MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON DECEMBER 1, 1999

I. CALL TO ORDER AND ROLL CALL

The Special Meeting of the Town Council was called to order at 1:35 p.m. by President Lesly Smith in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director Jane Skittone, Public Works Director Al Dusey, Town Engineer James Bowser, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. APPROVAL OF AGENDA

Town Manager Doney requested that an agenda item be added under item VIII. ANY OTHER MATTERS, regarding the review of new telecommunication providers by legal counsel.

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

IV. CONSIDERATION OF "REVISED" STATEMENT OF INVESTMENT POLICY REGARDING RETIREMENT SYSTEM DUE TO TYPOGRAPHICAL ERROR

Town Manager Doney explained that there had been a typographical error in the investment policy statement of the Town Retirement System, as part of Resolution No. 31-99, and a corrected copy was now being provided to the Town Council, with Page 2 of the investment policy statement of the Retirement System being replaced.

President Pro-Tem Wyett moved approval of the correction to Resolution No. 31-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

V, CONSIDERATION OF COMPREHENSIVE COASTAL MANAGEMENT PLAN ALTERNATIVES PER MR. DUSEY'S MEMORANDUM DATED NOVEMBER 23, 1999

Public Works Director Al Dusey reported that the cost figures based on the State cost sharing had been updated. He explained that the original alternative proposed on October 26, 1999, would have cost the Town approximately $13,650,000 in 1999 dollars, and based on when the projects would be finished, it would be approximately $14,171,000. Alternative 2, which he had been directed to investigate, included Reach 8, which would cost the Town approximately $20,000,000 on 1999 dollars, and approximately $21,300,000 inflated dollars based on when the projects would be constructed.

Mr. Dusey recommended the following program:

Reach 1 - Continue to support the implementation of the Lake Worth Inlet Management Plan at U.S. Army Corps of Engineer expense.

Reach 2 - Provide one-time beach restoration of a narrow berm without a groin field. This beach should be fed by the Sand Transfer Plant/Corps Inlet dredging and should also help stabilize Reach 3.

Reaches 3 & 4 - This section should be restored and maintained as a feeder beach to help stabilize Reach 2 and Reach 5.

Reach 5 - Provide one-time beach restoration without groins to help stabilize Reach 4 and provide some sand for Reach 6.

Reach 6 - Encourage the State Department of Transportation to maintain the rock revetment. This Reach may develop a minimal dry beach with sand being fed from Reach 5 and Reach 7.

Reach 7 - Restore and maintain this section to serve as a feeder beach primarily for Reach 8 with some sand to move to Reach 6. Investigate feasibility of groin field in Phipps Ocean Park.

Reach 8 - Provide beach restoration without a groin field on a one-time basis. This project should help stabilize Reach 7. Also, explore possibility of combining with a project for Reach 9 in South Palm Beach and Lantana.

Mr. Dusey explained that Mr. Michael Hole, of Salomon Smith Barney, had been asked to determine a tax rate necessary for an action next year to pay for either of the alternatives by FY2006.

In response to Councilman McLendon, Mr. Dusey explained that if groins were placed into a project, the State required that the project be maintained in perpetuity. The original plan had proposed a groin field in Reach 2, some groins in Reach 5 and some in Reach 8. The current proposal included a groin field in Reach 7 at Phipps Ocean Park if it was permitted.

Mr. Al Levenson, representing the Citizens' Association of Palm Beach, commented that 1,500 citizens in the Reach 8 section of the Town of Palm Beach had signed petitions to include Reach 8 in the beach renourishment project.

President Smith assured Mr. Levenson that Reach 8 would be included.

