

**MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 13, 2000,
REGARDING COASTAL MANAGEMENT ISSUES**

I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting was called to order at 9:30 a.m. by President Jack McDonald. On roll call, the following Elected Officials were found to be present: Mayor Lesly Smith; President McDonald; President Pro-Tem Sam McLendon; Councilman William Brooks; Councilman Norman Goldblum; and Councilman Wyett. Also attending for all or part of the meeting were: Town Manager Robert Doney; Town Attorney John Randolph; Public Works Director Al Dusey; Town Engineer Jim Bowser; Police Chief Frank Croft; Finance Director Jane Skittone; Zoning Administrator Paul Castro; Purchasing Agent Charles Boggs; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. President McDonald led the pledge of allegiance.

III. APPROVAL OF AGENDA

Councilman Wyett made a motion to approve the agenda. The motion was seconded by President Pro-Tem McLendon and carried 5-0.

**IV. COASTAL MANAGEMENT ISSUES REGARDING POTENTIAL LITIGATION AGAINST THE
FEDERAL GOVERNMENT REGARDING LAKE WORTH INLET AND SELECTION OF LAW
FIR TO ANALYZE SAME** *(deferred from December 14, 1999, January 11, February 8, and March 14,
2000, Town Council meetings)*

President McDonald expressed his disappointment regarding the article in the Palm Beach Daily News where confidential information was released to the press prior to this meeting. He said the article violated the trust of the Town Council members and the members had to be able to trust each other to follow the Town Attorney's advice and accomplishing the objectives of the Town requires a team effort.

President McDonald said that Mr. Stouck was not at the meeting to read his report but to answer questions or explain information. He said he wanted to retain the confidentiality of Mr. Stouck's report and parts of the report should remain confidential as that was important to any potential litigation strategy.

Mr. McDonald said that generally speaking the bottom line was that if the Town wanted money and perhaps sand, it would take approximately \$500,000 and twelve to eighteen months to determine if the Town had a good case. He added that if the case was won by a settlement or trial, there would be some variegation of property rights. He said he would not dwell on the causes of action, the statute of limitations, or their proof, or the first impression question of how much property the government has taken as that was explained in detail in the report.

Mr. McDonald said the answers for the threshold questions should be addressed in addition to obtaining the information necessary to this case such as how many beach front property owners within nine miles of the Inlet will join with the Town, their length of ownership, are they willing to become plaintiffs, are they willing to sign agreements relative to the goals of the litigation - authority to decide issues, consideration of settlement offers, and how the money will be spent-and prevent the establishment of an ECL or control the placement of an ECL?

Attorney Randolph introduced Attorneys Jerry Stouck and Rebecca Womeldorf from the firm of Spriggs and Hollingsworth who prepared the litigation analysis presented to the Mayor and Town Council. Mr. Randolph said he thought it was important to repeat the importance of the confidential nature of this report. He said the role of the Mayor and Town Council was not necessarily to discuss the content of the report, because discussion may breach its confidentiality. He suggested questions should be addressed to the attorneys but this is a public meeting and the only way for the Mayor and Town Council to have a confidential meeting or a closed door session in regard to the litigation is in the event litigation were pending. He advised the State legislature is giving consideration this session to the Sunshine Law which would allow closed door sessions for anticipated litigation, but unfortunately that does not exist at this

time.

Attorney Jerry Stouck said he was at the meeting primarily to answer questions and President McDonald had succinctly stated the bottom line. Mr. Stouck said that Corps of Engineers has a big legal problem, and there is fairly compelling evidence with a good portion of the evidence in the Corps' own documents that a good part of the erosion on the beaches south of the Inlet is caused by federal navigation activities, dredging of the Inlet, and maintenance of the Inlet. He continued that there is strong legal precedent that the erosion of beach front property works a taking of that property under the fifth amendment of the U. S. Constitution and the federal government is therefore liable to pay just compensation.

Mr. Stouck said litigation of this nature is a significant undertaking, and the Town would have to be committed to this as well as other beach front property owners. He said the bottom line of the report was that the law suit could lead to a court victory or at some point along the line, to a resolution short of full blown litigation in which the government would own up to some fair share of responsibility for the erosion that was caused.

Councilman McLendon asked what additional effort would be necessary to file the claim?

Mr. Stouck replied his firm was prepared to go ahead with the filing, and the filing fee in the Federal Court of Claims is approximately \$120. Mr. Stouck recommended before the suit was filed a discussion should be held with the Corps of Engineers in Jacksonville regarding what the Town is doing and why it is doing it. This would be partly as a courtesy and although the Town was committed to the litigation and enforcing the Town's rights, the Town was alert to the opportunity to discuss the matter.

Attorney Randolph said he agreed with Mr. Stouck's suggestion and thought it was prudent that Mr. Stouck or anyone else authorized by the Town Council meet with the Corps prior to any litigation filing. Mr. Randolph said it was anticipated that the meetings could be held within a week and subsequent to the outcome of the meetings, the Town could be in a position to file a law suit if that was the desire of the Town Council.

Councilman Brooks said it appeared from Mr. Stouck's document that the federal government would file a motion to dismiss. He said he understood the threshold was relatively low, and the Town would not have to take on a great burden of proof, but if the Town would move toward a full blown trial, that threshold increases exponentially.

Mr. Stouck replied he concurred with that statement, and the cost of a law suit, if it goes through to the end, can be considerable—several million or a couple of million dollars. The appeal costs would be quite a bit less.

Councilman Goldblum questioned the legal costs to the individual landowners

Mr. Stouck responded that he did not see that as a particularly big factor, and he envisioned that the Town would take the leading role in the litigation—hiring counsel, organize in some fashion the other beach front owners and have a proxy for the conduct of the litigation and for the disposition of proceeds.

Councilman Goldblum said he understood that the beach front property owners received a portion of the settlement in proportion to the length of time they owned the land.

Mr. Stouck replied that was correct, and an owner for a recently purchased piece of property would not have much claim for erosion. He said the action was not with individual claims.

Councilman Wyatt asked how long it would take to prepare the claim against the federal government and would that delay any action regarding the anticipated nourishment of the beaches?

Mr. Stouck responded he was not aware of all of the implications of that question as he was not thoroughly familiar with the beach front nourishment efforts including the bond amendments to be considered at this meeting. He said from his point of view, he did not think that needed to be delayed because of the law suit, although ECL issues may intervene.

Mr. Stouck said the Corps of Engineers is engaged in a large number of beach and shore front protection and renourishment projects up and down the Florida coast.

President McDonald said he thought the report was clear that the law suit should be filed before the beach renourishment is started.

Councilman McLendon asked if it were feasible to file a class action suit with the beach front property owners but would the suit lose validity by filing a class action suit as opposed to individuals?

Mr. Stouck replied he thought a class action suit could be a good way to go, and the report discussed the various options. He said a class action suit may be the best way to proceed promptly, but it would not obviate the need to obtain cooperation from the individual property owner.

Mayor Smith asked what the attorneys' costs would be prior to meeting with the Corps of Engineers?

Mr. Stouck replied the cost would be minimal – \$5,000 or less. Mr. Stouck clarified that as described in the report, his firm has not reviewed all the information it needs to review to conduct the litigation; although he has reviewed many reports that were done over the years, additional information needs to be gathered locally from various individuals. He said the preparation work necessary before the filing of the suit was not extensive.

Mayor Smith asked if an individual beach front property owner could stop the action if they objected to the suit?

Mr. Stouck replied they could not.

Mayor Smith asked if Mr. Stouck said, referring to the Applegate case, that the issue was sand – not money – and did the initial settlement of \$5 million in the Applegate case go to the Town or to the various people named in the suit?

Mr. Stouck responded he did not know the answer to that question.

Councilman Goldblum asked how the issue of not having a sand replenishment plant in the Applegate settlement compared to the Town of Palm Beach's potential law suit where the Town did have a sand transfer plant?

Mr. Stouck replied the Applegate law suit was fundamentally about the same issue as in Palm Beach which is a claim for money damages for just compensation for the taking of property against the federal government. In both cases, the ultimate objective is not money but sand and renourishment. The vehicle to that through this particular litigation course, is to make a claim for money then either collect the money at the end of a law suit and turn it into sand or negotiate a resolution along the way and turn it into sand.

President McDonald asked if the facts in the Bowling case were more in line with Palm Beach's case than the Applegate case's were?

Mr. Stouck replied he did not think so, and the Bowling case is a pending Federal Circuit Court appeal that involves some issues that may come up in Palm Beach litigation. He said the Applegate case involves beach erosion whereas the Bowling case involves some erosion on the Intercoastal Waterway.

William Cooley, 233 Tradewind Drive, addressed the Mayor and Town Council and said he saw beach renourishment and shore protection as a four part effort.

1. Beach renourishment, the act of putting sand on the beach;
2. Protection of property owners' rights from the ECL;
3. Asking for federal funding through an appropriation; and
4. Negotiation and/or litigation with the federal government to achieve federal funding.

COOLEY: We're faced with a problem that must be viewed globally. Each and everyone of these four parts of the Shore Protection effort is linked. The Town should plan and implement a global solution and advance on forefronts simultaneously. Adoption of one part of the effort prematurely may fatally harm the entire effort.

The Town should have a global plan, not one that will only renourish the beach and provide shore protection, but a plan that will gain commitment from the federal government to renourish it for all time so those who live in Palm Beach after us don't have to face the same dilemma we're facing today. We need a plan that will see ongoing beach renourishment and shore protection, paid for from the federal treasury. A plan that will see a commitment from the State to exempt down drift communities from the necessity of creating an ECL.

In regard to the bond resolutions that are before you today, passing these bond resolutions prematurely, without advancing on the other three fronts, is in, my opinion, not the way to proceed. If they are passed, I believe the Town is telling the federal government – if they are passed prematurely – I believe the Town is telling the federal government that we don't think they are responsible for the damage, and that we would choose to tax the residents of the Town of Palm Beach nearly \$40 million in principal repayment, interest, and the use of reserves rather than ask the federal government to pay for the damage their actions have caused.

There is a point in time when these bond resolutions should be passed. It may be in weeks. It may be in months, but it should be after the demand is made on the federal government to fix the problem. It should be after a bill is introduced in Tallahassee to exempt Palm Beach and communities similarly situated from the necessity of drawing an ECL.

Secondly, it should be after the project has been quantified, so we know exactly how much it will cost and we know that it will be permitted as proposed. Additionally, when the bond resolution is passed, in my opinion, it should contain some additional WHEREAS paragraphs in the enabling section. The following language, I believe, should be added which would increase the possibility of the Town recovering any money spent as a result of this bond issue. Just as WHEREAS the Town of Palm Beach is determined that an emergency exists, caused by the federal government's dredging and maintenance of the Lake Worth Inlet, which has blocked the natural southerly migration of sand needed for the renourishment of its shoreline; WHEREAS the failure of the federal government to provide adequate beach renourishment and shore protection has caused excessive beach erosion; WHEREAS the Town of Palm Beach is funding these emergency improvements to protect the health and welfare of its citizens; and WHEREAS the Town of Palm Beach will be making a claim to the federal government for full reimbursement of the funds being used to protect life and property.

By adding these four paragraphs to the resolution, I believe--again in my opinion--would help the Town in its position to recover any money spent at this time for beach renourishment.

I hear the argument from some that we were working so well with the Corps that we hate to sue them. Believe me, you are not suing the Corps and asking to punish them. You will be asking to give them the bureaucrat's dream. You are going to ask that they do more work. That their budget is increased and that their department will grow. If you think that will make the Corps mad, because you are asking Congress to give them another \$50 or \$100 million, I respectfully submit that is not correct. As a matter of fact, I would tell them ahead of time, that you are trying to get more money for their budget from the federal government. I think they will love it.

I also hear from some of my discussions with some of the Council that there may be a difficult time rounding up plaintiffs for the law suit. I believe there are two ways to do that - first, asking in which the Town would have to take a proactive role in finding land owners to be plaintiffs, and the second would be when public money is spent, placing sand in front of private property, at that point it should be accompanied with a requirement that the landowner become a plaintiff and sign a proxy saying their rights go back to the Town.

I also hear from some that this claim against the government could be very expensive. Yes, it can. It can also be not very expensive, and that all depends on, as I say this with all due respect, on the Mayor and Town Council, because if the Town hires an attorney to make the claim against the government and then sits back and lets the attorney do all of the work, it will take years and it will cost millions of dollars. However, if you hire an attorney to make the claim and then assist him in an effort by contacting Congressman Shaw, Foley, Wexler, Hastings, and Senators Graham and Mack and have a funding bill introduced and then go to Washington, pound on their desks, call your friends who have political influence in Washington, that would be an effort that would much shorten the law suit, will bring down the price, and you'll get your end result. There are at least five people you know in Palm Beach who have the President's private phone number. There are at least fifty who have a mail code they can add to the President's name and send a letter, where the letter will wind up on the President's desk - unopened. There's no town in America where 9,500 people pay as much federal income tax as Palm Beach, and there is no town in America that has as much political clout as the Town of Palm Beach.

