached to the application was the new "Preliminary Design" which stated that because of "advancement and refinement" of the design, the project now requires 1.5 million cubic yards. To quote from that document:

> "Approximately one half-million yards more than the Conceptual Design volume - is proposed to provide sufficient material to maintain a beach along *most* of the project shoreline until the projected renourishment in 8 years." (emphasis on "most" contained in original text).
>
> Even with that half million-yard overfill, the Preliminary Design anticipates that:
>
> "Within 6 years, the shoreline between monuments R-116 and R-117 would erode back to the existing condition...." and,

"Within 8 years, the shoreline would erode back to the existing condition between monuments R-116 and R-118...."

When the funding was first proposed for this project, it was sold to the taxpayers as not costing more "than a daily newspaper." When project was sold to the Town Council it had a funding requirement of only "six years" (see Salomon Smith Barney, November 24, 1999, Revised Coastal Protection Program Cash Flow Analysis).

Now, on the eve of the bond resolution, we find out that:

1. The project's required sand volume was underestimated by 50% to 100% because of the poor quality of available sand in the designated borrow areas.

2. The length of the financial obligation to the taxpayers is not six years, it is eleven years.

3. Certain sections of the project will have "erode(d) back to the existing condition" in 6 or 8 years, and will require renourishment solely at the cost of the Palm Beach taxpayers (who, by then, won't have quite yet finished paying for the bonds that paid for the sand that has washed away).

The Preliminary Design document estimates the cost of the sand at $4.50 per cubic yard. The CCMP update used a figure of $6.50 per cubic yard (in 1996 dollars). The 882,000 yards used in 1995 at the Mid-Town Beach is shown on Table 1 of the Preliminary Design as costing $3.23 per cubic yard, but this doesn't compute as it equates to only $2.8 million as the sand cost for that project, while the project cost was $6 million.

Can anyone state with certainty how much a yard of sand will cost? Why has there not been a high and low cost estimate so that better financial planning can be accomplished?

If the project ends up costing twice the estimate, what is the fall-back position? Raising more money? Doing 50% of the entire project? Nourishing half of the reaches? If so, which ones? If you start with Reach 7 & 8 and run out of money, do you think you might have some upset taxpayers? Especially considering that part of Reach 7 and Reach 8 have not been designated as "critically eroding" and may not qualify for State funding, and part of Reach 7 will be gone in 6 years.

If you good folks made up the Board of Directors of a public corporation, would you authorize spending $36 million of your shareholders money without knowing the answers to all of the above questions? I would venture a guess that you wouldn't. I urge you, don't do it now.

Please look at the beach renourishment problem from a global prospective: Until you have better estimate of the cost of the entire project, the cost of sand, the required yardage, the

federal government's response to a demand for assistance, the future of the ECL, the effect of the ECL on a possible lawsuit, and, importantly, the Town's litigation posture, it does not make good business sense to commit the taxpayers to a $36 million obligation.

Sincerely,

William O. Cooley

enclosure
cc: Messrs. Doney, Dusey, Randolph, Esq.

PALM BEACH COUNTY LEGISLATIVE DELEGATION

DELEGATION MEETING - THURSDAY, FEBRUARY 17, 2000

Palm Beach Community College
Edward M. Eissey Campus
3160 PGA Boulevard
Palm Beach Gardens, FL
12 noon - 3:00 p.m.

301 N. Olive Avenue
West Palm Beach, FL 33401
(561) 355-2406
Fax: (561) 355-2343

WEST COUNTY
996-4800 Ext. 2406

Representative Suzanne Jacobs
District 88
Chair

Representative Sharon Merchant
District 83
Vice Chair

Todd J. Bonlarron
Executive Director

SENATORS

William "Doc" Myers
District 27
Ron Klein
District 28
Steven Geller
District 29
Muriel "Mandy" Dawson
District 30
Jim Scott
District 31
Tom Rossin
District 35

REPRESENTATIVES

Rick Minton
District 78
Arthur Argenio
District 82
Sharon Merchant
District 83
Addie Greene
District 84
Lois Frankel
District 85
Ed Healey
District 86
Bill Andrews
District 87
Suzanne Jacobs
District 88
Curt Levine
District 89
Abby Sanderson
District 91

Agenda

I. ***Call to Order***

II. ***Roll Call***

III. ***Pledge of Allegiance***

IV. ***Welcome remarks by Erin McColskey of Palm Beach Community College***

V. ***Special Presentation by Mary B. Hooks, Secretary of Labor and Employment Security***

VI. ***Special Presentation by Mr. Frank Finch , Executive Director, South Florida Water Management District***

VII. ***Appropriations***
Presenters
1. Bill Feaman - Healthy Mothers/ Healthy Babies/ SOAR
2. Sherry Friedlander - A Child is Missing
3. Houston Tate - City of Belle Glade Waste Water
4. Pam Sandlian, Library Cooperative of the Palm Beaches - State Aid to Public Libraries

VIII. ***Local Bills***
Presenters
1. Kenneth Edwards - Northern Palm Beach County Improvement District (2 bills)

IX. ***Public Comments***
1. Carlos Muhletaler - Citizens for a Sound Economy
2. Dr. Jean Malecki, Director of PBC Health Department
3. Scot Kannel - ARC
4. Eileen Trainor/ Elonor Siklofsy - National Alliance for the Mentally Ill of PBC
5. Suzzette Greg, (Ashley Bodmer) Child Abuse Prevention
6. Joyce Friedman - Program for Assertive Community Treatment
7. Cynthia Becton - Juvenile Justice Council
8. Lee Tirpak/ Mark Grohman - Child Care Resource and Referral
9. Maria Wise Miller - Specialty License Plate for Horses
10. Steve Lord - Juvenile Practice Committee
11. Ray Zentis - Florida Manufacturing Technology Center
12. Richard Mason - Free Beaches
13. Teresa Johnson - Urban League of Palm Beach County
14. Albert Dusey, Director of Public Works of Town of Palm Beach/ William Cooley - Erosion Control Line
15. Louise Murtaugh, Jupiter/ Tequesta/ Juno Beach Chamber of Commerce - Legislative Agenda
16. Rosa Durando, Audubon Society of the Everglades - Everglades Restoration
17. Don Marksz, Justin Marksz Foundation, Inc. - Revamping Legislation for selling alcohol to minors
18. Lee Coleman, Constitution Committee of Florida - Teaching of U.S. Constitution
19. Barbara Susco, Eagle Forum - Health Education
20. Richard VanMunster - Impact of Limited Marine Fishing on Bait and Seafood
21. Edward McJobian, Boca Del Mar Wolverine Homeowners Assoc. - Eminent Domain and Photo Cameras

X. ***New Business***
1. Delegation Policy and Procedures

XI. ***Adjournment***

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******Please turn off cellular devices during the meeting.******

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480
844-0612

Robert J. Doney, Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

April 24, 2000

Dear Mr. Doney,

After the Town Council meeting of April 13, I obtained additional information regarding the cost of the beach restoration work covered under the application that was authorized by Resolution No. 14-00. That resolution was offered at the April 11 meeting and was passed at the special meeting on April 13.

It has taken a few days to combine the information contained in the latest application with other information that was previously provided, so I apologize for the delay in getting this letter to you.

Several questions have come up that I would like to have answered now that all of the cost figures for the 10 year beach renourishment program are available.

For the ease of answering the questions, which I assume would be referred to Mr. Dusey, I have tried to keep them specific and would appreciate similarly specific answers. If a "Yes" or "No" answer is not appropriate, I would appreciate a longer, detailed answer. Or, if my facts or assumptions are incorrect, I would appreciate the correct information; thank you in advance.

1. "Table 1" as attached hereto, was prepared by the Town and covers the period 1996-97 through 2005-06, i.e. the 10-year plan. This table, as presented to the Town Council and which formed the basis for the Council's approval, stated the cost of the ten year beach renourishment program was to be $42,479,000. Is that correct?

2. On December 1, 1999, the Town Council approved a ten-year coastal protection program on a 4 to 1 vote based on those figures. At that meeting it was represented that the Town's share of the cost of the improvements was to be $3.5 million in cash from reserves and $21 million from the sale of bonds, for a total of $24.5 million. Is that correct?

3. The $21 million bonding portion of the financing program approved in December has been increased to $25 million. Is that correct? The additional $4 million being needed for additional interest payments because the maturity was lengthened from 6 years to 11 years, is that correct?

4. That $4 million in interest could have been saved if the bond maturity was 6 years instead of 10 years. Is that correct?

5. The $42,479,000 expenditure outlined in Table 1 was represented as the work to be installed and completed in the ten-year plan. Is that correct?

6. "Table 1A" as attached hereto, is made up of "Table 1" (which was prepared by the Town), plus a series of additional hand written figures that I have added to Table 1, which were taken from the application approved by Resolution No. 14-00. These additional cost figures represent additional costs of additional renourishment in the ten-year plan, as set forth in the application approved by Resolution 14-00. Is that correct?

7. The additional costs set forth in that application totals $29,521,000. Is that correct?

8. The estimated total cost of the ten-year beach renourishment and maintenance program is therefore $72,000,000, before financing costs and fees. Is that correct?

9. Of the additional $29,521,000 in costs, the Town of Palm Beach is projected to pay $23,589,650. Is that correct?

10. The $25 million in bonds that the Town Council is being asked to approve in Resolution No's 11-00 and 12-00, are scheduled to cover only a portion of the Town's share of the costs of the improvements to be made under the 10-year plan. Is that correct?

11. There is no funding mechanism in place, nor has any public discussion occurred, regarding the source from which, or method by which, the Town of Palm Beach will raise the additional $23,589,650 (the Town's share of the additional $29,521,000) needed to fund the additional costs in the ten-year beach renourishment project. Is that correct?

12. The Town of Palm Beach's share of the ten-year plan as first presented to the Town Council is $28,500,000 ($3.5 million cash and $25 million in bonds), plus approximately $10.5 million in interest and costs, or a total of approximately $39 million. Is that correct?