Mrs. Eileen Curran commented that she had served on the Shore Protection Board, and had heard from many experts during that time. After three years of presentations and discussions, she stated that she learned that beach restoration was based on scientific facts that an inlet to inlet solution was required to correct the damage inflicted upon the Palm Beach shore line by an artificial inlet that had been swallowing sand and depriving beaches of their natural inheritance for more than 70 years. She explained that the purpose of groin field projects was to retain sand, and they must be installed in a specific order that respected sand flow from north to south. Groin field projects that were done in isolation and based only upon priorities of public vs. private beach would exacerbate erosion and would not stabilize the shoreline. Beaches south of any groin field project would suffer worse erosion. Mrs. Curran referred to the report of Coastal Tech Engineering Firm, dated November 19, 1999, which said: "This is an evaluation of critical erosion in the vicinity of Phipps Ocean Park. Summary and Conclusion: The Department of Environmental Protection has designated shoreline segments in Palm Beach County as areas of critical erosion, including segments from Reference Monuments R-76 to R-121, and from R-133 to R-137. The shoreline segment from Reference Monument R-121 to R-133 also warrants designation as an area of critical erosion for the following reasons" (Mrs. Curran stated that she would now insert her own translation based upon the charts received. R-121 was the area of the Tres Vidas Condominiums. R-137 was the area of La Bonne Vie Condominiums at the southern boundary of the Town of Palm Beach.) "The shoreline in this segment has receded and eroded at rates comparable to that experienced in the adjoining segments that are designated as areas of critical erosion. The physical processes at work in the region are expected to exacerbate future erosion within this segment. The eroded and steepened beach, in combination with the effects of the existing seawall, had diminished and threatens marine turtle nesting habitat. To provide for continuity and effective regional management of the shoreline, it is desirable to nourish this shoreline segment."

Mrs. Curran explained that she had presented the recommendations of the experts so that when the Town Council approved a renourishment plan Reach 8 would be included.

Dr. Sten Lilja commented that he had studied the verbatim transcript from the November 11, 1999, Town Council Meeting, and concluded that there was nothing further that he could say that would influence the thinking of the Town Council. He stated that he would mention, for the record, three of the most serious potential consequences which would be detrimental to the Town:

1. Establishment of an Erosion Control Line would create the legal problems clearly defined in the letter of Mr. Wiley, dated November 5, and November 22, 1999.

2. Aside from the legal aspects, as described by Mr. Wilkey, the creation of new public beaches was certain to generate new and huge problems, which would destroy some of the qualities of life in this town, as well as being seriously injurious to beach owners and to the Town in general. Frankly, while women feel safe in Palm Beach today, with new influx of strangers, he would worry about crime and the safety of women and children.

3. In the absence of express mention of special assessment funding for "those especially benefitted" and the apparent intention to rely on ad valorem or other direct income and funds, there appears to be a misconception of what the law required.

Dr. Lilja added that any neglect of the problems and the laws outlined in the points mentioned would be subject to challenge.

Mrs. Nancy Douthit commented that she would like to make six individual $100 bets with the Council members that when the proposed coastal management plan was put into place the A.C.L.U. or a similar organization, would present a court challenge to the Town and/or State. She stated that the principle of "spot-zoning" would be used to prove that no individual state official had the right to exempt the Town of Palm Beach from State law, and that all of the "strings" attached to partial State funding of beach nourishment could be put into effect by the court, which was likely to contend that the inlet caused erosion would not exempt the "Rich Fat Cats" of Palm Beach from sharing the existing, and providing yet further beach access. She maintained that with the increase of beach goers the crime rate would escalate and rob the older voters of their security.

Mr. Dusey accepted the offer of Mrs. Douthit regarding the $100 bet.

Dr. Sanford Kuvin commented that he was delighted to hear that Reach 8 was being addressed. He stated that Jupiter Island had maintained its own beaches at its own cost since the 1960's, and had never sought out State monies for the same reasons that had been stated today, and every 7 years Jupiter Island had put sand on its beaches privately, all within the high water mark, never treading on State land. He stated that was not possible in Palm Beach, because the beaches were seriously eroded, however, had the Town been pro-active in years gone by, none of the attendees would be at the meeting today.

Dr. Kuvin stated that the five questions he had put to the Town Council and Mr. Dusey remained unanswered, and asked that they be responded to now, or in letter form at a subsequent meeting. He noted that the Army Corps of Engineers had stated that they had not made any decision about a 1500' pipe in the Reach 1 area as yet, and would invest in a study that would determine the possibilities. He concluded with the statement that the Town Council and its staff were mandated to answer reasonable questions in a reasonable and timely way before definitive action on such a far-reaching plan was taken.

