

MINUTES OF SPECIAL TOWN COUNCIL MEETING HELD ON

OCTOBER 26, 1992

Roll Call

I. CALL TO ORDER AND ROLL CALL: The Special Town Council Meeting of the Town Council of the Town of Palm Beach was called to order at 10 AM on October 26, 1992 in the Town Hall Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilman Ilyinsky, Councilwoman Douthit and Councilwoman Wiener. Also attending for all or portions of the meeting were Mr. Doney, Attorney John McCracken, Mr. Elwell, Mr. Dusey, Mr. Bowser, Mrs. Martinuzzi, Mrs. Peters and Mr. Kirby Green from Department of Natural Resources.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. Pledge of Allegiance was led by President Pro Tem Weinberg.

Approval of Agenda

III. APPROVAL OF AGENDA: Motion was made by Mr. Ilyinsky, seconded by Mrs. Douthit to approve the agenda as printed. On roll call, the motion carried unanimously.

Mid-Town PEP Reef Project

IV. MID-TOWN PEP REEF PROJECT

A. Update by Harvey Sasso on Project Monitoring.

Attorney Lickie asked permission to have a statement read into the record by Beth Mitchell, Vice-President of American Coastal Engineering, Inc. Mr. Heeke asked if there was any objection to this request to which Mrs. Wiener responded she did object, as they have just approved the agenda which states there will be an update by Mr. Sasso.

Mr. Ilyinsky believed this was a very important issue and anything that can make this go smoother and the more information they have put before them would be to the Town's benefit. Mr. Heeke noted there was one for and one against and he asked Ms. Mitchell to proceed.

Beth Mitchell addressed the Council reading the following statement:

"In August of 1990, American Coastal came before this Council and proposed an experiment for a Reef for the Mid-Town section of Palm Beach. You gave us the go-ahead to go forward with the permitting process to see if this could be a viable alternative to provide a permanent solution to the serious erosion threatening the Mid-Town section.

Within sixteen months, we had all the permits in hand at a total cost to the Town of \$8,000. In January of this year, after your careful and deliberate consideration of all of your options, the Town elected to go forward with the Reef experiment. We all committed to this - the Town - American Coastal - and the State, through the DNR. Was this a good business decision? Well, what is a good business decision - good business includes research and development and long term investment. Good business also includes taking some smart risks on occasion and being open to trying something new and different, while being fiscally responsible. And what is a partnership? Webster says it's a state of being a partner, including participation and joint interest. Taxpayers of this Town and this State will benefit if we can provide a method of erosion control that protects the Town's public interests. And the Reef costs less than half of more conventional methods. It is more permanent and it will provide an enhancement to our environment.

Because of the experiences of the Halloween storm of 1991, and the concerns of the pending storm season in 1992, we went forward with an accelerated schedule with the intention of having this Reef in place by October 1, of 1992. After intense contract negotiations between all parties, in which our Company kept to its pricing structure of August of 1990, the Town and American Coastal went forward with the Reef. A test plan was developed. The DNR issued its Notice to Proceed and all of the reef modules were built. Our sub-contractor, Murphy Construction, went forward, knowing that time was of the essence and devised an innovative two step method to install the Reef as quickly as possible.

After all, innovation is what this project is all about. Only two weeks into the installation process, we were unfortunate to have the storm effects from Hurricane Andrew impact the progress of the Reef. At that time, we had a total of 242 units in the water, approximately two-thirds of the total project. There were 56 units interlocked at the south end. After the storm, we determined there was measurable settlement of the units. Acting responsibly, we came to you and the DNR and told you of our findings. We also informed you that we would pursue resolutions to the settlement and we went forward with our proposal.

During the first week of October, we were visited with the first northeasterly storm of the Season, just as predicted. Mr. Sasso will report to you in a few minutes on the results of that storm on the partially installed Reef. However, let me say that the results of the storm indicated that we were on the right track with the concept and the design of the Reef. The 56 interlocked units that were in place had already started protecting the mid-Town wall. Although the data is limited, the positive results suggest there is a need to learn more about this Reef and its potential. It also suggests that the settlement of the Reef in and of itself is not the only yardstick to reach conclusions of the Reef's performance. It should not doom this project. In fact, the Test Plan specifically states that only adverse impact or serious problems would precipitate decisions to remove the Reef. The small Reef provided wave energy dissipation and protected the seawall from the normal pounding it takes during the autumn storm season just as we promised you it would.

We are here today to tell you that we are ready to move forward. We have suggested a Test Plan which needs the approval from both you and the DNR. We suggest that the Mini-Test that we have proposed, which includes testing of two options American Coastal is ready to go forward with, and data-collection at the existing unit. The predictable storm season gives us the opportunity to take advantage of the modules that already in the water for a field test. We want to go forward, because even though we already have positive results, we wish to provide the Town with the most optimal performance of the Reef.

In order to do that, we need a signal from you all today. That you are committed to this project as we were back in January. This project is not a short term item. Our small company, with limited assets, has overcome tremendous odds and adversities since the concept was first developed seven years ago. We believe that with your support, this project will continue to move forward and that the Mini-Test will result in promising data that will provide us with the knowledge to complete this entire installation by Spring. Thank you."

Mr. Harvey Sasso of Coastal Technology Corporation addressed the Council indicating he wishes to revisit the two month follow-up report which has been distributed to all and he will highlight the conclusions in this report. He advised the two specific areas which he focused on were:

- (a) the continued settlement of the inter-locked units, and
- (b) near-shore bathymetric changes landward of the structure and within other areas of the project.

He reported on the continued settlement. He stated after Hurricane Andrew, the average settlement of the 56 inter-locked units was 2.1'. He noted the average settlement measured was 2.6' which suggests the settlement of the units is slowing down. He felt whereas the settlement previously appeared to be settling where the units which were placed by the end, more recent data has shown that the units placed at the north end had settled more than the units in the middle, which suggests the settlement no longer appears to be settling more, but more influenced by its location or by the characteristics of the structure. He believed the center portion had slowed down in the settlement and is tending to be more of a equilibrium settlement, somewhere in the order of two to two and one half feet maximum.

Mr. Sasso reported the south end of the structure appears to have settled to a maximum of 3.5' but also appears to be achieving a certain equilibrium condition. He thought this was consistent with what the theory suggests and that is that over time, the structure will achieve a settlement which will stabilize over time and is dependent upon the wave conditions. He believed that as the most severe wave conditions are experienced, no further settlement will occur. He stated his conclusion is the maximum settlement they might anticipate would be approximately 3.5', but this would be towards the end and it is conceivable that as the construction is made longer, the central portion of the structure may not settle as much as the end portions.

Mr. Sasso continued stating that with regard to the bathymetric changes landward of the structure, there has been an accretion of twelve cubic yards behind the structure and within 600' south of the structure, there is approximately seven cubic yards per foot of accretion. He is comfortable with this data as it is within the profile line with a two to four hundred foot increment, whereas, the other data were measured out to a depth of approximately twelve feet. He noted that to the north of the installation, the spacing between the profiles becomes longer and the location of the scattered units offshore are unknown and from the basis, they were not comfortable with the data to the north of the installation and could not conclude to what extent the scattered units were causing accretion to the north, even though based on personal sight observation and aerial photographs, there were some distinct areas which appeared to be building and similarly there were other areas which had been eroding. He commented he could not conclude what the overall trend of this area north of the installation was, however, he was comfortable with the fact that nowhere to the north of the installation was there the same amount of accretion as was measured behind the structure. He noted most of the profile lines, all but one to the north of the installation did not show the same magnitude of erosion as accretion that was shown behind the structure.

Mr. Sasso observed another interesting element and that is he had taken the data behind the structure and downdrift of the structure and looked at the hydrographic or elevation changes of the bathymetry behind the structure as illustrated on Figure 4 (Page 14) of the report. He thought this was interesting as it shows the erosion/accretion trend within the region where they feel the data is more conclusive and reliable, specifically, this is a contour map of erosion and accretion and it shows areas where there has been a net building of the bathymetry. He noted immediately behind the structure, there is erosion and this is the dishpan scouring that was noted previously. He confirmed that as the waves spill over the top of the structure, it scours the sand right behind the structure causing the scouring in the order of one to two feet. He pointed out this does push the sand up as the waves go over the structure and there seems to be a distinct of what appears to be an equilibrium profile landward of the structure.

Mr. Sasso referred to Figure 5 (Page 15) which showed the dishpan scouring immediately behind the structure and it also shows when the profiles are superimposed, they tend to get the same shape of the profile behind the structure in every case, and in fact the higher the structure, even though the shape is the same, the shape is higher and that suggests that the Reef is having an influence on this area landward of the structure in that it is maintaining a certain shape of the beach. He believed as the tow of this equilibrium profile is controlled, also controlled is the extent of the width of the beach by virtue of the actual structure itself.

He noted the scouring behind the structure on Figure 4 which shows a net accretion in the order of one to three feet landward of the structure. He stated on the north, there is no impact or erosion.

Mr. Sasso stated the data is not conclusive, but the trend based on the data they have suggests the structure is having a positive influence with a net accretion landward of the structure and downdrift of the structure. He noted the force of this material is unknown as it could not be determined on the data. He could not determine whether this was trapping sand and the sand was moving along the shore and flowing down and stopping behind the structure or whether the sand was coming from off-shore and somehow being transported over the structure onto the beach and then moving southward from there. He felt the data suggests there is some net building behind this structure as a result of the inter-locked units.

He believed the fifteen profile lines which were used to perform this analysis were insufficient. He does feel good about the build-up behind the structure, but what influence it is having further downdrift and what the background trends are updrift have not yet been determined. He stated if they wish to proceed with the project, he recommended that further surveys be done to confirm what the Reef is doing and what further improvements can be made to optimize the structure. He recommended wave gauges be placed so a determination can be made as to what extent the structure is reducing the wave energy coming over top of the structure and with regards to the

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settlement, he feels that although there has been some settlement, the structure does appear to be contributing to some building and he supports the recommendation as outlined in American Coastal's Stabilization Report to at least understand the settlement further - perform the Mini-Test Program and a determination then be made as to what extent the settlement is a problem or to what extent the settlement could be controlled. He stated that if in fact the limited data they have on hand at this time suggests that perhaps there could be more building if the structure could be maintained at a higher elevation and that could probably come out of the Mini-Test as well.

He concluded with the statement that with the limited data does suggest the Reef does appear to be causing some net building behind the structure, however, the data as he stated is limited and further data is recommended and throughout the winter season he suggested that they proceed with the Mini-Test program so a more thorough hydrographic surveying program be performed so the settlement issues could be addressed and the structure could be fine-tuned to result in a more effective structure.

Mr. Heeke called for the comments of Mr. Kirby Green of the Department of Natural Resources. Mr. Green addressed the Council stating there are things happening out there, some good and some bad, depending on perspectives. He thought it was far too early to draw any conclusions about the data as there is only one data point to look at, other than the settlement issue.

Mr. Green advised from the State's viewpoint, the settlement is a major issue. He stated the heights of the structure will determine what kind of build-up there will be landward of the structure and what type of wave energy reduction there will be landward. He located this with American Coastal in a position with the height of the structure in relation to the wave climate for that site would, he felt, optimize the performance of the structure. He believed if it continued to sink, efficiency will be reduced as it sinks lower and this will reduce the ability of the structure to retain or hold sand at that site or to build up the beach. He felt at this point, the Department's view is the foundation issue is the major issue which needs to be addressed. He believed it was icing on the cake for the accretion landward at this point, but they haven't got into the test program as yet. He noted there have been no wave gauges installed to look at the wave energy reduction which are being allowed by the structure, so at this point, the Department's view is to focus on the foundation issue and the settlement issue and until that is resolved, they really don't need to be talking about what may or may not be happening landward of it.

Mr. Green stated his concern and focus is on that at this time and they have talked to other consultants about this and have been reading reports of other installations further up on the east coast, where settlement was also an issue and the ways settlement was resolved at those locations.

Mr. Green indicated he has looked at the report and it is just one point of data and there is a lot more information needed to be gathered before they start drawing conclusions of whether or not this is a successful project.

Mr. Heeke believed the foundation issue is a major issue and he would like to hear the thoughts of Mr. Green in conjunction with American Coastal on that issue. Mr. Green stated he has reviewed the alternatives offered by American Coastal and he outlined same:

1. To align the units so they are one continuous and contiguous structure. This will be accomplished by interjecting a smaller module in between those larger modules which will bring the alignment keys back into a position that will allow them to be continuous with each other.
2. To place a foundation mat under the units to fill the void which were created by the ways the units were originally constructed. He stated at this point there is a concave portion of the unit which is above the ground and there is some thought that a current is being created through that opening which is attributing to the settlement.
3. To place a scour apron on the front and both sides of each unit to reduce the scour and possibly reduce the settlement.
4. To place a rock foundation with filter cloth underneath to provide a foundation for the structures to sit upon.

Mr. Green stated American Coastal has indicated they would like to try the first two alternatives, and that would be to bring them back into alignment and put a mat under them to reduce the void which currently exists. He stated the Department had a letter of response to present a few weeks ago, but with the addition of the information gathered by American Coastal through their survey, the letter was not issued in hopes that there would be additional information available. He didn't think the report that was provided will change the Department's views or its recommendation on which alternative to choose. He recalled the letter basically stated whereas there was merit in Alternatives One and Two, they didn't find any engineering support to support those recommendations. He will ask for additional information from American Coastal to support those two alternative. He stated if the Department had to state today which alternative they would like American Coastal to move forward with, which would ensure there would be no further settling, and that would be Alternative Four - a rock foundation with filter cloth with some modification to the design as provided. He emphasized he did not have a complete review of the first two alternatives and if there is additional justification provided for those two alternative, they will look at them.

Mr. Green commented at this point in time, in looking at other projects along the east coast that have occurred, the recommendations have been to have rock foundation under it or they will continue to see some sinkage.

Mr. Heeke asked what other projects there are along the east coast on which the Department is making the comparison. Mr. Green responded there are two reports the Department is looking at, one is put together by Dr. Darylrumple which was a physical model test of units and they were laboratory tests, and is on a NASA test site at Wallace Island in Virginia, and they installed an off shore breakwater not too dissimilar in configurations than the Town is looking at and some of the same types of settlement issues were experienced. He indicated this was installed March of 1988 and profiles were taken from 1988 through 1990. He advised the final consultant's recommendations on this was they needed to go in and do some type of stabilization to the foundation and they recommended using rock with filter cloth type of a configuration.

