

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON

APRIL 29, 1993 AT 5:01 PM

Roll Call

I. CALL TO ORDER AND ROLL CALL - Town Council President M. William Weinberg called the Special Town Council Meeting of April 29, 1993 at 5:01 PM to order indicating this Special Meeting is on zoning. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Weinberg, President Pro Tem Wiener, Councilwomen Smith and Royal. Absent was Councilwoman Douthit. Also attending for all or portions of the meeting were Mr. Doney, Mr. Randolph, Mrs. Peters, Mr. Elwell, Mr. Jakubiak, Mr. Moore, Mr. Zimmerman, and Mr. Frank.

Invocation

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

III. APPROVAL OF AGENDA - Agenda was approved as published.

IV. PROOF OF PUBLICATION - Mr. Moore confirmed the Proof of Publication was received and will be filed for the record.

Ord. 9-93
Second
Reading

V. SECOND READING OF AMENDED ZONING ORDINANCE NO. 9-93.

Attorney Randolph read the Ordinance No. 9-93 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; PROVIDING AMENDMENTS TO ARTICLE 2, SECTION 2.10 ENTITLED "DEFINITIONS", BY REVISING DEFINITIONS (11), "BUILDING, HEIGHT OF", BY REVISING DEFINITION (11.1) "BUILDING, HEIGHT OF, CORNER LOT", BY REVISING DEFINITION (11.2) "BUILDING, HEIGHT OF, CORNER LOT", BY REVISING DEFINITION (11.3) "BUILDING, HEIGHT OF LOT ABUTTING LOW STREETS", BY REVISING DEFINITION (11.4) "BUILDING, OVERALL HEIGHT OF", BY ADDING A NEW DEFINITION (11.05), "BUILDING, HEIGHT OF" (APPLICABLE ONLY IN THE R-B DISTRICT), BY ADDING A NEW DEFINITION (13.31) "CUBIC CONTENT RATIO", BY ADDING A NEW DEFINITION (29.05) "LOGO", TO PROVIDE AMENDMENTS TO ARTICLE 4 ENTITLED "DISTRICT REGULATIONS" BY AMENDING SECTION 4.10, SCHEDULES OF REGULATIONS, BY AMENDING SCHEDULE A, SCHEDULE OF LOT, YARD AND BULK REGULATIONS, BY INCREASING LOT COVERAGE FOR TWO STORY BUILDING IN R-B DISTRICT, BY REDUCING BUILDING HEIGHT AND OVERALL BUILDING HEIGHT FOR ONE AND TWO STORY BUILDINGS IN R-B DISTRICT, BY ADDING A NEW PROVISION TO R-B DISTRICT, BY ADDING A NEW PROVISION TO R-B DISTRICT ENTITLED, "MAXIMUM CUBIC CONTENT RATIO", BY DELETING PROVISION FOR "BUILDING HEIGHT PLANE" IN R-B DISTRICT; TO PROVIDE AMENDMENTS TO ARTICLE 6 ENTITLED "SUPPLEMENTARY USE REGULATIONS" BY AMENDING SECTION 6.33, "SIGNS IN COMMERCIAL DISTRICTS", PROVIDING FOR BUSINESS LOGOS IN CONJUNCTION WITH PERMITTED SIGNS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Moore explained he has distributed the Revised Chart on the changes in Ord. 9-93, and he referred to Cubic Content Ratio column noting he has revised that figure to accommodate the extra foot of height the Council added at the last meeting, which is adjusted to 4.50%. Mr. Moore noted the other changes are the revisions in the height increasing from 12' to 13' for one story and for two stories from 20' to 21'.

Mrs. Wiener asked what would be the normal footage between the first and second story? Mr. Moore responded that is a function of design and to accommodate the floor and utilities, and could run as little as six inches in the prestressed slab situation or as high as 3' for the conventional truss systems. He advised the industry norm on that type of construction is 18" to 24". Mr. Weinberg asked if that would accommodate a duct system to which Mr. Moore responded affirmatively.