President Smith noted that the Town Council had not voted against a referendum, and had taken no action on that subject.

Mr. Martin Klein commented that he urged support to the modified plan of Mr. Dusey, and that it was the responsibility of citizens to preserve and defend the beaches.

Mr. Joel Martino commented that he had not received answers to his questions, which had been promised to him at the last meeting.

President Smith responded that Mr. Martino had received answers from Mr. Dusey.

Mr. Martino commented that the real issue was how to get more sand on the beaches. He noted that he had asked three questions, and before the meeting Mr. Dusey had replied to question #1, referring to possible costs of unscheduled renourishments beyond the engineered design limits of the plan. His response was that quantifying damage and budgeting for it were policy questions that could only be answered by the elected officials of the Town. He submitted that was not an answer, and was only a good reply. He referred to questions #2 - should other forms of taxation or revenue, such as impact fees, hotel room fees, or car rental surtaxes be discussed – Mr. Dusey had replied that special taxes were not available, however, Mr. Martino maintained that there had been no open discussions about what taxes might be available besides ad valorem taxes. He then referred to question #3, regarding the erosion control line, which was responded to by Mr. Dusey in the statement that it was not believed that upland property owners should be concerned about the establishment of an erosion control line. Mr. Martino maintained that there was justification for extreme concern about the erosion control line. He stated that he did not think he got substantive answers to his questions. He asked Mr. Dusey if the figures he quoted for the plan of $21 million included the $3.5 million which was already on hand?

Mr. Dusey replied that the $21 million was the additional cost to the Town after reimbursements, and after considering the amount of monies that were on hand. The total costs of the project proposed was $42.5 million, with the Town share being approximately $21 million, over and above the $3.5 million already on hand.

Mr. Martino then stated that the true cost of the plan was then $24.5 million, and that the money received by the State could instead be funded by the Town.

Mr. Dusey responded that he had done a cash flow analysis for the purposes of what it would cost to finance the program, and it showed a balance of $3.3 million in the Coastal Protection Reserve Fund.

Mr. Alec Flamm commented that he was speaking as Vice Chairman of the Palm Beach Civic Association, and believed that the work done had been of extreme value, and that the alternative plan submitted by Mr. Dusey in a memorandum dated October 19, 1999, got the most cost effective project from the Comprehensive Coastal Management Plan Update material. He noted that the alternative plan presented October 19, 1999, had left out Reach 8, and the current alternative plan had included Reach 8. He advised that the Civic Association strongly supported the current alternative plan, which support was premised on not having a referendum. He stated that having a referendum on something this complex was a formula for disaster, and strongly urged the Town Council to move forward with the project under alternative plan #2, without a referendum. He noted that if a referendum was chosen because Reach 8 carried with it a nominal tax increase, then the Civic Association would have great difficulty supporting that approach, and would most likely support alternate plan #1, which had no tax increase, and debate Reach 8 when and if State funding was received.

Mr. Jim McCann, resident, and representative of the Board of Directors and Officers of the Palm Beach Board of Realtors expressed support for alternate plan #2, and stated that he hoped the Town Council would act without a referendum, as they had listened to all experts on the issue. He urged the Town Council to approve alternate plan #2.

Mr. Norton Rosenberg commented that he had worked on the beach issue with Mr. Dusey and the SOS Foundation, and considered alternate plan #2 as an excellent plan. He thanked Attorney Frank Chopin, because at the last Civic Association meeting he had indicated that there was only one person who had the right to complain about the construction of the new pavilion at Mar-a-Lago, since nobody in the Town had come to resist the request for a new pavilion, except Mr. William Guttman. Mr. Rosenberg stated that was why the people were now here in response to the beach issue.

Ms. Pat Fowler, resident of the Cove Condominium, urged the Town Council not to put a referendum forward because she had taken a poll of many of the condominiums, and most were not residents of Florida, and would, therefore, be ineligible to vote.