Mayor Marix asked if they followed through with this rock with filter cloth to which Mr. Green responded negatively, noting they did not have the funds to do it and he isn't aware of the current status of the project. Mayor Marix asked if it has sunk any more? Mr. Green indicated he has no further information available on it but they are trying to follow up on it.

Mrs. Douthit asked if this was the only kind of installation of this type on the east coast? Mr. Green replied it is the only one that he knows of.

Mr. Weinberg asked if Mr. Green was stating he doesn't favor any of these solutions, but he leaned towards No. 4, the rock foundation with fiber cloth. Mr. Green responded that is the only one he can give a positive recommendation on at this point as he doesn't have any further data to be able to make a recommendation. He stated if the Council wants to ask him which alternative will resolve the issue, he believed the only one he believes will resolve the issue is Alternative No. 4. Mayor Marix asked if this alternative would have any environmental problems? Mr. Green responded he thought it would as they are talking about a major substructure into this area, which would be quite a few tons of rock and filter cloth which would have to go under the PEP reef, so there will be environmental issues which would have to be looked at and the permit would have to be modified both by DNR and DER before they move forward with that solution.

Mr. Weinberg noted this method would be rather expensive and is probably the most expensive of the four alternatives to which Mr. Green agreed, noting it would probably double the costs. Mrs. Douthit believed the underpinnings would be as much as the original modules. Mayor Marix understood they needed more data on the Alternatives 1 and 2 and asked if after the data is provided, would they be willing to look at those alternatives? Mr. Green stated that is always a possibility pointing out there are a couple of issues, for example on No. 1, the size of the unit itself. He believed the maximum thickness was two feet wide and when they start putting that between the units, the Department wants to know if there is any settlement or is there a rocking back and forth and if the study shows the width is thick enough to support the action of those two units on either side and a decision would have to be made as to whether the thickness should be increased and those are the type of issues which need to be analyzed. He also needed to look at the currents as there seems to be some scour regardless of the accretion and they need to examine how that scour will affect the sinkage. He commented all of these are issues which they haven't addressed as yet.

Mr. Heeke asked if these would be subject to the Mini-Tests to which Mr. Green agreed, noting as soon as they had a basic understanding of how this will work, a Mini-Test could be accomplished. Mr. Heeke asked what about the scour apron (Item 3) to which Mr. Green responded the Department did not believe there was a lot of merit and they discounted it very quickly.

Mayor Marix believed there was something going on out there as obviously there is a build-up, but the idea is how can they solve the problems so they can do the Mini-Tests. She recalled there was supposed to be an accretion of two feet a year and it looks like it is a great deal more. Mr. Green cautioned them about the build-up landward of the structures, noting he flew over the area this morning and there are groin fields in this area which haven't had sand in them for a number of years and he doesn't know if that was because there was enough sediment placed in the system as result of Andrew or the Northeasters to start the movement back along the shore system to fill the groin fields or whether there is something unique or extraordinary happening behind the Reef. He stated it does appear there is something happening out there, but he doesn't know what it is at this point. He urged them not to draw hasty conclusions about it.

Mrs. Douthit recalled normally in this area, the northeasters rob the coastline and the sand diminishes and that is not the case here as the sand has increased. Mr. Green noted there are groin fields to the south and they are also experiencing some increase, so he can't tell what is happening as they have one point of data pointing to a positive result, however, it is not known if this is a long term trend or a one time point.

Mr. Heeke recalled when Mr. Lonnie Ryder was here and they discussed the possibility when they were in the permitting process, some submerged reef system had been tried on the west coast, which were not manufactured but rubble and they had to experiment with height, depth, etc. to strike a balance. Mr. Green responded there was an emerged breakwater placed by the Corps of Engineers at Reddington Shores in Pinellas County on the west coast. He advised there was a headland there and they placed this in conjunction with a beach restoration project and the reason they did that was due to the fact wave energy was coming directly into that point and it had flow in both the north and south directions once it left the point, so it was an erosionally stressed area. He reported they placed this emerged breakwater off shore to reduce the wave energy at that point and allow for the beach to remain for a longer period of time. He recalled the original installation was 2 to 2.5' above mean sea level, which means the sand spit came out to connect with the breakwater. He stated that was an adverse impact as it blocked the flow of sand around the area, so what they did was take off two or three tiers of rocks off the top of the breakwater to reduce its height to allow increased wave energy to get across and reduce the tombola and that did happen. He advised they reduced it one time and the tombola is behind it which does not extend all the way to the breakwater itself and there are currents associated with that which have created some hazardous swimming conditions, but it is functioning. He believed another adjustment would be made to reduce the fill behind it a little more.

Mr. Lickie clarified that American Coastal did not want to give the Council the idea that anyone of these four proposals they are trying to select have the absolute solution to the settling of the reef. He stated their proposal is for Test Plans or Mini-Test Plans which would leave the existing units where they are lying now and continue to monitor it with additional surveys and see if these units are reaching an equilibrium and whether or not they will stabilize and not sink any further. He stated the second idea is that fifty feet north of the existing modules, they would place five modules which would be a sixty foot section with a key lock system, which would be an attempt to align the reef together as in their opinion it may stop the scouring effect, which they think is the phenomenon being caused by the staggered installation.

He advised the third proposition is to put in the erosion mat, and there would be another Mini-Test fifty feet north and then to leave the scattered units as they are and develop data through the surveys over a period of time. He stated they would monitor this for six weeks taking data surveys every two weeks to see if there is a trend that either stops the settlement, slows the settlement and also what kind of performance these little mini sections do vis a vis the accretion or erosion. He stated American Coastal agrees with the statement of Mr. Green that there is something going on out there, but they do not want to come to any conclusions at this point in time

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as this is an experimental project and needs to be studied over a long period of time. He noted Mr. Green talked about the project on the west coast, there were problems encountered on that and they had to go back and modify it and return it and come up with a workable solution. He believed that was the stage where American Coastal was at this point as there are problems.

Mr. Lickie referred to the fourth alternative, putting in a rock bed with fiber cloth and American Coastal does agree that is a viable alternative but should be tested in conjunction with the other three proposals as the cost is almost prohibitive. He stated American Coastal is willing to pick up the cost on the other three alternatives, if they are determined to be viable solutions, but they couldn't handle the cost of the fourth alternative which would double the cost of the Reef. He stated they hoped to do the Mini-Test Plans now and gather the data that Mr. Green needs to see before coming up with a solution for the balance of the project. Mr. Weinberg asked if the Tests would be done simultaneously to which Mr. Lickie responded affirmatively.

Mayor Marix asked if she was recalling correctly that when the DuPont Reef shifted in a storm, she was under the impression the Reef was on solid rock croppings and there was some question as to the fact that they were on that crop could have added to the movement of the Reef? Mr. Lickie believed the actual settling effect of the units in the sand by them being heavier and larger and newly designed, should settle into the sand in order to be more stabilized. Mayor Marix thought if rocks were put under there, they could run into the same problem as the DuPont Reef? Mr. Lickie stated there was a difference as one is rock and gravel which is pliable material and the Reef system down there is a flat piece which would make it more prone to slipping as opposed to a steadier base. Mayor Marix believed there were ecological problems as well as financial problems connected with the Alternative No. 4. Mr. Lickie agreed noting there is an ecological system building under the existing reefs as there are lots of fish and lobster already on the reefs now. He asked the Mayor and Council to remember while the data shows and they believe through the wave tank testing, the maximum height of the reef was for optimum conditions as part of the test program and as part of the monitoring program, it may be determined there is a different height between mean low water and the top of the reef which will provide optimum nourishment or beach protection. He felt that was part of the data which needed to be produced. He recalled the design parameters stated the units should not settle more than one foot and perhaps that needed to be looked at and studied and considered, as that might turn out to not be critical in the development of this Reef, as something is going on out there. He wished to continue the project and he thought it was to the Town's benefit to continue the project. He felt after the test program is put into place and the wave monitors are put in place and the survey are done, American Coastal wanted to get the State involved at this point to help out with the surveys as the existing surveys only went three or four hundred feet into the ocean and DNR has a concern about where the sand is coming from and they all want to know if there is any shifting of sand beyond the reef itself and the only way to do that is to have the surveys further out.

Mr. Weinberg asked if there was a difference between the "key-lock" and "inter-lock". Mr. Lickie responded there is a tongue and groove which allows the south end of one unit with a tongue to fit the grooves on the north end of each unit and that is the inter-lock. He explained the key-lock is designed to alter that so they can be brought into direct line with each other so that the tongue of the north unit would line up to the exact center of the southern unit.

Mayor Marix wondered if there was a gap of fifty feet and these were short units, would they be long enough to give us a picture as if there was a mini-reef just a few feet long, how would that work? Mr. Lickie responded the real key of the mini experiment is to study the scour as opposed to accretion or otherwise, but that would be monitored along with it, but the test program is trying to come up with a solution for scour.

Mr. Weinberg wondered why there was a build-up of sand elsewhere as well as behind the Reef, as it is assumed the build-up of sand near North Avenue is due to the fact there are modules there, however, in the south end of Town, there also has been a build-up of sand without the existence of a Reef and he felt that added to the confusion as why would a Reef be needed, if the sand is coming in without one in the south end of the Town. Mr. Lickie believed it would be safe to say that in some areas there will always be a build-up and in other areas, there will be erosion. He believed they needed to focus on the areas where they are having serious erosion problems and that is the Mid-Town area and they need to come up with a solution to redirect the forces or alter it so the shoreline is protected.

Mrs. Douthitt believed the wave action in the area of the Reef during the Northeasters seemed to be very much reduced and she did notice some erosion near Peruvian Avenue and there is some accretion north of that and wondered if that is where the scattered pieces were located? Mr. Lickie stated that is the area where the scattered modules are located.

Mrs. Wiener noted there was a lot of discussion on this and she knows there is a problem and she didn't believe discussion whether they have accretion or they don't or they could have it, all these things those of them who are concerned about fiscal responsibility see these as red flags. She thought what was really germane is how this problem is going to be solved and they should get down to basics and discuss what needs to be done.

Mr. Heeke called for public comment. Dr. Sten Lilja addressed the Council and asked to offer his reaction to some of the technical items presented. He drew a sketch on the blackboard of a module and referred to the sinking of the units, stating he understood the height of the modules were designed to reduce the wave energy and what is happening is the whole thing is sinking and there is some scouring and there may be sand going underneath. He believed the modules will stop sinking and when they have stopped sinking, there will not be enough height left to break the waves. He suggested a solution that after everything is stabilized, they add a cap to the top of the module to get back to the height. He thought another suggestion is to try and solve the problem of the sinking and he heard them talk about putting a mat underneath to keep the sand from sliding out. He suggested they drive something down to stop the scouring. He thought if the mat is going to work, they would have to dig away the sand to get the mat all the way down and then put the sand back on top of it to stop the scouring.

Dr. Lilja talked about the interlocking system, suggesting they put in a water jet to hollow out the different module and when the hollow is done, they pour concrete into it and they would have a strong interlocking situation.

Dr. Lilja suggested they go for the three alternatives for which American Coastal has offered to pay to implement them as he thought there would be nothing to lose.

Richard Brown, bartender at Chuck and Harold's addressed the Council indicating he has worked in Palm Beach for ten years and he has known Mr. Rauch for many years and he has invested some of his money in Mr. Rauch's reef project, not to make any money but because he thought this idea was a good one. He believed there is a major problem in the Town and they are losing their beaches. He stated Mr. Rauch has dedicated many hours to the Reef in the hope he could change what is happening to the beaches here, so he thought the Council should remember that Mr. Rauch is an inventor and a believer in his idea and is willing to do anything to make this experimental project work. He thought sometimes they forget about that aspect when they talk about fiscal responsibility. He believed it will work although there are problems with it, but it will work and there is something here that will save the beaches. He believed they should all work together and although it is difficult, he thought they should consider it a good project and something they will all be happy with in the end.

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Project (cont.)

Mr. John Rybovich addressed the Council indicating they are not paying much attention to the fact they are putting this Reef at the shoreline and the deeper it sinks, the less they are going to get out of it. He recalled the statement of Mr. Green of the State that there is a reef out there and this Reef installed is a secondary thing. He recalled Mr. Sasso stating there is no change in the shoreline and that just is not so, as just a year ago the beach near Wells Road not only survived but increased the beach. He noted with the repeated northeasters in this month, the beach has now disappeared so to say nothing has happened is not the way it is. He believed that beach went some place and someone has got it and it may mean it went south to Mid-Town. He recalled the jetties at the Palm Beach Inlet have been raised three times as it kept sinking and they had to build it up. He stated the waves and the scouring which undercut the Reef and allow it to sink and that is bound to happen and he tried to get across the idea that if this reef does make one single grain of sand, it is going to be taken from somewhere else and in this case it is from underneath, but he has a feeling it is the Beach that was at Wells Road down to the Breaker's.

Mrs. Rose Harwitz addressed the Council stating she had a question and that is as long as the State has stopped the job, the Council cannot proceed and it is a question of the financing and she wondered if the Council will proceed with the financing, and will DNR give the American Coastal people more time to complete their testing and it will be at their expense or the Town's expense. She asked if the Council was going along with DNR? Mr. Heeke believed DNR is looking for more testing. Mrs. Harwitz asked if that this project was stopped subject to more testing? Mr. Green responded they all know there is a problem and there is no need to install more units and watch them sink and they need to make a correction in order to have a viable project and what they have said is to stop the original installation and they all need to come up with a solution and the American Coastal has offered alternatives and of the four proposed, three have merit in the eyes of his Department and two of them they need more engineering data before DNR could support the Town spending additional monies to place them and have it monitored. He felt what DNR believes is a more surer solution is No. 4 and if the Town agrees, that is the way they will go, but if there is something less than that and the Town wants tests on it, then DNR can test it. He believed they could do limited time periods and they are concerned about the six weeks as there may not be a Northeaster during that time which will create the wave energy which has contributed to the sinking. He felt all of these were issues and they needed to have the testing to make sure the modules are working before they give the green light to install all of the units. He agreed the work has been stopped because there is a foundation problem and they are willing to do some experimentation and do not want to just to think of different methods to try that may or may not have viability and will end up costing the Town more money so at this point they wish to make very sure they have engineering data to support whatever they will move forward with. Mr. Heeke asked if he was very uncertain with Alternative Three to which Mr. Green stated they really don't see how that will help at all.

Mayor Marx commented on her appreciation for what Mr. Green is saying and recalled what Mr. Brown stated that we are all trying to do this together and achieve a common good goal and if the beaches are saved here, it will help the whole State. She recalled when the American Coastal people found there was a problem they came to us and stated they were stopping until they could find a solution and she didn't think it was that they were working against each other as they are looking to do what they all know what they have to do together.