Madam Mayor and member of the Town Council, if you make the commitment, you make the phone calls, this lawsuit will be short lived. There can be a funding bill introduced in the next session of Congress, and the law suit will be over. The cost of the suit will be in direct proportion to the amount of effort, arm twisting, desk pounding that you and we, collectively, do, and we can help you. We can give you support. We can call our friends in Congress, and we can walk the halls with you, but we can't do it without you.

In summary, while quickly placing sand on the beach is necessary, it should be recognized as a temporary solution. Spending \$30 to \$40 million dollars of local taxpayers' fund on sand is temporary. Setting an ECL the length of Palm Beach and creating additional public beach and taking away some property rights, however, is permanent. Not asking the federal government to pay for this damage, while on the other hand, asking the property owners of Palm Beach to solve a federal problem, is first, I believe, not fair and second, I believe, is bad public policy. This is a global problem, must be solved by strategic thinking, and all parts of the puzzle must fit together. There must be an overall plan. I urge you to first proceed with a demand on the federal government that they fund the renourishment, and if in a reasonable amount of time, you do not get an affirmative response, file a claim in the Court of Claims. Then immediately ask Palm Beach legislative delegation to offer an amendment to 161.141 to exempt communities like Palm Beach who suffer from sand starvation as a result of a public inlet and exempt us from creating an ECL. Then request that Mark Foley and Clay Shaw prepare legislation to permanently fund the Corps of Engineers for renourishment of the beach in Palm Beach, and, this is important, that the projects will be directed and approved by the Town Council. We just don't want to give money to the Corps and have them come in and do something that isn't approved by the Town Council.

Defer adoption of the bond resolution that you have in front of you until the stage has been set for the reimbursement of any funds that you spend on beach renourishment. The stakes are high. We are not talking about \$40 million you are considering now. The \$40 million that the folks in this room will be repaying--because that sand will be gone before those bonds are paid off. We're talking about hundreds of millions that will be spent by the folks in this room and future residents of Palm Beach who will be facing this exact problem if we don't find a permanent solution. Your decision here today will determine whether or not the 9500 residents of Palm Beach are going to fund the hundreds of millions to solve a problem not of their making--needed for beach renourishment going forward or whether the federal government will rightfully pay to solve a problem they have created.

Just one little thing. I haven't had a chance to finish this. I just picked this off the Internet. This is the 1999 report of the Corps of Engineers on the projects they are doing in Florida. This is dated September 2, 1999. Five shore protection studies are authorized underway; 27 shore projects or project segments have been authorized in Florida, and going through here, outlining the various projects, Palm Beach is obviously missing. They're up and down the beach in every direction. They're dumping millions of yards of sand on, funded by the federal government, except when it comes to Palm Beach. There is just this big void here in this program, and I suggest that with the proper invitation, the Corps would add us in here, and we could probably save a lot of money.

Now my quiver truly is empty. Thank you.

McDONALD: Who wants to be next?

KUVIN: Sanford Kuvin. Good morning. Madam Mayor and members of the Council. I have no prepared remarks, but it was in response to Mr. Stouck's comments that I would like to ask -- and briefly comment.

Firstly, and these are just points of information, Mr. Stouck. You mentioned a lawyer's bill that could amount to several million dollars? Have you given consideration to taking this case on a contingency fee, or in part?

McDONALD: Let me answer that, Dr. Kuvin, because it is in the report, and his firm has offered us several fee and contingency agreements from which to select. Thank you.

KUVIN: One wouldn't construe that from the morning paper. Secondly, you did say that you have not reviewed all of the material at hand, and again, none of us are privy to this confidential report, however, I would like you to at least address the issue of one major difference between the Applegate case and this case, and I've read the Applegate case. I don't know if you indicated you had or not, but the Applegate was a settlement of about \$122 million, basically in sand, with about \$5 million distributed to the residents who were impacted. One of the major differences which is so striking to me at least was that, in Applegate, there was no sand transfer plant. We have had the benefit of a sand transfer plant. Now, that is a legal question as to the impact of that commission in the Town of Palm Beach as opposed to that omission in Canaveral.

Then lastly, hearing your comments, you, I think it is fair to say, addressed the issue or rather dismissed the issue of the bond issue as not having any major impact on going ahead and filing the federal law suit. For months, that has been debated in these chambers, and I think it is fair and correct to say that many people or some people believe that from a legal - I am not a lawyer - but from a legal point of view, it would be counter productive to have the bond issue passed. Extremely counter productive in terms of the future fulfilling the outcome, if the outcome is outcome oriented in favor of the Town of Palm Beach--that it would be injurious to have that bond issue passed. Now, that is a question for Mr. Randolph and you, Mr. Stouck.

On the very last issue, in reference to the bond issue, I don't think that the bond issue has been clarified at all in terms of costs--90% of the bond issue will be devoted to sand and yet we don't know where that sand is coming from. We don't know how much the sand is going to cost us, whether it's \$3.50 or \$6.50 or \$9.50 a yard. The overfill factor, the so called refining costs, which have all been mentioned in other documents, none of these have been addressed in respect to the bond issue which remains a separate issue for discussion and debate. But those were my comments and questions to you. Thank you very much.

McDONALD: Thank you, Dr. Kuvin. Who's next?

HENNESSY: Good morning, ladies and gentlemen. My name is Kevin Hennessy. I am with the law firm of Lewis, Longman & Walker in West Palm Beach. I am an attorney in West Palm Beach and I represent the group of Town of Palm Beach residents under the name of Beach Alert. I have provided previously this week, the Town Council, with a letter with much of our position. I'll try not to repeat that but deal with what I'm hearing this morning.

It's obvious to you all that the Town is at an important juncture, here today, with regard to how it is going to pursue its vision of the future for this town. Clearly, you have a situation of starved

beaches, and you are grappling with reaching the solution. I think it is wise that you have brought forth outside counsel today to provide you with this information, and you need to weigh that carefully and make sure that you do not act at cross purposes with those recommendations. There is some confusion I have, though, in the statements that were made by the counsel, particularly in terms of recommendations as to the ordering with which you will be taking action.

Prior to the bringing of any law suit, particularly a law suit of this magnitude, a demand on the defendant is appropriate. It is not appropriate to proceed by filing the law suit and letting the demand be made in that law suit and then once swords are drawn, combat is begun, then try to sit down and see if there is a workable solution, because you will go through a protracted litigation dance once you have set your lawyers to do battle.

Maybe the confusion is solely on my part, but if there is any confusion in the Town Council's mind that they should not make a formal demand on this potential defendant and discuss the issues prior to filing the law suit, I think that confusion should be cleared up, because a demand should be made.

Secondly, with regard to the expenditures, spending \$3 million on a lawsuit is a very substantial sum. Any lawyer would be happy to get a Town Council to agree to, but it was surprising to me that, and maybe it's in the report, we don't have privy to this report, but as I believe was stated by Mr. Cooley earlier, a law suit is just one means of negotiation. You should fully use your entire quiver of resources and at the same time as proceeding with this litigation, you should be proceeding with lobbying and negotiations at both the federal and state levels to achieve both funding and changes to the law to correct the issues that you are grappling with here today.

I am not clear, and I would put the question to your outside counsel as to what he means by a derogation of property rights even with the bringing of the law suit against the party responsible for the erosion that has destroyed the Town's beaches. I would also inquire of your outside counsel as to whether — I've only heard the mention of the Corps of Engineers as a defendant. I believe that there may be other potential defendants, other government agencies that are involved in decisions surrounding the operation of that inlet who are potential sources of recovery.

As I said, you all are at a critical point in proceeding, and I would hate to see the Town lose avenues they have to benefit this Town by taking action that would contravene those goals; such as incurring substantial debt by way of a bond; such as committing to permitting and permitting costs for which the Town will be fully responsible; such as stepping into the shoes of the parties who are responsible for depriving private landowners of their land and becoming yourselves those responsible parties for the taking of private property. I think you need to weigh carefully whether you want to take on that responsibility.

Thank you for your time today.

McDONALD: Mr. Hennessy, I have a few questions. Where did you get the \$3 million dollar figure from — for the cost of litigation?

HENNESSY: In the newspaper this morning, there was a reference to \$3 million. Mr. Stouck, today, started by saying several million and then said \$2 million — at least.

McDONALD: All right. So it was the newspaper where you got the exact number. Thank you. I have another couple of questions, based on your letter.

Can you tell me what cost information you reviewed regarding the cost of beach restoration that led you to make the conclusion that it was an unrealistic estimate?

HENNESSY: You have distributed certain...

McDONALD: What did you review to enable you to make this conclusion?

HENNESSY: The documents that have been put out there are associated with the bond proposal, and that bond proposal has in it certain estimates of costs in describing the need for that funding. Those are the documents that I had access to and reviewed.

McDONALD: You were able to review those and draw a conclusion that they were not accurate costs, based on your legal experience?

HENNESSY: My legal experience, based on my review, indicates that you do not have sufficient information to determine that the numbers that you are putting forth are going to be accurate. Okay. I think that's even evident — I would back that up with the information that I have reviewed with regard to the project costs for the beach renourishment program. That there are so many questions that you have as to — such as the availability of sand, the availability of sufficient quality sand, that leaves open the potential that the numbers that you are using are extremely conservative and may, in fact, be

much larger than expected.

McDONALD: All right, and that led you to the conclusion that it was not accurate?

HENNESSY: That led me to the concern that it's not accurate.

McDONALD: Thank you. One final question is that you – maybe you could just name two of those legal obstacles that we would face if we were to pass the bond issue. Just two of them please.

HENNESSY: The legal obstacles that you have are, passing this bond resolution at this time, with an incomplete project that you don't know that you will be totally able to fund, may lead at the back end to a problem—let's give you an example: if you were to begin your project and only complete a small portion, and let's say that portion dealt with primarily private lands, ..

McDONALD: But what's the obstacle?

HENNESSY: Well, that's what I'm getting to. The importance of this bonding to you is that it is tax free. Were you to complete a project where, in fact, those lands were limited to private lands, you would be subject to perhaps losing that tax free nature of that bonding. So that is a substantial potential risk that you take into account not having this project fully defined.

Another legal obstacle that you face is the prospect that the project has not been fully permitted. There is, I understand, quite a bit of controversy with regard to this project.

McDONALD: So it's permitting. Thank you, Mr. Hennessy.

WYETT: I have a question.

McDONALD: Mr. Wyett.

WYETT: Is this your first appearance before us?

HENNESSY: On this issue, yes, sir, before this Council.

WYETT: And therefore you did not hear this Council at a previous meeting when estimates were made by attorneys that the cost might be approximately \$3 million.

HENNESSY: \$3 million for...no, sir.

WYETT: The source of that information you only got from the newspaper which I supplied; however, that information was revealed publically at a prior meeting.

HENNESSY: It seems like it was fairly, substantially ratified today by Mr. Stouck's comments, too. He came down to \$2 million, but he started by saying several million.

McDONALD: Thank you, Mr. Hennessy. Unless there are any other questions from Mr. Hennessy, I'll call on Mr. Lickle. Do you have a question specifically for Mr. Hennessy or you just want to be next? Okay, Mr. McLendon.

McLENDON: I just want to mention, I keep hearing from Mr. Hennessy and previously Dr. Kuvin and others along the way that we don't know what the costs of the project are going to be. What we have and used to make our decisions to date are feasible reports in which are estimated by the engineer to the best of his knowledge using comparative projects nearby. The Town has spent one-half million dollars to locate sources of sand and verify its size and quantity available, and the contract costs are not developed, are not known, until you take bids on a project and we don't authorize the detailed preparation of detailed plans and specifications until we have reviewed the feasibility report estimates..how that fits with Town projects. So to hear that we don't know what the exact costs are—Yes, we don't—and we will never know until we take bids and even during the construction process, items come up of emergency nature that have to be considered so that you don't know what your final costs are until you finish building it. But certainly, my opinion is that the estimates we've had have been reasonably based on similar projects and I am happy with them.

McDONALD: That's not a question for you, Mr. Hennessy. You can go ahead and sit down. Thank you, Mr. McLendon. Thank you, very much.

Anyone else want to? Who's next? Mr. Lickle? Please.

LICKLE: For the record, Gary Lickle, former chairman of the Shore Protection Board. I guess as I am sitting here, I'm kind of feeling like deja vu. We've been here, we've been through this so many times. I was reflecting just a few minutes ago on what our role was as the Shore Protection Board, and to try and put perspective back on this. I think when the original Council set up the Shore Protection Board, the idea was obviously to investigate everything we possible could with the best

experts in the world that we could. Bring them all under one roof and cipher through all of this information, all the opinions, etc. and come up with recommendations.

In addition, we saw our role as trying to keep the Council advised, from time to time, and now it's been almost 4 ½ years of the road and the path of that recommendation. Granted, understanding that as that road meanders from time to time, the key is to keep us from suddenly blowing the road apart or turning around and going backwards.