Mr. Bob Aaronson commented that it seemed that there was an opportunity to take some kind of action to preserve the beaches, and not to include Reaches 7 and 8 would disenfranchise that part of Palm Beach, and that it was the responsibility of the Town Council to make the decisions and determinations involved in going forward. He urged the Town Council to take action and assume responsibility as elected officials.

Mr. Arthur Gross, president of the 2500 Condominium, commented that he had brought pictures to present today of the beach area in front of the condominium, showing exposed man-made pilings.

Mr. Philip Krup, 3100 South Ocean Blvd., commented that the beach south of the Ambassador Hotel was 40% eroded and needed to be renourished, and that it should not be excluded from the plan.

Mr. Robert Clinger, Palm Beach County Department of Environmental Resources Management, commented that the County funding for shore protection would be done through his offices, and he encouraged Town staff to meet with County staff for development of an interlocal funding agreement that would be used for the beach projects, so that County participation monies would be clear, and the money could be set aside appropriately.

Mr. Jerry Levy, former member of the Shore Protection Board commented that he was proud of the hard work of everyone, and urged the Town Council to take action today.

VI. DISCUSSION OF FINANCING OF ALTERNATIVE IMPROVEMENT PROGRAMS BY MICHAEL HOLE, SALOMON SMITH BARNEY, INC.

Mr. Michael Hole of Salomon Smith Barney, Inc., advised that he was asked to review the full shore protection program to address two issues: the capacity to borrow, and the average life issue. He had concluded that there was sufficient capacity either on a G.O. basis or a revenue bond to fund the full program. He noted that currently, looking at a significantly reduced program, those conclusions had not changed. He explained that he had been asked to review the financing for the full $42 million program, with a much shorter term, having everything retired by 2006. Smaller dollars and shorter terms would involve short term borrowing, and he had prepared a cash flow exercise for presentation today.

Mr. Hole explained that the cash flow analysis he had completed included the two large expenditures under the revised program: one in the next fiscal year, and in FY03, of approximately $18 million each on a gross basis. The analysis assumed a tax-exempt bank line of credit, however, the difference between a line and a draw down bond was just a matter of where the market was at the time of borrowing. With those assumptions, a millage increase of approximately .3 mills which would involve three other sources of funds: the .1092 mills currently being levied under the coastal protection program; .2200 mills, which is equivalent millage of the Series 1980 Bond issue that is being retired this year; and the loan outstanding bond issue of the Series 1993 Bonds, which would retire in FY05, one year prior to the program term being considered. The .3 mills is based on the assumption of a 3% tax base growth. Should the Town decide to use, for example, the utility service tax, which has sufficient borrowing capacity, that money would no longer go into the General Fund, which subsidizes the millage; the equivalent millage will rise in any event to .3 mills.

In response to Councilman Shaw, Mr. Hole explained that 1 mill was $1.00 per thousand; .3 mills would be $300 per million.

President Pro-Tem Wyett suggested that a term beyond 7 years should be explored. He commented that he thought the cash flow analysis had established that a referendum was not needed for the $22 million program.

Mr. Martino commented that there were numerous examples of revenues from increases in traffic fees, etc., and asked Mr Hole if he had any particular knowledge of such available resources?

Mr. Hole replied that a legal analysis would be needed to establish authority to levy a new tax, as well as limitations on what the revenues would be used for.

Town Attorney Randolph noted that the authority to tax would come from the State and any tax would have to have special legislation from the State. He explained that Town could increase parking meter fees at any time.

Mr. Martino responded that the tax payers deserved a serious effort to discover what types of other revenues were available, besides ad valorem taxes.

Mr. Hole noted that the only time a referendum would be required would be when ad valorem taxes were pledged directly to a debt that would be repaid over more than one year. The only time a referendum would be required would be if a General Obligation (G.O.) Bond, secured by the full faith and credit of the taxing power of the Town. He commented that there were many options available to the Town that would not require a referendum.

Mr. Jerry Frank asked for clarification of the financing figure?

Mr. Hole explained that scenarios were run on both Alternative #1 and Alternative #2. The total cost of Alternative #2, with Reach 8, was estimated at about $42 million over 7 years, of which the Town portion was $24 million, of which there was already $3 million on hand.