Mr. Heeke asked what this Council had to do with respect to a Mini-Test Plan. Mr. Green responded he didn't think there was anything this Council could do as DNR has some questions which have to be answered by American Coastal before they will move forward with the projects and he didn't know if it were appropriate to discuss this here but he has been told American Coastal has a limited monitoring budget and would only be willing to monitor isolated things in a test project. He has indicated all along that the Department doesn't want to spend its money until they get the structure in the ground and can start monitoring for the results, so at this point the Department has withheld the State dollars for monitoring until this is installed so in the interim period, this Testing period, there is going to be a need for monitoring and he doesn't know if the Town was going to be involved with that or if this would be totally on American Coastal's part or how it will be worked out but these are issues which are in the background at this point.

Mr. Green stated as far as they are concerned, DNR can sit down with American Coastal and get some engineering data on why they think the first two solutions are the way to go and once verification is done, they can authorize a short term study.

Miss Mitchell addressed the Council noting that in terms of the monitoring over the next six weeks, their proposal is American Coastal would pick up focusing in on the settlement issue and what Mr. Green and she have talked about is the potential for everybody to share in the monitoring costs, so that it is more broad in scope. She stated the data which already has been collected has been paid for by American Coastal and it is difficult to hear that the data collected is not enough but the question actually is how do they get more data. She is willing to pay with regards to the settlement issue in terms of monitoring to continue to check the elevations of the units on a six week basis or however long it takes. She thought what they are talking about is going back to the original test plan that included survey lines for 62 profiles. She stated American Coastal paid 75% of the pre-installation survey, along with the Town, and what she is suggesting now that if they wish to know where the sand is coming from and they want to know if they are influencing the south end of the beach and if there is any adverse impact, another survey needs to be done so the data can be compared.

Miss Mitchell believed it was premature to kick in the whole Test Plan before the Reef is installed, but on the other hand there were contingency funds set aside in the budgeting process

for just this kind of thing and it is now time that some of the other partners in this scheme contribute to it.

Mrs. Wiener commented that this is not a background issue but is very much a foreground issue. She felt there was no question that when one experiments, these are the things that are bound to happen as when they talk about partners between a business and a government, she continues to stand where she stood before as she doesn't believe government has any business in these trying financial times to be involved in experimentation as they will continue to go further into the Town's pockets and the taxpayers will be partners to what? She felt the fact of the matter is if they go back to the beginning and everything that has come along, this has not been anything that has saved this Town from a major emergency, which is why it was touted in the first place. She stated they rushed into it and did not have competitive bidding as this had to be in by October 30 and the fact that it didn't go in is not American Coastal's fault, but the fact that this has become less of a product and more of an experiment every single day and she cautioned the other members of the Council on this issue as to where the line is drawn in the sand and when do they say they just can't spend more money.

Mayor Marix recalled they embarked on this program as this was the only program that they could embark on at that time. She thought there was every reason to believe that a Reef will eventually work although there are ups and downs and that obviously is the case with anything of this nature. She understood there was a barge taking sand to Delray Beach and that ran aground and now they have to figure out who will pay for it.

She knows a great deal of money has been spent on research or studies, some of which are more important than others and she can think of nothing more important to this Town than to protect our coastline and nothing is more important for the people who come to our beaches to have a beach to visit. She doesn't believe they can wrap this up by stating this is a bad year and we just are going to let the road fall in and let people not go to the beach and let the infrastructure go to pieces. She thought they all knew when this decision was made, which was a perfectly wise decision and she didn't think anyone made any big mistake as they all have ups and downs which have to be contended with, so she didn't think it was a matter of the government had no business in this kind of thing as the government does have to save the coastline.

Mrs. Douthitt felt the important thing was to save the seawall although it is very nice to have the sand, but to save the seawall as there are utilities under that street, which is a major infrastructure for this Town and if that is injured in any way, it will cost much more to replace than it will cost for the reef.

Mrs. Wiener stated the real fact of the matter is if this reef is something that had been installed in many places and was proven, she would be delighted to be in favor of it. She felt they keep talking about this as though it were a fact of life, like motherhood and apple pie, and the fact is it is an experiment and it may not do anything for the Town. She recalled hearing at a Council meeting that they were never going to get the money from the Federal Government for the sand and just because they say something, doesn't make it so, and whether they have the money from the Federal Government or not, it has nothing to do with this issue today and all she is saying they should all remember they are not dealing with a finished product and they don't know if this will be a finished satisfactory product in two years or two months or twenty years or never and that is her concern.

Mayor Marix responded reefs have protected thousands of islands in many parts of the world, especially in the South Pacific where they have tycoons constantly and yet they are protected by reefs. She stated a regular reef cannot be grown here because of the temperature of the water and the idea of an artificial reef is a sound one and with the expense of putting sand on beaches and the problems with the seawalls and other things that have happened, many are up on this problem, and whether this reef works perfectly or not perfectly is not the point as reefs do work. Mrs. Wiener responded Mother Nature works and sometimes when man tries to do the same thing, it doesn't work. She stated if the reefs are a great answer, and maybe they are, she would assume that business would be booming up and down the entire East Coast.

Mr. Philip Englehardt addressed the Council stating he thought it was an issue of perspective as everyone agrees the beach is a valuable amenity to the Town and needs to be protected, but the concern is whether or not the solution proposed is a viable solution as if a salesman tried to sell you a reef and a choice was made on what was best suited for this area, that is not what happens. He thought the issue was that the fiscal decision on how the further experimentation will take place is of key importance, and it is not about whether anyone on the Council or in the audience or anywhere in Town would like to protect the Beach, as that is a foregone conclusion and the question is how they will go about doing it and what it will cost. He has watched a series of events where the escalating cost of the project has become aggravating and this is the difference between a contract for time and materials with an idea of what might get built and a fixed price contract where there is a description of the project, time-frames and some assurances that the project can get completed and that is his concern. He believed there should be some format which will make a determination on the contractor's end, between themselves and the State as to what the correct course of action is and what ought to be heard by Council is it has been reviewed and list their conclusions and recommendation of what should be getting done. He thought it seemed to be like an endless request for financial assistance and he finds that to be problematic.

Mayor Marix responded she didn't think she liked the remark about the continuous escalation as part of the argument is when the Town hasn't paid their bills, but the continuous escalation is small, compared to what has been spent on other things, because certain requirements that DNR needs and other circumstances which have come up. She thought if sand was being put on the beach and it disappeared next week, you couldn't go back to the person who sold you the sand and say "you've given us a bad beach" as when the ocean is being dealt with, these problems arise. She stated American Coastal quoted the same price this year as they did a few years ago and wrongly as she views it. She recalled they got all of the permits necessary for \$8000 and they were wrong to charge that and should have charged \$50,000, but the fact is they charged extremely little on these things and now certain things are coming up which we are going to have to do and we have to alter the problem about the sinking, or have the time to measure if it is stopped or not. She didn't believe they could do these things for free and this is where Mr. Englehardt states it is escalating, which she doesn't feel it is. Mr. Englehardt explained he has heard the requests for additional financial assistance in the past, and he has heard the Mayor make the comments that "they can afford it better than we can" or "we can afford it better than they can" or today's comments is "two million dollars maybe isn't such a large amount" and all of these are relative

PEF Reef
Project (cont'd)

issues, as the dominion of the Town government is to protect the purse of the Town and the dominion of the folks here today is to protect the best interest of their company and if the two can be mutually beneficial so that they can deliver a product and we can pay for it and they can make a reasonable profit and save the beaches, that is a viable end result.

Mayor Marx responded that is exactly what they are all trying to do. Mr. Englehardt thought the problem was if they wanted to install a reef, they should have a reef expert. He commented if they wanted to buy a car, they go to a car dealer and not a toy store and he believed the issue here was whether or not the company hired by the Town, in conjunction with the appropriate administrative agencies of the State of Florida are capable of implementing a solution that gives the Town Council the benefit of the bargain for which they originally contracted for. Mayor Marx responded she thought that was what this meeting was all about. Mr. Englehardt thought it was a little more exploratory than that and the undercurrent of the forthcoming request for financial assistance, is what is his concern and he doesn't know if Mr. Heeke had planned opportunities for public comment at various stages during the meeting or not. Mr. Heeke advised as each agenda item came up, he would be calling for public comments.

FEP Reef
Project
(cont'd)

Mayor Marx thought it was important to realize that since the Town didn't have the permits for beach renourishment, they would have been in for far more money, so if they are talking about fiscal responsibility, a reef is doing a fiscal responsibility, because the sand pumping would be eight, nine or ten millions and they had to cut the length down because they didn't have the money. She believed they all knew, just like the engineer said for the Delray project, a good storm will take it all away, which she considers fiscal irresponsibility. She knows they have a problem here and they are trying to solve it. Mr. Englehardt stated it is not a question of attacking the motivation, as that is at the highest level for all parties, but he heard Mr. Green state there was one comparable project on the east coast of the United States to compare this to and the Federal government concluded they could not afford to keep up with the project.

Mayor Marx recalled they couldn't afford to put the rocks underneath. Mr. Englehardt reminded they were talking about the Federal Government and while their red ink flows in greater proportions than the Town's, they made the determination it was too rich for their blood and this is the kind of issue that is his concern.

Mr. Heeke asked Mr. Green if he could give more details on that, recalling that he stated it was near a NASA project and he didn't know if it was a NASA effort or not. Mayor Marx pointed out they want to see what happened when they didn't do that and these are the things the Town needs to find out. Mr. Heeke asked Mr. Green to expound on the March 1988 effort. Mr. Green responded it was a NASA project and it was to protect one of their research facilities. He recalled they were looking for funds out of their budget to address their erosion problem and it was NASA who made the decision that the fix was too expensive at that time. Mr. Green advised he doesn't know what the results have been. Mr. Heeke stated this is in the nature of an artificial reef and you have to go along and see what is happening and he would like to find out what has occurred during the four or five year period of time it has been installed. Mr. Green stated they are following up on this to see if they can gain that information.

Attorney Lickle stated he feels compelled to respond to Mr. Englehardt's claims about the increasing costs of this project, and as Mayor Marx has pointed out there has not been any increase in the costs of the project. He stated American Coastal has been before Council on two occasions to request funding and this has been with regard to the Test Plan, which was contemplated. He knows there is a difference of opinion as far as the interpretation of the contract for an amendment, which was provided for in the contract that once the Test Plan was known and the extent of it, that the Town would pay for it. He stated the second time was with regards to the payment to the sub-contractor, which is part of the contract. He pointed out the contract has not increased one dime as far as the project interpretation and moving forward with it. He felt it was a misrepresentation to state that this was an empty hole into which the Town is continually sinking money as there are tests which will have to be done and the Test Plan was a part of the negotiated contract in the beginning and the estimates were \$100,000 per year and this is not anything new. He commented that American Coastal, as part of the test programming, will be back to ask the Council to consider those items once they are firm up with DNR.

Mr. Lickle did not think the comparison with the other two projects mentioned is quite valid as the one on the west coast was an emerged project and the artificial Reef here is an entirely different project completely. He stated with regards to the other one, the NASA project, that is a budgeted project within NASA and there really is no comparison except for the fact they had problems, and they worked through them. Mr. Heeke asked if it was fair to state that American Coastal and DNR have to get together and decide on the monitoring of the Mini-Tests. Mr. Lickle saw no reason why these should not go forward, with the only question as to which alternative items the DNR wishes to test, and the submitting of engineering data before the tests go into place. Mr. Heeke believed this was something DNR and American Coastal needed to work out, as to how much detail and monitoring the first two alternatives need. He recalled hearing Mr. Green stating their preference would be Alternative Four, but they are willing to see what American Coastal can come up with on Alternatives One and Two to see if this could possibly be a less costly solution as it is known Alternative Four will be quite costly.

Mr. Lickle responded American Coastal will not be charging for the testing of the projects as outlined on Alternative One and Two, as they think this is a viable solution and he thought they may come up with a solution that will be far less costly. He believed where they were at, is clearly to have a vote of confidence from the Town, as far as the project going forward in conjunction with DNR.

Mr. Heeke recalled Mr. Green's statement that he didn't feel that was a decision of the Town Council and the only place where it would be would be in the extension of the contract issue. He stated that would be a "wait and see" attitude and not create a problem by the termination of the contract prematurely as they still have some options. Mr. Ilyinsky agreed. Mr. Lickle agreed but thought an understanding was needed that time is of the essence in order to get the studies done and they want to make sure that DNR and the Town will be cooperative in the timing process so the Mini-Testing can be done, approved and in place, so that it doesn't happen as Mrs. Wiener stated that it would be two or three years before the initial process is completed. Mrs. Wiener recalled her statement was two months, two years, twenty years or never.

Mr. Heeke thought it was axiomatic that the Town wanted this to move forward as quickly as possible as it is to the Town's benefit to have the protection they are seeking and he would be

surprised if anyone thought they should drag their feet on this. He recalled Mr. Green indicated that DNR is willing to work with American Coastal as much as possible to get to the Mini-Tests, so results can be received and a determination made that these are workable solutions.

Mr. Lickle informed the Mayor and Council that American Coastal is willing to move forward today in order to get the approvals that are necessary from DNR.

PEP Reef
(cont'd)

C. AMERICAN COASTAL ENGINEERING, INC., RECOMMENDATION WITH OPTIONS TO ADDRESS PROTECTION OF AT&T CABLES AT CLARKE AVENUE BEACH AREA AND DEPARTMENT OF NATURAL RESOURCES RESPONSE TO SAME. Mrs. Douthitt believed the way to handle this would be to leave the appropriate gap of 150' or in the neighborhood and do the Reef to the north of that in a lesser length and the units not used be placed at the southern end of this project.

Mr. Heeke believed a solution should be found first and then they come back and worry about the placement of the units, as it may be the solution itself will impact the potential decision on the AT&T cables. He recalled when AT&T representatives were here, they felt comfortable with what has been proposed and wanted to be sure their cables would not be damaged, but if there was damage, the Town would be responsible. Mrs. Wiener stated this was for one million dollars per hour. Mayor Marix noted the last cable was installed about four or five years ago and it was the fiber-optic cable and she wondered if the Town received any kind of payment for any of this as this is certainly a money-making thing for them with revenue at one million dollars per hour. Mr. Doney responded the Town did not receive any payment as the cable was installed on the AT&T rights-of-way that they have for their exclusive use. He advised they are still awaiting documentation from their attorney and ours. He advised that AT&T were paying taxes on the property on the upland portion where the cable is now located. He acknowledged the submerged areas are subject to permitting from the Corps of Engineers and other agencies. Mayor Marix stated it looks like they make their profit and the only expense they have is paying the taxes on the upland property, to which Mr. Doney agreed. Mr. Heeke suggested this discussion be deferred until later on until it is known if there is a viable solution to the settling problem coming forward.

Mrs. Wiener asked if Mr. Green could give his comments on this subject. Mr. Green addressed the Council indicated they looked at the proposal and going along with the Test Plan and the earlier recommendations DNR made that there be some gaps in this, as in other typical breakwater designs there are gaps left in the breakwater to help adjust for the tombola effect and that was one of the things they wanted to look at. He commented that consistent with that original view they had, they felt the best solution from their viewpoint, is to put the 200 foot gap around the AT&T cables and there is another structure in that area, the outfall, so the best way to approach that is to allow for the 250' gap and then adjust either end or truncate the project at its original length previously proposed. He believed the addition of the units at either end would be a small item as far as DNR is concerned although they would have to adjust their profile and monitoring.

Mr. Heeke advised the main reason the Council was concerned about the Clarke Beach area, which is an area that was breached in the October Halloween storm last year and it seems to be a weak space that would damage the roadway. Mr. Green believed the 200' gap would allow for protection of that beach area and that would be perfectly okay with DNR.

Mr. Weinberg asked if Mr. Dusey had any comments on this? Mr. Dusey agreed with the idea of having the gap there, as he was concerned about what may or may not happen in severe storm events, and the Andrew experience in the south showed that objects that were ninety feet in the ocean got moved hundreds of feet and were torn apart, so it is not known what will happen and from his perspective, the further they stay away from the cables, the better it will be.

Mr. Heeke stated they will then move onto the next item. Mr. Lickle asked to address one lingering question and that was whether the Town Council, in light of the fact there is a possible solution with the 200' gap, would this time be the time to communicate to AT&T that they should go ahead and armor those cables and bury them, as they have offered to do that at no cost to the Town. Mr. Heeke believed that would be very protective for their own interest. Mr. Lickle believed AT&T were waiting for direction from the Town. Mr. Heeke asked how much lead time would they need to which Mr. Lickle responded he believed it was four to six weeks.

Mrs. Douthitt believed they should go ahead and do it as it is for their own benefit. Mr. Heeke agreed. Mr. Lickle recalled the letter was sent to the Town and they had certain proposals outlined in their letter and if those proposals are acceptable, they will armor and bury the cable. He thought perhaps now, since there will be a 200' gap, AT&T might feel it isn't necessary for them to do so. Mayor Marix believed the Town should tell AT&T to go ahead, as all obstacles that can be cleared out, should be cleared out. Mrs. Wiener wondered if they wanted to protect their cables, they would go ahead and do it anyway. Mr. Lickle responded their concern in the beginning was the Reef project in that area. He pointed out there have been no horizontal movements of the units installed in that area from the effects of Hurricane Andrew nor from the northeasters. Mrs. Wiener believed this was contingent on something and she didn't want the Council to be making decisions on this at this time. Mr. Lickle reminded this was to be done if it was acceptable to the Town in regard to the installation of the Reef with some conditions. Mr. Heeke recalled they were waiting for a response from DNR on that issue and DNR recommended there be a 250' gap.

Miss Mitchell addressed the Council noting they are talking about Option 2, and she suggested in her letters to the DNR that this is conceptual as they can't tell them it has to be 216' and the reason for that, is although the AT&T cables were located several months ago and when the AT&T people go out there to armor and bury those cables, they will identify the exact location, as at this point in time, that is not known exactly. Mr. Lickle noted there is a possibility the cables may be brought in closer, but AT&T are not sure about that. Mr. Heeke noted DNR does favor the gap in the cable area. Mayor Marix asked if Mr. Doney would be given permission to write AT&T to armor those cables now? Mr. Heeke asked Mr. McCracken if he saw any particular problem in authorizing the Town Manager to write the letter recommending the armoring of the cables by AT&T. Mr. McCracken stated there was no problem.

Mr. Heeke asked if there were any objections from the members of the Council to authorize this letter. Mrs. Wiener noted the letter from AT&T states they will do the armoring if the Town complies with the conditions outlined in their letter. Mr. Lickle recalled AT&T requested cooperation in removing any segments which interfere with any maintenance work they may have to do; and also an element of cooperation in the future regarding the laying of another cable. Mrs.

Wiener recalled another requirement is the Town will provide a gap in the Reef to protect the optical cable and she thought that that needed to be a part of that letter. Mr. Doney responded that this letter from AT&T was in response to prior proposed solutions.

Mrs. Wiener wondered if another sentence in that letter would be satisfactory to American Coastal as they state: "The Town will cooperate in allowing AT&T to temporarily remove reef elements to accommodate the construction of the shore end of the optical cable during 1994." She felt there were all kind of things in this letter and they needed to be very clear about what they are doing. Mrs. Douthit thought that issue had been settled. Mr. Lickle explained that under this letter AT&T was happy with the solution of laying the segments on top of the analogue cables creating a gap only for the optical cable, but now the proposed solution is to have a gap so there would be no reef segments in the area, and that issue will go away. Mrs. Wiener agreed that might be but she would like to hear from staff to make sure.

PEP Reef
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Mr. Doney reported in anticipation of this meeting, he spoke to Mr. Wargo of AT&T, the representative who came to the Town Council meeting and is available for a conference call, if needed. He recalled Mr. Wargo indicated a transmittal had been received of the revised alternative solutions from American Coastal and they were reviewing those but the same bottom line is that AT&T will still hold the Town completely responsible and liable if the cables were damaged, due to the reef installation. Mr. Doney asked if they wait until the Test Plan is completed, whether or not AT&T would want to spend the money if the Test Plan results are such that there will be no reef units in the area. Mrs. Wiener thought they were putting the cart before the house and suggested this item wait until later.

Mrs. Douthit didn't believe it was of vital importance right now. Mr. Heeke thought it would be important when they get down to the installation of the final units at Clarke Avenue and that's where there may be a few weeks delay. He suggested this matter be revisited when American Coastal and DNR are ready to report to the Town on the Mini-Testing.

Mr. Heeke noted there is input now from DNR's preference of the gap, which we did not have before when Mr. Wargo was in attendance.

Mr. Dusey commented that on the Option 2, to leave the gap, there is a provision by American Coastal to place the number of the excess units on the south end of the property and he was not sure whether the Town Council had considered that option. Mr. Heeke stated he has expressed his personal opinion. Mrs. Douthit recalled Mr. Green's commented it was not vitally important to him. Mayor Marix recalled there doesn't seem to be a problem. Mr. Dusey noted the problem would be that he will get a bill for the units that have been cast and may not be used. He recalled he had received a bill for all the units which had been cast, and there may be some of which may not be used. Mayor Marix felt there was a way all the units could be used and she didn't see the problem. Mr. Heeke stated he did have a problem where it benefits private property and taxpayers' monies are being used for private property.

Mayor Marix asked how far this reef extended, as she thought it didn't go into private property. Ms. Mitchell responded there is 335' feet at the south end before they get to the private property so there is room there for the use of 216' in the south. Mayor Marix asked Mr. Heeke if this would solve the problem at the south end. Mr. Lickle stated they would simply take the 216' being cut out and move it to the south end of the project and this would provide a 4000' barrier. Mr. Green explained this is not a problem with DNR unless there is a major reef or something else in that area, but he didn't believe there was, the relocation of the units to the south end of the project would be acceptable to them, although the monitoring plan would have to be modified.

Mr. Heeke recalled that was an objection he had. Mr. Dusey explained Town Council specifically told him not to pay for those units which would be at the north end of the project at Clarke Avenue at a previous meeting and now perhaps they are stating he can pay for them. Mayor Marix pointed out the question has been solved. Mr. Dusey asked for a motion to be made.

Mrs. Douthit moved the bill be paid. Mrs. Wiener asked if they could stay with the Agenda. Mr. Heeke believed that matter was later in the agenda. Mr. Dusey believed it was an AT&T item. Mr. Heeke believed that item had been handled.

Mr. Lickle believed the only issue is payment of the units which would not be used, if they continue to have an issue with AT&T, so they are looking for some direction from Council, noting the fact is they will be able to use all of the units as indicated by DNR and the survey shown, and those units have been constructed many of which are in the ocean. Mr. Heeke asked how much would that payment be to which Mr. Lickle responded \$126,116.30. Mrs. Wiener asked if this was on top of the two hundred thousand to which Mr. Dusey responded that is a separate issue. Mr. Heeke stated he would rather have the payment issue come up after there are other discussions on the various payments. Mrs. Douthit withdrew her motion. Mr. Heeke thought it was better as it will have a better flow. Mrs. Douthit asked what was that figure to which Mr. Dusey responded \$126,000 and change. Mr. Lickle stated they will detail it for the Council at that point.

Mrs. Wiener asked if the south end was ever a part of other considerations to which Mr. Lickle responded negatively. Mrs. Wiener asked what benefit would be gained by putting the units there, other than the fact that they are manufactured and waiting to be put in. Mayor Marix hoped the wave energy would be broken on the south end of the project. Mr. Dusey stated he could not say what benefit it would be as he is not an advocate of the project. Mrs. Wiener didn't think he had to be. Mrs. Douthit commented it will protect the seawalls in the south end of the project. Mr. Dusey stated if the reef does provide protection, it would protect the south end also. Mrs. Wiener wondered why it wasn't included in the project originally to which Mayor Marix responded because they were going for 4000' because they are being fiscally responsible. Mr. Heeke believed this was a subject matter which should be addressed later as it doesn't fit in under Item C which had to do with the protection of the AT&T cables.

Lunch break was taken.

Mr. Heeke reconvened the meeting at 1:40 PM.

D. REQUEST BY AMERICAN COASTAL ENGINEERING, INC. FOR TIME EXTENSION TO CONTRACT DATED FEBRUARY 11, 1992.

PEP Reef
(cont'd)

Mr. Lickle indicated there is a letter in file which extended the deadline to Dec. 6, 1992 and under the proposed Mini-Test Plan and studying the results, American Coastal is requesting an extension until March 15, 1993, which allows for the storm season to move through and give them time to begin the installation in the Spring. Mr. Ilyinsky didn't believe they had any choice. Mrs. Douthit agreed. Mr. Lickle explained if it could be done any sooner, American Coastal would do so. Mrs. Douthit moved the contract date be extended to March 15, 1993. Seconded by Mr. Ilyinsky.

Mrs. Douthit asked Mr. Green if that was a fair enough date? Mr. Green responded he cannot predict the weather and he thought this would offer them a fair opportunity and should be adequate time. Mayor Marx asked if there could be an addition to the motion that if there are any other things that might come up, it would be in order for them to request a further extension? Mr. Heeke did not believe that was necessary to be in the motion as they always have that option and they could cross that bridge when they get to it as the results are known and the parties, by mutual agreement, could always extend the contract. Mayor Marx stated as long as that is clearly understood and the record shows that that was the intent so there is not a big argument again in March.

On roll call, the motion carried by 4-1 vote with Mrs. Wiener voting against the motion.

- E. REQUEST BY AMERICAN COASTAL ENGINEERING, INC. FOR PAYMENT OF TRANSPORTATION COSTS FOR PEP REEF UNITS WHICH HAVE BEEN DELIVERED BUT NOT INSTALLED. (Deferred from September 14, 1992 Special Town Council Meeting).

Mr. Lickle reminded all there have been two Town Council meetings over this issue and this was discussed extensively. He stated prior to the Special Town Council meeting of September 14, 1992, they requested a partial payment as against the third phase of the contract, which consisted of two parts, one being of delivery of the units to the site and two, being the installation of the units.

Mr. Lickle observed Mr. Murphy of Murphy Construction Co. is here today with his attorney, Mr. McBane, who are concerned about the payment and the reason for the request was the construction company devised an accelerated method with which to deliver the units to the site and then come back with a submerged unit in order to align them. He stated the units were all delivered prior to Hurricane Andrew and it was discovered there was a settling of the units and the project was stopped until a solution could be determined. He stated subsequent to that meeting, a letter arrived from DNR who stopped the project, which was no surprise to American Coastal but evidently was to the Town, who called a Special meeting to defer the payment which was agreed upon earlier.

He indicated he is back here today requesting the payment of the transportation costs and now since it appears the project is going forward and American Coastal together with Murphy Construction Co. have sent a letter to the Town requesting payment. He noted the expenses have been incurred and American Coastal with the fabrication and delivery of the units and Murphy Construction with their sub-contractors for the barges, etc. He stated as to whether the Town is receiving a direct benefit as a result of the units being out there is a question, however, Mr. Sasso's surveys do indicate there perhaps is a correlation with less erosion in that area and a some diffusion of the wave energy at the same time, so there may be a benefit and American Coastal believes there is. He felt more importantly both of these companies, especially now with the testing plan going forward and the delay to the Spring, simply need to have some cash infusion to continue on this project.

Mr. Dusey asked Mr. Lickle if they had a contractual obligation to pay Murphy Construction \$258,000? Mr. Lickle responded they discussed this at staff meeting and the position is not being put forth from a legal demand, at least from their perspective, but from a sense of equity in that the third phase of this contract calls for payments when the modules are delivered to the site and installed. He stated this is more a claim of decency in light of the issues which have occurred and the fact that Murphy Construction together with American Coastal accelerated the delivery schedule in an attempt to make the October 1 deadline, and it is not a payment for services which have not been rendered and is more a quid pro quo request and a policy question for the Council to consider whether it is fair to have these companies continue to suffer financially and it is a serious point at this stage of the game.

Mr. Dusey asked if he was saying he did not have a contractual obligation to pay Murphy Construction the \$258,000 they claim that American Coastal owes them? Mr. Lickle responded there is a contractual obligation with Murphy, whether it is a legal and enforceable obligation, he might differ with Mr. McBane on it but it is a serious problem and will become more serious if not resolved. Mr. Dusey asked Mr. Lickle if he feels strongly this money should be paid to which Mr. Lickle responded affirmatively. Mr. Dusey asked if there was any reason American Coastal could not pay them this money? Mr. Lickle responded American Coastal doesn't have the money.

Mr. Martin Murphy of Murphy Construction Co. addressed the Council, indicating he is a sub-contractor in this project and wished to explain what they did as sub-contractors to American Coastal on this project. He advised their portion of this job was the installation of the reef in the ocean and this consisted of three or four objects to get it to the position of the reef, by trucking the units from the casting yard west of Town to an area north of the Port of Palm Beach, unloaded them, reloaded them onto the barge, ten to twelve units at a time and then positioned the placement crane and barge every morning in the different locations as they were proceeding from Hammon Road southward.