I feel like, as everybody has said, that we are at a serious crossroad here, and I would just like to spend a minute kind of reminding Council and for the benefit of the new Council members some of which were privy to a lot of this information, some of which were not. That going back, I think it is now four years ago, the Board, in its original recommendations developed twelve key points to help this Council and future Councils keep on this road to make sure that we implement the best plan possible based on the recommendations of the experts.

One of the key provisions there is item 2 with regard to the sand transfer plant. In the past we felt as though we, as a town, made a terrible mistake by pursuing a law suit against the County for the failure of that plant when it was undetermined as to whose responsibility it was to keep that plant going. As a result, we lost five or six years worth of sand transfer to our beaches and we lost over 2 million cubic yards of sand to our beaches which is further exacerbated and probably cost us well in excess of the millions of dollars that we are talking about spending for this law suit. As a result, our recommendation was, and I quote: "A serious mistake was made in not assuring that the sand transfer plant regardless of who was responsible, was pumping sand at all times during the past five years. This should never happen again. The sand is vital to the continued maintenance of our beaches."

From that premise, I think we are at a crossroad again. The question is: Who is responsible? Again, your Shore Protection Board went back and took a look at the legal ramifications. We took a look at the Applegate case. We also took a look at the federal funding issue, and it was clear in the points that we talked about that the federal government is out of the game of funding. I agree with Mr. Cooley, there is no question about it, we can mount a lobbying effort; we can pull all sorts of strings if we want to; but the handwriting has been on the wall. The federal government is out of this business and short of a law suit, we are not going to see any federal funding. We advised the Council of that to the extent that we could through other efforts or otherwise consider it found money, but don't let that control your decision about how to fund this project.

Also we took a look at the Applegate case. For once, I agree with Dr. Kuvin. He is absolutely correct. There is a fundamental difference between the Applegate case and our case, and that is that sand transfer plant. I believe if I recall reading the Applegate case, that one of the fundamental issues on appeal was that had they had a sand transfer plant in that case, they may not have ended up with a reversal on that appeal, and I believe that the opinion somewhere in that states that, and I would ask Council perhaps they can expand upon that. That was a fundamental issue on this. Now, where you are now, in my opinion, is not an issue of legality but an issue of a business decision. Every one of us who has been in various businesses or had problems in our lives or otherwise have had to face the question of litigation, it is not just a question of filing a law suit. It's a question of resources, energy, costs, and the risk weighed. Too often, as we all know in today's society, litigation is being used as a weapon in order to negotiate settlements. However, having been a lawyer for twenty years and watched many of these law suits etc., I really seriously question how many law suits have ended up with true victories and true justice done. That having been said, I look at it today and I say, What do we have in hand, as a Town, which we spent four and one half years on.

We have a project. We have a sound project that is going forward. We also have 50% funding from the State and the County for that project. We also have no tax increase as a result of it. Let's go back and take a look at this again as a reminder. The Shore Protection Board came to you with a recommendation that said you, as a town, can literally take this entire project and you can pay for it by yourselves, because this is a community that can afford this—not only from a citizens' standpoint, from a comparison standpoint with other communities, and from even bond counsel's opinion that this community has very little debt.

So, the number one key is if you want to retain total control of your property rights or the issues of this Town, etc., if the citizens stood up and said we want to pay for this ourselves, you eliminate a lot of these issues that are out there. Granted, nobody likes a tax increase and nobody wants to pay for this, but we could do it if we wanted to. So we went back in order to placate a lot of the concerns about tax increases – worked this thing down through the brilliance of Al Dusey and the plan he came up with and the wisdom of the Council to get it to a point where it was palatable through no tax increase. That took a lot of work, and we are there. When you give up those rights, along with them come issues such as the ECL.

The ECL issue I am completely in accord that we should go and ask for relief on that ECL. Nothing ventured, nothing gained. If this Council goes to Tallahassee through lobbying efforts or

otherwise, if we can either eliminate it or get it moved further to the east –why not? However, I don't think there is any real down side if, in fact, the ECL is not eliminated.

So, we have a project; we have 50% funding; we have no tax increase; and we have at least the hope of a commitment of \$3 million from the federal government for the improvement to the sand transfer plant. I recognize that has been going on for quite some time, but again I would encourage Council let's get on the ball, and I know we've mentioned it in the past, but do the lobbying efforts to make sure that we get that \$3 million.

Now, what are you risking if you file this lawsuit? We've heard the number bandied about, \$3 million plus in litigation fees. I think that is probably conservative for a case of this size – absent a quick settlement, and that is just my personal opinion. You also have the additional cost of dealing with the ECL before the State of Florida at the same time which I can only imagine would require some additional either lobbying or some additional legal costs. You've got the potential loss of our place in the state funding. If we lose that 50% funding, we go to the bottom of the line. We go back and we will now have to reapply and probably get into the pipeline which we know from our experience is a \$30 million this year grant, and I think there is another \$30 million for next year – somewhere in that neighborhood, and right now we seem to be at the head of the pipeline.

This is a new funding vehicle for the state, because the feds have pushed this requirement to the states. There are not a lot of towns or counties that were aware of this or that were ahead of us in this process. Once they have gotten wind of the fact this is now a state issue, they are all scrambling in their communities to try to get in line for this money so the competition for this money is going to be much more fierce in the future.

What if this litigation takes years. We're back into the sand transfer plant point that we talked about. We now have no sand on our beaches to protect us against any potential large storms, and there's no question about it, that if we have large storms, at least the waves breaking further from our shore causes less damage to our infra-structure period. How many millions of dollars do we potentially risk in the destruction of our infra-structure by not proceeding now? How many more millions of dollars will it cost us seven years from now to continue to improve the erosion we will experience over the next five to seven years?

The issue about beach front owners joining in this lawsuit. I'd be willing to bet that's a difficult proposition to get everybody to agree on number one joining in and number two what is going to be the remedy? When you have a lawsuit that size as was pointed out, what are the damages? Are your damages going to be money damages? Are your damages going to be a beach renourishment project? Our goal is a beach renourishment project. What happens if 2, 3, 4, or a half dozen say: I don't have any interest in a beach project, I just want the money. How are we going to get them to all agree on what that settlement probability or potential is going to be? We already have great dissension amongst the beach front residents as to this entire project to begin with. Then consider from the Town's standpoint, for monetary damages, if the Town takes the lead on this, which was recommended, what does the Town get? I think the Town only has two, if I recall, two public beaches. One maybe precluded from recovery because of the ECL which I think Mr. Dusey spoke about at the last meeting. The second one is the Phipps Ocean Park. The rest is all ocean front owners. So in the event that we receive some great monetary award, the Town is really the minority vote on this whole thing. The citizens are then the ones who will be running this litigation, and the question is, from a fiduciary standpoint for our Town, is that the kind of control this Council wants to give up to all of our residents to potentially fight amongst themselves for the next seven years over what's the right thing to do as we meander through this lawsuit.

Potentially, obviously, I agree with Mr. Stouck that the Army Corps is used to being sued. I don't have any doubt about that; however, I don't know what effect that may have on the \$3 million dollars they are thinking about or at least semi-committing to the sand transfer plant. I can make a bet that it won't happen, certainly, until this lawsuit is finished.

Lastly, I do agree with the question as far as the comments in the paper this morning about the likelihood of success. I would likewise – and I think it was our first speaker who was asking about the issue of the contingency. I would ask Mr. Stouck if it is possible that he comment on it, if it's not confidential information, but most law firms if they really do believe that this is a terrific case and that it has that great likelihood of success, would be willing to step up to the plate and take this on a contingent basis with no legal fees expended by this Town. I just don't know if that threshold issue has been asked or if that is part of this operation, but I would make a bet that would be a great threshold test for this Council to ask if they would take it on a full contingency basis because that in and of itself to me says a lot about whether they believe this case is truly a winner.

Thank you.

McDONALD: Thank you, Mr. Lickle. Mrs. Douthit? I apologize, Mr. Horwich?

HORWICH: Good morning Madam Mayor and Council Members. I'm Harry Horwich, 2860 South Ocean, and just speaking as a plain resident, I would like to make a plea that this matter not be allowed to languish. We have a place up in Vero Beach. I first went to it almost 50 years ago, and there is a tremendous difference there because the sand has not been renourished. As a matter of fact, there is a picture up there at the place that shows a beach about 150 feet wide, smooth going down to the ocean, and it's all gone now. Now there is about maybe 10 feet of beach. When the tide is in there is 0 beach, and there is a 20 foot high retaining wall trying to retain the buildings which like all of our buildings are built on the sand dune. As Gary Lickle has pointed out in his presentations in the past, if a beach is properly renourished, there is a gradual, gradual slope which protects the sand dunes and in nature's way makes for recurrent bouts of renourishment which will never occur once you have the huge revetment there. So, please bear in mind that over a period of years, this will no longer be Palm Beach just like where our place is, it's no longer Vero Beach.

Thank you.

McDONALD: Thank you, Dr. Horwich. Mrs Douthit please.

DOUTHIT: Nancy Douthit, 330 Cocanut, and I simply have a question and that is we have been told right along that the 50% of our expenditures are going to be paid by the State and the County. Now, do we have any place in writing how much we will be permitted or how much they will add...Do we have any arithmetic figures in literal black and white print from them? Mr. Dusey?

McDONALD: Mr. Dusey, do you know the answer?

DUSEY: We have a State budget that shows, I think, \$5.5 million in this fiscal year for ... the upcoming fiscal year.. and we have a letter from the County indicating, I think, \$2.1 or \$2.2 million, both in writing, but we have to work on (inaudible) to finalize that. Those are in process.

McDONALD: Thank you, Mr. Dusey.

DOUTHIT: But in other words, we go off and spend \$25 million, the Town does, and so far we are promised - give or take \$7.5 million back - and that is a far cry from 50%. I think these figures should be made clearer and certainly be known to the public. We just keep hearing, "Oh, they're going to pay 50%." Do you have any further response?

McDONALD: I think what Mr. Dusey has spoken to, Mrs. Douthit, is in writing, the \$7 million and apparently he does not have any additional-anything additional to that in writing.

DOUTHIT: Okay. But that is certainly not 50% of \$25 million. That's my point.

McDONALD: All right. Thank you. Yes, Sir? Who wants to be next?

BYRD: Good morning. My name is Wade Byrd. I'm a lawyer here in Palm Beach, and I have been a resident for over 30 years. I represent Vizscaya Corporation which owns the property at 101 Wells Road, Palm Beach.

Vizscaya has absolutely no problem with the fact of the bond issue, the amount, or paying its share as a property owner here in the Town of Palm Beach. My client feels that Mr. Dusey, Mr. Doney, the Shore Protection Board has done a fantastic job and particularly the Town Council. The problem my client has is simply the ECL. My client feels that it is patently unfair to establish, for example, if you went out in front of 101 Wells Road today and established the ECL, you would be almost up to the seawall, because in the last ninety days there has been a tremendous loss of sand. To adopt a plan that would adversely impact the boundary of that property, my client feels is totally improper. But again, as far as the cost, the funding, the bond, and the need, it totally agrees, but to put an ECL, say, next week or next month or the next two months up against a seawall and which just because of whatever phenomenon that has occurred in the last ninety days to remove that sand would be patently unfair.

Second part of talking this morning is from - not from the standpoint of representing Vizscaya, but having been a part of this community for many years, and to address the litigation issue, I would urge this Council to explore every possibility of settlement to get the ECL issue resolved; to meet with the Corps of Engineers as opposed to filing a lawsuit against the Corps of Engineers. Filing a lawsuit with the idea that you are going to force a settlement is a dangerous, dangerous, long standing, costly proposition. I think that people who have been here in the Town and from the lawsuits that the Town of Palm Beach has been involved in the past certainly can understand the cost, the delay, and the damage cost by litigation.

Thank you.

McDONALD: Thank you, Mr. Byrd. Let's let everyone have one opportunity to speak. Who wants to be next? I think Mr. Martino was next and then we'll go to Mr. Gilbertson, Mr. Frank.

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MARTINO: Good morning, Mayor and Town Council Members. My name is Joel Martino, 109 Ocean Terrace. I am a former member of the Shore Protection Board. I think the ECL issue is paramount. You're going to see more and more concerns raised about it. I don't believe that the Council, the Town, has ever published a written document that tells us why we should not be concerned about the ECL. Why we should not be concerned that property which is now private and would be deeded over the state for all times should not concern us. There are ins and outs. None of that has been totally explained to the Town—to the people of the Town. I certainly for one feel very reluctant to grant the state deed to property which is now mine, and I would like to know in some official capacity what the Town has to say about that.

Thank you.

McDONALD: Thank you, Mr. Martino. Mr. Gilbertson.

GILBERTSON: Good morning everybody. I'm so glad so many people are here today. I'm really impressed.