Mr. Gary Lickle, former Chairman of the Shore Protection Board, commented that the Shore Protection Board had investigated hotel taxes, casino taxes, Port of Palm Beach taxes, etc., and had concluded that there were not other viable means available to raise revenues.

Dr. Sanford Kuvin asked Mr. Hole how much of an increase in taxes would it mean, in terms of millage, to the residents of Palm Beach to forego the risk of public beaches and the consequences thereof, if that risk was avoided by not accepting State monies?

Mr. Hole replied that the tax base was $5.4 billion; a mill was $5.4 million dollars, so $10 million would be raised by a 1.8 mill all at once. If the $10 million was scheduled to come in next year, for example, and instead of taking the $10 million the Town just wanted to write the check itself, it would be a one time millage increase of 1.7 or 1.8 mills, or $1,800 on a million dollar property. He noted that the .3 mills referred to in the model was annually, over the next 7 years.

Mr. Dusey clarified that whether State funding was received or not, the erosion control line was still required by the State.

Mr. Gary Lickle commented that the original plan of the Shore Protection Plan was for the Town to go it alone, and the number was .8 mills on a 30-year project. The project was designed so that the Town Council decided that the strings attached by the State were to much, it could always opt out on it.

Councilman Shaw commented that although the erosion control line (ECL) was a mandated requirement, there had been circumstances when its location had been adjusted, based on mitigating circumstances. He advised that he had called Mary McCarty, who had some very strong connections in Tallahassee, and talked with her about getting the State to grant relief from where the ECL would be placed.

VII. PRESENTATION BY MR. WILLIAM COOLEY AND ATTORNEY JERRY STOUCK CONCERNING POTENTIAL LITIGATION AGAINST THE FEDERAL GOVERNMENT REGARDING LAKE WORTH INLET ISSUES

Mr. William Cooley addressed the Town Council, distributing a "Five-Part Shore Protection Plan" suggesting issues for consideration of the Town Council. He explained that one part of it concerned litigation, however litigation itself would not solve the beach problem, which would take a combination of efforts. He noted that he had spoken with Attorney Randolph earlier concerning the Army Corps of Engineers participation in fixing the beach problem. In addition, he suggested that the plan to renourish the beaches should be a global plan, lasting less than ten years in duration,

as no ECL was required on a beach restoration project if the project had a duration of less than ten years, including the actual construction and the maintenance; calling the project a "beach restoration" and not erosion control, because beach restoration projects were exempt from an ECL if their duration was less than ten years

Attorney Jerry Stouck, of the law firm of Spriggs & Hollingsworth, addressed the Town Council stating that he had a good deal of experience in litigating against the Federal Government and had specialized in this type of work for approximately 20 years, including some of the largest taking cases during the last decade in the Court of Federal Claims. He explained that he believed that the Town of Palm Beach could litigate against the Federal Government for three reasons: 1) The Army Corps of Engineers had some real responsibility for causing the beach erosion and failing to control it through dredging and maintenance of the inlet; 2) the government would respond to litigation of this type; 3) precedent – there were many cases dating back more than fifty years, including cases where the Federal Government had been held financially liable for a taking of property. He noted that the Federal Government was very sophisticated about litigation, and government officials understood that if land owners had a claim they would pursue it; litigation was basically negotiation, and a taking claim was likely to be seen as a big problem, and the government would be motivated to solve the problem. He explained that the appropriate plaintiffs in such a lawsuit would be beach front property owners. He reviewed the steps necessary to begin litigation.
He explained that the establishment of an ECL would make the State the water front land owner.

Attorney Stouck addressed the issue of costs, advising the preparing for litigation, preparing a legal evaluation memorandum, and giving the Town and other potential claimants advice could be handled within 30 days, and would approximate $35,000-$40,000. After instituting litigation, it could go in radically different ways – the Corps of Engineers could be interested in avoiding a long, legal battle, or they could chose to fight it for 3-5 years with substantial costs. It would be impossible to predict what the costs would be at this point.