Mr. Murphy reported they were able to use good weather and were able to get nearly 400 units delivered to the site. He advised as they were delivered to the site, there was another crane that started setting the units and that was the crew that set the 36 units. He stated if there had not been a hurricane, they would have completed the project. He believed that in getting the 400 units on site, they hired an additional tug boat and two barges which enabled them to perform towards the finished schedule which was tight. He clarified there were 242 units on the ocean bottom, with 56 of them being connected. He talked with Town Staff and Miss Mitchell about their procedures and that is when the Council was approached about an advancement on the contract since the material was delivered to the site. He is not requesting anything more than they have earned and he knows his contract is with American Coastal and their contract is with the Town. He noted there are rules and regulations and certain schedules of jobs which are adjusted as the project moves forward.

Mr. Heeke commented they were asked to deliver and install and asked if there were any assurances that they could make to the Town that the installation will be completed. Mr. Murphy

responded they broke down the unit costs and they do have a performance bond outstanding from his company and one from American Coastal. Mayor Marix understood Mr. Murphy was not asking to be paid for the installation of the units he hasn't completed but merely to be paid for those he has installed and the other units brought to the site to which Mr. Murphy agreed and not asking for an advance on the installation charge.

Mr. Heeke wanted to be sure they can get them installed once they get to that point. Mrs. Wiener asked Attorney McCracken what the Town's relationship with the sub-contractor and Mr. McCracken responded there is none as our relationship is with the prime contractor who in turn has a relationship with the sub-contractor. Mrs. Wiener stated she has a problem with them not being paid and she has had a problem since Day One doing business with a company who would not provide financial data so that it could be known we were dealing with a solid situation, which she thought behooves the Town Council. She has a problem with American Coastal not having the money and with the Town not having a relationship with Murphy.

FEP Reef
(cont'd)

Mayor Marix recalled there are many occasions where the Town pays bit by bit, such as the Fire Station, doing the Water Report and it is not uncommon in this day and age to pay at certain points of a project. Mr. Murphy stated that is correct as usually when materials are delivered to the site and usually this is done at a pre-work conference but this wasn't accomplished on this job by the Town. He stated that wasn't for him to look into and he is speaking as a sub-contractor however he is not asking for anything which he hasn't earned. Mrs. Wiener stated that is the whole point and although the Mayor is right about paying in a series of time and when that arrangement is made with the person you are dealing with American Coastal was the one who made the arrangements with Murphy Construction and that is the whole problem. She stated she has another problem with the Town Attorney permitting this discussion with a sub-contractor because the Town does not have a relationship with Murphy Construction and perhaps the fact they are talking with them now would be establishing one. Mr. Murphy stated what he is trying to explain is that American Coastal asked him, and he hasn't asked the Town to do anything and he is just here talking for American Coastal and the usual procedure is to make progress payments and that is how he operates with the State and the Army Corps of Engineers and the County. He reported his company has worked for different ports, inlets, and has worked for the Town of Palm Beach, and progress payments have been made, based on Schedule of Values, which are adjusted for materials which are on site.

Mrs. Douthitt believed it was basically immaterial if the check is made out to American Coastal and they pay their sub-contractor. She knows the material has been delivered and are sitting in the ocean and this does not constitute an installation charge and she asked Mr. Dusey if it was for \$258,000 which Mr. Dusey confirmed. Mr. Dusey advised some of the units which have been installed which the Town has paid for, but apparently Murphy Construction has not been paid in full for them. Mr. Murphy confirmed that 24 units of the 56 units is what he has been paid for in full. Mr. Dusey indicated the units do not meet the specifications as they are not in the place they are supposed to be vertically. Mayor Marix asked if these were the ones that were connected to which Mr. Dusey responded affirmatively. Mrs. Douthitt stated these are the ones that sunk. Mr. Dusey stated the Town has paid for 24 units and before they were billed for the remainder of them, they sank and now a certification is needed from their engineer that they are properly installed and they cannot get that until after the test. Mayor Marix stated that is what they are trying to resolve. Mr. Heeke pointed out Mr. Dusey is trying to explain why certain payments have been made and others have not. Mr. Murphy agreed Mr. Dusey was right and there is a question about the difference between 24 and 56 and that is something the Town has to address. He pointed out this Reef is something that they all took on and this whole project is an enthusiastic project and is not like something that has been designed for a hundred years and they would build it and walk away from it as the discussion has shown this morning, that isn't the case when you deal with the Ocean and he concurs with what Mr. Rybovich stated about the jetty at the Palm Beach Inlet as his company has raised that elevation at least three times and for some reason, it settles. Mayor Marix believed the jetty is doing what the Port wants it to do, even though it hurts the surrounding beaches, but in the event there is a lot of sand put on the beach, it too will go away and we would have to do it again and again. She felt in comparison the problems with the Reef are not that bad when you stop and think about it. Mr. Murphy responded that is for the Town Council to decide, but he does concur with the Mayor's remarks, but they have to decide. He stated another example is the Sand Transfer Station at the Inlet and that is something that was built forty years ago in the sand and it has taken good care of the area to the north and is supplying 100,000 or more yards per year, depending on the weather, so it has performed, but it has also been a high maintenance item for the County. He stated his company has been building seawalls for a long, long time and they are trying to build a seawall that will not fall down. He explained this Reef is an experimental project and it is getting a lot of attention and needs tender loving care and statements have been made today that there is sand there now and it is coming from somewhere and it is building beach.

Mr. Weinberg asked if someone could tell how many units have been properly made and installed so they could properly pay for what is the Town's responsibility and ignore what is not proper? Mr. Dusey responded they were billed correctly for 24 units and that bill has been paid. He stated 56 units were connected and then the Hurricane Andrew arrived and before the billing occurred the units installed sank. Mr. Weinberg asked Mr. Dusey if he was in favor of paying the remainder of the connected units? Mayor Marix realized there was a certain amount which should be said for just plain honesty and the units are there and as Mr. Murphy pointed out there is recourse and when it is found out why they sank or the problem is cured, the units will be put together and she can't imagine doing business in such a fashion that we hold up their payment because there is a technicality, as we know full well the units are there and when the problem is solved, they will be installed the way they belong. She pointed out we are dealing with a member of our own Zoning Commission here and there is no question that the bond will take care of it and she thought one pays one's bills and she doesn't believe they are paying anything in advance as there is a technical hitch here so they can't hook them up, but once a solution is found, they will be hooked up. Mr. Heeke pointed out if they looked at the 56 units, the first 24 were certified as being properly installed and he understood Mr. Murphy is requesting the payment for the units actually delivered even though they are not all installed and he is not asking there be payment for the installation of those remaining units. He believed that the request is for the 32 units that are installed, the payment is not only for the delivery but also for the installation. Mr. Lickie responded indicating the issue on the 32 units is technically they were installed in accordance with the parameters by Murphy Construction, however, the time between the installation and Hurricane Andrew coming through, the engineer cannot certify that they are there, so they are in the same position as all of the other units which have been installed and it is a timing problem that the engineer could not get to it before Hurricane Andrew arrived. He felt there was no difference between any of the installed units sitting out there now, as they are functioning or not functioning exactly the same as all the rest of them. Mr. Heeke understood Mr. Murphy was

PEP Reef
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requesting payment for the units which have been delivered, the 242 units and these are in the water and of those, he has not been paid for 24 units which actually have been installed and certified. Mr. Dusey reported the Town has paid that bill for the 24 units. Mr. Heeke stated he meant the 32 units which are installed and have not been certified and the \$258,000 is the installation of those 32 units. Mr. Dusey believed that was correct. Mr. Murphy stated that is correct and in the time frame, the units settled, but those units were installed exactly like the first 24 units. He noted the 56 units which are connected all do not meet the criteria right now as they all have had some sinkage. He explained the criteria on delivery is they took the unit costs and it has been broken down and that is just the cost of the delivery. He indicated they are not looking for the full cost of 242 units, although he wished they could, but he didn't believe the Town would go for that.

Mr. Ilyinsky believed there was an obligation to pay American Coastal Engineering, but he thought they needed to have a better bookkeeping system than they already have. He felt they had to know where this is going and what it will cost. Mayor Marix and Mrs. Douthitt both stated they do know. Mr. Heeke believed that what Mr. Murphy was telling us is that in the normal contractual procedure, there would have been draws for the delivery on site of the units, and to offset the costs the contractor or sub-contractor incurred to get them at that point. He believed there should have been some sort of system devised with regard to draws, but this is looking backwards. He believed the drafting of a contract is a never-ending thing depending on who is drafting the contract. He wished to state that had Andrew not come along, there probably would not have been a settling, and the main problem the Town would have been faced with is the installation before the storm season and Murphy Construction should be applauded as they devised a plan to meet the deadline and moved along rapidly with the delivery and the project would have been completed. He knew they were trying to keep up with the time frame and get this thing going before the storm season. He agreed with the comments about the Town not having a relationship with Mr. Murphy but his people have gone out of their way to try and meet a deadline. He heard Mr. Murphy state they have a Performance Bond for the installation and this is a 50% request for payment. Mr. Lickie pointed out additionally, there is a ten per cent withholding which protects the Town.

Mrs. Wiener wondered if there was anything in the request or in the contract that the Town Manager would like to comment on? Mr. Doney responded he has some comments but would like Mr. Dusey to explain how they are paying for some items of work performed. Mr. Dusey stated his concern is from the side of bad things happening as if there are good things happening which means the contract goes well and it is wonderful, but if these alternative solutions do not come to pass and the units sink four feet instead of the three and one half feet they are at right now, that would mean we have the units paid for but we can't use them and we would have to pay to remove them. He believed the benefit of the Reef will be when it is properly in place and that is what has been bought and the units now sitting in the water are not doing us any good. Mayor Marix responded they don't really know if they are doing us good or not doing us good, and she heard statements today that there is something going on out there, but we just don't know. She asked how much money has been spent since January in furthering the information for the sand fill possibilities? She believed they were paying for it and we still don't have the sand and it is a known fact it always goes away and wondered if they were going to ask for the money back and of course, they were not. She believed what Mr. Dusey was saying was what do we do if it doesn't work? Mr. Dusey disagreed, stating what he was saying was what does he do when the alternatives to stop the settlement do not work, as if they have paid for units which haven't been installed and this could be a quarter of million dollars. Mayor Marix thought if they put the sand in, they will lose a lot more. She believed they were trying to achieve something and she knows it is not a guaranty, but sand isn't a guaranty either, and with this project they are trying to find the most reasonable and permanent way of solving a very serious problem. She doesn't see the difference between putting sand in that we all know won't last, or putting in a reef which they hope they won't have to remove.

Mr. Dusey recalled he remembers talking about this at a meeting about the sand, but today they are talking about paying \$258,000 for units which are not in a position to be of any benefit and if the alternative solution to settlement does not come to pass, they will not only be paying the quarter of million dollars for units, but will also have to pay to remove the units, and it has nothing to do with beach sand and he doesn't know why they are talking about beach sand. Mr. Heeke asked if that was not the concept with the Reef all along and this is part of a risk with a Reef, even if were properly installed? Mr. Dusey responded there always has been a risk that it may have to be removed, but expectation was that that would not be the case. Mayor Marix commented this was known when the decision was made to install the reef and that has always been a possibility, and it always has been known that a reef is a better solution and there is good reason to believe it will not have to come out but with sand, they always know they have to replace it.

Mr. Heeke called on Mr. Green, noting he could sense their dilemma about the 242 units in the water. He recalled Mr. Green believed there was one solution which will work (Alternative No. 4) but the Council wished to look for a less costly solution. He recalled Mr. Green also indicated they were not absolutely sure whether or not the depth at low tide needed to be three feet or whatever, as that is not known with an ongoing experiment and asked what would his counsel be at this point with respect to the 242 units? Mrs. Wiener asked if perhaps he had a little budget money available to which Mr. Green responded he did not. Mr. Green responded he shared the same concerns that Mr. Dusey expressed, and if for some reason they can't come to a solution or if the solution is a rock bound foundation and it is determined that that would be too expensive, then they would have to remove the units. He didn't know if they could be used as an off shore reef or used in some other way. He thought if there are contractual obligations to remove and to install that can be enforced, then he probably wouldn't have a big problem with making the payment, however, he is not privy to all of that data, but his personal view is that a solution will be found for the foundation problem and they will move forward with the installation, however, he has been wrong before. He thought it would then be a matter of how comfortable the Council felt with advancing those funds.

Mr. Doney knows this is a difficult policy consideration for the Council and the Mayor and he knows that Murphy Construction has performed a number of jobs for the Town of Palm Beach and he is discussing this with Mr. Dusey from a contract administrative perspective and from the "what if" scenarios that are before staff, he could not recommend payment for the units because of the potentials that exist which may not materialize, including the potential of this being too costly a project, however, he did believe it was a policy question and if the Council determines there is enough comfort in the alternatives, the Council has that prerogative, but staffwise, he would not recommend payment. He didn't want to be unhelpful but contract administration-wise, it is totally distinct from anything they have ever done. He set out an example that if Murphy was building a

seawall and they were awarded the bid, there would be a schedule developed and there would be materials put on site, suitably stored, and then inspected and the Town would pay for them and they would be incorporated within the work, and this has been done many times, however, this is totally unique that a situation has arisen on an experimental project and it is not known what the next step will be, so staffwise they would not be fulfilling their obligation as a good contract administrator to recommend payment.

PEP Reef
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Mayor Marix asked Mr. Doney if he felt comfortable in spending more or less one million dollars, of which \$400,000 was returned, to research the sand situation, and that project is not yet completed, even though he knew the sand would go away in three or five years? She noted they know how the sand works and how often it has to be redone, and the reef they really do not know how it works but it might be highly successful and probably will work, so neither situation is comfortable, nor is the Island washing away. Mr. Lickie stated he understood the frustration now being experienced by the Council and the Mayor, but Mr. Doney explained this is an unique situation and doesn't fit into the parameters of the normal construction project and they did wrestle with that in previous meetings, and because it is an unique situation, it requires some new thought and answers on how to make it go forward, and that is where they are at this time. He believed it was proper for the staff to be very cautious in their concerns, but this has to move forward if it is going to be successful.