We talk about a critical crossroad. Well, we had a critical crossroad in '85 and I suggested their course was abominable, but they knew better and the State was going to tear out the groins. So they tore out the groins. We had no beach in Palm Beach as you all know for seven years. The wall took a beating, and it cost us taxpayers \$5 to \$7 million for nothing. Then our staff and our good Council got together in '94 and we have a magnificent beach.

What tough guys they are and what a great staff we have. It's just incredible. Now, as I said yesterday, all you people weren't here, so maybe it's a little boring but last February, of course I blame Al Dusey for it because he goes to church too much, but we got \$2 million worth of sand on our Mid-Town beach for nothing, except for Mr. Dusey. I don't know what he is going to bill us for it anyway. We got \$2 million worth of sand and it's still there today. Any why is it there today? Only one darn reason – the groins were there. We had new groins in there, and without groins you're just wasting our money and wasting a lot of it. So, we have to think, and then of course this is another thing that annoys me a great deal, south of our Mid-Town beach, say from Gulfstream to Jungle Road, there were, when I was a little kid there were 8 beautiful groins down there. Now, they're all broken to pieces.

But even those battered groins saved a million dollars of sand in February. We got a million dollars of extra sand, but the tragedy of the whole thing – it should have been – we lost 5 million down there, so we end up with one when we could have had \$5 million worth of sand if those groins had been repaired. Without groins, it is insanity, and to think this beach renourishment—I know up in Jupiter, oh yes, it's coming right over to my house north of the lighthouse there. So they had to chip in \$50,000 each to put in revetment rock. I mean nourishment would have meant nothing, and it means nothing out here, because we had no beach in Palm Beach for seven years. Since we have such a brilliant Council, I shouldn't have to say anything else, should I?

McDONALD: Thank you, Mr. Gilbertson. Mr. Frank? Anyone who wants to speak, you need to come up to the front row so I know. Mr. Frank?

FRANK: My name is Jerry Frank. I live at 2784 S. Ocean. I'm the president of the condominium. I'm a member and on the Executive Committee of the Citizens' Association, but I am speaking as an individual at the present time.

I can't imagine at this point, the Council, in their good conscience could not understand that there is an emergency situation in the Town. Not maybe reach 1 where the sand transfer plant is doing a great job, but when you get further south, in many areas, there is no beach. The waves are breaking on the seawalls of the condominiums. This summer there was damage to the condominiums because of the collapsing of the walls in front of the condominiums. Sure the wall obviously belongs to the condominium, maybe they should make it thicker and make it higher, but that's, I don't think what we are trying to do here. If there was a proper beach, a beach that has been here or had been here for many years before this was there, probably this destruction would not have taken place. In the last few months, more of the beach has disappeared. One of the condominiums, as part of the beach cleaning process in the south end, has said they do not want to pay for beach cleaning any longer through the association because they have no beach. So, you know, we're talking, I guess there's different theories based on what you see when you look outside, but there's a large section of the Town of Palm Beach that needs immediate work done. It is an emergency, and I can't believe the Council does not realize that, and would be anxious to take action because of that. I can't believe that if we do repair work in an emergency situation that any case the Council would decide to get involved in would not be part of ...whatever is spent would be part of the money that would come back from whoever they were suing. This is like saying, I mean I've had cases where I have had buildings where part of the roof came off. The insurance company immediately said repair—do emergency repairs even before we get there, because we don't want any further damage. We don't want our obligation to be even greater. If we have condominium walls coming down, and we have damage to condominiums, is that now going to be included in the case against the federal government if you go forward with that?

I guess if that happens and we lose a few million dollars or a \$100 million in condominiums, maybe that could be part of the case. That is ridiculous. I think that anything we do, because we have an emergency situation, and you went along with a federal case would be recouped.

The other question I have—we do have state money. Obviously, we don't have a letter or something in black and white, but I think that could be explained. But, I know there is money there that will pay for this project or pay for half of the project. If we don't act now, we are going to lose that money. If we do lose the money, what happens? Where do we get this money to do these beaches which are seriously, seriously in need of sand right now. I can't imagine that the Council would not look at it on that basis, and say we must go along with what they have planned, what the recommendations were from that group that they put together 4 ½ years ago.

One of the other things that is interesting, and I'll quit after that is I've heard many times that the Town of Palm Beach never wants the federal government to be involved. If the federal government starts putting sand on the beaches, they're going to ask for beach access and suddenly everybody has forgotten about that because once the federal government comes to Palm Beach, I've heard, we're in serious trouble, because they are going to want all kinds of access to our beaches.

Thank you.

McDONALD: Thank you, Mr. Frank. Mr. Levy?

WYETT: Excuse me. I would like to ask a question.

McDONALD: Mr. Wyett, we just want them to make their comments now, and then you can...

WYETT: We've established a practice of asking a question.

McDONALD: No. Later we'll do it. Mr. Levy?

WYETT: Mr. Frank, are you concerned about the ECL program? Would you like to pass it?

McDONALD: Mr. Levy. Please. You can speak now. Thank you.

LEVY: Madam Mayor, President McDonald, Town Councilmen, fellow residents, my name is Gerald Levy, previous member of the Shore Protection Board and have been very interested in beach renourishment in our shores for years. By the way, this gentleman here, the proposal of the Shore Protection Board included groins throughout the Town. Now the program they are putting in now, has modified it a bit in that they are going to wait and see where they need the groins, but the groins were proposed in our proposal.

I thought the beach renourishment project was finally approved, and I was finished addressing this honorable body. However, it appears that those residents who apparently do not have a beach problem have not given up trying to forestall the project. Apparently the movement to delay the beach renourishment project emanates from the same source that has appeared and spoken against implementing the Shore Protection Board's recommendations so many times this past year.

Yes, as a member of the Shore Protection Board, we spent three long years with all kinds of experts and recommended a plan that should be implemented as soon as possible. No one knows how soon the next storm will occur. The request to hold up the beach renourishment project for litigation purposes, is, in my opinion, just another attempt to submarine the findings of the Shore Protection Board.

It would be unconscionable to witness needless damage to our shores and our properties by holding up the project for the purposes of litigation. Please, I ask you to realize the importance of not putting this project on hold.

Thank you, very much.

McDONALD: Thank you, Mr. Levy. We'll listen to Mr. Lilja and then we'll come back to Mr. Lickle and Mr. Frank.

LILJA: Madam Mayor, Council Members my name is Sten Lilja. I had not intended to speak here at all, and my statements here will be a reaction to what has been said before.

Before I go to the core of what I was going to say, this matter about storm protection comes back and back. We are here to discuss the sand in general and not if the sand will prevent damage from storms. That matter should have put to rest by the Council meeting two months ago when Mr. Decker himself acknowledged that sand is not effective as storm protection for anything that is beyond a category 2 storm. That is a myth, and I thought I should address it.

The reason I came up here is that Mr. Hennessy was asked a few questions, how he could state that

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substantially the present cost estimates which today amount to \$40 million overall cost to the Town are underestimated. To that, I could go here and give reasons and run it down piece by piece and show you how high we are going to end up.

McDONALD: We don't want you to do that, Dr. Lilja. We asked him that because he made those statements in his letter. We were interested in his response. Okay. Thank you.

LILJA: That's what I say, I'm not going to do it. So I am just going to refer for the Council to read on the restoration application that has been submitted for the Phipps Ocean Park to the DEP. Page 8. I am not going to read it. I suggest you read it, and it is very clear that something is drastically wrong here, and we can go on.

The other item I would refer to--the Mid-Town permit application on the table following page 26 which shows the available sand sources and believe me what I am saying here is that if we don't watch out, any acceptable sand that is there will be used up in the first whack at Phipps. Beyond that, we are in serious trouble. We can try to refine, we can do everything and we can go to the Bahamas to look for sand if we want to.

Thank you. I don't want to take more of your time.

McDONALD: Thank you very much. Mr. Lickle?

LICKLE: I just have two items to respond to. I guess I just wanted to help clarify. I know we have a letter that we have all seen that talks about the eligibility for funding from the state which is at the 50% level. While we recognize there is plenty of work to be done, that's, I think, the major hurdle in the commitment from the state for that funding.

DUSEY: If I might. There's a letter that says on a one time basis for mitigation purposes, the state will pay 50% of the cost for sand placement through our monument 121, I believe, which is just short of the Par 3 Golf Course from the northend. We do have that in writing, but it is still subject to permitting and other eligibilities.

McDONALD: You'll provide a copy of that to Mrs. Douthit? Anything else, Mr. Lickle?

LICKLE: Some of you all, I think, have seen it. I'd like to talk about that ECL line and mentioned that I would come back to it and I did forget to come back to it.

If I could just go up on the board for two minutes and maybe it will help Mr. Byrd with his issue also.

Mr. Bryrd. He is gone? Sorry.

The point of the ECL and even Mr. Martino, maybe this will help. This is my interpretation and understanding of the ECL issue, and I at least wanted to demonstrate that I think this is a terrific legal argument, no question about it, and I again I encourage the Council to go to Tallahassee and ask about the ECL to see if we can't move it or eliminate it. There is, thanks to Mr. Cooley who brought this up, the statutory section. There is a possibility of a good argument if the plane, meaning the section 161, 141 or whatever it is, it says if the project is less than 10 years and certain other qualifications, there's a possibility for the elimination of that ECL. If it's eliminated, we're all winners. But let's assume worse case, it's not eliminated. The ECL goes in. As Mr. Byrd pointed out, this is the ocean here and his client's house is sitting right here. Everything east of here, right now, is state property. Period. There is almost a de facto ECL in place right now. So the fact that his clients have one foot of beach, means he has one foot left of private beach. For those who are luckier, then maybe the beach line is out here who have 30 or 40 feet of beach left, and I try to put myself in the position of being an owner of beachfront property, I'd say that if we are convinced that the beach is continuing to erode and that de facto ECL is getting closer, closer, and closer to my home, I'd want the ECL in today. In fact, I would want the ECL in last week, last month, or 2 years ago, because that's my protection of existing private property, because once the line is drawn, that is true. It then becomes state property. But again, this is state property right now. So, if you believe you are going to accrete, then you are right. You have a taking and you have a line that is drawn and everything thereafter continues to be state property. However, if you believe that we are losing beach, then that ECL is getting closer and closer every day, and if anything, as I said, I'd rather have it put in now rather than later. But, again, I still encourage Council to make that trip to Tallahassee to ask for that relief.

McDONALD: Thank you, Mr. Lickle. Mr. Frank, Mr. Wyett has a question for you.

WYETT: In your private opinion and perhaps reflecting the opinion of the Citizens' Association and all the residents, south of Sloan's Curve, is the ECL a consideration of utmost importance that you would have us sue on this issue which would in turn somewhat delay the beach? Or is getting the beach going paramount?

FRANK: Well, the ECL was never really a major consideration. I am sure it is a consideration because nobody wants property taken away from them which they think may belong to them. But, the urgency of putting sand on those beaches comes first. There is no reason in my mind why the ECL line because of what we have heard recently could not be moved. This is a one time program by the State and I think with the proper work being done in Tallahassee, I think we have a very good chance of having that happen. I don't know whether the energy, my personal opinion, the energy has been put forth by the Council to do something in the meantime in relation to the ECL. I'm sure that they couldn't do anything in relation to some of these plans that have been put together, but I think that should be worked on immediately, but if it can't be accomplished because of the emergency situation the sand reduction in front of many properties, I think it should go forward without that happening. I would like it to happen, like we all would, but I don't think it is going to affect our lives. In the history that we have been presented with at previous Council meetings, nobody has ever suffered from problems with that ECL line. The State has never come in and opened-put toilets or had hot dog stands on the beaches in front of homes.

McDONALD: Thank you, Mr. Frank. The Council-we are going to lose a couple of members early this afternoon. So the Council wants to be able by 11:15 to start discussing this matter, so we would like however many speakers are left to be finished by 11:15. Is there anyone who hasn't spoken yet who would like to speak? Mr. Flamm?

FLAMM: After hearing all the issues being discussed this morning, it becomes apparent that the key issue that remains on the table is the ECL. I will tell you that in my view why the lawsuit itself against the federal government does not seem to merit our serious consideration. I have authorized numerous lawsuits, and I have rejected numerous lawsuits. The standard procedure in deciding whether one should or should not sue, as Gary indicated, is a risk/reward business decision. In this particular case, in Mr. Randolph's memorandum of February 6th, he indicated there were two substantial defenses. One is term, statute of limitations, and the second is causative - what portion, if any, was caused by the actions of the federal government. Each of those would have to be hurdled to win the case. By the way, I think it would be extremely imprudent for us to assume that in making that decision today, whether we are going all the way through trial or whether something much more satisfactory but much more unlikely would happen on the dismissal stage. So I think it would be very prudent to go to trial which means you end up with a jury trial, and if one asks an attorney what is the chance -

McDONALD: Mr. Flamm, I think it is a trial before a judge.

FLAMM: Okay. If one asks what is the opportunity, what's the probability of having each of these cases successfully litigated, normally they say you have a very good chance, and would you mind quantifying that? Yes, I will quantify that as 50%. I'm not kidding. That's what is considered a very good chance. It's not bad. But if you take the 50% on the term and you take the 50% on the causative, then further in that memorandum, Mr. Randolph indicated a prudent number to use as to what percent the Corps of Engineers may have contributed to - that might be 45%-- let me just simplistically make that 50% - if you take those numbers and multiply them out -let's say we make a claim of \$40 million - you end up getting \$5 million. Obviously, that's not the number you get, but in making the judgement, I would suggest that is what you have to do.

Now, let's be super optimistic. Let's say the possibility of each of these cases, the causative case and the term case, that you will get up to 2/3, 67%, probability. When you multiply those very high numbers out, which I believe are unrealistically high, you come to about \$10.5 million. What you are risking then, you're risking five years of what Gary just described. I think, my experience and I have sued the federal government often, is typically something between 3 1/2 and 7 years, some go longer and some go shorter, but the normal distribution curve is in the five year range. You lose five years of the protection and the benefit to the Town of the beach renourishment program. You're five years behind. You have a bird in the hand of close to \$20 million or approximately \$20 million, half the project, no litigation, just moving forward, and I strongly support those people who say we put out a full court press on trying to get rid of the ECL, but failing that, I would still go ahead. So that I think the gain in this particular case, the cost benefit, so overwhelms, the benefit overwhelms the cost, that I for one do not see the merit for moving forward with a litigation against the federal government. Thank you.

McDONALD: Thank you, Mr. Flamm. Mrs. Curran, do you want to speak?

Can I just see a show of hands of anyone else who is going to speak? Not the repeaters, but who wants to speak for the first time? So we can presume Mrs. Curran is the last one. Go ahead, Mrs. Curran, thank you.

CURRAN: Your honor the Mayor, Town Council President and members of the Town Council. As a former Shore Protection Board member, I fully respect and appreciate that you, in your capacity, as elected members of the Town Council, are confronted with making a decision regarding the shoreline that will directly impact the future of the Town of Palm Beach. This decision, while it is certainly grave and far reaching, can unfortunately be compared to a gamble. It involves winning and losing and risk. At a different level, but for the purpose of analogy, please permit me to mention that the

Florida lottery is a form of legalized gambling as we know. Those who win gain a monetary reward. Those who lose can also be satisfied by knowing their participation has given added support to the cause of Florida education. A decision to participate in this litigation against the federal government, however, is to gamble for a monetary reward while placing the protection of property at continued and even greater risk.

Less than ten years ago, as Gary pointed out, the Town Council at that time made a decision to litigate instead of undertaking the immediate repair of the damaged sand transfer plant. At that time, the Town Council gambled and lost. I hope that we will have learned from that regrettable decision. Thank you.

McDONALD: Thank you, Mrs. Curran. All right. What repeaters do we have? Two? All right. You have one minute, Dr. Kuvin.

KUVIN: Sanford Kuvin. Unfair. You gave more than a minute to Mr. Lickle.

McDONALD: I think he was about a minute.

KUVIN: Was it? Okay.

In any event, I would like to respond to Mr. Lickle's comments, because he based his comments on basically fear. Fear that the \$3 million sand transfer that has not only been appropriated, rather authorized, but also appropriated by the federal government will be lost if we go to court with the federal government. Not true. Fear that if we don't put on the beaches, that we'll be swamped in the next storm. Not true.

Nobody doubts the fact that anything larger than a category 2 storm, no matter how much money you put on the beach, will devastate us. Wade Byrd, who unfortunately is not here, made the case for having the ECL, not objecting to the ECL, and going ahead with the bond issue. The whole perspective here is to put this in perspective, namely if the outcome is favorable in a federal lawsuit, it will be of enormous help to the Town, if it is meritorious, but the issue is the ECL. By accepting the bond issue as it is with public money, the Town is selling itself for \$12 million to become de-privatized. It will provide public sand which means public beaches which means access which means toilets and the whole litany of a change of a quality of life to this Town it has never, ever experienced. It is truly a watershed issue.

The ECL is the issue, and by accepting the bond issue in its current form with the public money that goes with it, you're accepting the ECL as a parcel. Therefore, please keep it in perspective, and as far as Mr. Lickle's comments about fear, and he chose El Mirasol as a point, I'll just close on this, and that is anybody from the Town should come up and see the accretion to the beaches - not only at the far north end, but going well past the former Kennedy Estate, the Castle Estate, and they will soon make their way, at about a mile a year, down to El Mirasol and all the way down to the south end of Palm Beach because it took that long for the six year mistake of this Council to rectify itself. Now we have an abundance of sand - that sand bank is making its way at a mile a year-- south. Is it a gamble? Of course, it is a gamble, but we chose that gamble when we chose to be residents of this island and live on a barrier reef. With that reward of living here, comes a bit of risk.

Thank you very much.

McDONALD: Thank you, Dr. Kuvin. Mr. Hennessy - one minute and we'll be done.

HENNESSY: Thank you. I didn't point out previously that my expertise is environmental law. I have experience both with the Vero Beach that was mentioned earlier, and your same beaches out here today. I'm actually very impressed by Dr. Kuvin's comments, because he shows great understanding of beach processes. The fact of the matter is beaches recede and beaches accrete. If someone were to suggest that the best thing to do right now is to run out on that beach and draw your ECL today before it gets any worse doesn't understand the beach, because the fact of the matter is, beaches recede, not only over time, but over the course of a season, and your winter season is the worse for the beaches. Your summer season, you are going to accrete. To the very least, you are going to improve at the end of this summer as opposed to the beginning of or the end of the winter storm season.

The biggest problem you have with your beach is that you were starved for several years, because that sand transfer plant was switched off - wasn't working, and you are suffering the effects of that sand starvation, and to again, draw an ECL line now in a time period when you are just coming back from a sand starved situation, is to deprive yourselves of the right to get that recovery and to deprive those private landowners of the right to receive that recovery.

The bottom line with the ECL - black and white in the law - is once you establish that ECL, you will have changed the law out there forever. Your accretion - your rights as a property owner to

whatever accretes on your beach – will no longer exist. The second thing is that once you go forward with this plan and you obtain this permit with its conditions and its state involvement and its state funding will also change your situation here forever. You will have more state involvement. You will have more federal involvement and with that comes those goals of public access, public use, and public projects. If you understand that, and that is what you want, then go forward. If that is not the situation you want, if that's not the change you're voting on making here at these meetings, then you need to consider that in your decision making.

McDONALD: Thank you, Mr. Hennessy. All right. That concludes public comments, so it's open to the Council. Anyone have any comments? I guess the motion to adjourn would be good.

SMITH: I have a few questions.

McDONALD: Mayor Smith?

SMITH: With all of the various speakers, I tried to keep track of whom I had questions for and I'm not sure that I remember them all in order. However, Mr. Cooley brought up a list of projects that the Army Corps is currently undertaking or about to undertake? Mr. Cooley, in the State? I wasn't sure what the list was that you were talking about.

COOLEY: This is a list of five shore protection studies that are authorized and underway and a list of 27 shore protection projects or project segments that have been authorized for Florida.

SMITH: And is it for this year? And my question was, Mr. Dusey, did we apply for any of these funds?

DUSEY: No, these are projects that have been previously approved, and there are 50 year agreements on these – Delray Beach has one in this area and Boca Raton had one.

SMITH: They were previously approved, when?

DUSEY: They were approved prior to the President's declaration of no more beach projects with the possible exception, could be the Canaveral project or some kind of a special appropriation. These are pipeline projects, I believe, because from a beach standpoint, that is all you get now. We had an opportunity for a Mid-town back in '90 and we went a different direction.

SMITH: Because we were able to take care of Mid-town, so we're in good shape with Mid-town going back a couple of years. Mr. Cooley, do you disagree with Mr. Dusey's statement?

COOLEY: Well, I'm not sure I disagree with it, but I will restate what this says. This takes into account some of the provisions of the 1999 Water Resources Development Act which specifically included and restated some of these projects. So this isn't old stuff. This is new stuff that was recently authorized in 1999.

SMITH: We don't know exactly when it was permitted. They may have applied for the permits several years ago. I was just trying to clarify what it was and whether or not we had...

COOLEY: There's a chart in the back and it tells when the project started and the duration.

SMITH: All right. We've lost a great deal of the Council, but however, I'm fine to talk about this. I don't have a problem with this right now.

5 minute break

McDONALD: Ladies and gentlemen, could we resume our meeting please? Mrs. Smith, Mr. Wyett, Mr. Brooks, Mr. McLendon, Mr. Dusey, Mr. Doney.

Mr. McLendon, we're going to start. Mrs. Smith is leaving for something else.

Mr. Randolph missing? Mr. Randolph is here. Mr. Randolph, do you want to make any comments or sum anything up before ..?

RANDOLPH: It might make sense before you try to have an independent discussion about the lawsuit for you to discuss the next item on the agenda, which is the ECL, unless you wish to ...

McDONALD: I don't know what is left on it except maybe your comments, but all right let's go to item number B.

(Item A. was heard after item B.)

A. LEGAL FEASIBILITY REPORT FROM MR. JERRY STOUCK

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 4/13/00

McDONALD: Who wants to speak first?

DONEY: I don't have a policy thought, but I do have an administrative thought, and that is now that the Town Council has engaged Mr. Stouck, he's had the benefit of hearing what has been discussed today - questions, comments - to hear from him now.

McDONALD: All right. That's a good point, Mr. Doney. Mr. Stouck, please, since none of the Council people want to speak right this minute.

STOUCK: Yes. Mr. Doney, did you have some question or issue in mind?

DONEY: There were a series of questions the speakers had addressed, I think, to you in terms of what you have done or not done as far as the study. I don't have anything specifically.

STOUCK: Okay. I think I've got a partial record of those. I can address those, if that would be helpful.

I don't really have, otherwise, anything to add at this time. I agree with a lot of the comments that have been made. Again, I have nothing more to add to what I said before. Litigation is a serious undertaking and there are risks involved, but as our report states, we think you have a good claim.

McDONALD: Thank you, Mr. Stouck. Mr. Wyett.

WYETT: It is very difficult to discuss suing the United States government when you have, properly - probably, imposed a gag order. Maybe I misunderstood, but I thought that many issues in the report would be revealed today to the public. I guess that is not the proper thing to do, so therefore I can't talk about anything that is in that issue.

When I mentioned \$3 million, that was a dollar figure that was thrown out back in February or March and obviously the very fact that we are considering this report, I can't see how we can say anything. What am I supposed to say that I can't get in trouble with?

McDONALD: What we are asking the Council to do, because we are going to presume that every Council person and the Mayor has read this report and understands - and knows what the contents are and will understand it and ask questions to clear up any ambiguities and is prepared to make a decision whether we should sue the federal government or not.

WYETT: Aspects of that report that are vital and probably properly secret, secret as far as not wanting to reveal it out to the general public- not our public, but I am talking about the public that will oppose us; however, there are aspects of that report that I think are inconsequential to the suit and could be discussed, but I can't break the confidence without permission. The public is entitled to know something about how we are going to spend "X" dollars of their tax money, and if we are going to vote to sue without even having a private session among us which we are entitled to do if we decide to sue, and I know...

McDONALD: That's not correct, Mr. Wyett. That's not correct.

WYETT: All we have - just a minute - all I have is a written report which I have read several times, and I understand the report. However, you are asking me to make a decision to sue without having any public input and without hearing from other Council people in private. I know we can't have a private meeting until we agree to sue. Is that correct, Mr. Randolph?

McDONALD: I don't think you can have a private meeting until you sue.

WYETT: That's just what I said.

McDONALD: No, I thought you said you couldn't have a meeting until you agreed to sue.

WYETT: I'm sorry, I meant that. I assume to just have conversation amongst the six of us with staff, I would have to vote to sue. That doesn't mean, after we have this conversation that the situation couldn't be reopened.

McDONALD: Well, what are you suggesting, we take no action on it today or release the report?

WYETT: No. I'm just telling you that I feel very frustrated with a total gag order.

BROOKS: Mr. McDonald?

McDONALD: Yes. Mr. Brooks.

BROOKS: The law suit troubles me primarily on two points - causation and the statute of limitations. There are other points that concern me, many of which have been addressed by our citizens, namely

length of time this would involve, cost that is somewhat amorphous and understandably it has to be. I think that what the law firm in its best effort allocated for lobbying efforts is woefully inadequate. Having said that, I'm prepared to make a motion. Like the rest of you, I have read this until I'm a little sick and tired of it, but perhaps you want more discussion.

McDONALD: Hey, is there any more discussion?

SMITH: Well, can we ask a few more questions.

McDONALD: Yes, sure.

SMITH: Is it possible to start the lawsuit, I know what Mr. Stouck said about talking to the Army Corps of Engineers. The Army Corps of Engineers would not pay any attention to us if we would not be prepared to litigate, and the Town of Palm Beach litigates on many things, the most recent of which was the suite against the City of West Palm Beach on the water contract. So, we do step in and do litigate. Would there be a point that you feel that the government might return some funds to the Town of Palm Beach before we were actually into trial? Mr. Stouck.