13. If the $23.589 million in recently presented additional costs is an additional financial obligation of the Town, the Town's obligation has been increased to $62.589 million ($39 million + $23,589,650). Is that correct?

14. If the $23.589 million that is needed for the recently presented additional costs is borrowed at 6%, over 11 years, it will require an additional $10 million in interest costs that would bring the total obligation to the Town of Palm Beach for this 10-year beach project to $72.589 million ($39 million + $23.589 million + $10 million). Is that correct?

15. Is the Town obligated, or being obligated, to make the additional beach renourishment improvements that will cost the additional $23,589,000?

16. In the recently presented additional costs for the ten-year beach renourishment plan, there is shown a Town of Palm Beach obligation for the year 2008-09 of $11,828,000 for Reaches 2, 3 & 4, and 7. At that time the Coastal Protection Reserve Fund will contain zero dollars, and the Town will be paying about 8.5% of the entire General Fund Budget, or $3.125 million per year on the bonds currently being proposed (Resolutions 11-00 & 12-00), what will be the source of this $11.8 million? More bonds? A one-time 2.5 mill property tax increase? Or?

17. The minutes of the January 14, 2000 Town Council Meeting reflect Mr. Dusey saying, "He noted that within the next 3-5 months the Town would be in the process of establishing the ECL on those projects (Reaches 3, 4, and 7), and the staff would need direction." Over three months has passed; exactly when does the ECL get established? What must be done to stop the ECL from being established?

18. In Mr. Dusey's 3/27 letter to you, Mr. Doney, he states that "Reach 8 is not currently eligible for State cost-sharing and therefore not shown in the application." This raises the question: Does this mean that no work is planned for Reach 8 subsequent to 2002-03? If work is planned: What work? When? What is the cost? Wouldn't it be similar to the $9.074 additional work needed for Reach 2? If so, shouldn't this $9 million be shown as a Town obligation?

19. Has a final "Offshore Sand Search Investigation" report been received by the Town? If so, when?

20. How many cubic yards of .035 to .0395 mm mean grain size sand has been located in the borrow areas?

21. What is the overfill factor on the various projects that is recommended because of the necessity of using inferior grade, 0.19 to 0.22 mm, of sand?

22. What is the additional cost per yard that will be incurred because of the "refining of borrow areas" that is necessitated by the predominance of inferior grade of sand?

23. If the cost of the renourishment project exceeds cost estimates, how will the financial shortfall be handled?

a. an across-the-board reduction of the overall project.
b. deletion of certain reaches, if so, which ones.
c. request additional funding from the tax payers.

24. Why does the financial advisor use 6% as the interest rate for the bond issue (Resolution No's 11-00 & 12-00) when the 4/20/00 Bloomberg Index for 10-year, triple-A rated, tax exempt insured revenue bond is 5.17%, down from 5.20% on 3/23/00?

25. How much are the selling fees for the bond issue? Will the selling agents be taking a flat fee, or will they be taking down the bonds as principals and reselling them and keeping the spread? What other costs are involved in the bond issue? How much is the bond counsel being paid?

Mr. Doney, I think you can see where this is headed. I only hope that I have read these reports incorrectly, and that this project, which was presented as the "Revised Plan" in October costing $13.5 million, and then that was sold to the Town Council as only costing "$21 million additional" with the addition of Reach 8, has not grown to an obligation to the town of $72,000,000, plus future unspecified costs for post-2003 work on Reach 8. If the information that I have put together is correct, and this has grown in size by 3.4 times without public discussion or disclosure, it is time that you, as Town Manager, request the Council to shut this project down until it is under control.

Again, I hope I am wrong. I hope this is still a $24.5 million obligation of the Town and that the Council is not being asked to sign a blank check. However, if these figures are correct, or mostly correct, two things should happen: If the Town Council has been placed in a position of believing they were approving a $24.5 million dollar improvement, which in fact is a $72 million expenditure, this entire project should have new public hearings; secondly, an ongoing expenditure of this size points out the absolute necessity of filing suit against the federal government as it is fair to say that shore protection and beach renourishment will cost Palm Beach $7 to $8 million per year (plus inflation), for ever.

I thank you in advance for your attention to this, and look forward to a speedy response. I would like to set up a meeting with you on Wednesday of this week to go over as many of the answers to these questions as you may have gathered, I'll be in Town Hall all day at the ARCOM meeting. I'm sorry about the extra work, but this seems somewhat critical.

Sincerely,

William O. Cooley

cc: Mayor and Town Council
Mr. John C. Randolph, Esq.

TABLE 1

APPROVED COASTAL MANAGEMENT PLAN

SCHEDULE AND COST PROJECTIONS

FUTURE DOLLARS

YEAR	STUDIES	REACH 1	REACH 2	REACH 3 & 4	REACH 5	REACH 7	REACH 8	ANNUAL TOTAL
1996-97								
1997-98								
1998-99	551,000			420,000		600,000		1,571,00
1999-00				7,738,000		10,604,000		18,342,0
2000-01			480,000		425,000		482,000	1,387.0
2001-02		2,630,000						2,630,0
2002-03			6,360,000		5,633,000		6,556,000	18,549.0
2003-04								
2004-05								
2005-06								
TOTAL	551,000	2,630,000	6,840,000	8,158,000	6,058,000	11,204,000	7,038,000	42,479,0

"TABLE 1A"

APPROVED COASTAL MANAGEMENT PLAN

SCHEDULE AND COST PROJECTIONS

FUTURE DOLLARS

YEAR	STUDIES	REACH 1	REACH 2	REACH 3 & 4	REACH 5	REACH 7	REACH 8	ANNUAL TOTAL
1996-97								
1997-98								
1998-99	551,000			420,000		600,000		1,571,000
1999-00				7,738,000		10,604,000		18,342,000
2000-01			480,000		425,000		482,000	1,387,000
2001-02		2,630,000		173,000		188,000		2,630,000
20[illegible]03			6,360,000	105,000	5,633,000	188,000	6,556,000	18,549,000
2003-04			244,000	123,000	174,000	181,000		
2004-05			497,000		174,000			
2005-06			3,308,000		167,000			
TOTAL	551,000	2,630,000	6,840,000	8,158,000	6,058,000	11,204,000	7,038,000	42,479,000
SUB-TOTAL OF NEW COSTS thru 2005-06			4,049,000	341,000	515,000	557,000		
2006-07			272,000					
2007-08			543,000	392,000		557,000		
2008-09			3,614,000	5,222,000		7,428,000		
2009-10			298,000	142,000	327,000	231,000		
2010-11			298,000	132,000	4,372,000	231,000		
TOTAL NEW COSTS			9,074,000	6,229,000	5,214,000	9,004,100		29,521,00
GRAND TOTAL	551,000	2,630,000	15,914,000	14,387,000	11,272,000	20,208,000	7,038,000	72,000,00
TOWN'S SHARE OF ORIGINAL PRESENTATION								28,379,00
TOWN'S SHARE OF RECENT ADDITIONAL COSTS								23,589,6

TOTAL COST TO PALM BEACH (EXCLUSIVE OF INTEREST COSTS) $51,968,6

ESTIMATED ADDITIONAL INTEREST COSTS $20,000.0

TOTAL TOWN OBLIGATION $72,000,0

MEMORANDUM

TO: ROBERT J. DONEY, TOWN MANAGER

FROM: WILLIAM O. COOLEY

DATE: APRIL 26, 2000

RE: BEACH RENOURISHMENT AND SHORE PROTECTION COSTS

The more I read the permit and funding applications, the more I am convinced that the overall cost of the beach project has been greatly underestimated. For example:

Page 8 of the Phipps Application states that because of the use of inferior sand, Coastal Tech advises the if "additional funding can be made available (they would recommend) placement of additional sand volume up to the calculated 2.1 million cubic yard requirement." The alternative, they say, is to place a lesser amount, but that the placement of the lesser amount will mean the "area would erode back to the existing condition within the 8-year renourishment period."

In a letter from Dr. Devereaux, dated 2/7/2000, he stated that the Town would be responsible for 100% of the costs for required maintenance "for a minimum of 10 years." It would seem then, in order for the Mayor and Council to have all the facts prior to making decisions on this project, that the cost of an additional round of renourishment should also be added to the costs the Town will be facing within the 10-year plan.

An additional round of renourishment for Reaches 3, 4, & 7, could cost an additional $12.5 million, and with financing costs, one could add another $20 million to the Town's obligation within the next ten years. Likewise, if an additional round of renourishment is necessitated in Reaches 2 and 5 because of the necessity of using "inferior sand" and not having the funds required on the front-end to place all of the over-fill required, the Town may be looking at an additional round of renourishment for Reaches 2 & 5 that could amount to nearly $8 million, plus financing charges.

I had suggested in the past that a "Sources and Uses" schedule be created for the Mayor and Council. That was done, but it didn't seem to include all of the costs that the Town will be facing over the 10-year life of the plan. Another one should be done before the next meeting.

If the data that I have extrapolated from the material available is correct, which I hope it is not, the Town of Palm Beach will be obligated to fund $100,000,000.00, plus, in beach renourishment over the next ten years. If that is correct, and after the Mayor and Council have all the facts, that is what they wish to do, so be it. But, I would hate to seem them stick their fist into this "tar baby" thinking they are solving the beach problem for ten years by selling $25 million in bonds, only to find out that this is only a small part of our obligation.

TOWN OF PALM BEACH

Office of the Town Manager

Via Fax and First Class Mail

May 4, 2000

Mr. William O. Cooley
233 Tradewind Drive
Palm Beach, FL 33480

Dear Mr. Cooley:

Thank you for your letter dated April 24, 2000, and memorandum dated April 26, 2000, concerning the Town's Coastal Management Plan. I have conferred with Mr. Dusey to prepare this letter.

Attached is a copy of a memorandum dated January 11, 2000, from Public Works Director, Al Dusey, to me, which was provided to the Mayor and Town Council for back-up at its January 14, 2000, Special Town Council Meeting, which also provided an attached letter from Mike Hole, Investment Banker, Salomon Smith Barney describing the financing alternatives. Also attached is a copy of a memorandum dated January 25,2000,from Director Dusey to me, which summarizes the actions taken by Town Council regarding the Coastal Management Plan including the financing of same. The Plan was approved by the Town Council at its December 1, 1999, meeting and the financing was approved at the January 14, 2000 meeting.

The application to State DEP, approved on April 13, 2000, by the Town Council via Resolution 14-00, was prepared to maximize the Town's share of State funding. Contained within the application is the Coastal Management Plan approved by the Town Council. At no time will the Mayor and Town Council be asked to approve funding in addition to that which has been previously approved without full disclosure by staff and/or the Town's consultants. You will note in Resolution 14-00 that the Town's "commitment" is only for FY 2001-02. The Town's share of this commitment is to come from the approved financing plan. And, this "commitment" may be withdrawn at any time. The Mayor and Town Council maintain complete control over what the Town does with respect to the Coastal Management Plan. Town Council may stop a project in mid-construction if they so choose. The bonds have a defeasance provision which would permit application of unspent bond proceeds to reduce outstanding bonds. All the checks and balances are in place to allow the Mayor and Town Council to proceed with, stop, or modify the Coastal Management Plan as they see fit.

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480 • (561) 838-5410

The Town staff is presently proceeding with the Coastal Management Plan and financing plan that has been approved.

As you may recall, the Mayor and Town Council approved the Coastal Management Plan using the adaptive management approach. The initial projects are to be implemented and monitored and the next set of projects, if any, are to address problem areas identified by the monitoring effort. Town staff believes that the Town will need to prepare a new Comprehensive Coastal Management Plan to address what actions, if any, are appropriate for the future, and that Plan would be scheduled for completion in 2007.

The Erosion Control Line (ECL) is required as part of the permitting process. It can take four or more months to go through the process. The Mid-Town and Phipps Ocean Park projects will start the ECL process in the very near future to allow construction of these projects in November, 2000.

An application for State cost-sharing would only be made for projects that are eligible for State cost-sharing. Reach 8 remains in the Town's Plan for construction in Fiscal Year 2002-03 at 100% Town cost.

The Palm Beach Offshore Sand Source Investigation was completed in final form in March, 2000. The Town's coastal engineering consultants identified composite grain size for each borrow area.

The question of borrow area grain size and its impact on the projects under design and permitting was discussed with both of the Town's coastal engineering consultants. Neither consultant has a concern that grain size will significantly impact their respective projects.

The Mid-Town Beach design consultant, Coastal Planning and Engineering, Inc. (CP&E), does not use the "overfill" factor, per se, in the design of their projects. The impacts of grain size on design sand slopes and in the modeling of performance provides them with the "factor" they need to properly design the project. CP&E estimates that an additional 150,000 cubic yards of sand will be needed because of grain size and that figure represents an additional 10%.

The Phipps Ocean Park project is being designed by Coastal Tech. Coastal Tech, similarly, has informed Town staff that sand quality will not significantly impact the initial cost of the project. The combined cost of Mid-Town and Phipps Ocean Park Project is still within budget based upon the latest consultant estimates.

As you know, engineering estimates do not establish the cost of construction. Competitive bidding by qualified contractors will establish the cost of the work in any particular market. If project costs exceed budget, the Mayor and Town Council will have all options available to them.

I believe you have misunderstood the purpose of Town Resolution 11-00 and 12-00. These resolutions were prepared by the Town's Bond Counsel, not the Investment Banker, and are written to authorize the selling of the bonds and to provide enough flexibility for the investment bankers to

market the bonds in the best interest of the Town. The Bond Resolutions do not establish the size or interest rate of the actual bonds, but, rather, the upper limits.

The selling fees are about $90,000 which is 3/8 of 1% for each bond underwritten. The size is still estimated to be under $24,000,000. There are other costs of issuance including rating fees, printing, credit enhancement, professional/management fees, etc. Bond counsel fees will be approximately $45,000.

The Mayor and Town Council have fully studied all relevant issues and have approved a plan of action which is being pursued by the Town's staff. We cannot assure you that each project estimate is perfect or that all bidding will result in project costs under budget. We believe that all the projects contained in the approved Coastal Management Plan can and will be constructed in reasonable compliance with the Town's expectations. If you continue to have concerns, please attend the Town Council meeting on May 9, 2000, and express same. The Mayor and Town Council will be considering Resolution No. 11-00 and No. 12-00, and I'm sure would welcome your additional input.

Sincerely,

Robert J. Doney

Robert J. Doney
Town Manager

Attachments
RJD:ms
c: Mayor and Town Council (via fax)
John C. Randolph, Town Attorney (via fax)
Jane Skittone, Director of Finance
Albert P. Dusey, P.E., Director of Public Works (via fax)
Mary Pollitt, Town Clerk
Richard Miller, Edwards and Angell , Bond Counsel (via fax)
Michael Hole, Salomon Smith Barney, Investment Banker (via fax)
Jerry Stouck, Spriggs and Hollingsworth (via fax)

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

May 4, 2000

Robert J. Doney, Town Manager
Town of Palm Beach
360 So. County Road
Palm Beach, Florida 33480

RE: Response to your letter of May 4, 2000

Dear Mr. Doney,

I am in receipt of your letter of May 4, thank you. Quite frankly I'm disappointed with the responses that Mr. Dusey drafted for your signature. The answers are evasive at best, and appear to be designed to obfuscate the facts and the issues. It would seem prudent that before you, as Town Manager, recommend that the Mayor and Town Council proceed with a project of this magnitude, that you see that they are armed with **all** the facts.

I'm very sorry, but his response is inadequate.

The two and one-half pages of responses that were prepared for you, didn't take him a week to prepare. It should have been turned around quicker so his answers could be discussed and examined **before** the council meeting. I asked 25 specific questions, and in return I received a few answers, and two pages of words that cannot be connected to my questions. It is, however, typical of what we have encountered over the past year when trying to get answers to our questions, i.e. stall to the last minute, present some pap for answers to serious questions, and tell the inquirer to make sure to attend the next meeting to see what happens. Without community consensus on this project, it will never be completed.

I spent thirty hours writing my letters of April 26 and 28, and I am entitled to answers to my questions. I do not consider the two and one-half pages of rambling narrative, and 29 pages of old memorandums (that I have previously seen and in fact used as part of the basis for my letters), to be specific answers to my questions.

While I appreciate the invitation to attend the Town Council meeting on the 9th (which I intend to attend), I do not want to waste the Mayor and Council's time at the council meeting asking for answers to these 25 questions. The purpose of my writing the letter to you, over two weeks prior to that Council meeting, was to have answers to the questions before the meeting so that the citizens and the council would be fully informed **before** the meeting.

Accordingly, I would like to make an appointment with you and Mr. Dusey for Monday morning and go over each of the questions I have asked, and to receive an answer to each. I will then take it upon myself to hand deliver the answers to each member of the Town Council. Please give me a call when you receive this and let me know what time is good for you.

Let me address a few of the responses to my questions that were contained in your letter.

First page; third paragraph: "The application to State DEP...was prepared to maximize the Town's share of state funding." What does that mean? It sounds like the numbers have been "cooked" to try get more than we are entitled to from the state. Is that what that means? Are the figures in the application correct or not? Is the $29,521,000 additional project cost correct?

First page; third paragraph: "At no time will the Mayor and Town Council be asked to approve funding in addition to that which has been previously approved without full disclosure by staff and/or the Town's consultants." That should go without saying, but that didn't answer any question that I asked. That statement may have been an attempt to answer my question number 11, but I can't tell as there is no way to connect this sentence to a specific question that I asked. If that is supposed to be an answer to question 11, please be advised that it did not answer the question.

It appears that some of the questions that were asked received answers, but it is difficult to tie the answer to the question. I would appreciate specific answers to the questions. For example; "The answer to Question number 1 is YES." "The answer to question number 2 is YES." That way, the Mayor and Council, and the public, will know the answers to the questions and will not have to try match a statement in the letter to one of the questions.

The point of these questions is to find out <u>how much the ten-year shore protection plan will cost, and how it will be funded.</u> There has been a lot of talk about Long Range Planning, this falls in that category. If the Mayor and Council thought that by selling $24.5 million in bonds, plus taking the ad valorem tax allocated for the Coastal Protection Reserve Fund for bond debt service, they would solve the beach renourishment problem for ten years, **<u>and it doesn't</u>**, that should be discussed.

On the other hand, if the Mayor and Council knew the ten-year renourishment plan would cost $72 million, and they knew the $24.5 million in bonds was just a down payment, and those of us in the audience <u>are the only ones</u> who were ignorant to this fact, that should be discussed.

I look forward to hearing from you this morning. If Monday isn't convenient, Sunday afternoon would be fine with me. You name it, I'll be there, but I would like to have direct answers to my questions, and share those answers with the Mayor and Town Council before the meeting on Tuesday. Thank you for your continued consideration and courtesy.

Sincerely,

William O. Cooley

cc: Mayor and Town Council
John C. Randolph, Esq.

06/06/06 12:45 FAX 3013650033

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

September 6, 2000

Mayor Lesly S. Smith and
Members of the Palm Beach Town Council
Palm Beach Town Hall
360 South County Road
Palm Beach, Florida 33480

Dear Mayor Smith and Members of the Town Council,

This letter is to outline my ongoing concerns regarding the overall policy of the Town as it relates to the beach renourishment project. There are four specific areas to which I wish to draw your attention:

1. The project itself, i.e. engineering and permitting, and natural renourishment of the beach.
2. Funding for the project, and the relationship of the project funding to the 2001 Town budget.
3. The Town's position on the Erosion Control Line (ECL).
4. The Town's position on filing suit against the Federal Government.