Mr. Doney advised the Mid-Town Beach Nourishment Project and from a coastal engineering perspective, this type of a project is called a nourishment project the first time sand is put on the beach. He recalled this method has been proven to be an effective technology to protect against beach erosion and is providing a solution and it is realized up front, that every five to seven years, depending on the design of the project, the beach must be renourished, however, it is a method of protecting the shoreline that has been tried and proven. He recalled when the Town Council authorized to pursue the beach nourishment project, he did feel comfortable with that. He stated the PEP REEF project is experimental and he understands the Mayor and Council's desire to find a solution, but from a contract administration perspective, he hoped they can understand where he and Mr. Dusey are coming from, and the next step would be to recommend the Town Council await the results of the Mini-Tests and then revisit the situation.

Mayor Marix asked if he was saying they simply should not pay? Mr. Doney responded what he was saying is they take up this question of payment at a time when it is known the results of the Mini-Test Plan. Mayor Marix asked if he meant not to pay them until March or April or whenever the test is completed? Mr. Doney's response was he didn't know when the results of the Mini-Test would be completed, but he felt they should know what the results are. Mayor Marix responded they do know the modules are in the ocean, that is something they do know and that's all they are asking to be paid for at this time.

Mr. Lickie interrupted noting that Murphy Construction has certain requirements in order to protect their interest under the laws of the State of Florida and they are running up against that deadline, and if there is further delay on a decision on this issue, Attorney McBane has advised if the payment doesn't occur, they will have to notify the bond people and if that happens, this will have a domino effect and would have serious consequences, so the issue of waiting further is not an option, as he sees it.

Mrs. Wiener thought that with all due respect to the Town Manager, whether he thinks that sand is good and the reef is not, or vice-versa, that is not where he is coming from in discussing this but what he is talking about is contract administration, which has nothing to do with the decision making. Mr. Doney stated he was responding to the Mayor's comments about beach nourishment, he knows from what he has read and also from the Florida Department of Natural Resources and the Corps that beach nourishment is a coastal engineering solution that has been proven, but that is aside from the point. Mrs. Wiener believed that was not what they were talking about, but they were talking about payment on the contract. Mr. Doney stated he was talking about the contract administration and he hoped there was a solution out of the Mini-Test Plan which will be financially acceptable and the project be revisited by the Town Council so that it can be completed and is successful. Mr. Heeke knew that Mr. Doney was obliged to call these things to the Council's attention and no-one is saying that he is telling them how to vote but what he is doing is putting them on notice of what Mr. Doney thinks is important and Council has been told what they need to know.

Attorney Louis C. McBane representing Murphy Construction Co. addressed the Council pointing out on the question as to whether or not the Town can enforce the contract between the Town and American Coastal and then between American Coastal and Murphy to have the units installed and he believed they could as that language is in the contract. He believed that would only be if everyone else has lived up to their agreement and right now, American Coastal has not as they owe Murphy \$258,000 and they haven't been paid. He stated as far as his client is concerned, they have spent over \$200,000 in research and development of the submarine that places these units on the ocean floor. He stated they front-ended that cost and it is built in and spread out over the life of their total contract and in addition, they had to hire sub and sub-sub contractors, have had to rent barges, and have expended a substantial amount of money on this project and they are not receiving, in the payment of the \$258,000, they are not receiving their full contract amount and they are not asking to be reimbursed for all they have laid out, but merely want what is the reasonable cost to transport and store these units on the ocean floor and that is not unreasonable and American does owe it to them and if they do not pay, they will file suit against the bonding company and once that occurs, the project probably will be dead, and they all really don't want to see that happen.

Mrs. Douthit moved the \$258,000 be paid to American Coastal who in turn will turn it over to Murphy Construction Co. She believed from the picture they were handed today, the units are in the ocean and the beach is looking pretty good with more sand.

Mr. Ilyinsky recalled there were 242 units in the water, with 56 connected. Mayor Marix pointed out they have not verified that they are actually connected as the water became too murky. Mr. Murphy responded the best way to look at it is that 24 units were connected on the first estimate and the second estimate has a total of 56 units connected, which is 32 more. Mr. Ilyinsky asked if this bill would have been the same amount if Hurricane Andrew had not visited the shores of Palm Beach to which Mr. Murphy agreed stating transportation and placement on the bottom consisted of fifty per cent and if they were all in, he would have another bill for \$258,000 roughly today. He agreed if there had not been a storm, he felt pretty confident the job would have been completed on time and all the units would have been connected, depending on how the AT&T

thing would have gone. Mr. Ilyinsky understood the staff's frustration with this and he thought it was an enormous gamble, but he thought they have to bite the bullet and for that reason, he will second the motion.

Mr. Heeke asked if the motion was to pay \$258,000 to American Coastal to which the maker and seconder agreed. Mr. Dusey suggested in situations where claims have been made and filed, joint checks have been issued made out to the prime contractor and the sub-contractor and he believed that would be appropriate in this case, if it is agreeable to both parties, and in that case it will ensure the monies will get to whom they want it to get to. Mr. Heeke stated it will be a joint check to which the maker and seconder agreed.

Mr. Heeke believed this was the bottom line as a claim against the bonding company would simply kill the project and with Mr. Green being very candid with the Town, indicating there are solutions available and he has been here today hearing the concern of the Council's as to the costliness of one of the solutions. Mrs. Douthit felt these were monies contracted for when the contract was signed. Mayor Marix asked if someone could answer the question about the \$238,000 which is owed to Murphy - is there anything more owed for the materials or is all of this Murphy's money or is money owed for things that have been built? Mr. Lickle responded that will be the next discussion as there are other things that have been incurred.

Mr. Lickle hoped the Council would understand that everything that has been asked for is still within the contract price, and is not an add-on.

Mrs. Wiener commented she heard words inserted into the discussion on this which she found most peculiar, and those words were "decency and honesty," as if one were voting to protect the financial interest of the taxpayers in this Town, one would be indecent and dishonest and she is neither and she wanted this to be perfectly clear that regardless of how anyone votes on this issue, it doesn't make them dishonest or any other negative personal thing and it is neither humorous or funny and she finds it demeaning that anyone on this side of the table would publicly make those kind of comments. Mayor Marix recalled she made that comment and she believed it was turned around a bit. She believed when a contract is made with someone who has performed to the extent these people have performed and through no fault of theirs, there was a hurricane. She thought they may wind up better as they will all learn about the Reef, but she is a firm believer that when a contract is made and they have done the work, she thought it was simply "honest" to pay up to that point and not let other items come into the way of an obligation. She stated they are only asking to be paid for what was done and she thought that was honest and decent to do so.

Mr. Heeke believed this was a very important project and apparently, this is the only way it will continue.

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

F. REQUEST BY AMERICAN COASTAL ENGINEERING, INC. FOR PAYMENT OF INVOICE RELATED TO DEVELOPMENT OF TEST PLAN FOR MID-TOWN PEP REEF PROJECT.

Mr. Lickle stated they still have the other remaining issue about the payment for the fabrication of the units which have already been fabricated which will now be placed on the South end. He stated that invoice has been sent and payment is pending.

Mrs. Wiener felt they have been through plenty and she would just as soon turn over a blank check. Mrs. Douthit commented that this was all contracted for and the units have been made and are totally usable and are waiting to go in. Mrs. Wiener stated if this is all the same contract and all the same stuff, they wouldn't be sitting here discussing it and she thought they should stop beating around the bush and talking about things which just aren't so.

Mrs. Douthit stated she was prepared to make a motion to pay for these units for the amount of \$126,000. Mr. Dusey observed this would be \$126,000 and change and the concept was to pay for units which were to be placed at Clarke Avenue and the Council said "no" at a point in time and now they need to say "yes" and these units can be paid for. Mrs. Douthit believed they can be used as they just don't know what will happen with AT&T, but there is an alternate use and she moved to pay that bill in the amount of \$126,616. Mrs. Wiener asked if the DNR did not have to approve this change first? Mrs. Douthit recalled she understood Mr. Kirby Green to say he did not see any difficulty with this and it would mean a minor change in the monitoring guidelines.

Mr. Green addressed the Council recalling what he said was they didn't see any problem with the realigning the 200 foot section to the southern end or the northern end, as long as there was no reef or something off shore which would interfere with the placement of that. He stated if there were no reef or environmental problems, all that is required is a modification of the monitoring plan.

Mr. Ilyinsky seconded the motion if American Coastal would agree to return the money if those particular modules could not be used, to which Mr. Rauch agreed. Mr. Ilyinsky stated if for some reason these modules could never be used, American Coastal will repay the Town. Mrs. Wiener pointed out that American Coastal is having trouble paying their bills, so she didn't see how they would be able to repay this money. Mr. Lickle advised there was plenty of money at the end of the contract which could be offset against this, so there is protection.

Mr. Heeke stated the motion is to pay for the 216 units which were fabricated. Mr. Dusey asked if this was the difference between the 291 which were previously authorized and the 330 which have been cast? Mr. Lickle responded this is correct. Mr. Heeke stated the motion then is to pay for the 39 units and if they are not used for any reason, American Coastal will refund or permit an offset. Mayor Marix asked if this should be qualified a bit in the event there may be a misunderstanding later on. Mr. Lickle suggested the Council grant him the ability to come back and argue the issue. Mr. Heeke did not agree stating they have already agreed to this.

Mayor Marix stated what if the Town is unable to use them for technical reasons, such as a reef, or the cables? Mr. Heeke recalled another was for environmental reasons. Mayor Marix stated she hated to see them use the word "any" because of the temperament of this Council as "any" could be "anything" and she would rather they stated a technical reason. Mr. Heeke pointed out if the Town is unable to use the modules, the Town will get its money back. Mr. Lickle stated this would

be for reasons of installation problems or other things such as that but not because of a decision of the Council to simply not use them.

Mayor Marix recalled the reason Mr. Dusey thought the modules could not be used, was because the distance was too short. Mr. Dusey stated that was a concern, but also there is an old jetty on the south which may or may not interfere. Mayor Marix asked if this was the one that was covered up with sand? Mr. Dusey was not sure.

PEP Reef
(cont'd)

Mr. Philip Englehardt addressed the Council asking if it was reasonable to say if they can be used, they will be paid for by the Town and if we cannot use them, we won't pay for them. Mayor Marix pointed out the expense of making them has already been made. Mr. Englehardt stated he understood that, but he was paying close attention to Mr. Dusey's comments and that applies here and that is they are selling concrete and the Town is buying a reef and we don't have one and why should we figure out how we will get money back from a company that has demonstrated its inability to pay today and try to figure out how we will come up with a solution to get a refund from them if these things don't work? Mayor Marix stated nothing can be proven yet but as Mr. Green has pointed out, there is something going on down there. Mr. Englehardt stated he didn't wish to argue and he understand what she was saying but asked the Mayor and Council to pay attention to what Mr. Dusey has said. He stated they are relying on Mr. Green's opinion to place them on the north and a few minutes ago they heard Mr. Green state if it was his money, he wouldn't spent it. He believes that is a concern and he hasn't heard them discuss it.

Mr. Doney asked about the AT&T letter? Mr. Heeke asked if this was with regard to the motion? Mr. Doney believed it did if there is going to be an authorization to sign on the enumerated items in the AT&T letter as there are questions in his mind, interrelated to this issue.

Mr. Heeke responded what they are doing now is talking about payment of the fabrication of these units and if they are not used, for any reason, there will be a full credit and that was his understanding of the motion. Mrs. Douthit pointed out that was the second, not the motion. Mr. Heeke asked Mrs. Douthit if she was agreeable to that condition to which she responded affirmatively. On roll call, the motion carried 4-2 with Mrs. Wiener and Mr. Weinberg voting against the motion.

Mr. Doney understood the issue of whether or not the units which were authorized to be paid for and which were to be used originally in the Clarke Avenue Beach Area, this matter will come back to the Town Council at a later date as a result of the mini-tests. Mr. Lickie stated the units are at the yard now and this is solely for the fabrication of the units which is Phase 2 under the contract and is a different issue completely. Mrs. Wiener asked if they would drag them off somewhere so that next month they will come back and say they are sitting there and we have to pay for them? Mr. Lickie stated that is not fair and that is not what has been going on, and nobody has been transporting units to the reef site. Mrs. Wiener stated she wanted to make sure that these are not going anywhere and they will sit there until everything has been okayed by the State.

Mr. Doney stated this is a major concern to him looking out for the best interest of the Town. Mr. Heeke recalled the last decision made by the Town Council was to stop at a specific point at the north end, which was 24' south of the southernmost cable and he believed Mr. Wargo of AT&T was at that meeting.

Mr. Lickie reminded the Council that Mr. Wargo and AT&T's engineers were initially happy with the segments on the cable. Mr. Doney recalled they were happy but they still stated the Town has the ultimate liability. Mr. Lickie agreed but he believed that had eliminated that liability and reducing it to such a insignificant factor. Mr. Doney stated it is a policy decision. Mr. Heeke believed that on the AT&T issue about writing the letter, they were not going to do anything until the results of the Mini-Test were obtained. Mrs. Wiener agreed. Mayor Marix did not agree they had actually decided but put it off for further discussion.

Mr. Doney reminded there were two AT&T issues, one was the letter dated 8-26-92 from Mr. Regolfsky and the second issue was whether the Town Council would request that AT&T would agree with the split casing installation to armour the three cables. Mayor Marix asked Mr. Lickie if nothing is done until the test is made and then it takes AT&T six weeks or three months to do their job, the only problem with doing it that way is Clarke Avenue may wash away so there would be no installation problem or anything if we just wait. Mr. Lickie stated that was correct and this is purely a timing issue as if American Coastal has to come back before the Council in order to authorize the agreement with AT&T, they would be six weeks plus whatever time it takes to get back to the Council, since he was sure that once DNR and American Coastal comes up with a solution with the settling issue, American Coastal is standing ready to install the units as soon as possible, and they would come back and get clearance from Mr. Doney to sign that letter so AT&T could proceed with the armoring of their cables. Mayor Marix asked if it would raise the cost of Murphy if they had to delay the northern installation after the cables have been done? Mr. Murphy responded if it was done in a timely manner, it would not, but if it were more than six weeks, it might. Mr. Dusey recalled the installation will not be over the cables. Mr. Heeke didn't believe this had to be handled at this point as they will have to come back to the Town Council at a later date.

Mr. Murphy addressed the Council suggesting they write the letter to AT&T and get it out of the way as Mr. Green has had his say about it and as to solution, they will have a letter in the file. Mr. Heeke responded the Town Attorney, in light of what is now known and the 216' gap, he wishes to look at the way the letter is drafted to AT&T as that letter was anticipating two or three different options.

Mrs. Wiener asked if they could move along with the agenda.

NOTE: The following is a verbatim transcript.

MR. HECKE: Mr. Lickie?