STOUCK: I think that a lawyer's objective is always to accomplish the best result as quickly as possible. A lot of cases do settle. The Applegate case settled. I think if the Town, though, as was mentioned by someone out here earlier and I have alluded to, makes a decision to pursue litigation, there has to be a commitment to pursue it, seriously, and a willingness to pursue it to the end. I mean settlements sometimes happen, but the objective in any litigation, but certainly in litigation of this nature and magnitude, the objective has to be to pursue, that you have confidence in prevailing to the end. So, I think-- the objective should not be to try to arrange a quick settlement. That may happen, it may not happen. We will be on the look out for it.

SMITH: Can you state for the record, Mr. Stouck, that you think this case would have a 50% chance of prevailing for the Town?

STOUCK: As qualified to some extent by the complexities of the issues in the report...

SMITH: I understand that, but we can't go into the details.

STOUCK: I would say yes. May I just address the confidentiality issue though?

McDONALD: Yes.

STOUCK: I think Mr. Randolph actually alluded to this. It is an awkward problem. As I understand, it is a problem with State law though. There's this divide between you all not being able to discuss in private potential litigation, but you can discuss actual litigation, so the awkwardness...if you feel awkward, go to Tallahassee and maybe they will fix it.

McDONALD: Thank you, Mr. Stouck. Are there any other comments? Mr. Goldblum.

GOLDBLUM: Question. Why make a resolution? Can we discuss the resolution before we vote on it?

McDONALD: I think Mr. Brooks is prepared to make a motion, but we wanted all of the comments first. Mr. Wyett?

WYETT: Mr. Stouck, question. Relative to the ECL, it was recommended we negotiate a little bit before we even try to (unintelligible) our suit. In regard to the potential suit to the United States government, is it a procedure to sue and then talk about it and see if we can settle or is it procedure to talk and to say we hope we don't have to bring suit because we would like to negotiate?

STOUCK: With regard to the litigation that we've investigated?

WYETT: Yes.

STOUCK: As I just said, I think that I would not recommend that the Town Council or any client enter into litigation with the objective of trying to settle. I mean, that's not what litigation should be about. Litigation has to be about the vindication of legal rights that you believe you've got a good chance of prevailing on. You have to have a commitment to go to the end. If settlements happen, it's because both sides see that as in their best interests. We will be on the alert for opportunities to settle. It relates to the cost issue as well. My objective is to get you a ton of money at no expense. It doesn't always happen that way in litigation.

WYETT: This will be different than the potential suit with ECL. This is a recommendation that we have to bring suit and then open up the channels of negotiation.

STOUCK: Yes. If I understand the question, I think that, again, in litigation if we are right that the Town has

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a good claim, if the Corps sees it that way, there is a mutual interest in trying to resolve the problem. If they don't see it that way, if they think "no" our claims are not good, then the opportunities for settlement would not be there. Is that responsive?

WYETT: I think I understand what you are saying, but I think what it says is in order to get to the Coast Guard attorneys, our attorneys into the same room, you have to bring suit so they know we're serious. Is that what you're saying?

STOUCK: No, I wouldn't say that. I mentioned earlier that I think it would be wise, and I think someone from the audience or the public mentioned a demand letter. A demand letter, a meeting before suit might be advisable, but I wouldn't expect to settle the case before filing a law suit.

WYETT: In other words, you have to go through the motions, but you really believe in order to get serious attention, we have to sue.

STOUCK: I believe that even suing, it may take a while to get serious attention. I think if you decide to go forward with the litigation, it ought to be because you are committed to trying to vindicate legal rights that have been violated.

WYETT: So, if I vote to sue, your first role of action in suing, if we all vote to sue, after we have a private session with you, would be to notify them informally that we would like to talk about it in some form or manner and, failing any response, that is when you actually file the suit.

STOUCK: Yeah. I think the first meeting would be just as a courtesy to advise them of what we are doing so they don't read about it in the newspapers.

WYETT: That's what I was trying to determine, because I had the impression before that the first time the Coast Guard was going to officially hear about this, I mean the Corps of Engineers, the first time they were going to officially hear about it is when they got a notification of a suit. Obviously, you have the other way of doing it, and I approve of it.

McDONALD: Thank you, Mr. Wyett. Mr. Doney.

DONEY: Mr. McDonald, I have several thoughts that hopefully will be helpful to try to piece this together, but May 9th is your next monthly Town Council meeting. You now authorize that the Mayor go to Tallahassee to try to address the Erosion Control Line issue. The legislative session of the State is over May 5th. If that is accomplished, then there is a report back at the May 9th meeting about the Erosion Control Line, I think it also deserves the Town Council's decision today to, and correct me if I'm wrong, Mr. Stouck, that you said it would cost not to exceed \$5,000 to meet with the Corps and try to discuss with them the potential for moving forward with a potential lawsuit, so that they are fully aware of what this matter entails from the Town's perspective. Is that correct?

STOUCK: You know, I believe Mrs. Smith's question was what would it take to get started, and my response was minimal, and she asked for more specificity. I don't really want to get into sort of piecemeal fees. We have laid out the estimates in the report, and getting started would be minimal cost, but I don't know that I would be comfortable even taking the first step with a \$5,000 limit. It is just not in anybody's interest to go that way. If you are going to approve the litigation, we ought to have some general understanding that we are going to do what it takes to pursue the litigation.

DONEY: May I make this suggestion then to the Town Council? If it's \$5,000, if it's \$10,000, whatever Mr. Stouck feels, then the Council also authorizes that the Town Attorney, the Town Manager, and the Public Works Director accompany Mr. Stouck when we meet with the Corps and try to see what we can do to report back on. Then from there, and we may not be able to do this by May 9th, but maybe we'll be able to do it by the June Council meeting, so we have something on the horizon to try to have a timetable to offer policy information to the Town Council, because then the next part of this agenda is to hear from the bond counsel and to hear from the investment banker to try to piece together what their considerations are as far as when and if bonds are even going to be sold, because there are issues that have to be addressed here today; otherwise, unless all of this is addressed on a comprehensive basis, then I don't think the Town Council has the policy information at hand to make the right decisions.

McDONALD: Mr. Goldblum first, then Mr. Wyett, then Mr. McLendon. Mr. Goldblum.

GOLDBLUM: Where do we stand with the Corps with the new Sand Transfer Plant?

DUSEY: There's been two or three federal appropriations for design and construction, and they are pretty well dragging their feet. We're trying to get them off center. In fact, we're trying to come back - Mr. McLendon has asked and we've obtained - they're dragging their feet - we're trying to get them moving.

GOLDBLUM: Okay. I agree with Mr. Doney.

McDONALD: All right. Mr. Wyett.

WYETT: I'm a little confused. We have one issue and the second issue that come together. The ECL issue is a state issue if I understand correctly. The action is in Tallahassee with the State Legislature and the Governor of the State. It's even possible that we don't need an executive order of the State and the Governor of Florida would suffice on this. This is the question I am asking.

RANDOLPH: It is the Board of Trustees that you would be dealing with.

WYETT: So we are not totally bound by the May 5th date on the ECL. I don't think you could get an issue into the State Legislature within two weeks time and get it voted on.

RANDOLPH: No. You won't get a bill passed.

WYETT: So, you're really going for an administrative action to the Board and to the Governor. Now, the Corps of Engineers is a Federal suit. Totally separate issue, they are not related. I think you have to separate that. We don't have a May 5th or a May 9th deadline. I think we ought to make sure that we are looking at two separate issues. We've already settled the ECL. We are going up to Tallahassee with staff and the Mayor, and our Mayor's persuasive ability will come back with success.

SMITH: Don't do that to me, Mr. Wyett.

McDONALD: We're dealing with "A". We've dealt with "B". We're working on "A".

WYETT: I'm going back to the lawsuit potential with the Corps of Engineers which is the subject of this confidential report. There's no time limit on it. We could make a decision today to do what we want to do, and I think Mr. Brooks is prepared to make that motion. Don't confuse the ECL and the federal case.

DONEY: Mr. President, I think there is an inter-relationship with the ECL and the litigation that is contemplated with the Federal government even though I agree, Mr. Wyett, that the ECL is a State law as far as setting of an erosion control line, but when you have to take into consideration all the pieces, just like these bond issue pieces that have to be addressed, when you hear from Mr. Hole as an investment banker and Mr. Miller as the bond counsel, we have to piece all of this together, but I see it being something that can be as talked about earlier, you can move forward concurrently on five different paths, but we have to do all of them with Town Council policy understanding and direction.

McDONALD: Thank you, Mr. Doney. Mr. McLendon, then we'll go to Mr. Brooks.

McLENDON: I guess I misinterpreted something about two hours ago. I thought that in response to a question that we were advised that once the complaint was filed with the Corps, that we would be permitted to have a private meeting to discuss this report and that procedure in filing the complaint would permit our representatives, Mr. Stouck and whoever else would go, to start negotiating with the Corps. Now, I am understanding now Mr. Stouck doesn't think that gives us any negotiating position, and he wouldn't be interested in particularly doing that. So, I guess I am confused with that.

With regard to another item that has been discussed - the statute of limitations. I have looked at the aerial photographs for the northern part of the Town at least going back, I believe, to the 40's, and it is not a dramatic change between the position of the shore front in that period time, that is, the northern end. I expected something completely different than what I found. So I question what the value of the litigation would be if we are limited to a six year statute of limitations.

McDONALD: Mr. Brooks.

BROOKS: Well, before I make a motion, if I may sir, a couple of comments.

McDONALD: Yes.

BROOKS: Mr. Stouck has pointed out, and I believe correctly so, even though my reading of the document seems to be pretty much let's prepare for negotiated settlement, I think once the die is cast, it's soup to nuts on the expenses, and we've gotta be prepared to run the whole gamut. I've also said I have problem on at least two areas - the causation, the statute of limitations and the ECL - which, my understanding is the State of Florida will demand that we have an ECL in place. So, my motion was going to be let's deep six the lawsuit; however, after listening to Mr. Doney, Mr. Wyett, Mr. McLendon, and the Mayor, I would move that we hold in abeyance whether we are to pursue or not pursue the lawsuit and concomitantly empower Spriggs & Hollingsworth or our own attorney to approach the Corps of Engineers and let's say let's play ball. In other words, let's see if we can get this thing off center. I think it is time that we make a management decision here. This has been going on and on and on, and we've heard representatives from both reaches talk

about the precarious state of those beaches. I don't want to go pell mell in rushing to anything, Mr. President, but I think I would like to see a deliberate plan to get this off center. So, my motion - let's hold in abeyance whether we go up or down on the lawsuit, but let's empower either Mr. Stouck or Mr. Randolph or both with Mr. Dusey to approach the Corps on a formal basis involving the new and enhanced Sand Transfer Plant. This would be a parallel track with what the Mayor is going to do in Tallahassee on the ECL. That's my motion.

WYETT: Second.

McDONALD: All right. There is a motion to defer indefinitely as to whether to approve a lawsuit against the federal government and to proceed with negotiating with the Federal government either through Mr. Randolph's firm or Mr. Stouck or both, so we can get to that later. Is there any discussion on this motion?

(There was none.)

Town Clerk Pollitt called the roll, and the motion carried 5-0.

McDONALD: Now do we need to choose who is going to do this negotiation and negotiating with the Corps of Engineers? Should it be Mr. Randolph, Mr. Stouck or both?

SMITH: Mr. Doney and Mr. Dusey?

DONEY: I would like to suggest to the Council that it be concurrent with Mr. Stouck and the Town Attorney and then the Town Attorney will utilize staff including Mr. Dusey, myself, and Mrs. Skitone or any others we need to try to piece together the right people that need to be at this meeting.

McDONALD: All right. Mr. Stouck, is this something you can work on with Mr. Randolph on an hourly fee basis?

STOUCK: Be delighted to.

McDONALD: Thank you, Mr. Stouck. What is the Council's pleasure?

SMITH: Could we ask him what his hourly fee is?

McDONALD: Oh, yes. What is your hourly fee, Mr. Stouck?

STOUCK: \$330.

BROOKS: Any chance for a discount, Mr. Stouck?

STOUCK: Be happy to discuss any of the alternatives in the report, but not in public.

SMITH: Don't listen, Mr. Randolph.

McDONALD: What's the Council's pleasure? May we have a motion approving this?

McLENDON: So moved.

BROOKS: Second.

McDONALD: Mrs. Pollitt.

The Town Clerk called the roll and the motion carried 5-0.

McDONALD: All right. I think we have disposed of A and B so let's move on to number V.

(The following item was heard before item A.)

B. EROSION CONTROL LINE LEGAL ISSUES AND BULLET LIST FROM TOWN ATTORNEY RANDOLPH *(As considered at the February 8, and March 14, 2000, Town Council meetings)*

RANDOLPH: I addressed the matter of the ECL in my memo of February 7, 2000, to you, and I won't go through

that in detail but I agree with a statement that was made here this morning several times and that is I think the ECL is key to whatever decisions you make, and when I say decisions, I mean in regard to the lawsuit, in regard to the bond resolution, and in regard to your dealing with the State in regard to the ECL. Certainly it is key in regard to the lawsuit because in any taking action you have got to prove to the Federal government that you have had property taken, and if the ECL is established at the current mean high water mark and the state becomes the owner of property that may have previously been in the possession of the property owner, then there would be a question as to: 1) whether you would even have standing to bring the suit; and certainly 2) what kind of damages you may have. The State by statute has provided under the Beach and Shore Preservation Act that when they contribute to a beach preservation project, they will establish an ECL which will be the boundary between the private property and the State property. In locating that line, the Board of Trustees will conduct a survey and in conducting that survey, they are going to take into account the location of the present mean high water line, and that's going to be the most substantive part of their study. But, they can also take into account the extent to which erosion or avulsion has occurred, and the need to protect existing ownership as much upland as is reasonably possible. It's my suggestion that when you go to the State, and I think your recommendation as a Council has previously been that we should go to the State to discuss the placement of the erosion control line—that you go to them with an expert who can testify as to the amount of erosion which has occurred in the Town over the years as a result of the Inlet and attempt to show them that here's where the ECL should be placed. Here's where the mean high water line would have been but for the influence of the Inlet.

In addition, I think that we should go and this would be your first course of action to request that in this particular instance, they not establish an erosion control line with the argument that has been made here by some people previously that the mean high water mark that is in existence today is artificial; that it has been created as a result of the Inlet; so for purposes for this project, we would request that an erosion control line not be established. But most certainly in the event they would agree to not place an erosion control line, to certainly argue that an erosion control line should be placed much further seaward than it is now.

You're going to be discussing the subject of the resolutions later on in regard to bonds, but I think you have to give some consideration in regard to going forward on those as to the effect that the passage of those would have on your efforts in regard to the erosion control line. Certainly, I don't think there would be any impediment other than whatever impediment there might be in regard to a lawsuit to which I would yield to Mr. Stouck to comment on. Certainly, there would be no impediment to go forward with a bond resolution were you not anticipating receiving money from the State as a part of that project. In other words, if you saw a need to go forward with a \$25 million project because of the need for emergency renovation in certain areas within the Town and should you decide to go that on your own without receiving funding from a State agency or from the County, then there would be no need for the placement of an erosion control line, and you're saying "no", Al.

DUSEY: That's absolutely not true. No, the ECL is required. For example, at Mid-Town, we paid for that 100% with our monies, and you always have an ECL requirement. The only exception is sand placed through dredging or by-passing.

RANDOLPH: Even if you don't accept money from the State.

DUSEY: Doesn't matter.

RANDOLPH: Well, then I'm wrong on that. I thought that if we were to go that on our own, we would not have to accept the State money, and accept that condition, but that's one of the things you are going to have to consider in going forward with the bond resolution, is the effect of the placement of the erosion control line.

So, those are my comments. I do think that it would behoove you, as soon as possible, to have a plan to go to the State and convince them that this erosion control line should either not be placed or that it should be placed further seaward.

McDONALD: Thank you, Mr. Randolph. Let me just ask Mr. Dusey a question. How quickly could we find an expert who would be able to testify to those issues regarding what Mr. Randolph has covered that would need to be discussed?

DUSEY: We have completed a study to try to quantify the downstream impact of the Inlet. That was done by Applied Technology and Management so I think we could draw upon that resource immediately depending upon how specific we have to be. If it is to try to establish where the line would be, that is going to take a lot more effort, but we have three coastal engineers under contract that we can use anytime for any purpose.

McDONALD: Speaking in terms of someone who could travel to wherever, Tallahassee, or somewhere with probably Mayor Smith and be able to give some expert testimony or comments regarding this.

DUSEY: I believe that person exists, and they have prepared a study for us. What it will not do is say the ECL should be at this location, but he can certainly testify to the downstream impact of the Inlet, how far that went, and the consequences over the years.

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McDONALD: So there's no delay there. Mr. Goldblum.

GOLDBLUM: Don't we have a set of photographs of the whole beach that shows what it was twenty years ago? Fifteen years ago? That we can use to show how much the beach has deteriorated.

DUSEY: We could look in our archives. There's a 1935 photo sitting in the back conference room that is pretty graphic.

GOLDBLUM: Those would be important documents to have if we have them.

DUSEY: Yeah. Again, we have to look at the archives. There could be something there.

GOLDBLUM: The other question I have - In any resolution we have, Skip, can we put in there the word "emergency" for beach renourishment?

RANDOLPH: Certainly, you could put that in the resolution.

GOLDBLUM: If it is proper, I would like to recommend it.

RANDOLPH: I mean, I would yield to bond counsel, but I don't see any reason why, in the whereas clause that you could not incorporate that kind of language.

McDONALD: I would like to deal with Mr. Randolph's comment on dealing with the ECL first in terms of having someone go to the proper place and meet with the proper people. Does anyone have any comments that aspect of it?

McLENDON: I think it should be done right away.

SMITH: Well, we've been talking about it for five months. It was first brought up in November and we tried to send the Mayor and the Council didn't move on it, so I would think today would be the day for the Council to take action or forget it.

McDONALD: We're ready. Mr. Brooks is ready.

BROOKS: I'm prepared to make a motion in that regard.

McLENDON/WYETT/GOLDBLUM: Second.

BROOKS: Well, I think you ought to hear the motion first.

McDONALD: What is the motion?

BROOKS: I would like to move that the Council designate the Mayor with all good and deliberate speed to go to Tallahassee-Jack, picking up on your point-as soon as possible taking into consideration an expert. I also would like to offer our lobbyist, not that we deal with ECL, but at least as door openers, lobbyists are related by consanguinity at least to the second degree, if not the first degree, so it is rather a warm and friendly trot for the most part. So, my motion then would be that this Council empower the Mayor, as soon as practically possible, accompanied by an expert on this matter to approach the Department of Environmental Protection in Tallahassee-also possibly the Speaker of the House, Mr. Thrasher, and the President of the Senate, Mrs. Jennings. Now the point is, we have about a month left to the session, so I think we should mach schnell.

McDONALD: Thank you, Mr. Brooks. Is there a second?

WYETT: Second.

McLENDON: Second, and I'd like to see Mr. Dusey go if that's feasible.

SMITH: I think there should be a whole group of people going- Mr. Dusey and Mr. Randolph. This is a legal issue. I think you have to have the appropriate people.

BROOKS: I would volunteer to go with you, Madam Mayor.

McDONALD: No, Mr. Brooks. I don't think you can go. I don't think we can have two-

SMITH: Mr. Randolph?

RANDOLPH: I agree. I don't think it needs to be incorporated in the motion. I think whatever staff supports that you feel you need.

SMITH: Sure. Whatever anybody thinks and when it can be done.

McDONALD: All right. Is that correct, Mr. Randolph? I don't think Mr. Brooks and the Mayor can go or not?

RANDOLPH: They shouldn't go together if they are going to be involved in a meeting together. Correct.

McDONALD: Okay. Thank you. So, Mayor Smith will accept this challenge. Put her team together post haste and depart for Tallahassee/ Jacksonville?

SMITH: Our team, together.

McDONALD: Our team, together.

SMITH: Our team. This is a Town effort which it has been all along. We'll give it our best shot. We'll play, "Who do you know?"

McDONALD: All right. So that will be our first step regarding the ECL. Yes. Mrs. Pollitt.

POLLITT: Roll call: carried 5/0.

McDONALD: All right. Next up, Mr. Wyett.

WYETT: I would just like to bring to Mr. Dusey's attention that you might employ the Shiny Sheet and old archives of theirs such as when the center beach and the piers were torn down. I'm sure they have plenty of pictures showing what was going on at that particular point and other points.

DONEY: Mr. President, we also have the 1986 Comprehensive Coastal Management Plan prepared by Cubit Engineering that does identify and serve as a perspective as to what the beach was in various stages.

McDONALD: We don't need to hear the details, Mr. Doney. Give her all the ammunition she needs to go. Thank you.

All right. Mr. McLendon.

McLENDON: I would like to ask Mr. Dusey a couple of questions. What is the status of the permits at this point? We have none in hand yet, right?

DUSEY: No, but we're very far into the process. Well we have both our coastal engineers with us this morning. It would probably be better if we just ask them to come up for a second and answer that. Norm Bumell from Coastal Planning and Engineering. They are doing the Mid-town reaches at 3 and 4, and Mike Walther from Coastal Tech. He's doing the Phipps Ocean Park, reach 7.

McDONALD: Mayor Smith will speak before they start.

SMITH: I wanted to clarify-- several people spoke to me during the break and there seems to be some concern that any action the Council takes today will stop this process. That is not true. The permits are on-going and no action the Council takes today will stop the process for getting the permits for these beach renourishment projects that we have in the loop.

McDONALD: Who is going to speak?

DUSEY: Norm Bumell.

BUMELL: Norman Bumell with Coastal Planning and Engineering, Boca Raton. We are handling the Mid-town project. Right now the most likely scenario for the permits - depending on the State's response - would be June - July, that time frame. That's being optimistic, but they seem to be supportive of the project right now, and Mike Walther can speak to the other project.

WALTHER: Good morning, Mayor and Council. Mike Walther with Coastal Tech. We are the consultants for the Town on the Phipps project.

We are in a very similar position as CP&E is with Mid-town. DEP has, in concept, blessed the project. We have addressed the critical issues, we believe, of the project. We've made contact with U.S. Army Corps of Engineers for that permit. We also expect to obtain a permit early summer.

McDONALD: Thank you. Let me just back track for a minute, because I want to emphasize what Mr. Brooks said. I believe the present legislative session ends the first week of May, so it is important if we are going to try to get a bill introduced, and I don't know if that is too late or not, that we really need to move extremely quickly.

Mr. McLendon.

McLENDON: The other reaches, other than these gentlemen just testified to, have we applied for the reaches 2

to 4 or whatever the numbers would be?

DUSEY: That's in item number 7. Resolution 14-00 is the application that gets those projects in the pipeline. It's on the agenda today.

McLENDON: And reach 8 – I didn't look at that.

DUSEY: Reach 8 is not included in the application since there is no State participation, but it is still in our program. It's part of our program, but it's not in the application.

McLENDON: You don't need a permit for that?

DUSEY: Yes, but the application is for funding – not for permits.

McDONALD: Have we sufficiently dealt with the ECL issue, Mr. Randolph, you think? At least the first step.

RANDOLPH: I have nothing to add on.

McDONALD: All right. Then we need to go back to item A on the agenda

V. RESOLUTION NO. 11-00 - NON-AD VALOREM REVENUE BOND AUTHORIZATION *(Deferred from April 11, 2000, Town Council Meeting)*

(Item V. was heard after IV. A.)

DONEY: Before Mr. Randolph reads the resolution by title, I think it is important to realize that after you hear from Mr. Hole and Mr. Miller because of the bond issues and also from Mr. Dusey because of the substance of the projects, we may need to go back to these couple of issues. Keep that in mind please.

McDONALD: Thank you, Mr. Doney. Mayor Smith, do you have some comments?

SMITH: No. No, I didn't.

McDONALD: Mr. Hole. Are there some things you want to cover or do you want to wait for the Council to decide what direction they want to go?

HOLE: The only comment that has come to mind as I listened this morning is in terms of –I can comment on the timing of issuing bonds relative to where you are in the project on design, construction estimates, cost permitting. I could certainly provide some comfort on that. You have heard from a couple of folks, but I don't know if they are bond specialists or not.

The fact that the law and the way your budget works here in the State of Florida, requires that you have a funding source identified, in place, prior to letting of construction contracts. That in itself causes us, as investment bankers, to be in this position and talking about issuing bonds relatively early in the process of an overall capital project development. Obviously, before construction, because you can't let the contracts until the bonds are issued and usually before final design and sometimes before preliminary design. The market is used to this. This is just the way it is. We rely on the experts and staff to come up with cost estimates and virtually every bond issue that is issued is sized based on estimates. One of the reasons that the market is used to and accepts the risk that the estimates are wrong is the way the bond documents themselves are written. There are two particular provisions in most bond documents and are included in the resolutions that Mr. Miller has provided. One is called the defeasance provision, and what that's in there for is in the event the estimates are wrong, permits aren't in place, they take longer and the cash flow changes because the project is delayed. For whatever reason that you end up with excess money left over, they estimated high, and the construction bids came in low, there are mechanics built into the document that allow you to take that excess money and defease bonds with them.

Conversely, there is a thing called the additional bonds provision that allows if you estimated low and you ended up running short of money. You are allowed to go back to the market, issue additional bonds under the same source of security and complete the project. Obviously, you have other alternatives to that, including scaling back the project or paying the amount as you go. So, that's the talking about permits not in place or estimates not being exact. We know that, and the market knows that. That is an issue that does not bother us at all and doesn't bother the market, and I wanted to put that on the record so that, in my opinion, can come off the table.