Mrs. Royal pointed out that it could be that the industry norm would not apply to the homes constructed in the Town of Palm Beach, and asked what that space would be for a luxury building. Mr. Moore responded the standard he quoted is the standard used in Palm Beach and has been used for a long time.

Mr. Weinberg believed under those circumstances the ceiling for the first floor would be about 11' and for the second story, it would be about 9'. Mr. Moore agreed. Mrs. Smith pointed out it could be 11' for the first floor, 9' for the second floor and 2' for the truss. Mr. Weinberg agreed noting it could also be 11', 9' and 3' which would make it 22' or 23'. He thought 21' was rather a low ceiling situation and he hoped they would be able to add more footage. He believed they were considering standards for the future and he would like to see better standards with the higher ceilings rather than lesser standards. He asked if it would be possible to add another foot to the ceilings to which Mr. Moore responded affirmatively.

Mr. Zimmerman explained the advertising done previously would be adequate as specific numbers were not advertised, it was done in generalities.

Mrs. Wiener addressed the one story, noting if they are talking about bulk from the outside, she didn't understand what difference it would make as long as the height were no higher than a two story, and she didn't understand why the one story was being reduced, as it doesn't relate to bulk at all.

Mrs. Royal asked if Mr. Wood of the Zoning Commission could tell the Council why they wanted to lower the one story height? Mrs. Smith noted the Chairman of the Zoning Commission is here, Mr. Beal, and he should be the one to address it. Mr. Weinberg asked for the comments of Mr. Moore and then Mr. Beal. Mr. Moore responded when this matter was before the Zoning Commission, the design

Ord 9-93

community that participated in this felt the one story house height should have a relationship to the height as well as not to have the same kind of a relationship of a one story equalling a two story and dimensionally and proportionately the windows and doors would add a bulk appearance to the mass between the floor slab and the tie beam or plate. He recalled Mr. Brisson stating he could not support the reduction of the one story height due to the fact that if two stories are alright at that height, then one story should also be.

Mr. Alexander Beal, Chairman of the Zoning Commission, addressed the Council indicating it was their attempt to cut down the bulk of the houses, in accordance with the request of the former Council. He felt they did that. He stated the Zoning Commission believed it was appropriate to cut down the height of the single story as well as the two story as they increased by one foot the one story as well as the two stories. He reported the Zoning Commission has worked very hard on this and the Zoning Commission discussed this with the architects, who came to their last meeting and they felt the recommendation made to the Council was appropriate and if Council wished to change it, it certainly would be up to them to do so.

Mr. Moore recalled the staff's recommendation was to not put the restriction on the one story, recalling the architects who appeared before the Zoning Commission did talk about windows and the mass of them and doors, as far as they would appear from the street, and that was their purpose for reducing the height of one story.

Mrs. Wiener asked if there had been any complaints received in the last few years with regard to one story homes. Mr. Moore responded there have been some, but they have been very few.

Mr. Beal informed the Council that as far as one story homes are concerned, the architects found no fault with the height and the only ones who were not happy with it were the Board of Realtors. He thought as far as the appearance from the street is concerned, it is better for the bulk to disappear and have the differentiation between the one and two story houses. He noted they have a larger floor area, going from 25 to 30% on lot coverage, so as far as the Zoning Commission is concerned, this seemed to be the best route to go.

Mrs. Wiener stated she has a problem with the one story height, as she believed the problems in the north end were with the two story looming residences and if someone wants to build a one story home, she sees no major problem.

Mrs. Smith recalled there were a few problems with the filling in of the land and putting the house on top of that.

Mr. Weinberg referred to the chart furnished by Mr. Moore noting he shows 15' plus 3' for the truss which would make it 18'. Mr. Moore responded he believed it was 15' plus 2' making a total of 17'. Mr. Weinberg noted in the Now column, they now say 13' plus 3' or 16' and he couldn't see how they could get more for less. Mr. Moore pointed out the height of the parapet is different. Mr. Weinberg noted he is not an architect, he is not a builder, he is not in real estate, but he has strong feelings about low ceilings and he thought it was important that they should consider the people who live in these houses, and he would like them to have room to breathe and he didn't view this as an asset with the reduction on the one story.