The project itself, i.e. engineering and permitting and natural renourishment of the beach. From the reports that I have read over the summer, it appears that the projected availability of .035 mm to .0395 mm mean grain size sand from Borrow Area III was grossly overstated. The 1,004,000 cubic yards that were represented as being available in the Sand Search Report either don't exist or are only partially available for use. (See Question 20 from my list of questions asked at the May 9, 2000 Town Council meeting). Additionally, Borrow Area IV has about 75% of the amount thought to be in that area **after** increasing the dept of the cut from 15.7 feet to 29 feet. Further, the miscalculations and over-estimates in availability of suitable sand (.035 mm to .0395 mm mean grain size), and the resultant overfill necessitated by the use of .019 mm to .022 mm mean grain size sand, (and resultant turbidity) have brought into focus the effects of the overfill on the near-shore environment (See Question 21 from May 9 meeting).

It is my understanding that the permit for the Phipps Ocean Park Project was denied on July 24, 2000, and that the Town has asked for 45 days in which to attempt to cure the deficiencies of the application. I further understand that there are several groups lined up to litigate the permit should it be granted and the two proposed projects may not happen in the near future

While this is going on, major portions of the beach have been growing to a point where artificial renourishment may not be necessary, and at least one other portion of the beach, in Reach 8, is claimed to be eroding to a critical point where immediate attention may be warranted.

It now seems timely to take a new look at the entire project, as it doesn't appear to be headed anywhere in a hurry. Except for a few "hot spots" that need immediate attention, with continued sand pumping at the sand transfer plant the beach may renourish itself. I realize this thought brings panic to the engineers and contractors as much of the $50 to $100 million they are counting on receiving for their efforts may not need to be spent.

I would urge the Town to take another look at the entire beach renourishment project. The Shore Protection Board was formed five years ago. Their recommendations were based on data and a fact situation that existed three years ago. Their modified plan was adopted over a year ago. Things have changed, the needs are different. The plan, funding, and needs,-- the entire matter, should be reviewed and re-studied if necessary.

Funding for the project and the relationship of the project funding to the 2001 Town budget. As I read the 2001 budget, there is $19.729 million allocated for beach construction and renourishment in the years 2000 and 2001. $16.039 million for 2000, and $3.690 million for 2001. It would appear that none of this construction will take place in 2000 and likely very little in 2001. I believe it would be prudent to reduce the local levy to reflect this reduction in projected expenditures.

The bond interest income should be sufficient to pay for the bond interest expense considering none of the principal is being used during 2000 and possibly during 2001. Therefore, the transfer of $1.3 million from the General Fund to the Bond Fund appears not to be necessary in 2001.

The $1.263 million "pay as you go" expense for beach renourishment appears not to be necessary for 2001.

The local mill levy should be lowered to give the Palm Beach property tax payers the relief they should get considering the extraordinary valuation increases in Palm Beach real estate. I realize it is difficult for all forms of government, the Federal Government, as well as local government, to actually lower taxes. For some reason "government" believes they/it has a vested right in its' citizens property and money, and hates the thought of lowering taxes. Look at the Federal Government with a $2 Trillion surplus. They can't think fast enough of ways to spend this surplus, rather than giving it back to the taxpayers. I would urge the Palm Beach Town Council to set a positive example and levy only what you actually need to provide the goods and services required by the residents (taking into account reserves that are in place). Please lower the mill rate to reflect the funds not being used in 2000 and 2001 for beach renourishment.

The Town's position on the ECL. In reading news articles and letters regarding the ECL is becomes painfully obvious that there is a gross misunderstanding of the effects of creating an ECL, at any point, and of the offer of the state to draw the ECL line 100 feet seaward of the sea walls and dune line.

Pretend for a moment that a thief stole your car from your front yard. A few days later there was a knock on your front door and the thief was standing on your front step and was returning the four tires and wheels from your car...nothing else...and was expecting a "thank you."

Would you say that was "a good deal?" (This was the quote of a Palm Beach Town official as carried on the front page of the August 10-12, 2000 Palm Beach Daily News when describing the revised ECL proposal as "...a good deal for property owners.")

When a land owner purchases "ocean front" property, that land owner purchases, and pays for the ability to walk from his or her property directly into the ocean. That ocean front boundary moves east and/or west (in the case of Palm Beach) as the shoreline moves east or west. That is the right of "accretion," ergo, "ocean front." One of the property rights purchased and paid for by an ocean front property owner. Neither the State, nor the Town of Palm Beach, can take that property right away from that property owner without "just compensation."

The "thief" in this case is the State of Florida. They are saying that if Palm Beach wants to nourish its beaches, that an ECL must be established, and that land created seaward of the ECL is no longer private property. The right of accretion is being taken from the property owner. However, like the thief who brought back your tires and wheels and expected you to say thanks, the State of Florida is returning part of what they stole by moving the ECL 100 feet from the sea walls, and they expect our thanks. However, just like the thief that took your car, the State is still stealing from ocean front property owners, but the twist here is that they are asking the Town of Palm Beach to assist in the theft.

Florida Statute 161.141 states in part, "It is further declared that there is no intention on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his or her property. If an authorized beach restoration, beach nourishment, and erosion control project cannot reasonably be accomplished without the taking of private property, **the taking must be made by the requesting authority by eminent domain proceedings.** (Emphasis added).

The state is saying that they require establishment of an ECL. But, it is not their "intention...to deprive any upland property...owner of the legitimate and constitutional use and enjoyment of his or her property", and if there is a taking it "must be made by the requesting authority." They want the rights to the land, but they are leaving the liability of the taking for the Town of Palm Beach, the requesting authority.

For the Town of Palm Beach to take any position other than "NO ECL" is not in the best interests of the Town. It is naive and wrong for any Town official to believe that giving away beach front property rights to the state is "a good deal for property owners." The Town of Palm Beach is accepting a very large liability if they agree to take these property rights. The Town should look for a total exemption to setting an ECL, and if that cannot be accomplished, the Town should start a declaratory judgment action to prove that section of the law is unconstitutional.

The Town's position on filing a suit against the Federal Government. There will be a time that the Town will recognize that it is being "slow walked" by the bureaucracy. In November, if the Democrats take over the U.S. House, all of the good efforts by Congressman Shaw will be for naught as the minority members of congress lose quite a bit of their clout. If the Republicans maintain control of the U.S. House, I would guess that Palm Beach's problems might be moved to the back burner by the U.S. Corps, at least until their next appropriation bill is being heard, and will be considered only when the Town sends a delegation to Capital Hill to raise hell, which it won't.

I am enclosing two articles from recent copies of the Washington Post and Wall Street Journal that tell the story of another action in court system by Jerry Stouck. Jerry represent Maine Yankee, Connecticut Yankee, and Yankee Atomic Electric Companies, and is seeking damages against the Federal Government in the U.S. Court of Claims on behalf of his clients. The clippings speak for themselves, but without this court action, nothing would be done. The government, the U.S. Corps of Engineers, will do nothing meaningful, unless and until, they are made to do so by a court of law, or unless they believe a legal action will damage their nationwide ability to continue to ignore problems similar to those suffered by Palm Beach.

Palm Beach taxpayers should not be asked to pay to cure a problem caused by an agency of the Federal Government for the benefit of interstate and international commerce.

The Town of Palm Beach should set date, say the first week in January, 2001, by which to have reached a solution with the U.S. Corps. If a satisfactory solution isn't reached by that date, the law suit should be filed. Unless the Town takes that position, the government will toy with you until you are all out of public office, hoping that your successor will forget what this controversy was all about. I urge you to set a date, make a demand, and if success if not achieved by that date, file the suit.

Thank you for your continued consideration.

Sincerely,

William O. Cooley

cc: Thomas Bradford, Town Manager
John C. Randolph, Esq., Town Attorney

THE WASHINGTON POST
BUSINESS
E4 FRIDAY, SEPTEMBER 1, 2000

Utilities Can Sue DOE, Court Rules

U.S. May Be Liable for Nuclear Storage Costs

By DANA HEDGPETH
Washington Post Staff Writer

The U.S. Court of Appeals for the Federal Circuit yesterday upheld a lower court's ruling allowing nuclear-power companies to pursue legal claims against the Department of Energy for the government's failure to begin storing spent fuel waste.

The court rejected the government's argument that the utilities first had to go through an administrative remedies process with the Energy Department before seeking monetary damages in the U.S. Court of Federal Claims.

The utilities can now return to the claims court to determine how much the government will have to pay in damages, a figure that attorneys for the utilities said could be as much as $50 billion.

"This is a major victory for the utilities," said Jerry Stouck, a lawyer at the Washington firm Spriggs & Hollingsworth, who argued the case for nuclear utility Yankee Atomic and represents two other claimants. "The government is facing a big problem now. They are facing billions of dollars of damages that can be avoided, if they move the fuel."

The case has been closely watched by the U.S. nuclear industry and its opponents because it deals with the financial and safety issues of disposing of 30,000 tons of radioactive fuel stored at hundreds of reactors nationwide.

Congress established the Nuclear Waste Policy Act in 1982, obligating the DOE to begin removing the spent fuel from the plants in 16 years. Five years later, Congress followed up with a law directing the department to focus on putting the waste at Yucca Mountain, Nevada.

So far, the agency has spent a few billion dollars boring a tunnel into the mountain and studying the site, but environmental and political controversies have delayed its opening for years. The earliest the site could be ready is 2010.

"You can't just go to Sears and buy a shed and throw this stuff in it," Stouck said. "They've got to store it on a site." He said utilities have been incurring costs to keep the fuel at their sites.

In a statement issued from the DOE, Mary Anne Sullivan, general counsel for the department, said: "We will be discussing our litigation options with the Department of Justice in the coming weeks. We remain persuaded that the quickest and most efficient way to get relief to those utilities that are incurring costs as a result of our delay in accepting spent nuclear fuel is direct negotiation between individual utilities and the department."

The appeals court decision also ruled in a companion case involving Northern States Power Co. It reversed a claims court judge's decision ruling that the utility must first pursue administrative remedies at the DOE before seeking damages with the claims court.