MR. LICKIE: Okay. Last but not least and I appreciate Council's indulgence. Again, this is an issue that was brought back on May 12th Council Meeting. Perhaps you all may recall that American Coastal was here to request that Council apply the amendment to the contract, which American Coastal anticipated, to the development and implementation of the Test Plan. Prior to getting the Notice to Proceed with DNR, American Coastal was required to go out and get base line surveys. We

Verbatim
Transcript

discussed that and I think the base line surveys were estimated at about \$20,000. In addition, they incurred engineering costs in developing that Plan with DNR.

As I recall, the motion and approval back then, \$60,000 was approved as a fund which staff would be able to pay American Coastal on the surveys and for the engineering costs with the proviso that if it was determined that the engineering costs or any part thereof was not reimbursable by DNR, under the scope of the Test Plan, American Coastal would reimburse (unintelligible) with the further, you know, future contract with the Town. It never got that far. I think the only invoice that was paid was \$6000 towards the surveys and in that interim, there was a phone call or I guess some discussion with Mr. Green about whether the engineering costs would have been included as being reimbursable by the State and I believe the answer was no - on the engineering costs.

We are back again today - there is a difference of opinion I think, between Council, Skip Randolph and I and the staff met last week to discuss the issue. The Town's position is that the terms of the contract do not include the development of the Test Plan in the proposed amendment. It is our position that that was the intent - that it was to include the development of the Plan. And I think Mr. Randolph and I, and perhaps Mr. McCracken can confirm that we think this is probably resolved as more of an intent issue and a policy issue as to what was intended between the parties, and the whole issue is were the engineering costs and the survey costs in the development of the Test Plan included in the contract or were they outside of the contract and hence, an amendment needs to be developed to pay for those costs.

The language portion that is in question in this stage is found on page two, I believe.....

MR. DONEY: If you look at Exhibit F in the back-up, please.

MRS. WIENER: Exhibit F?

MR. DONEY: Please.

MR. LICKLE: And it is Page 2, Paragraph C. It says: "The scope of work under this contract and the contract price do not include any Test Plan, testing or monitoring of the PEP Reef, which is to be established by the Department of Natural Resources, or any other Federal, State or Local Agency, subsequent to the execution hereof. A separate addendum may be added once the scope and costs of the Test Plan can be determined to the mutual satisfaction of the Town and the contractor."

At the May 12th meeting, there was great discussion over that provision and I think - I think everybody agreed that it is a policy issue as to whether or not the Town feels that this should be appropriately added as an addendum. Since that time, American Coastal has paid for those survey costs. They've come out of their pocket for it and they are simply here to ask you all refund them.

BETH MITCHELL: Inaudible.

MR. LICKLE: Right. The \$60,000 that was appropriated was \$40,000 for engineering, and \$20,000 for survey and that is the amount of the bill that is before the Town at this time. American Coastal recognizes that the provisions of the contract clearly are not mandatory. They say they will enter into - the Town and the contractor agree to enter into or may enter into an agreement which they think is fair. And American Coastal is here today to simply ask you whether you think it is fair. And if so, whether you can allot a certain amount toward the costs that were incurred - for the benefit of the project - and were also incurred as agent for the Town to deal with DNR/University of Florida on those contracts to make sure that the Test Plan was a reasonable Test Plan. There were some debates at times over the number of surveys that should be conducted - how often - etc., which ultimately is to the benefit of the Town, because the Town does pay for the test monitoring over the next three year period. Eventually, I think there were some substantial savings that were - that were built into those negotiations on behalf of the Town.

MAYOR MARIX: Would you care to give us any examples of what they are talking about? I thought to give examples of how the negotiations of a Test Plan can upset the Town's expenditures, one way or the other.

MR. LICKLE: Miss Mitchell was directly involved in those.

BETH MITCHELL: I can think of two examples - one of them was probably a real cost savings for not only the State but also the Town - so we were discussing survey lines and how many survey lines and how far out should they go? We went from 6500 feet off shore to 3500 feet off shore. I can't really tell you the dollar amount of savings on that - but that just is an example. But more importantly, when we were working on the Test Plan, when Mr. Sasso and I were talking with Dr. Dean and Dr. Deveraux and Kirby's staff - what we had to do was come up with a message to test this reef which would be fair and objective. So in terms of real cost, if you had not received a fair test than what you would be dealing with is removal of the reef at any time, based on whatever the Test Plan had turned out to be. Those are two examples. It was an incredible amount of work - not only on the part of American Coastal and on the part of Harvey Sasso but the DNR staff spent a great deal of time and Dr. Dean of the University was involved in this work also, so it was pretty major.

MAYOR MARIX: Miss Mitchell, am I right - I thought I remembered that one of the things that was to eliminate, was to be sure there was no testing - let's say curious but uninterested parties would take up some of the time. You know, that there could be people that might want to come in and add their tests to something, even though it wasn't of interest particularly to the DNR or to the Town. Something about universities or some groups wanting to move on the Test Plan - to add bits of interest?

MISS MITCHELL: I don't think that was so much the case - one of the things that we took a very strong position on in terms of as an agent for the Town was that we wanted to make sure the data collection was done by professionals and we determined - we felt very strongly that a private surveying company who had a tremendous amount of experience would give us the kind of data that we could rely on - compared to University students going out there and conducting surveys.

MAYOR MARIX: That's probably what I was remembering then. Yeah.

MISS MITCHELL: Okay. That was the kind of thing that we were - yeah, Mr. Green worked with us on that. There was some give and take. The University will be conducting some of their own studies and doing some of their own data collection.

COUNCILWOMAN WIENER: I'd like to hear from the Town Manager on this one. We've got a staff - I'd like to use it.

MR. DONEY: If I might - I'd like - I think what I agree to do is disagree with the two attorneys - the Town attorney and Mr. Lickle - and I feel comfortable with that - I believe that the contract and a contract administration perspective speaks for itself. I know what staff's intent is - and I know what Mr. Dusey's and my intent was - and if you will, please, turn to the contract. Page One and I would like to read a sentence and lead you through this - because -

MAYOR MARIX: What page?

MR. DONEY: Page one of the contract.

MRS. DOUTHIT: Which section?

MR. DONEY: It's Exhibit F. Agenda Item F.

MR. WEINBERG: What page in Exhibit F?

MR. DONEY: Turn to the contract which is about half way through the Exhibit F. Two-thirds of the way through Exhibit F. Does everybody have it?

MR. HEEKE: No.

MAYOR MARIX: F - what page?

MR. WEINBERG: Page 31.

MAYOR MARIX: F?

MR. DONEY: F. It's the bottom document in Exhibit F. Which is the contract - if you turn to page one of the contract.

MR. HEEKE: Bob, is it after the May 12th minutes?

Mrs. WIENER: I've got the May 12th minutes.

MRS. DOUTHIT: So do I.

MR. HEEKE: I don't find a copy of the contract here.

MAYOR MARIX: I have the minutes. I think it is filed with Exhibit E not F.

MR. DONEY: Let me. Since it's difficult to locate, let me read from the contract.

MR. HEEKE: Yeah, it's with E, Bob. The back of E.

MR. ILYINSKY: Yeah.

MR. DONEY: It's the back of E, then. Okay. Article One - Scope of Work: "The contractor hereby agrees to furnish all the materials and all of the equipment and labor necessary to complete design, fabrication, construction and installation and to perform all the work shown on the drawing and described in the plans and the specifications for the project entitled "Mid-Town PEP Reef, Town of Palm Beach, Florida" including compliance with all additional permit requirements and permit conditions to plans and specifications incurred prior to the final Notice to Proceed issued by the Florida Department of Natural Resources."

It was my understanding and intent when the Town Council authorized negotiating this contract back in January that these permits - the Department of Natural Resources' permits, the DER permits, the DERM permits, The Corps permit and the Trustee's Deed - they are very involved and I was concerned that all of these conditions of compliance and this dollar amount that was cited by American Coastal that they would have to fully comply with those permit conditions and that's what I understand this contract to mean and the way that it reads.

I also understand that the Test Plan being a development of the Test Plan being a permit condition of the Department of Natural Resources is a cost which American Coastal should be responsible for, because further in this contract, when you look at Exhibit D, which is the last page of the contract - I remember discussions at the Council meetings and also staff meetings with American Coastal and Mr. Lickle where if you look at Exhibit D, which is attached to the contract, the last page, "yearly administrative costs to be agreed upon by the Town and the contractor, after the Test Plan is developed by the Department of Natural Resources, for compliance with permit monitoring requirements to all governmental agencies to be paid quarterly beginning with the final payment." I understand that to mean that after the Test Plan was developed and to be implemented, American Coastal will define a Scope of Work and their estimated cost to provide their administrative services - bring that back to the Town Council for Town Council consideration for approval and the distinction I see for the contract is that the development of the Test Plan is a cost, I believe, American Coastal has as a result of the contract speaking for itself.

MAYOR MARIX: Mr. Heeke?

MR. HEEKE: Yes, Ma'am.

MAYOR MARIX: On page 2, I can see it says "the scope of work under this contract and the contract price do not include any "Test Plan", testing, or monitoring of the PEP reef, which is to be established by the Florida Department of Natural Resources or any other Federal, State or Local Agency, subsequent to the exclusion hereof. A separate addendum may be added once the scope of the Test Plan can be determined, to the mutual satisfaction of the Town and the contractor."

MR. DONEY: If you look at the permit of the Department of Natural Resources, it speaks to providing and developing a Test Plan, which I referred to earlier.

MAYOR MARIX: But this says it doesn't include that.

MR. DONEY: Implementation of the Test Plan is my understanding of the intent of the contract.

MR. LICKLE: I believe Mr. Doney's interpretation of it is absolutely correct, absent that language. And the purpose of that language being put in there was to specifically exempt the Test Plan, because American Coastal had no idea at that particular time, what was going to be required by DNR. It was an open end item. And DNR - American Coastal was perfectly willing to accept the risk of that in going forward because if you all recall, the issue at that point was trying to get the Notice to Proceed, and they reserved the right to come back to the Town, after the Test Plan was developed and known and present what their expenses were to the Town, and if the Town thinks that it is totally inappropriate to have spent that money, they have the right to do that - under the contract - since the provision is an addendum that may be attached, however, there is a requirement simply to use good faith in determining what this figure should be, if the Council interprets it to mean American Coastal is entitled to bill the Town for the Test Plan.

MR. HEEKE: Well, on page two, the part that the Mayor just read seems to separate testing - as it says "this does not include any Test Plan, testing or monitoring of the Reef."

MAYOR MARIX: The Test Plan is in quotes is obviously the creation of a Plan, the testing - is testing - and then monitoring.

MR. LICKLE: The actual cost in testing which will be incurred over the three year period - I believe we've already had discussion with Town Council on that too - Council is perfectly capable of opening that up to bid, once the factors are determined as to what the cost will be in the parameters of that Test Plan.

MR. HEEKE: Yeah, I think Item D Page Four, deals with the monitoring, because it says "Yearly administrative cost, after the Test Plan is developed" so I think we have to look at the language Bob pointed out in Article One, and then Paragraph C on Page Two.

MR. DONEY: Mr. Heeke, you may want to hear from Mr. McCracken as to Mr. Randolph's and Mr. McCracken's opinion.

MR. HEEKE: Yes. I am still reading here. Mr. McCracken?

ATTORNEY JOHN MCCracken: I am sorry Mr. Randolph isn't here to speak to this issue himself, but I did talk to him about this and the problem I think, from our perspective, from the Town's perspective on this, is that he believes that during the negotiations of the contract, the parties were drawing the contract were using Test Plan and Monitoring interchangeably - they weren't distinguishing between the two and there is no question in Mr. Randolph's mind that the intent was - as Mr. Doney suggested - that is whatever was necessary to get to the permits and get to the final Notice to Proceed, would be covered by the contract, however, the monitoring and Mr. Randolph thought the Test Plan, he saw as after-the-fact that would be something that would be a separate item which the Town would then be in a position to put out to bids or whatever for ongoing monitoring of the situation. So I think what we end up with is a little bit of ambiguity in the contract, based on the fact that perhaps the various sides negotiating and discussing the contract weren't talking about exactly the same issue.

MAYOR MARIX: Well, Mr. McCracken, somewhere in here I was reading back on some of the things that have been said - but I do remember at some point that I said that if - that the Test Plan that was being designed by American Coastal, if they had to spend all the money to do that and they got nothing out of it, why would they bother? If they - what they were trying to do for the Town - mind you they weren't paid (inaudible) but what they were trying to do for the Town was to save the Town money down the road - the five year road - and I brought that up very squarely saying that if we do not accept the possibility that we pay for any of us, it's going to be the opposite of an incentive for them to spend time and money to reduce it. Since the Town has to pay later on - the incentive - they were trying to reduce what we would have to pay, and so if that had been included, under the Scope of Work, since they weren't going to pay anything - they wouldn't work very hard and as it is, they worked terribly hard to bring down what we would then be having to pay, and that I know I brought that up at the meeting because to me it made perfectly good sense, but their incentive would have been killed to spend hours of work and it's somewhere in here, my exact words - they could just go home or something. I can't find it. It's in the minutes. But anyway, that was the - yeah, it's here somewhere - now wait a minute. Well, it doesn't matter if I find it or not - but that was the whole thinking - but they were trying to save us money by spending all of this time and if they thought they were going to have to - if our intention was to make them pay - they wouldn't have done all of that - well, maybe they would, they are very good people but the incentive to do a very thorough job would not be there. Here it is: "Mayor Marix believed the question by Mr. Heeke was" no, that wasn't it. Sorry. Well anyway, that's basically - I'll find it eventually if you care - but you see my thinking.

MR. HEEKE: Well, of course, the contract doesn't define Test Plan, as I recall the discussion before. The difficulty is with the C language, you put Test Plan in quotes.

MAYOR MARIX: Well, it was a Plan. As opposed to Testing. The Test Plan was to make something. It was the Test Plan.

MR. HEEKE: Well, that's my point. You could get around - I think we need some very strong language some place, don't you, that....

MR. LICKLE: I would agree with you, Mr. Heeke, if it simply stopped at "Test Plan", then perhaps it would be more ambiguous but the fact that "testing and monitoring" are continuing exceptions within that, it was contemplated that not only the Test Plan but the testing and the monitoring were not things that were included in the scope of the contract.

MAYOR MARIX: That's the point I am trying to make.

MR. HEEKE: Well, we don't have any question with the last two - do we?

MR. MCCracken: Well, I think it would work better if there were no comma after Test Plan, it would work perfectly the way Mr. Randolph thought it was going to work and as Mr. Doney has suggested - that is that the Test Plan testing or monitoring would not be a part of the contract. But that is not to imply the Test Plan itself was not included in the contract.