Mrs. Smith recalled the complaints received were all about a two story house. Mr. Weinberg pointed out they are considering the two stories.

Mrs. Smith believed a large massing on a one story is due to the lot being filled to meet the flood insurance, and then the house on top of that. Mrs. Smith did not believe the major complaints came from the one story houses.

Joanna Frost Golino, Chairman of the Architectural Commission addressed the Council, noting she is a registered architect in Florida and Massachusetts, noting an outstanding job has been done with the zoning proposals this year. She stated they represent the final result of hundreds of hours of efforts of Town residents and design professionals who volunteered their time to understand and propose these regulations for this complex issue of size in the R-B Zoning District. She believed these proposals have reduced regulation by eliminating the building height plane; increased design flexibility by increasing the amount of height allowed for a pitched roof; simply the measuring of building heights by measuring from the top of the slab to the top of the beam and not penalizing anyone for a low lot; increased design flexibility by allowing the use of truss space; addressed the problem of excessive building mass and height by reducing the building height and establishing a Cubical Contents Ratio, which is still much larger than what exists according to the Town study done; and to encourage more intensive use of first floor building area by increasing lot coverage.

She believed this was a good compromise by seeking remedies without depriving homeowners of their property rights and urged them to take the final step by approving the proposals.

Pat Tracey addressed the Council thanking them for what they did last year at the Zoning hearings, and wondered how they got this far with the proposed changes thinking they should all be on the same side as they love the Town and agree there are some new homes which are very large and ugly, and she believed they should remain on the status quo and if ARCOM did not allow the ugly homes to be built and perhaps if the Town Council didn't approve the variances, it may be that they wouldn't have the problem, but they should continue as is without further government regulations.

Cora Mayne, 1581 N. Ocean Blvd. addressed the Council indicating she has written a letter to each of the Council members which states how she is concerned about the proposed zoning change as it may effect the sale of her small house, which is on the market and it was been listed as a tear-down and this is a one story small house. She is worried about someone building a house as this is a corner lot and there are other tall houses around her, she didn't know why they couldn't approve the zoning on a house by house basis, as she didn't want to be penalized. She wished to find a buyer for her house and suggested the new proposals not be adopted and it be sent back to the Zoning Commission for further study. She stated there is plenty of room to rebuild with a second story and since all the houses around her are tall houses, she didn't want to be penalized.

Mrs. Smith informed Mrs. Mayne a two story house could be built in this location on her lot.

R. C. Fields addressed the Council telling them they are sending a message to the world which bothers him, as Palm Beach always has been a special place, and when he rides around the Town and

Ord. 9-93

sees all of the homes that are for sale, it bothers him. He asked if they were trying to shut down Palm Beach as the people who have bought properties here have no sense of security. He wondered if there could be a stipulation in the Ordinance that present buildings would be exempt but effective Jan. 1, 1995, there will be a limitation, so people will have an idea of where they are going and he asked them to think about the fact that Palm Beach is really being shut down.

Mr. Wolf Falkenberg addressed the Council indicating he has seen many changes over the years. He heard a statement earlier that houses were ugly but he felt houses are always ugly for some but beautiful for others. He had a concern about this and referred to the house at El Pueblo Way and North Ocean Blvd. which was a problem last year that this building was too big for its lot. He did not believe it was too big for the lot and he believed that was one of reasons why these proposals were made. He believed people ought to be able to build to the maximum as the homes are not seasonal anymore but for year round residency. He objected to the lower ceiling and thought if he built a one story house, it would be nice to have a 12' ceiling, and wondered if they could ask for a variance to which Mrs. Smith responded anyone can request a variance.