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WSJ.com
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What's News—

* * *

World-Wide

* * *

The Energy Department faces suits for billions of dollars as an appeals court cleared four nuclear-power utilities to seek damages over the breaching of contracts to dispose of spent fuel. The government still hasn't opened a disposal site. (Article on Page A4)

* * *

Nuclear-Powered Plants Can Sue U.S. Over Disposal of Spent Fuel

By JOHN J. FIALKA
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The U.S. Court of Appeals here cleared the way for nuclear-powered utilities to sue the Department of Energy for billions of dollars in damages for breaching contracts to collect and dispose of their spent nuclear fuel.

In two decisions, a three-judge panel of the court upheld four nuclear utilities' right to sue in the U.S. Court of Federal Claims for damages stemming from the DOE's failure to remove the fuel, starting in 1998. The utilities are the first of 12 that have filed similar suits, seeking damages totaling $5.4 billion.

Robert W. Bishop, general counsel of the Nuclear Energy Institute, which represents utilities with nuclear plants, said the rulings are likely to invite most of the 66 operating nuclear plants to sue for damages. "It will take a lot of clever lawyers to prove that this decision does not apply to every plant," he said.

One case involves three New England utilities: **Maine Yankee Atomic Power Co., Connecticut Yankee Atomic Power Co.** and **Yankee Atomic Electric Co.** Each owns a nuclear plant where spent fuel is accumulating. A second case involves **Northern States Power Co.** in Minnesota, which also has nuclear plants, some of which have no more room to accumulate spent fuel.

Judges in the Court of Federal Claims differed over whether the utilities could sue for damages or would have to negotiate with the DOE under a clause in their contracts covering temporary delays.

Mary Ann Sullivan, DOE's general counsel, said the department is still weighing its legal options. "We remain persuaded that the quickest and most efficient way to get relief" for the department's failure to remove the spent fuel "is direct negotiations between the individual utilities and the department," she said.

In July, DOE negotiated its first out-of-court settlement in the matter with PECO Energy Co. of Philadelphia.

"We'd love to settle, but up to now [DOE has] been very stubborn about that. Now, hopefully this will shake some sense into them," said Jerry Stouck, a lawyer representing the New England utilities.

Under the law and the contracts signed by the DOE, the government was required to begin removing canisters of spent fuel from the plants on Jan. 1, 1998. Congress originally intended for the government to haul the fuel to Nevada for permanent underground storage in Yucca Mountain on the agency's Nevada Test Site.

But lengthy delays, lawsuits and scientific questions about burying the fuel in chambers inside the mountain have delayed the opening of the site until at least 2010. And Congress and the Clinton administration remain deadlocked over whether to designate a temporary site.

Spent nuclear fuel remains radioactive for thousands of years. At power plants, canisters of fuel are stored in temporary cooling ponds or in large cement casks while they await permanent disposal. Some environmental groups say the canisters are too dangerous to move. Some states have threatened to close plants if they lack further storage space.

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

October 6, 2000

Mayor Lesly S. Smith and Members of the Palm Beach Town Council
Palm Beach Town Hall
360 South County Road
Palm Beach, Florida 33480

RE: Response to Mayor's September 15, 2000 letter

Dear Mayor Smith and Members of the Town Council,

Thank you Mayor Smith for the response, dated September 15, 2000, to the letter I sent to the Mayor and Council dated September 6, 2000.

It pains me to say that the responses in the Mayor's letter, which I assume were prepared by the staff and the consultants, are generally wrong. Sorry, as I am a big fan of the Mayor's.

I don't expect you to take the word of an old bricklayer from south Minneapolis over that of your staff and consultants, but consider if you will, the content of the enclosed letter dated September 8, 2000. This letter is from Richard Walesky, Director of Palm Beach County Department of Environmental Resource Management, addressed to the Florida Department of Environmental Protection. Mr. Walesky's letter also comments on the "Petition for Variance and Waiver." This letter was written two days after the letter I sent to you on September 6, so I did not have the benefit of seeing it before I posted my letter to you.

Apparently Mr. Walesky saw the same problems in the "Petition for Variance and Waiver" that I saw, but he was much more eloquent in his expression of these problems. Mr. Walesky restates in technical terms, the problems I set out in my letter in lay-terms:

* not enough suitable sand for construction
* too much silt and resulting turbidity
* consistency of sand will be harmful to turtle nesting habits
* excavation depth that exceeds core sample depth
* no sand left for maintenance
* overfill factor will be devastating to near-shore habitat

I am bringing this to your attention hoping that you understand that I am not the only one who believes your staff and consultants are wrong, and that the Mayor and Council are being given bad advice and false information

Sincerely,

William O. Cooley

enclosure
cc: Town Manager

2/02/03

Town Council fears litigation, not environmental damage

The Jan. 26 Local Voices column written by Sandra Tate stated, "There are several environmental issues relative to beach renourishment that were carefully weighed in the design process. These issues include potential effects on endangered and threatened species of sea turtles, burial of near-shore rock habitat and turbidity." While this may be technically accurate, it falsely leads the reader to believe this "concern for the environment" was a voluntary action of the town, when in fact it came as a result of litigation.

This is a revisionist's attempt to rewrite history.

The Palm Beach Shore Protection Board made a recommendation to the Town Council to dump sand on the beach from "inlet to inlet" without regard to "cost" or the effects on the environment. The council scaled back this multi-hundred-million-dollar "plan" to the $78 million plan that exists today and that has received town approval in a series of resolutions.

There was little effort initiated by the Town of Palm Beach to save the Breakers Rock Pile or Breakers Reef, or the acres of "hard bottom" slated to be covered with sand and silt. Any assertion to the contrary just isn't so.

It was only through the efforts of a small group of residents that this environmental consideration was given. Specifically, the late Nancy Douthit (former council president), Dr. Sten Lilja, Dr. Sanford Kuvin, Judy Schrafft, Connie Gasque, Joel Martino and 100 or so contributors to Beach Alert Inc., which filed legal actions against the town *to force the town to protect the delicate near-shore environment.* This litigation went on for a year or so with the town doing everything in its power to roll over these good people. The town may now be "carefully" weighing environmental considerations but only because of the litigation.

The result of this litigation was a partial victory; some hard bottom was protected, and a half-hearted attempt not to cover the Breakers Rock Pile and Reef was achieved. Any attempt to rewrite history or diminish the role of Nancy Douthit and these other good people in the preservation of the near-shore environment cannot and will not be tolerated by fair-minded citizens.

WILLIAM O. COOLEY
Palm Beach

9/30/01

ciation leads town wrong way on beach project

know it is incorrect. The Town of Palm Beach has passed resolution No. 43-00, which approves a ntract between the town and the state, and says tate may pay a maximum of only 39.4 percent of ial renourishment of the Midtown and ojects covered under the contract. The s that the state *may* pay it, *if* it can get ated by the legislature.

passed Resolutions No. 26-01 and the cost of the entire beach er the next 11 years with an percent coming from state lacing sand on the beach on ost portion of Palm Beach), 00, with $1,864,000 te; that is, 12.6 percent from ociation and Mr. Lickle the funding for the beach the state of Florida. This is on, it is a blatant falsehood.

atened

lm Beach Civic Association ach project projected to cost wn's figures), with g of $20,513,282 (using the n is $55,576,218 short. The that money are more taxes ves.

e fiscal consultant hired by mended that the cost of the assessments against the ers. It was Mr. Lickle's nd direction from the Civic hat killed that fair and mended that the cost of the rom general taxation on all

unity to put the question of oters in a referendum. This y the Palm Beach Civic ith such limp arguments to mplicated for the citizens to

to raise $23.5 million of the the sand on the beach as olution, we are then short figures are actually in 1998 dollars, with no increase yet for inflation).

And, if you think your taxes aren't going to increase because of the beach bonds, that's not the case. Please understand that the debt service payments on the bonds were back-loaded. The 2002 and 2003 annual payments are $1.2 million each, and then the yearly payments increase in 2004 for seven more payments of $4 million each (Source: Town of Palm Beach Comprehensive Budget). The bond maturities were strung out over 11 years and the debt service was back-loaded so the Civic Association could claim that your property taxes wouldn't increase because of the beach plan. *They will.*

The leadership of the Palm Beach Civic Association misstates the law. Florida Statute 161.141 (please look it up at www.leg.state.fl.us/Statutes/index) provides that any new beach created east (i.e. seaward) of the Erosion Control Line (ECL) becomes "sovereignty lands of the state bordering on the Atlantic Ocean." In other words, when the ECL is set, all of the newly created beach seaward of the ECL becomes public land.

The Palm Beach Civic Association's beach program, which will require future provisions for public parking and public beach access, will change the town forever. In adopting Resolutions No. 43-00, 26-01 and 41-01, the town has committed to *future* maintenance renourishment of the beach. In that regard, the last sentence in the penultimate paragraph in the Oct. 13, 1999, letter from the state to the Town, which has been referred to in Mr. Lickle's speech and letter, reads: "Future maintenance nourishment of the area will be subject to all applicable program eligibility requirements for public access, as will other proposed shore protection projects located south of R121."

Mr. Lickle and the Civic Association said they "resent discussions about what we will have to do for future projects." Besides the raw arrogance of that statement, one can see why they don't want to discuss the issue. They don't want you to know that the next time we need more sand on the beach (i.e. "maintenance renourishment") in five or seven years (see Town Resolution No. 26-01), the public parking and public access easement requirements must be implemented. It is important to remember that the Midtown Beach volume was already one-third gone three years after it had received its initial sand placement.

There *is a requirement at the time of renourishment* for the Town to provide public beach access, public parking and associated facilities. No wonder they don't want to talk about it.

All of this was underscored in another letter to the town from Dr. Alfred Devereaux, director of the State of Florida Office of Beaches and Coastal Systems, dated June 15, 2001, in which the town was advised that in the famous "handshake" deal (under which the town was going to be allowed to move the ECL seaward) that the town was *shaking hands with itself*. There is no deal.

Ultimate cost unknown

Town officials are hell-bent on embarking on the sand project. They have no idea what this involves, what the ultimate cost will be, or where this will lead as a town.

It is time for the leaders of the Palm Beach Civic Association to look at the truth and admit they are wrong. The time has come for the people who are such ardent supporters of this flawed beach project to get past the denial stage: The environmental aspect of the project was shameful, but thanks to a handful of citizens it has been corrected; the financial aspects of the project are going to be devastating to property taxes; and the changes to Palm Beach that will result because of this new public beach — increased beach use and the parking and access requirements — will change Palm Beach for all time.

We as a community should have a full and open public debate on these issues before the project proceeds any further. An advisory referendum question should be placed on the next ballot. Let's determine, once and for all, whether the Palm Beach taxpayers (after having been fully informed of the ramifications of the beach plan) wish to spend $30 to $60 million or more (plus large financing costs) of town funds on sand. And finally, the Palm Beach Civic Association's leaders should either give up its tax-exempt status so they can legally act as a political action committee or they should get out of politics and give control of the Town of Palm Beach back to the voters.

WILLIAM O. COOLEY
233 TRADEWIND DRIVE
PALM BEACH, FLORIDA 33480

March 20, 2002

Mayor Smith, Council President Brooks
and Members of the Town Council
360 South County Road
Palm Beach, Florida 33480

RE: Mitigation of Breakers' Reef.

Dear Mayor Smith and Members of the Town Council,

At the February council meeting I asked Al Dusey a question about mitigation of the Breakers' Reef. He responded that my "suppositions" were not necessarily correct. I have checked my "suppositions" and I find they <u>are</u> correct.

Let me ask the question again. The Town had an opportunity to mitigate the damage that will be done to the Breakers' Reef and Rock Pile by creating an artificial reef <u>prior</u> to starting the fill project. If they chose to do that, the mitigation ratio would be 1 to 1.

The alternative is to commence the fill project and, if and when the Reef and Rock pile is covered by silt and/or sand, which it will be, the Town must mitigate at a 3 to 1 ratio.

Mitigating at a 3 to 1 ratio will cost the Town substantially more money, possibly millions of dollars. My question to Mr. Dusey was:

Who made the decision?

Where is this extra money in the budget?

I have checked with Dan Bates at the County DERM, and I have had an inquiry made of Martin Seeling, the Director of Permitting at the State DER. The answer that I have come up with is:

Yes it is true, if we mitigate before the project starts we can get by with a 1 to 1 mitigation, however, Mr. Dusey made the decision not to mitigate ahead of time, but to gamble that the Breakers' Reef and Rock Pile won't be covered.

Further, I have checked on the basis for this decision and find that it is based on modeling done by an engineering firm.

These questions should be asked and answered before sand is placed on the beach.

1.) Should a decision of this magnitude be made by a staff member?

2.) Considering the fact that this decision, if wrong, could cost the taxpayers millions of dollars, shouldn't this matter be an agenda item, publicly discussed, and voted on by the Town Council?

3.) Was the engineering company who provided information that led to the decision not to mitigate before the project was started asked if they would stand behind their engineering data?

4.) Was the engineering company put on notice that if they were wrong and the 3 to 1 mitigation was needed at a later date, that the Town would be looking to them or their insurance company to pay for the extra mitigation?

I think these questions should be answered immediately and in a public forum.

I had previously written you a memo asking to have the question of the ECL placed on the agenda. I am asking each of you, individually, the same once again. Please place the question of the impact of the ECL on the agenda for public discussion and place the questions I have asked in this letter on the agenda for public discussion.

I appreciate your consideration.

Sincerely,

William O. Cooley

WILLIAM O. COOLEY
8 WINDSOR COURT
PALM BEACH, FLORIDA 33480

February 12, 2004

Colonel Robert Carpenter
U.S. Army Corps of Engineers
701 San Marco Boulevard
Jacksonville, Florida 32207

Dear Colonel Carpenter,

This letter is being written to you to ask that you please not succumb to political pressure to approve the beach renourishment project at Phipps Ocean Park in Palm Beach, Florida.

There are many citizens of Palm Beach who feel that this is merely a "cosmetic" renourishment and one not warranted by standards that the U.S. Corps of Engineers should be using to determine whether or not renouishment of this stretch of beach is necessary.

The part of the Town's beach restoration Plan that was undertaken a year ago, in particular the so called, "Extended" northern part of the Midtown project, has been a monumental failure. Not only has most of the mud--like sand that was used for the project now washed away but, already in July of 2003, after 4 months, the Palm Beach County's Department of Environmental Resource Management's official aerial survey photos showed, that a substantial portion of the Breakers Rockpile had been covered. It was part of a historic and valuable hard-bottom environmental feature of Palm Beach.

To add insult to injury, I am enclosing two pages from our local web-site titled "Town Council Insults USACE - July 2003." This web-site reports upon actions of the Town Council. I find this story particularly offensive since I had spent six years in an U.S. Army Engineer Battalion from 1959 to 1965 and didn't then, and don't now, share the opinion that the Palm Beach Town Council has of the Corps.

Please do not let political pressure effect your handling of the Phipps Ocean Park project. There are many, many, people in Palm Beach that believe that sand should not be added to a beach merely to make it "better to swim." If the people on the south end of Palm Beach want storm protection, they should do like the rest of the town has done, construct sea-walls and/or upgrade existing sea walls to meet the height code.

Sincerely,

William O. Cooley

enclosure

William O. Cooley
8 Windsor Court
Palm Beach, Florida 33480

April 23, 2004

John F. Studt, Chief -- South Permit Branch
Ms Penny Cutt, Phipps SEIS Project Manager
U. S. Army Corps of Engineers -- Suite 500
4400 PGA Boulevard
Palm Beach Gardens, FL 33410

RE: Comments of Phipps Park FSEIS, DA permit application #200000380 (IP-PLC)

Dear Mr. Studt and Dear Ms. Cutt,

I am writing to request that you deny the Phipps Park restoration project. This project has, as all of the Palm Beach beach restoration projects, become driven by politics, and not driven by the need for storm protection, or by any consideration for the environment.

The last project that was completed by the Town of Palm Beach, the Mid-town Beach restoration project, has completely washed away in 12 months. Many of us told the Town that material they were going to use for the restoration was too fine and too silty. But, they went ahead, spent $5.3 million dollars, and the sand is gone -- and the Breakers Rock Pile is mostly covered -- killed.

There is only one thing that motivates this Town Council and makes them waste money dumping sand in the water. That is a voting block made up of the Palm Beach Civic Association and the Citizens Association. The Citizens Association represents the thousand vote "voting block" that has developed south of Sloan's Curve and who vote 85% in favor of anybody who will tell them that they are going to get "free" sand in front of their condominiums.

There is "hard bottom" at Phipps that will do the job for storm protection. The sand that they intend to dump over this hard bottom is so fine that it will wash away and do great damage to the surrounding marine life.

Enclosed is the copy for a letter to the editor that will be published in the Palm Beach Daily News on Sunday, May 2, 2004. I realize that date is past the deadline for submitting comments but please consider the unpublished text as part of my submission.

This project is a travesty to the environment and totally unnecessary. Please do not permit it.

Sincerely,

William O. Cooley

enclosure

To the editor, April 21, 2004

It was embarrassing to read the "Local Voices" column written by Sandra Tate, Coastal Management Coordinator for the Town of Palm Beach, in the April 11, 2004 Palm Beach Daily News. Ms. Tate probably believes that some of us don't save back copies of the Daily News in which she has made previous pronouncements.

For example: in the Sunday January 26, 2003 "Local Voices" penned by Ms. Tate, she proclaimed, "It is expected that within eight years the project area will be eroded back to its current position and will require renourishment." Well, here we are, fifteen months later and the sand is eroded away and now the excuses are coming.

Instead of saying, "I (the Town of Palm Beach) was wrong," or "You (the critics of pumping sand) were right, the grain size was too small and there was too much silt in stuff we pumped on the beach," we are subjected to fifteen paragraphs of excuses wherein she tries to tell us that this disaster "succeeds as predicted."

We are asked to believe that the $5.3 million that was spent on the missing sand was well spent because the sand didn't "disappear" and it isn't "gone" or "lost" but that the sand is laying on the ocean floor ready to be pumped back on the beach again.

Let me see now, isn't that where we were BEFORE we spent $5.3 million on pumping sand? No sand on the beach and plenty of sand off-shore just waiting to be pumped?

Ms. Tate quotes a firm by the name of Applied Technology & Management (ATM) (you'll hear more about them later) several times in her piece. ATM was the consultant that the Town hired in the mid-'90's to prepare the Comprehensive Coastal Management Plan Update (CCMP). One important fact keeps getting lost, that is, what exactly did the Shore Protection Board and ATM recommend in the CCMP? The CCMP called for inlet to inlet sand dumping, without regard to cost or to the environment at a projected cost of $100 - $200 million. **That is what the Shore Board and ATM recommended**.

Aubrey Consulting, Inc., was hired by the Town to do a Peer Review of the CCMP. Their review criticized the Shore Protection Board's CCMP so severely that the Peer Review was buried by the Town never to see the light of day again.

Let me quote a few paragraphs from the Aubrey Consulting Peer review report: "An extremely aggressive, unprecedented set of shore protection projects have been recommended in the CCMP Update. Over fifteen million cubic yards of beach replenishment and forty-six T-Groins, costing over one hundred million dollars have been recommended to manage the shoreline over the next thirty years....A plan of this magnitude essentially is unprecedented. Consequently, strong conclusive scientific and economic information should be provided to defend expenditures of this magnitude."