MAYOR MARIK: But the Test Plan being in quotes and as you say, with a comma after it, is obviously separate from the testing.

MR. MCCracken: Correct. That's correct. And as Mr. Heeke points out, by putting Test Plan in quotes, you were referring to this specific item that they're now seeking reimbursement for.

MR. ILYINSKY: How much money are we talking now?

MR. DUSEY: \$41,780.40. American Coastal is billing for 59 hours at \$75.00 an hour; plus travel expenses to Tallahassee and that's a total of \$4,649.00; Coastal Tech which was a sub-contractor for American Coastal has billed for \$37,131.40.

MR. LICKLE: Coastal Tech is Mr. Sasso's engineering.

MR. DUSEY: \$41,780.40.

MR. HEEKE: American Coastal is paying for - you referred to it as the Mini-Test Plan - is that correct?

MR. LICKLE: That is correct.

MR. HEEKE: Well, I have to tell you I have a lot of problems reading "Test Plan" comma - I don't see an ambiguity there. If it were to be excluded, what other way would it have been stated?

MAYOR MARIK: Well, even if it were to be paid for by Coastal, American Coastal, it wouldn't have been put in there, is that what you mean?

MR. HEEKE: Well, let's assume that American Coastal in presenting the contract did not want it covered - the Test Plan covered in the contract, what other way could they have stated it different from in Paragraph C.

MAYOR MARIK: That's what I - that's what I mean.

MR. DUSEY: Preparation of that Plan would have excluded the work that they've done - preparation of the Test Plan. Development of the Test Plan.

MR. HEEKE: Or development of?

MR. MCCracken: In Mr. Lickle's presentation - he mentions that - if you go back to Page One, he mentions that this work was done prior to the final Notice to Proceed, so it clearly is work on plans and specifications, prior to the Notice to Proceed as well. I don't know if that garbles it even more.

MAYOR MARIK: It's picked up in C and discounted again. That's - let's say clarified.

MR. LICKLE: I agree with the interpretation absent that secondary language.

MRS. WIENER: Mr. Heeke, vote - because no-one is going to change their mind on this.

MR. HEEKE: Well, I got an answer to my question.

MAYOR MARIK: They're going to pay for the Mini-Tests, which they certainly weren't anticipating doing.

MR. ILYINSKY: Let's make a deal.

MAYOR MARIK: We may go onto something else a while back - what else have you paid for recently - you didn't charge us for?

MR. LICKLE: Let's see - American Coastal reviewed the contract with the University of Florida, the Town and the State and did not charge the Town one dime for that. They have incurred all the latest costs of the surveys to determine the problems with the Reef - that was in two separate surveys.

MISS MITCHELL: We also picked up the 75% cost of the pre-installation survey...

MAYOR MARIK: Yeah - that's the one I was thinking of...

MISS MITCHELL: ...and that was a big number.

MR. DUSEY: Mr. Heeke?

MR. HEEKE: Yes.

MR. DUSEY: Given the possible ambiguity of the contract, might it be reasonable to split costs since it can be argued both ways?

MR. HEEKE: I think it can clearly be argued both ways, that's what we are hearing.

MISS MITCHELL: I would like to make a comment - Mr. Doney had the ability to comment about the intent on his part - when we were in the negotiating process. The intent on American Coastal's part was a little bit different. We had just been through two year processing of obtaining the permits. And although I was well aware the Permit said that the Test Plan still needed to be developed, it was our intention very specifically that the development of that Test Plan was to be excluded from the contract. Again, we didn't raise the cost of the Reef and that price was back in August of 1990. So this is an additional expense we all had to go through - I think we have all received benefits, but again our intent - we knew after our experiences of the permitting that this was going to be lengthy process. We were going to need to bring in an outside engineer to help us with this process and we did all of that and our intention was not to include that in the contract side.

MAYOR MARIK: Well, usually everybody gains on that, I mean, to have an effective...

PEP Reef
(cont'd)
Verbatim
Transcript

MR. HEEKE: Any other discussion? Anyone want to make a motion?

MR. ILYINSKY: How much money do we got left in the General Fund?

MAYOR MARIX: We'll make it come out of the Marins, Paul.

MR. LICKLE: I believe these funds were already removed and appropriated. There's \$60,000 of funds which have already been sitting there - appropriated and have not been applied to any of this yet.

MAYOR MARIX: You said \$60,000 were appropriated - making interest and we need how much, Mr. Dusey, forty-three?

MR. DUSEY: \$41,780.40. We have already paid \$6,778.75 for the pre-installation survey out of that sixty.

MR. ILYINSKY: How can the funds be appropriated if it wasn't part of the contract?

MAYOR MARIX: When we had that discussion....

MRS. DOUTHIT: We've talked about it before and it was appropriated then.

MR. DUSEY: Yes, it was. But the authorization to expend it was not given necessarily, but now it's there.

MRS. WIENER: The sooner we spend it, the sooner we can go find some more some place else.

MR. LICKLE: I think it actually comes in \$13,000 less than was appropriated, so.

MRS. WIENER: So it takes care of some of the things that came out more. You know, I've got to say something - get it off my chest. One would hardly believe that American Coastal came to this Town, begged and lobbied to do this project, begged, pleaded stating they would do it for \$8000 - get all this and now every single time you come before us, you know, we are issuing towels....

MAYOR MARIX: No, this is the same old towel we used before.

MRS. WIENER: Excuse me. You know, if we could just get to each other on a different kind of basis and we are communicating the same way. If you had said "Hey, we are a small company - we think we've got a brilliant idea, we need help to do this." If you had done that at Stage One, but instead of doing that at Stage Seven or Eight - I know I'd feel a lot more comfortable. And it's just the same thing over and over. I guarantee you that in another two months they'll be another fifty or sixty that will come up that we'll have to spend. We are going the same route that we went before the sand - and it's not your fault - it's not anybody's fault - someone's had an idea and nobody realized how very very much the financial burden it was going to be.

MAYOR MARIX: Mr. Heeke, I'd like to make a very brief comment about that - I've been involved wanting to see a Reef here, as you know, for years and years, and the day after, I think maybe even before Mr. Lickle, I don't know, shortly after the little reef was put in, I went down there because I was trying to see what it was going to do and went swimming out there, it was so rough and I came back the same day to the employees' party out there where that park was so I was sort of wet and I tried to gather people around to tell them about this small company and what they had done and how interested they were and I would certainly want to see another one somewhere else and there was one person who was not interested and said they weren't interested in talking about it, so I would say that it's (inaudible) possible that one would know about the small companies if one had been interested in it. Now, that's just a small antidote, but I sure think this was not included and I would like to see something fair and nice done. Sitting on the budget committee and begging so often for pay cuts or expense cuts, rather, that don't come, then I see something this important that we are going to - we should be working closely together with - the two just clash in my mind.

MR. LICKLE: I appreciate that, and I think again - to keep things in perspective, there's been a lot of money talked about at many of these meetings and for some reason, I sometimes get the feeling that some Council members keep thinking American Coastal's coming back for more and more and more money. If you distill this down at this stage of the game, the contract was for two million dollars to put in a 4000 foot reef and that contract price has not changed. If somebody wants to interpret this as an increase, then we are talking about a \$40,000 increase - over a two million dollar contract. That's it. I mean, hundreds of thousands of dollars have been discussed about and I don't want anybody to get the impression that this contract price keeps going up and up and up - it has not.

MR. DONEY: Well, the bonds and insurance?

MR. LICKLE: The bonds and insurance? But the whole purpose of carving those out at the time of negotiating this contract were to pass those on to the Town and taxpayers, at cost, without any mark-up whatsoever from American Coastal. Those bills are generated by the insurance companies, the bond companies and passed on without any mark-ups. That normally does not happen in the regular construction industry. That's usually a.....

MR. DUSEY: Normally, it's part of the contract when we bid it.

MR. LICKLE: That's correct. But there's something else usually built in on top of it.

MR. DUSEY: That's the way it normally is.

MAYOR MARIX: That's where the mark-up is, Al, exactly.

MR. DUSEY: It may be - but I've got competition.

MR. DONEY: Mr. Heeke?

MR. HEEKE: Yes, sir.

MR. DONEY: Related to this and I assume it's fair to assume and Mr. Green can speak to this if necessary, that the Test Plan, as it has been developed and approved because of now the Mini-Test Plan is going to be modified and there's going to be work involved to perform all of this and come up with a new Test Plan, so I think - it's my expectation, there's going to be more costs involved. So, on this issue, I just want you to be aware of that, so that if there is additional cost coming forward then through American Coastal to have the Test Plan revised, as necessary. And if I'm wrong, please correct me. Is Mr. Green still here? Oh, he's back there. He's been about eight different places.

MR. ENGLEHART: Just a comment in the interest of fairer negotiation - Mr. Doney's letter to Mr. Lickle in February, accompanying the contract, he made a request if there was going to be any addendums or changes to the contract necessary resulting from the implementation of a variety of items, such as development of the Test Plan, to propose a discussion on those changes and perhaps it's not a matter for this forum but a meeting to find out a fair way to distribute these costs. There's a lot of reference in the contract to a 50% sharing of some of the additional expenses and I agree with the comment that was made that the level of ambiguity on the reference on Exhibit D plus on the original body of the contract, would leave it to the point, where giving the conflicting intent of the two parties, at least settle down the middle and not necessarily go entirely as an expense to the Town scoffers.

MR. HEEKE: Is there a motion?

MRS. DOUTHIT: Paul?

MR. ILVINSKY: No.

MRS. DOUTHIT: He's not going to make one I guess cause he's running. I will have to make it. And, I will move to approve the payment of forty one seven something out of that sixty and in light - well, that's that. I am concerned about the future and the changes, just as a comment, it's not part of my motion but Mr. Dusey's notion to split 50-50 in the future as other ones come along, due to Andrew and this sort of thing, we might contemplate that.

MR. HEEKE: Mrs. Wiener, would you consider a slight amendment to splitting this 50-50 because of the....

MRS. WIENER: I didn't second it.

MR. HEEKE: I'm sorry - Mrs. Douthit, would you consider modifying your motion to pay 50% by the Town in light of - I think there's a clear disagreement as whether it was intended to be in or out - I did get an explanation how it could have been reworded on the C language from Mr. Dusey. It's just a motion on the payment. Yes.

MR. MCCracken: I might suggest the best reading of Mr. Lickle's argument that the Test Plan is outside the contract - if that were consistent with Mr. Randolph's intention concerning the monitoring - it would be that the issue should be open to be available to put out to bid and so forth, but obviously it's beyond a point where that can be handled, but it's still - the claim still comes in and more as a quantum (?) claim - we've done this work and it's benefited the Town and the Town should pay for it. That is, I think Mr. Heeke's pointed out, does not necessarily mean that the full bill is fair and should be paid, but perhaps as an issue should be looked at by the Town staff as to whether the full amount is the amount that should be paid.

MRS. DOUTHIT: Well, as I said Mr. Dusey's suggestion interested me, and I am trying to get this one done up in terms of....

MR. WEINBERG: Can we defer this until Mr. Randolph comes back?

MAYOR MARIX: I think this matter is small enough and should get settled today and not hung up for more horrors. What you're saying is that you made the motion to pay all of it because you thought Mr. Dusey's idea of 50% on any additional other things are going to meet - her worry being that the Test Plan will probably - and Mr. Green can disagree if he likes, but the Test Plan will probably have to be slightly altered some more after we find out exactly what we are going to do, and we are going to have to test what we are going to do, so Mr. Dusey's idea of splitting the new bit 50-50 interests her, but she would like to settle this one in full. Is that right?

MRS. DOUTHIT: I want to settle this one. Yes.

MR. LICKLE: That's acceptable to American Coastal if you were to vote for the full payment today - they agree to split the costs of any further development of any Test Plans 50-50. That gives them an incentive to certainly keep their costs under control and at the same time help the Town.

MR. ILVINSKY: Now wait a minute. We heard the Mayor's motion now what is yours, Nancy?

MAYOR MARIX: I was only interpreting Nancy's.

MR. HEEKE: Her motion - Mrs. Douthit's motion is to pay the entire invoice now.

MRS. DOUTHIT: Yes, to pay this one....

MR. HEEKE: And then why not accept the offer of American Coastal that any additional costs be divided fifty-fifty?

MRS. DOUTHIT: Yes.

MR. HEEKE: Or you don't have to have that as part of your motion.

MRS. WIENER: I don't really think it's part of it, you know, let's....

MR. HEEKE: ...Because you might want to look at the next bill and see again...

MRS. DOUTHIT: Okay. That's why I didn't make it part of it in the first place, so I will leave it stand - get this one in its entirety.

PEP Reef
(cont'd)
Verbatim
Transcript

MR. HEEKE: Is there a second?

MR. ILYINSKY: Yes, I will second it on the basis of the 50-50.

MRS. WIENER: No.

MAYOR MARIX: No. We just dropped that.

MR. HEEKE: No. No. No.

MR. ILYINSKY: 50-50 in the future?

MAYOR MARIX: We want to fight again another day. Then we'll discuss what the intent was. When you seconded it, you see. The intent was to listen to Mr. Dusey the next time, but then Mr. Heeke thinks that maybe if the bill is too high, we might want to sock them with 75% so he doesn't think it should be a part of this one.

MR. ILYINSKY: Go ahead, Bernie, put the stick down and make the motion.

MAYOR MARIX: Nancy's made the motion.

MRS. DOUTHIT: Yes.

MR. HEEKE: Well, Nancy, Mrs. Douthit's made a motion to pay the entire amount period.

MR. ILYINSKY: I go with the 50-50 for this one.

MR. HEEKE: Okay. There's no second to Mrs. Douthit's motion. Mr. Ilyinsky?

MR. ILYINSKY: You didn't make one.

MRS. DOUTHIT: Well, in lieu of that, I will make a motion to split it.

MAYOR MARIX: 75 - 25?

MR. HEEKE: 50 - 50?

MRS. DOUTHIT: The first one was not seconded so I therefore will make a second one that the cost be split 50-50.

MR. LICKLE: On this invoice or in the future?

MRS. DOUTHIT: On this invoice. MR. ILYINSKY: Second.

MR. HEEKE: The motion has been made and seconded. Is there any other discussion?

MR. HEEKE: Mrs. Peters.

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

V. ANY OTHER MATTERS. There were none.

VI. ADJOURNMENT. There being no further business, the meeting was adjourned at 4:45 PM.

Grace T. Peters,
Town Clerk

Adjournment