Mr. Falkenberg recalled the statement by Mrs. Frost-Golino that lower lots should not be penalized, but he believed they needed to be raised because of the Flood Insurance, so they are penalized to which Mr. Moore did not agree. Mr. Moore explained the new method of measuring will not penalize the lower lot and the measurement will not be taken from the roadway, so it is a benefit.

Pat Sousa addressed the Council and asked them to keep the proposals at where they are now as there other commissions in Town, such as ARCOM, and the Zoning Commission and if there is a problem in the lot, creative architecture could solve it. She felt if there is a second story, the portion overlooking the neighbor's pool should be made a closet or a bathroom, as there are imaginative ways to give the neighbors privacy and she urged them to leave the zoning ordinance as it now stands and and make no changes.

Mrs. Tracey addressed the Council stating she believed that some of the proposals are sensible, such as getting more floor area ratio than they had before, and she proposed they keep the good changes but raise the ceilings a few feet more.

Mr. Weinberg advised the Council will now go into Executive Session. Mrs. Royal asked if they would agree to the changes would they see more or fewer variances as she would like to get out of the variance business. Mr. Moore responded there are no guarantees, however, some of the changes proposed will address some of the problems they have encountered, specifically the way they are measuring the buildings.

Mrs. Wiener restated her concern that looking at the reasons, she doesn't know why they wish to reduce the height of a one story house. She felt this should be the decision of the property owner as to whether he wants a one story house with high ceilings or whether he wants a two story house with a lower ceiling. She believed the two stories could be lowered to some degree as that is where the major problem has been, to which Mrs. Smith agreed.

Mrs. Smith asked if the problem was with reducing the height of a one story or raising the ceiling of the two story. Mr. Weinberg stated he would like to see one foot added onto the one story as well as the two stories also, with the one story going from 13' to 14' and the two story going to 21' to 22'. Mrs. Smith recalled Mr. Randolph stated there would be no problem with the advertising and she would like to move that the height be raised from 13' to 14' on a one story and from 21' to 22' on the two stories.

Mr. Randolph stated if they did that, it is a change that would have to come back for a third reading. Mrs. Smith stated she didn't understand. Mr. Randolph explained they had a first reading last time and made a change, so between the first and second reading, the advertisement was run to let the people know this was going to be considered at this meeting, and they would have to advertise it once again, not with the quarter page ad but just to let people know it was coming back for a third reading. He stated as far as the reading of this Ordinance is concerned, since they have made some substantive changes, he believed they needed to have a third reading.

Mrs. Wiener seconded the motion.

On roll call, the motion carried unanimously.

Mr. Moore asked the Town Attorney if this third reading could be at a regularly scheduled Council meeting and not after 5:01 PM? Mr. Randolph did not believe it would have to be after five.

VI. SECOND READING OF AMENDED LANDMARKS ORDINANCE No. 7-93. Attorney Randolph read the Ordinance No. 7-93 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER 16 OF THE TOWN CODE OF ORDINANCES AT ARTICLE III, SECTION 16.41 THEREOF SO AS TO DELETE THE PROHIBITION OF LOGOS, PROVIDING CRITERIA FOR DEMOLITION OF LANDMARKED BUILDING OR BUILDINGS IN AN HISTORIC DISTRICT IN THE EVENT OF AN EXTREME ECONOMIC HARDSHIP; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion was made by Mrs. Wiener, seconded by Mrs. Smith to adopt Ordinance No. 7-93. On roll call, the motion carried unanimously.

Mr. Moore clarified that at the last meeting the Cubic Content Ratio was adjusted administratively in preparation of the adoption of the Ordinance and asked if the Council wished them to again adjust it so it will reflect the Cubic Content Ratio would probably be somewhere in the vicinity of 4.75%.

Mrs. Smith noted this provision on Cubic Contents was put into the Ordinance for the first time to which Mr. Moore agreed. Mrs. Smith asked why they just didn't remove it? Mrs. Wiener stated she has no problem with that. Mrs. Smith thought they should just eliminate it, as the height has been changed. Mr. Moore recalled the Zoning Commission asked for this inclusion to be a part of the package. Mr. Randolph advised they didn't have to accept it. Mrs. Smith believed they

Second
Reading of
Amended
Landmarks
Ord. 7-93

could eliminate it if they wished. Mrs. Wiener stated she could bring it back as long as she was on the prevailing side. Mr. Randolph advised they can vote to reconsider.

Motion was made by Mrs. Smith, seconded by Mrs. Wiener to reconsider Ordinance No. 9-93. On roll call, the motion carried unanimously.

Motion was made by Mrs. Smith to eliminate the Cubic Content Ratio from the Ordinance No. 9-93. Mr. Randolph suggested she move the adoption of the Ordinance No. 9-93 with the amendment to remove the cubic content from the Ordinance, and to add the additional foot of height, changing it from 13' to 14' for a one story and 21' to 22' for the two story houses. Mrs. Smith so moved. Motion was seconded by Mrs. Royal.

Mr. Moore wished to clarify the reason the Cubic Content was put in was to track the Architectural Commission and that was the purpose of the Zoning Commission's recommendation.

Mrs. Wiener recalled there were reasons why that was done and those reasons may not be valid at this point. She thought this was a decision for the Council to which Mr. Moore agreed. Mayor Ilyinsky asked if they really wanted to remove the cubic content provision to which Mrs. Smith responded affirmatively. Mrs. Wiener noted the Town managed to survive for many years without it and she didn't think it should be required now. She thought these were changes people were making with fiddling around with what this Town was, under the guise that other people wished to change it but this Council wants to bring it back to what it was and is.

Mr. Randolph pointed out when they adopted it earlier in the meeting, they lost half their audience and those people who may have wished to speak in favor or against it have left the meeting, but because they are putting in on a third reading, they will have an opportunity to come back and address it, if they so wish.

On roll call, the motion carried to remove cubic content.

VII. ANY OTHER MATTERS

A. LOBBYING OF TOWN COUNCIL. Mrs. Wiener advised she was in a seminar last Friday and Saturday for Public Officials and during the course of the seminar, something came to her attention which was the matter of the legality of lobbying in connection with quasi-judicial hearings, which are usually zoning matters. She understood this has been contested in Miami and in fact the law was upheld and she would like to have a clarification on the matter, as she has been lobbied over the past five years that she has spent on the Council, and if these acts are improper, she thought they needed some guidance.

Lobbying of
Town
Council

Attorney Randolph distributed a copy of the case and clarified it is not a law that is on the books, but this case was heard by the Third District Court of Appeal in Miami and what it relates to is lobbying at quasi-judicial hearings. He advised these are not all necessarily zoning matters but could be also applications for variances, special exceptions in which the Council is sitting as a Judge. He stated this particular case states they should act as a Judge and since a Judge does not allow himself to be contacted on an ex parte basis by individuals as he must sit as a judge and wants to render his decision without interference on a one-on-one basis from other parties.

He advised this case doesn't actually say that this lobbying can't be done, but does say there will be a risk in doing that, which risk would be that someone who is not happy with the end result could have a cause of action in court and state the Council was prejudiced as a result of the comments which came to the Council outside of the public meeting. He stated that in and of itself would not throw out any action that was taken, but what this case is doing is to go a step further than even the Circuit Court did in that it says in the event the Council has been lobbied by third parties, the burden is not with the person who is complaining but will be with the Council to show there has been no prejudice as a result of those lobbying efforts.