The sand sources and the "fine" sand that was available for renourishing the beaches has been in question from the beginning. Two problems with sand that is "finer" than the "native" beach sand are: (1) because of the substitute sand's fineness it tends to wash away faster, requiring an additional amount of fill (or "Overfill") to supply an equivalent amount of beach compatible material, and (2) when the fine sand washes away, it covers and kills valuable nearby reefs. The Aubrey Peer Review, the one that was disregarded by the Town fathers, noted the problem and stated: 'Offshore sand investigations completed to date show that much of the offshore sediment is relatively fine-grained compared to native beach sand." The Town went on to spend another $450,000 for another sand investigation report, which produced the SAME conclusions. They proceeded anyway to spend $5.3 million pumping sand, mud, and silt on the Mid-Town project only to see it wash away at a record pace.

Ms. Tate makes reference to the Town of Palm Beach Strategic Plan and uses it as an excuse to plow ahead with this boondoggle. The Strategic Plan calls for "flexibility and adjustments through a process called 'adaptive management'". "Adaptive management is an active commitment to improve future projects based on the performance of previous projects", (Aubrey Consulting, Inc.). In plane English, the Phipps project, which is now in the public comments phase, should have been modified to conform to the lessons learned from the Mid-town project. **IT WASN'T.**

The plan for Phipps is to dump another $8 to $10 million worth of sand that is much too small (.22 mm & .32mm when it ideally should be .50mm) and watch that wash away. Why? Why? It is politics in its most basic form. The sole reason, and its **not** for storm protection, is to appease The Palm Beach Civic Association, and to cash in on the 1,000 or so votes from the condominium dwellers south of Sloan's Curve that have been promised a free sandy beach by the Civic and Citizen's Associations. A free sandy beach paid for in large part by the rest of us who don't have ocean frontage. Now, if that's the cost for us land locked property owners, so be it. But, why doesn't the Town Council have the guts to stand up and say it? Why do they send a $100,000 a year public works employee to try baffle us with unreadable prose.

There is one final irony: Ms. Tate tells us in the last paragraph of her article that the Mid-town project has been nominated for a "Best Beach" award presented by the American Shore & Beach Preservation Association. That really sounds great. But a little investigation shows that this "august" Association is sponsored by, you guessed it, the very contractors that have done the work for the Town of Palm Beach. For example, Applied Technology & Management (ATM), (Platinum Level Sponsor who contributes $5,000 a year to this Association) were the ones who designed the very plan to which they are presenting the award. Also, one of their Silver Level Sponsors is Bean Stuyvesant, LLC. You'll remember them, they are the dredging contractor who just pumped the mud and silt on the Mid-town beach, took the $5 million, and left town before it washed away. I wonder what kind of award they will be presenting? How about an Oscar for best disappearing beach?

There are other members of this grand association who may give us an award; a Gold Level Sponsor is Great Lakes Dredge and Dock Co., you will remember them from about 10 years ago when they were criminally prosecuted and convicted for price fixing in Florida projects, including

a Delray Beach project. This is quite a group. I can hardly wait to see if we win.

The bottom line is that, the plan is flawed, the sand is gone, the money is wasted, the council is charging ahead to make the Civic Association and the south end condo dwellers happy, the tax payers are being fleeced, and we are all leaving town for six months and leaving the checkbook in the hands of incompetents.

Sincerely,

William O. Cooley
Former member of the Palm Beach
Strategic Planning Board

GARY M. BRANDENBURG
Brandenburg & Associates, P.A.
of Counsel
Haile, Shaw & Pfaffenberger, P.A.

Three Golden Bear Plaza • Suite 300
11780 U.S. Highway One
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249 Royal Palm Way • Suite 501
Palm Beach, Florida 33480

ATTORNEY AT LAW

November 9, 2004

Skip Randolph, Esq.
Jones Foster, et al.
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

Re: ***Use of Public Funds for Private Purposes***

Dear Mr. Randolph:

I represent Mr. William Cooley, a resident and taxpayer of the Town of Palm Beach. Mr. Cooley objects to the use of public funds to restore private property along the southern oceanfront portion of Palm Beach.

We understand that the Town Council has authorized the use of funds from the Beach Renourishment Bond issue to rebuild private property. The private property to be restored is located landward of the Erosion Control Line and is not located on Town-owned land or land upon which the public has any easements or rights of access. Consequently, this expenditure is purely to benefit private landowners and provids storm protection for private property interests during the winter storm season.

The Beach Renourishment Bonds and interest earned on the various funds associated with the Bonds are restricted to use on genuine beach renourishment programs. The proposed use of the funds to restore private property fails to meet the definition of a "project" in the Bond Resolution. It is true that some sand must be pumped on private property when a "real" beach renourishment project is undertaken; however, the pumping on private property is not done on a piecemeal basis that subjects the pumped sand to winter storms and likelihood of being washed out by the winter's northeastern storms. To be a legitimate expenditure, it would have to be part of an ongoing planned renourishment project that actually builds up areas east of the Erosion Control Line where public easements exist. Consequently, this effort cannot be disguised as part of a beach renourishment plan and, therefore, cannot be said to serve a "public purpose."

2 different items!

It also constitutes

We believe this expenditure violates the provisions of Bond Resolution No. 11-00 and is an illegal expenditure of public funds for purely private purposes. Should the Town desire to undertake this project, the benefited owners should be assessed the cost. If at a later date the effort is shown to actually contribute to a genuine beach renourishment effort, the benefits could be prorated between the Bond Fund and the assessment.

Please bring this to the Town Council's attention during today's meeting and ask them to reconsider their decision and put this matter on hold for further consideration.

My client has indicated an interest in pursuing this matter further if necessary; however, we hope to avoid litigation with a more thorough discussion of this issue by the Town Council.

Respectfully submitted,

BRANDENBURG & ASSOCIATES, P.A.
Of Counsel to
HAILE, SHAW & PFAFFENBERGER

By: Gary M. Brandenburg

GMB/slm

cc: William Cooley

November 17, 2004

John C. Randolph, Town Attorney
Town of Palm Beach
c/o Jones Foster, et al.
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

Re: ***Use of Public Funds for Dune Restoration***

Dear Mr. Randolph:

Thank you for sharing a copy of your memo of November 15, 2004, and the opinion of your bond counsel.

I believe the opinions create a very narrow trail for the Council to walk down. The opinions assert that the use of bond funds and the use of special assessments are both legal. Inherent in the opinions are the basis upon which the conclusions rest. If bond proceeds are used, they must be for a "paramount public purpose" to be legal. At the same time, in order for a special assessment to be legal, the benefits must uniquely and proportionately benefit the private property interest being assessed. For both methods to be legal, it follows that the project must both serve a "paramount public purpose" and provide a uniquely private proportional benefit at the same time. This is a difficult conclusion to reach. Clearly, the restoration of dunes on private property, with no intention of creating any beach where public easements exist, at this time of year has a primary purpose of winter-storm protection for abutting private property interests, who should be assessed the cost.

This is a private property storm-protection issue and really no different in nature than trying to use public funds to replace oceanfront windows with hurricane proof glass for storm protection. The glass replacement cost would be assessed against homeowners. This should be also.

Thank you for your careful consideration of this issue.

Respectfully submitted,

BRANDENBURG & ASSOCIATES, P.A.
Of Counsel to
HAILE, SHAW & PFAFFENBERGER

By:_____
Gary M. Brandenburg

GMB/slm

cc: William Cooley

JONES
FOSTER
JOHNSTON
& STUBBS, P.A.
Attorneys and Counselors

Flagler Center Tower, Suite 1100
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West Palm Beach, Florida 33402-3475

John C. Randolph, Esquire
Direct Dial: 561-650-0456
Direct Fax: 561-650-0425
E-Mail: jrandolph@jones-foster.com

"Revenue" bond to avoid Referendum
"construction bond" 2 year limit to be tax exempt
(6) palms Tribary + Sunrise excavation
Bond did not include Reach 8 initially, Bond "re-issued" to escape 2-year limit

VIA FAX: 838-5411

November 15, 2004

Mr. Peter B. Elwell
Town Manager
Town of Palm Beach
Post Office Box 2029
Palm Beach, Florida 33480

Re: Town of Palm Beach
Special Assessment for Dune Restoration
Our File No. 13156.8

Dear Peter:

During the Town Council meeting of November 9, 2004, a letter was delivered to me by an attorney for William Cooley which he asked, in the letter, to call to the attention of the Mayor and Town Council. A copy of the letter was circulated at the meeting to the Mayor and Town Council and the Town Council elected to give further consideration to the letter at its meeting of November 15, 2004, scheduled to begin at 10:00 a.m. For purposes of reference, a copy of the November 9, 2004 letter is attached.

Because it is contended in the letter that the use of funds from the beach renourishment bonds for the purposes authorized by the Council violates the provisions of Bond Resolution No. 11-00, we contacted bond counsel and asked that counsel review the letter of November 9, 2004, and render an opinion as to the opinions stated in the November 9th letter. A copy of bond counsel's opinion is attached hereto. The opinion concludes that "the Town may apply the proceeds from the 2000 Beach Restoration Project revenue bond to finance the dune reconstruction project or levy a special assessment to cover the costs."

The letter from bond counsel, in addition to opining on the use of proceeds from the revenue bonds, also contains a good discussion on the general law in Florida relating to the requirement that there be a public purpose in the expenditure of public funds. The opinion states in part:

> "In order to determine whether or not a municipality is running afoul of the Florida Constitution when the municipality is exercising its taxing power, the traditional test is whether or not the improvements serve a "paramount public purpose." However, a municipal purpose comprehends all activities essential to the health, morals, protection, and welfare of the municipality. The Florida Constitution expressly recognizes that the public interest may even be served by facilitating private economic development. The incidental benefits or advantages gained by private enterprise from expenditures made for a public purpose do not vitiate or diminish the public purpose."

determination for the governing body involved. The Mayor and Town Council have previously made a factual determination that there is a public purpose for the expenditure of the funds for the restoration of the dunes. If the Council, however, in light of events which have occurred since its original decision desires to give further consideration to this issue it may do so at its meeting of November 16, 2004.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

John C. Randolph
JCR/esm
Enclosures
cc: Richard J. Miller, Esquire
Gary M. Brandenburg, Esquire
Paul Brazil, Director of Public Works

Edwards & Angell LLP

One North Clematis Street Suite 400 West Palm Beach, FL 33401 561.833.7700 fax 561.655.8719

To : John C. Randolph, Esq., Town Attorney, Town of Palm Beach

From : Richard J. Miller
Kevin P. Stack

Date : November 15, 2004

Re : Town of Palm Beach Funding of Dune Reconstruction

QUESTION PRESENTED

1. May the Town of Palm Beach (the "Town") utilize funds from the Beach Restoration Project bond issue to restore dunes located on private property?

2. May the Town levy a non ad valorem special assessment against private citizens to pay for the dune restoration effort?

BRIEF ANSWERS

1. Yes. According to the terms of the Resolution authorizing the Beach Restoration Project revenue bonds and general Florida law, the Town of Palm Beach (the "Town") may utilize funds from the Beach Restoration Project bond issue to restore dunes located on private property.

2. Yes. Florida law supports the Town's ability to levy a non ad valorem assessment against private citizens to pay for the dune restoration effort and any citizen attempting to challenge such a decision faces a significant legal hurdle.

DISCUSSION

1. Use of Bond Proceeds

Municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.[1] However, the Florida Constitution prohibits the state, counties, school districts, municipalities, or agencies of any of them from being a joint owner with, or stockholder of, or giving, lending, or

[1] Fla. Stat. Ann. § 166.021(1).

Edwards & Angell

using taxing power or credit to aid any corporation, association, partnership, or person.[2] Since the legislature can delegate to a municipality only powers for municipal purposes, any exercise of power must serve a public or municipal purpose in order to be legal. The phrase "municipal purpose" means there must be an activity related to the conduct of municipal government, the exercise of a municipal function, or provision of a municipal service.[3]

In order to determine whether or not a municipality is running afoul of the Florida Constitution when the municipality is exercising its taxing power, the traditional test is whether or not the improvements serve a "paramount public purpose."[4] However, a municipal purpose comprehends all activities essential to the health, morals, protection, and welfare of the municipality.[5] The Florida Constitution expressly recognizes that the public interest may even be served by facilitating private economic development.[6] The incidental benefits or advantages gained by private enterprise from expenditures made for a public purpose do not vitiate or diminish the public purpose.[7]

The current dune restoration contemplated by the Town will occur in an area where a substantial number of condominiums and high rise apartments exist. Therefore, a large number of residents stand to be protected from the Town's efforts, reinforcing the argument that a valid public purpose exists. Additionally, the Town can validly claim this is an emergency situation since the damage to the dunes occurred as a result of the recent hurricanes and the work is required to protect the property owners adjacent to the dunes from winter storms. This claim of an existing public emergency is supported by a First Amended Emergency Final Order (the "Order") issued by the Florida Department of Environmental Protection ("DEP") on September 27, 2004 and Town Council findings made on November 1, 2004. In the Order, the DEP stated that Hurricane Jeanne "created a state of emergency threatening the public health, safety, welfare and property throughout the Emergency Areas." Palm Beach County was included in the definition of "Emergency Areas." The Order also stated that "immediate action by Florida's citizens and government is necessary to repair, replace, and restore structures, equipment, surface water management systems, works, and operations damaged by the Hurricane." (emphasis added). The DEP also addressed the specific issue of dune restoration in Section 7(a) of the Order stating "[t]he following activities may be undertaken by local governments and utility companies to protect, repair, or replace structures and property without notice to the Department ... (3) Return of sand to the beach and dune system that has been deposited upland by the Hurricane, and restoration of a damaged dune system using beach compatible sand from an upland source."

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[2] Fla. Const. Art. VII § 10.
[3] *City of Ormond Beach v. County of Volusia*, 535 So.2d 302 (Fla. 5th DCA 1988).
[4] *Orange County Indus. Dev. Auth. v. State*, 427 So.2d 174 (Fla. 1983).
[5] *Greater Orlando Aviation Auth. v. Crotty*, 775 So.2d 978, 980 (Fla. 5th DCA 2000); *State ex rel. Harper v. McDavid*, 200 So. 100 (Fla. 1941); *See also* Fla. Jur.2d Counties and Municipal Corporations § 301.
[6] Fla. Const. Art. VII § 10(c).
[7] *Brandes v. City of Deerfield Beach*, 186 So.2d 6 (Fla. 1966).

Beach projects' rationale based on shifting sand

PB Daily News

By WILLIAM O. COOLEY
Special To The Daily News

It was embarrassing to read the Local Voices column written by Sandra Tate, coastal management coordinator for the Town of Palm Beach, in the April 11 *Palm Beach Daily News*. Ms. Tate probably believes that some of us don't save back copies of the *Daily News* in which she has made previous pronouncements.

Mr. Cooley

For example, in a Jan. 26, 2003, Local Voices, she proclaimed: "It is expected that within eight years the project area will be eroded back to its current position and will require renourishment." Well, here we are, 15 months later and the sand is eroded away and now the excuses are coming.

Instead of saying, "I (the Town of Palm Beach) was wrong" or "You (the critics of pumping sand) were right, the grain size was too small and there was too much silt in stuff we pumped on the beach," we are subjected to 15 paragraphs of excuses wherein she tries to tell us that this disaster "succeeds as predicted."

We are asked to believe that the $5.3 million that was spent on the missing sand was well spent because the sand didn't "disappear" and it isn't "gone" or "lost" but that the sand is lying on the ocean floor, ready to be pumped back onto the beach again.

Let me see now, isn't that where we were *before* we spent $5.3 million on pumping sand? No sand on the beach and plenty of sand offshore just waiting to be pumped?

Ms. Tate quotes a firm hir[illegible] an additional amount of fill (or "overfill") to supply an equivalent amount of beach-compatible material, and (2) when the fine sand washes away, it covers and kills valuable nearby reefs.

The Aubrey Peer Review, the one that was disregarded by the town fathers, noted the problem and stated: "Offshore sand investigations completed to date show that much of the offshore sediment is relatively fine-grained compared to native beach sand." The town went on to spend another $450,000 for another sand investigation report, which produced the *same* conclusions. It proceeded anyway to spend $5.3 million pumping sand, mud and silt on the Midtown project only to see it wash away at a record pace.

Ms. Tate makes reference to the Town of Palm Beach Strategic Plan and uses it as an excuse to plow ahead with this boondoggle. The Strategic Plan calls for "flexibility and adjustments through a process called 'adaptive management.' "

"Adaptive management is an active commitment to improve future projects based on the performance of previous projects" (Aubrey Consulting Inc.). In plain English, the Phipps project, which is now in the public comments phase, should have been modified to conform to the lesson learned from the Midtown project. *It wasn't.*

The plan for Phipps is to dump another $8 million to $10 million worth of sand that is much too small (0.22 mm and 0.32 mm, when it ideally should be 0.50 mm) and watch that wash away. Why? Why? It

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Ms. Tate quotes a firm by the name of Applied Technology & Management (ATM — you'll hear more about them later) several times in her piece. ATM was the consultant that the town hired in the mid-'90s to prepare the Comprehensive Coastal Management Plan Update. One important fact keeps getting lost; that is, what exactly did the Shore Protection Board and ATM recommend in the CCMP? The CCMP called for inlet-to-inlet sand dumping, *without regard to cost or to the environment* at a projected cost of $100 million to $200 million. *That is what the Shore Board and ATM recommended.*

Aubrey Consulting Inc. was hired by the town to do a peer review of the CCMP. Its review criticized the Shore Protection Board's CCMP so severely that the peer review was buried by the town, never to see the light of day again.

Let me quote a few paragraphs from the Aubrey Consulting peer review report: "An extremely aggressive, unprecedented set of shore protection projects have been recommended in the CCMP Update. Over fifteen million cubic yards of beach replenishment and forty-six T-Groins, costs over one hundred million dollars have been recommended to manage the shoreline over the next thirty years. . . . A plan of this magnitude essentially is unprecedented. Consequently, strong conclusive scientific and economic information should be provided to defend expenditures of this magnitude."

The sand sources and the "fine" sand that was available for renourishing the beaches have been in question from the beginning. Two problems with the sand that is finer than the "native" beach sand are: (1) because of the substitute sand's fineness it tends to wash away faster, requiring is politics in its most basic form. The sole reason, and it's *not* for storm protection, is to appease the Palm Beach Civic Association, and to cash in on the 1,000 or so votes from the condominium dwellers south of Sloan's Curve who have been promised a *free* sandy beach by the Civic and Citizens associations. A free sandy beach paid for in large part by the rest of us who don't have ocean frontage. Now, if that's the cost for us landlocked property owners, so be it. But, why doesn't the Town Council have the guts to stand up and say it? Why do they send a $100,000 a year public works employee to try to baffle us with unreadable prose?

There is one final irony. Ms. Tate tells us in the last paragraph of her article that the Midtown project has been nominated for a Best Beach award presented by the American Shore & Beach Preservation Association. That really sounds great. But a little investigation shows that this "august" association is sponsored by, you guessed it, the very contractors that have done the work for the Town of Palm Beach. For example, Applied Technology & Management, (platinum level sponsor that contributes $5,000 a year to this association) was the one that designed the very plan to which the award is being presented. Also, one of its silver level sponsors is Bean Stuyvesant LLC — the dredging contractor that just pumped the mud and silt on the Midtown beach, took the $5 million and left town before it washed away. I wonder what kind of award it will be presenting. How about an Oscar for best disappearing beach? . . .

The bottom line is that the plan is flawed, the sand is gone, the money is wasted, the council is charging ahead to make the Civic Association and the South End condo dwellers happy, the taxpayers are being fleeced, and we are all leaving town for six months, and leaving the checkbook in the hands of incompetents.

Mr. Cooley is a former member of the Palm Beach Strategic Planning Board and a frequent critic of the beach restoration projects.