With respect to the defeasance provision, it is somewhat analogous in that you have heard the term 'found money'. With respect to Federal litigation, if at some point money does come back to the Town, but if the Town so chooses to keep the project moving and bonds were issued that same

provision can be used. It's not specific to bond proceeds. You could elect at that time to do something else with the money or you could use it to cancel bonds. Mechanically, the bond issue is fine with respect to those issues. The issue of timing and how it relates to litigation is something that obviously I am here to answer questions, but that is not our area.

McDONALD: Thank you, Mr. Hole.

RANDOLPH: May I ask him a question in regard to the timing? How long, if they adopt a resolution, how much time do they need to begin expending the funds?

HOLE: Sure. One of the certificates, I'm not sure if it is the Mayor or the Town officials who will be signing at closing, will be a certificate that says you reasonably expect to spend the proceeds of the bonds and that's just the \$24 or \$25 million, not the other money, but you have to reasonably expect to spend the proceeds of the bond itself within approximately three years from the date that you borrowed. The cash flows here are well within that. We're really more of a two year, two and one-half year window, in part because you have other monies. Remember, this is not all bond, this is a part pay-as-you-go part bonding. That is part when we work with staff – the first contract is not scheduled to be let, I think, until sometime this summer. The fact that we have prepared and have been diligent of getting the bond issue ready to go, at your discretion now, was simply a market call on our part. That is we know we are in an inflationary environment. We know the Fed's policy. We know the rates are going up. Because we can invest these proceeds, once they are borrowed, at the cost of your borrowing, there is no net cost of borrowing now and spending in July, November, or next year. The bond issue carries itself. There is no net cost. That is why the strategy was to go ahead and get it ready, we know we have a relatively good market right now – the last two weeks, and there's no risk or cost of borrowing early. Your question was: What is the back end? What if we take longer? There's sufficient cushion there as well, and also that certificate comes back to a reasonable expectation. It's not that if circumstances occur after we close that cause you to not spend within three years, nothing occurs and your bond counsel can elaborate on this if you wish. It is a reasonable expectation test. We have issues out there five or seven years where proceeds are still out there continuing to be spent, because circumstances occurred after the fact that you didn't reasonably expect. So, that's really the nut, Skip, in terms of spending the money and the timing. There is no cost to doing it now and spending later as long as you reasonably expect to spend this piece of the overall funding package within the next three years when you close the issue, then you have full flexibility in that regard.

McDONALD: Thank you, Mr. Hole. Mr. Stouck, I have one question for you. Is the passage of the bond resolution legally detrimental or is it the actual spending of the bond money to start the renourishment of the beaches that is detrimental to the case if the complaint hasn't been filed?

STOUCK: Could I ask a question before I answer that one which is I didn't understand if the resolution were to be passed, for example today..

McDONALD: Yes.

STOUCK: ..the bonds are then sold immediately? Is that ...

HOLE: Let me elaborate there.

STOUCK: I heard about when the money had to be spent over three years, but when do the bonds actually...?

HOLE: Sure. Right now what the resolutions do is they are authorizing and delegating resolutions, meaning that the bonds are authorized; however, (cell phone interruption) the question is when the actual bonds go into the market and even if the Council adopts the resolutions today, it takes further action by the Mayor and the Town Manager to authorize going into the market.

STOUCK: When would you expect that to happen?

HOLE: We were expecting to have that happen within the next two weeks.

STOUCK: My answer is, I think, that in connection with the initial contact with the Corps, demand letter, I think is what Mr. Randolph and I – demand letter and meeting are what we are working towards, what's been authorized, I believe. The message there is that this is the Corps' problem, and they ought to solve it. So, here's an opportunity to do it.

If I understand what's been said over here, the bond –ultimately if the Corps says okay, we'll solve the problem for you, you just defease the bonds, I guess. You're not really spending the money yet.

McDONALD: My concern was, based on some of the comments in your memorandum, is that we shouldn't start to replenish, renourish the beaches before filing a complaint if that is what we decide to do. My question is – is that the same as approving the bond resolution?

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STOUCK: I guess I don't understand enough about the bond resolution process. I do think we ought to approach the Corps with some kind of demand before the Town becomes committed to doing it with your money.

McDONALD: I think what you are saying, if I'm hearing this right, is that we are going to need to defer approval of these resolutions for a few weeks or a month. Is that ...?

STOUCK: Again, if you're committing to spending the Town's money by passing the resolutions, if that is the effect, then I would say yes.

McDONALD: Is that the effect? Mr. Miller, perhaps you can tell us if that is the effect.

MILLER: Rick Miller, Edward & Angell. I think there are probably ways to accomplish this. In other words, we can word your bond resolution, and we can also await, for instance, the meeting that is going to take place in Tallahassee before actually going into the market. But, we probably can couch your WHEREAS clauses in that this is an emergency situation, and we are going forward based on that emergency situation.

McDONALD: All right. Thank you, Mr. Miller. Mayor Smith.

SMITH: Mr. Miller, what about the recommendation for additional WHEREAS clauses? Were you here when Mr. Cooley spoke? I think he read out four different WHEREAS clauses. Would you have a problem with including those?

MILLER: I don't have a problem with them. I would modify them in certain respects. I have gotten a copy from Mr. Cooley, and we would read them to you.

SMITH: All right. So, if I can ask, Mr. McDonald, would-let me start over. Would there be any down side to not passing these resolutions until the May Town Council meeting? Either Mr. Miller or Mr. Hole or whomever.

HOLE: The only downside is an opportunity/cost issue and one that can't be identified. That's just the delay in the issuance of the bonds and locking in the interest rate, and if interest rates go up, there is a cost there. That would be it.

McDONALD: All right. Thank you, Mr. Hole. Mr. Wyett.

WYETT: One of the letters I received, and I forget who it was, purported that the purpose of the bonds was a little vague, or did you see that letter, and did you have any comment on it?

HOLE: Yes. I did see the letter. My only comment, if you are referring to the project description and the fact that it is a paragraph as opposed to a number of pages, it is done purposely that way. We would leave it alone.

WYETT: I am no expert. That's why I asked the question.

The other question. What would happen - we float the bonds, but for some reason we decide not to use the bond money, what is the cost involved to the Town?

HOLE: Well, you pay bond salesmen to sell bonds. So, you have had a cost of issuance of doing that; however, the majority of cost when you issue bonds and don't spend it right away and possibly cancel them in at a later date, is to the extent that you could not invest - it's your money. You've got the \$24 million - \$25 million and it's invested. It's in your general fund, and you're getting the earnings. To the extent that you could not invest that money at the interest rate that it cost you to borrow it, then you are going to have an ongoing loss, because your interest expense on the bonds is not going to be fully recovered from your interest income on the proceeds. In today's market, and that is one of the good thing's about today's market-that is not an issue. In fact, one of the things that is in this resolution that if we are going to consider it today, one of my details I wanted Mr. Miller and I to high lite is that there is a reinvestment program that these bond proceeds will be segregated. They are your money and your bank, but they will be separated in a separate investment and invested as such that in today's market, we'll actually earn more than the yield. Of course, since 1986, you can't keep that excess. It goes back as rebate. That is one reason why we segregate it. It was for that calculation. But right now, there is essentially no cost of borrowing today. It will carry itself and there will be money in that account, if at some point you decide to defease.

McDONALD: So the answer is commission expense.

WYETT: Also, are you saying that - I anticipate that we are going to be using the bond money, but are you saying that if for some crazy reason that I can't imagine that we don't use the bond money, we can't give the money back and we have to keep the money for the ten year term? Let's for some

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crazy reason we don't spend the money, we don't even take a dime. We can't buy the bonds back from the bond holders and say we have no need for the money?

McDONALD: Yes, yes. You defease the bonds.

HOLE: Sure you can. You can defease them. If I wasn't clear, that's my point. This can be defeased after it's issued, and today where interest rates are, it can be defeased at no carry cost. The only cost is the issuance.

WYETT: You referred to the small profit we could make if we borrowed what was there at 5 and loaned at 5 1/4 say. What happens to that profit?

HOLE: It goes to the Federal government.

McDONALD: Mr. Doney, I think we have heard just about enough, but go ahead.

DONEY: This is a question for Mr. Stouck and also for Mr. Randolph, based upon the discussions that have taken place now, if there was a written demand request made of the Army Corps of Engineers that stated the Town's position and timetable, would that stay and be helpful to the Town to get that letter of demand in the Corps of Engineers hands before the meeting occurs? And would that help as far as the timing and sale of these bonds.

STOUCK: Excuse me. I didn't understand before which meeting occurred?

DONEY: I'm saying with the Corps of Engineers. Would it be helpful to have you with Mr. Randolph style a demand request and file it with the Corps so we have something on record that stays the time and protects the Town from its timetable that is ongoing with the bonds?

STOUCK: I just don't understand the question. I'm sorry.

DONEY: The question is this: Would it be helpful if you wrote and styled a demand request to the Corps of Engineers that said this is what the Town of Palm Beach is contemplating, A, B, C, and D, and we want to know your position before we sue as far as moving forward with our bonds and all the other ongoing timetables, so that we protect the Town's interest in making sure that we get this protected.

STOUCK: The part of the question I don't understand is the relation to the bonds. Yes, I thought that Council had authorized Mr. Randolph and I to make some kind of approach - letter, meeting - so I just don't understand what the relation....

McDONALD: Let me interrupt you, Mr. Stouck.

DONEY: Maybe I'm not phrasing the question right.

McDONALD: Yeah, Mr. Doney, but I think that what the Council - my suggestion is that this Council should really defer this matter, in terms of acting on the bonds, until the May meeting and hopefully we'll have some more information in response to this demand letter. That would be my suggestion. So, that would make some of these questions moot. Mr. Wyett.

WYETT: I have to disagree in one major respect. We've been warned or advised. The bond market and the interest rate market in this country is very precarious because of conditions in the market place. The market, as bond values go up, the stock market has gone down a little bit. It could reverse, and I think you've ably pointed out, we have an advantageous window here. When you take into account the interest rate differentials that could occur if they go up over ten years, we're talking about a lot of money to our residents, taxpayers. So, by taking the gamble of waiting until next month or the month after, we are gambling on a higher cost, and if you keep delaying, you won't ever start the November 1 beach project. I think we primarily have to wait until the turtle season is over. Am I right? So, I'm very concerned. I want that beach built, and I think we have to have that beach built. If you don't want to start the entire beach, we should have enough money to start reach 7 in the southern end of the Town which is most endangered. We have to take some affirmative action, otherwise is not to face up to our responsibilities in my estimation.

McDONALD: Thank you Mr. Wyett. Mr. McLendon.

McLENDON: I would like to make one comment and then a motion. I don't see the urgency in approving the bonds today or the bond resolution. What I am afraid will happen is that if we do that today, it will be used against any success Mr. Randolph and Mr. Stouck may have in meeting with the Corps of Engineers. So, I would move that we postpone further consideration of the resolutions on the bonds until the May meeting.

McDONALD: So that would be deferral of Resolutions 11-00, 12-00, and 14-00?

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DONEY/DUSEY: No. 14-00 is a different issue.

McDONALD: Just 11-00 and 12-00. Is there a second?

BROOKS: Second.

DONEY: To the May 9th Town Council meeting.

McDONALD: Correct.

DONEY: In which case the bond counsel, the investment banker, and I don't know if Mr. Stouck is expected to be here? Mr. Stouck also.

McDONALD: I don't think so. I don't expect Mr. Stouck to be here. No.

McLENDON: No. I don't think so. Mr. Randolph can report what their success may be.

DONEY: Okay. Thank you.

McDONALD: Mrs. Pollitt

The Town Clerk called the roll and the motion carried 5-0.

VI. RESOLUTION NO. 12-00 - NON-AD VALOREM REVENUE BOND SERIES RESOLUTION
(Deferred from April 11, 2000, Town Council Meeting)

This item was deferred to the May 9th Town Council meeting. See above.

VII. RESOLUTION NO. 14-00 - APPLICATION TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR BEACH EROSION CONTROL PROGRAM *(Deferred from April 11, 2000, Town Council meeting)*

DUSEY: That application attached to the resolution is for the program as you have approved it. It get's us in a pipeline for construction of reaches 2, 5, and 8. I'm sorry. 2 and 5 for State monies. 8 will occur at the same time for November of 2002, and also applies for funding for shared monitoring costs. It needs to be in May 1st, by their deadline.

WYETT: I move approval.

McDONALD: Is there a second.

GOLDBLUM: Second.

DONEY: Wait. You have to read it by title.

McDONALD: I'm sorry. Read it by title, Mr. Randolph.

RANDOLPH: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE FUNDING APPLICATION TO THE STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION, FLORIDA BEACH EROSION CONTROL PROGRAM.

McDONALD: Mrs. Pollitt.

The Town Clerk called the roll and the motion carried 4-0 as Mr. Brooks was out of the room.

VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

The meeting was adjourned at 12:30 p.m.

Mary A. Pollitt, Town Clerk