Mr. Randolph advised this case has been bounced around in legal circles for the past two years and has caused some concern to attorneys and governmental officials as to how it should be handled. He thought the safest way to handle it would be to not allow themselves to be intentionally lobbied. He stated the case does state there will be circumstances which are inadvertent and where they will come across information outside of the public meeting and the court is saying that is not necessarily bad, but what is bad is if they knowingly allow themselves to be lobbied outside of the public meeting. He reported attorneys have been advising their clients differently and some have been saying they can continue to do it but it should be recognized there is a risk; whereas others are advising their clients to not do it. He advised them that in his opinion the safest thing would be to not allow themselves to be lobbied. He advised one important statement in the case is that statement which says: "Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings; quasi-judicial officers should avoid all such contacts where they are identifiable." and "Occurrence of ex parte communication quasi-judicial proceedings does not mandate automatic reversal" and "Upon aggrieved party's proof that ex parte contact occurred with decision makers in quasi-judicial proceeding, its effect is presumed to be prejudicial, unless defendant proves contrary by competence evidence."

He advised this Council does act in a quasi-judicial capacity when it hears Variances, Special Exceptions and in some cases, Appeals from decisions of Landmarks or ARCOM. Mrs. Wiener believed it was anytime they sit in judgment rather than in a legislative position.

Mr. Weinberg asked if he received from an attorney a phone call on some particular matter that was coming before the Council, would that be a violation? Mr. Randolph explained it would not necessarily be a violation, but if an attorney was calling him on a Variance or Special Exception or Appeal, the best thing to say to that attorney would be "Thank you very much but I would like to deal with this at the public meeting."

Mrs. Wiener understood this had quite some history behind it and was not a brand new matter and it wasn't just this case. Mr. Randolph responded the courts have been split on this case and on page 1341 of the Southern Reporters 2d Series, and the first split stated "Courts hold that an ex parte communication does not deny due process...." and they went with the second set of decisions, so from that standpoint, it was relatively new and a shake-up in the ways things have been handled. He believed they should know that it has not been unusual in any municipality for lobbying efforts to go on. He believed it has gone on all the time and it will continue to go on.

Attendance
of Council
Members at
Committee
Meetings

He thought it was a good thing to have discussed this and they all are aware of the potential consequences.

B. ATTENDANCE OF COUNCIL MEMBERS AT COMMITTEE MEETINGS: Mrs. Wiener noted Mayor Ilyinsky has sent a letter concerning the fact that there are Mini-Council meetings held each time a Committee meeting is called, and he felt they were wasting time doing things over and over. She stated the reason she brings this up is because she has not been attending these Committee meetings, other than her own, but on the other hand, it is a good learning experience for the new Council members.

Mayor Ilyinsky recalled they could always attend as spectators in the audience. Mrs. Wiener believed they had to remember, they are all elected individually and independently and they each interpret their role differently and she felt if there was a particular item that she had a strong feeling about and rather than getting into a harangue at a Council meeting, the input can be provided at the Committee meeting time. She believed each person has to act in a way they see as their duty and she wouldn't presume to tell anyone how to conduct themselves.

Mrs. Smith commented she does intend to attend all of the Committee meetings as a part of the educational process as she felt a new perspective is learned on the Committee level. Mrs. Royal agreed and since they don't have meetings daily or weekly, they don't have the opportunity to share ideas except at a public meeting.

Countywide
Beaches &
Shores
Council

C. COUNTYWIDE BEACHES AND SHORES COUNCIL. Mr. Doney advised the next Town Council Meeting is May 11, and the Countywide Beaches and Shores Council will be considering the Palm Beach/South Palm Beach Shore Projection Project - Environmental Assessment and Project Options on May 10, 1993. He referred to Mr. Elwell's memorandum of April 26, 1993 which states there is an ongoing study in the south end of the Town for Beach Nourishment and called on Mr. Elwell for a summarization of his memorandum.

Mr. Peter Elwell, Administrative Assistant to the Town Manager, addressed the Town Council indicating he has sent a memorandum to the Mayor and Town Council via Mr. Doney which identifies there are seven options which have come out of the initial Environmental Assessment for the project and the County staff's recommendation is to go with an option which is known as the Federal Project, which is a significantly shortened project compared to that which was originally being studied. He stated the project is proposed now to run from Phipp's Ocean Park to the Lake Worth Public Beach whereas it was from Sloan's Curve to the Lantana Public Beach. He advised the input looked for by the Beaches and Shores people was to identify the option which the Town Council would support.

He recalled this same question is being asked of the other governmental bodies in the effected project area. He advised the Town of South Palm Beach has submitted their option which is to support continuing to study the full project area, which is Option No. 7 and if this Council is so inclined, they as staff reviewing the options has found that a reasonable recommendation to the County would be to continue to study the whole project area, but being sensitive to the County's recommendation which is based on environmental concerns in the southern area of the project.

Mr. Elwell suggested it would be reasonable if the Council desires to have the entire study area continued to be explored, consistent with the Town of South Palm Beach, that they recommend doing so with the environmental concerns being taken into account and whatever modification or mitigation that might be required become a part of that project. Mr. Weinberg asked if there were funding problems involved in agreeing with the option selected by the Town of South Palm Beach to which Mr. Elwell responded the funding for whatever project ultimately is designed, the funding formula would be dependent upon the publicly assessable space vs. private benefit and that is another issue. He pointed out the longer project does include more private properties which would benefit and there would be less federal assistance available but there are means for providing for the funding, other than dipping into the municipal coffers.

Mr. Weinberg pointed out the area south of the Lake Worth Bridge as it pertains to the Town of Palm Beach is all private property.

Mrs. Wiener believed they may be getting themselves into a problem as they are going down the road where the Town would have no control over something and they will be paying big bills for private property. Mr. Elwell responded if this Council or a future Council could make the decision to commit Town funds to the project but at this time that is not being requested, nor has any commitment been made. Mrs. Wiener knew that but wondered what would happen if they decide to move forward and then just assign a share to the Town, as we were a part of the process all along. Mr. Elwell explained the understanding at this point in time is there are no local sources of funds identified and it is quite likely, particularly with a project of this type with a lot of private benefit, that there would be some way, whether through an Erosion Control District or some other method to have the private property owners pay some portion. He stated if the local government body decided to pay for that, rather than having the private property owners participate, that is an option, but it would be at the discretion of this Council. Mrs. Wiener felt there still could be a large bill down the road as she could see the Condominium owners considering this as tax monies, and unless there is something submitted in writing that under no circumstances would the Town be committing themselves to any type of funding, whether private or public, but if this would help other people to move forward that is one thing, but she didn't want to be caught into a situation of a fait accompli several years down the road.

Mr. Weinberg recalled there were some initial monies given in the past to which Mr. Elwell responded that commitment was to donate \$900 to the preliminary feasibility study for the project with the condition that the Town did not intend to contribute any additional funds. Mrs. Wiener stated that is one thing but they may be putting something onto the Town residents, and she thought they needed to be very careful about this.

Mrs. Smith noted the \$900 was donated in 1992 and asked what would be their reasons for not doing this now? Mr. Randolph did not believe from a legal standpoint, there was any commitment other than what was being requested now. Mrs. Smith stated she has also a concern on the other side of this, as if they don't help the beach and go ahead with the project which may ultimately help the beaches in the Town, then there could be a problem there also.

Beaches &
Shores
Council

Mayor Ilyinsky reminded all this could be a millions of dollars project. Mrs. Smith asked just exactly what are they asking for? Mr. Elwell responded it would be for a four mile area for the longest beach and a two mile area for the shorter area.

Mr. Elwell stated the question is whether or not the Town Council wishes to take a position and support one or more of the projects shown on the back-up map. He pointed out there are several different project options identified and if the Council wishes for Mayor Ilyinsky to take back to the Beaches and Shores Council the recommendation of the Town Council to pursue one or more of these options, they could do that or they could also choose to not take an action. Mrs. Smith thought perhaps their response is that the Town is looking into this themselves.

Mr. Doney reported the issue is the Beach Renourishment Council that is behind this effort to try and have a beach nourishment project in the south end of Palm Beach is also represented by some private interest. He believed it was explicitly clear that at these meetings, there have been no preliminary cost estimates as to what the extent the project would be, nor estimates of what Federal and State cost sharings would take place, as there has been no ability to determine what kind of public participation there would be and he suggested another way that this may be considered is to put a proviso on this that in addition to asking Alternative 7 be looked at further, with the desire to have further mitigation for the environmental concerns, the Town of Palm Beach is extremely concerned about the estimated cost of the project and reserves the right to reconsider its participation financially, depending on the cost estimates which would be later derived after the additional studies are completed.

Mrs. Wiener advised she was not prepared to jeopardize the finances of this Town in cooperation with other municipalities, and in addition to the fact that the Town will be able to get out of it but may be obligating the residents of the Town to a huge bill and she feels strongly about this as they do have some guidelines as to what kind of costs they are talking about from the past sand matters, as this involves staff time and she doesn't want to go along with this open ended situation. She believed they had to know if there will be a financial obligation down the road and people need to be aware of it.

Mr. Weinberg recalled when the Town Council of Palm Beach gave the Beaches and Shores Council the \$900, the Citizens Association South of Sloan's Curve contributed \$5000 to this study, with the hope that this would initiate the situation and then State and Federal funding would flow in and this contribution was to get things going. He knew the people in the South end who have the fear that Mrs. Wiener expressed as they live here, they are being hit by this and they have no beaches and want to know what the Town of Palm Beach is doing for them.

Mrs. Smith noted they received \$5900 for this study from the Town and its Association. Mr. Weinberg believed there were also contributions from South Palm Beach and Manalapan. Mr. Doney explained this is a multiple phased project and the first step was to do the environmental assessment. Mr. Elwell reported that has been completed and that is what identified the environmental concerns. He stated the next step will be for preliminary engineering and continued environmental analysis that would help define specifically what the project would be, and will reveal the financial information that Mrs. Wiener is concerned about. He stated this will give the scope of the project which will help identify what the total project costs would be and to identify public and private benefit within the project area and what the State and Federal assistance would be and define the local cost.

Mrs. Smith noted the report did not specify what the environmental concerns were. Mr. Elwell responded the environmental concerns had to do with what is referred to as "hard bottom" which basically is not so active to be a reef with coral heads on it, but is rocky areas rather than sandy areas in the near shores where there biological organisms can live and there is a concern about covering that area with sand.

Mrs. Wiener stated her concern about what would be public benefit, what is private, what is the Town's, and reiterated they are going down a road and handing over a blank check and the further they go down that road, the more difficult it will be to extricate themselves.

Mrs. Royal asked if this should be given to the Public Works Committee to which Mrs. Wiener did not agree, stating what she thinks should be the action is to write them and tell them we are in a situation of our own with the sand situation and it is not our policy to be involved in something where they didn't know what the cost will be and who will pay.

Mr. Weinberg agreed it should be one step at a time as we are now involved with the PEP project. Mr. Elwell commented if the Council wished as a body to write to Beaches and Shores and state the concerns expressed today, they could do so, but they are not obligated to respond in writing and they could respond verbally that the Town Council does not wish to exercise any of the options. Mrs. Wiener did not agree stating they should be more specific. Mrs. Smith believed they should respond and tell them the Town isn't interested at this time.

Mrs. Wiener moved that the staff advise the Countywide Beaches and Shores Council that because of the Town's financial concerns at this particular time, the Town of Palm Beach will not continue to be involved in this project, but if at some time they can come back with figures and how all of this will be paid for, the Town of Palm Beach will be happy to entertain it at that time. Mr. Weinberg thought they could define the PEP situation and the Sand Transfer Plant and we have enough problems at this moment which we are struggling with. Mrs. Smith seconded the motion. On roll call, the motion carried 3-1 with Mrs. Royal voting against the motion.

VIII. ADJOURNMENT. There being no further business, the meeting was adjourned at 6:42 PM.

Grace T. Peters
Town Clerk

Adjournment