Mr. William Guttman commented that there had been two alternatives presented by the Shore Protection Board – one by an ad valorem tax, and one with the owners of homes and condominiums along the shore line to bear the entire cost. He noted that since the Town owned only 1/12 of the shore line that if there was a favorable litigated result, 11/12 of that would go to the beach front homeowners, and not to the rest of the taxpayers who had participated in funding the entire project at the outset.

Attorney Stouck responded that was an interesting point, and at the narrowest technical level it was true that damages would be paid to the beach front landowners. That was not to say that in the course of such an undertaking the settlement could lead to appropriations that would lead to fixing the problem. He advised that the point raised by Mr. Guttman would have to be reviewed and considered in deciding the pursuit of a lawsuit.

In response to Mr. Wilkey, Attorney Stouck explained that the 5th Amendment to the United States Constitution provided, among other things, that the Federal Government would not take private property for public use without paying just compensation. He also agreed that it was his understanding that after a beach restoration using State funding there would be a new owner between the old current owner and the Atlantic Ocean.

Mr. Wilkey commented that the high water mark simply meant that when the tide was in, one could stand with one foot on private property and put one foot in the ocean. He added that if the ECL was set and new property was added between the old owner and the Atlantic ocean, a huge legal problem may be the result.

In response to Mr. Martino, Mr. Dusey replied than an ECL was only required when a renourishment project was done – one section of the beach that was renourished could have an ECL, and an adjacent beach could have nothing.

President Smith clarified that the issue of discussion of a lawsuit against the Federal Government would be put on as an agenda item for the next Council meeting. She then asked for discussion regarding action on the beach restoration project.

Councilman McLendon commented that the absence of groins was a mistake, however, a beach program was needed, although he was not one-hundred percent committed to do it just as proposed.

Councilman Shaw commented that the Town should be committed to doing the beach renourishment, and should do the modified program.

Mayor Ilyinsky commented that he would like to see further discussions taking place now regarding the role of the government, and that Mr. Wilkey had introduced some interesting ideas. He noted that he would like to see the funding program of the State in writing. He suggested that a responsible plan was needed, with specific costs for each project done one at a time. He noted that he was in favor of a referendum, and would not commit any resident to a debt without them having full knowledge of the issue.

President Pro-Tem Wyett commented that he was in favor of the alternate plan submitted by Mr. Dusey, and that the Town would have to get in line for State monies for beach restoration, and urged that action be taken now. He expressed concern regarding those who would find any tax increase difficult, and suggested that a fund could be set up to aid the less advantaged in the Town.

Councilman McDonald commented that he agreed with the comment of Dr. Kuvin that previous Town administrations had neglected beach renourishment, and also agreed with the Mayor that beach renourishment would not protect the Town from a great hurricane, which was not the real intent of beach renourishment. He noted that he had been committed to shore protection for five years, however, he expressed concern regarding the ECL issue, and agreed that Mayor Ilyinsky would be a likely candidate to send to Tallahassee in that regard. He also noted that someone today had made the point that approximately 30-40% of the property owners were not qualified to vote.

President Smith commented that she believed that all residents should have a vote on how their money was going to be spent, and was in favor of a referendum. She stated that she did not feel that the large beach front property owner should have any more of a vote than the young family on Seaspray Avenue with four children.

President Pro-Tem Wyett moved approval of a beach restoration project, incorporating Reaches 2, 3, 4, 5, 7, and 8, and ask South Palm Beach to add their position so that perhaps Reach 8 and 9 could be done with their participation, but not limited to their participation. He included that action begin on an interlocal agreement with the County, and get in line with the State for appropriation of funds, including the request that the Army Corps of Engineers proceed with a pipe or some other accommodation to moving sand, and fund the program as outlined by the financial advice with specific costs determined.

Councilman Shaw suggested that Mr. Wyett clarify his motion.

President Pro-Tem Wyett clarified his motion stating that he would move conceptual approval of the alternate plan #2 presented by Mr. Dusey, and give consensus to the Town Attorney to draft a recommendation that could be read at the next Town Council meeting.

Town Attorney Randolph suggested that Mr. Wyett keep his motion simplified, with conceptual approval of the alternate plan #2 presented by Mr. Dusey, authorizing staff to proceed with the necessary steps, as it would be very difficult for the Town Council to vote on extending the pipe and all of the other facets as part of the same motion.

President Pro-Tem Wyett then withdrew his clarifying motion, and accepted the suggested clarified motion as suggested by Town Attorney Randolph, nothing that he would include Reaches 2, 3, 4, 5, 7 and 8. Councilman Shaw seconded the motion. On roll call the motion carried 4/1, with President Smith casting a dissenting vote.

Mrs. Douthit asked Mr. Dusey where the sand source was, as that would adjust the price of sand?

Mr. Dusey replied that the consultant had identified five borrow sites, with varying sand quality, with a total quantity of approximately 21 million cubic yards.

Councilman McDonald made a motion to reconsider the motion made by Mr. Wyett. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Councilman McDonald then made a motion to conceptually approve the recommendations of Mr. Dusey for the beach restoration program, alternate #2, as outlined in the memorandum of November 23, 1999, without inclusion of the financing. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/1, with President Smith casting a dissenting vote.

Councilman Shaw moved that the financing of the project, based on the combined memorandum from Mr. Hole and Mr. Dusey, indicating the funding sources, and the fact that a proposed maximum millage rate was being considered as outlined, and also to look into the possibility of alternate proposals as indicated today.

The motion died for lack of a second.

Mr. Hole commented that he would use the scope of the project, as per the November 23, 1999 memorandum of Mr. Dusey, and would need to address the issue of whether the Town Council would need the G.O. side was available to be included in the analysis.

Councilman McDonald clarified that he would second the motion of Councilman Shaw that Mr. Hole would present his financing proposals at the next Town Council Meeting.

Attorney Randolph explained that the question was whether Mr. Hole should consider a G.O. Bond as well as a Revenue Bond in his analysis.

Mr. Hole commented that he could bring back all alternatives and do the additional modeling.
He explained that if the Town Council decided to put the question to referendum, there would be two questions: whether the voters wanted to support the project, and the question of authorization of issuance of General Obligation Bonds to fund the project. Also, the voters could also be asked whether the Town should pay for the project or not, without asking for the G.O. authorization. He estimated that he could have the material available for the Town Council sometime before the December 14, 1999 Town Council meeting, although it would be tight.

On roll call the motion carried 4/0, as President Smith had left the room.

Councilman Shaw stated that he would like to pursue the dialogue with Barry McCarthy regarding the ECL, and gather information to present to the Town Council.

Town Attorney Randolph requested clarification as to the expectations of advise regarding the viability of a lawsuit; he suggested that an expert opinion may be required.

Councilman McDonald replied that he did not think the Town Council could expect Attorney Randolph to give advice on the issue; he suggested that the Town Council would discuss hiring an expert, should the issue be considered. He suggested that, as stated previously, it be placed on the agenda for the next Town Council Meeting.

VIII. ANY OTHER MATTERS

A. Legal Services To Review New Telecommunication Providers

Town Manager Doney referred to a memorandum dated December 1, 1999, from Assistant to the Town Manager Jakubiak, with the subject of legal services to review new telecommunication providers. He explained that staff was requesting Town Council authorization to utilize the services of Miller and Van Eaton law firm to assure that the Town would have the funding authorization to use these services, on a not to exceed $7,500 on a case-by-case basis.

Councilman McDonald moved approval of the recommendation of staff. The motion was seconded by Councilman Shaw for discussion.

Assistant to the Town Manager David Jakubiak commented that staff could get no funding authorization, and allow each company to come to the Town Council and make a proposal; staff would then recommend that the proposal be reviewed, and would need to obtain legal advice. The other alternative would be to have the proposals reviewed by Miller and Van Eaton on a case by case basis if legal advice was needed prior to the issue being brought to the Town Council, staff would need to have the funding authority in that case.

Councilman McDonald withdrew his motion of approval, as did the seconder of the motion.

Councilman Shaw moved approval of authorization of up to $7,500 for the legal services of Miller and Van Eaton to review new telecommunication provider proposals. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Smith had left the room.

IX. ADJOURNMENT

The meeting was adjourned at 5:32 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk