

MINUTES OF THE JOINT MEETING HELD WITH THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH AND THE
TOWN OF PALM BEACH TOWN COUNCIL ON MARCH 15, 1994.

A joint meeting of the Town Council of the Town of Palm Beach and the City Commission of the City of West Palm Beach was held on March 15, 1994 in the City Commission Chambers in the City of West Palm Beach on March 15, 1994 to discuss the Franchise Water Agreement between the two municipalities.

Mayor Nancy Graham of the City of West Palm Beach called the meeting to order at 2:09 PM. The following Elected Officials were in attendance who introduced themselves.

TOWN OF PALM BEACH: Mayor Paul R. Ilyinsky
Council President Hermine L. Wiener
President Pro Tem M. William Weinberg
Councilwoman Lesly S. Smith
Councilwoman Michelle Clarke Royal
Councilman Leslie A. Shaw

CITY OF WEST PALM BEACH: Mayor Nancy M. Graham
Commissioner John F. Koons
Commissioner Sara Brack Nuckles
Commissioner Mary B. Hookss
Commissioner Howard Warshauer
Absent: Commissioner Joel T. Daves

Also attending from the Town of Palm Beach were Town Manager Doney, Assistant Town Manager Elwell, Town Attorney Randolph, Director of Public Works Dusey, Town Engineer Bowser and Town Clerk Peters. Attendees from the City of West Palm Beach were City Administrator Michael J. Wright, Town Attorney Patrick N. Brown, City Clerk Agnes Hayhurst, and Director of Public Utilities Erik Olson.

COMMENTS ON HISTORY BY TOWN ATTORNEY RANDOLPH: Attorney Randolph gave a history on the fact that there have been several years of negotiation with regards to the Water Franchise Agreement and several issues have not as yet been resolved. He recalled in September of 1993 a completely new draft was submitted to the Town of Beach by the City of West Palm Beach staff which deleted much of the language which the Town felt was negotiated over the last few years. He stated the reason for this meeting is to receive input on policy from the Elected Officials of each municipality.

Comments on
History by
Town Atty.
Randolph

Mr. Randolph reminded all that the Town of Palm Beach does represent thirty to thirty-five per cent of the customer base of the entire system, and because of that fact and the history that has transpired and because of the long standing relationship the Town approached these negotiations in a spirit of cooperation as partners with the City of West Palm Beach. He commented that it was thought that what the City of West Palm Beach does for its customers in the City should also be done for the Town of Palm Beach customers and the same rate should be charged and that is the approach the Town would like to take with regards to the unresolved issues.

Mayor Graham recalled the City Commission was asked to bring this matter forward and some of the Commission members felt it may not be the right time to bring it forward as President of the Town Council Heeke was going off the Council and a workshop was held in the City of West Palm Beach at which time it was decided to go back to the drawing board and try to simplify. She knew one of the unresolved issues was the surcharge issue. She recalled this had been suggested by staff a number of times over the years and the reason they went back to the drawing board was due to the fact there was not a consensus on the surcharge issue and several other issues. She commented that Mr. Heeke wished to have this resolved before he got off the Town Council.

Attorney Brown added that the negotiations have been cordial and respectful although there have been substantial differences of opinion. He advised that they have tried to go back to a simple format which will deal with the tough issues from the City's viewpoint.

Attorney Randolph stated several of the issues are:

1. The surcharge.
2. Rates proportionality.
3. Level of service standards related to pressure and to capital improvements.
4. Exclusivity of the Agreement particularly with non-potable water consumption.
5. Terms of the Agreement as to length.
6. Purchase price methodology.

Attorney Randolph recalled there are several other sub-items which they are trying to work out at the staff level, and he doesn't consider them major issues.

Attorney Brown asked to address the surcharge issue as when the staff went to the City Commission for guidance several months ago, the Commission told staff they did not want to waive the right to utilize the surcharge if it was deemed advisable by this Commission or a future Commission. He recalled strong guidance was given that they would have the same base rate between the Town and the City and that is a substantial concession on the City's part, since they could base the rates in the Town on those portions of the system which are unique to the Town, which are more costly than providing the service to the customers in the City of West Palm Beach, such as the sub-aqueous crossing. He noted this crossing is the next part of their five year capital improvement plan and it is a costly item.

Surcharge
Issue

Attorney Brown stated they could take those items, plus others, and adjust the base rates to reflect those surcharges which are peculiar to the Town and on top of that, a surcharge could be imposed under Florida law. He advised there are two ways a surcharge can be imposed and he is pointing this out because he believes it is a concession on the City's part. He pointed out once they choose that method, they can still impose a 25% surcharge but it is limited to 50% over what

the City charges its customers. He reported what they have done in this document is state they will not use that method but will use the method of charging both customer bases at the same rate, but will have the right to impose the 25% surcharge on that base rate. He believed if they went the other way, they could impose 25% but no more than 50% of the City's customers' base rate.

Mr. Randolph asked them to keep in mind the Town's first premise, that they want to be treated fairly and equally. He hoped they could appreciate that position and wished them to know that the Town does not believe it is unique from the standpoint of the City's service to the Town, for instance, the sub-aqueous crossing, but feel they need to do the same thing with other parts of the system, as they have to extend lines to remote areas of the City, and they should give the same consideration in those instances as they do to the Town of Palm Beach, and he asked why the Town should be treated differently just because of the sub-aqueous crossing which he knows is expensive, but the reason they laid that crossing is because the City of West Palm Beach Utilities Department is in the business of providing water and receives valuable consideration for doing that. He stated the Town looks at itself as equal in that respect and wish to be treated equally.

Mr. Randolph recalled he and Attorney Brown have asked themselves the question as to whether or not future Councils of the City can be bound and not assess a surcharge, which is otherwise accessible under the Florida Statutes. He believed they could, as they are receiving consideration as a result. He didn't believe they could bind future Councils if there was no way out, but they can bind future Councils if there is an alternative available which he thought was the case, as the franchise agreement could always be renegotiated.

Mayor Graham responded the very same reason that the Town wants to protect its constituents is why the City wishes to have this in their agreement, as no one knows what will happen in the next thirty years. She didn't believe they would be able to make much movement on this particular issue.

Commissioner Hookss suggested they deal with this issue and not put it on the back burner.

Mayor Ilyinsky expressed his appreciation for this meeting and to meet on a one-to-one basis as he didn't believe that happened enough times. He didn't see any reason why people of good will could not with fairness and equity work out any problem, which he hopes they will be able to do. He knew there would always be differences of opinion between the two communities, he believed they could in a spirit of mutual cooperation through their representatives perhaps, continue to work on this water issue and fairness will prevail.

Commissioner Hookss believed the surcharge should remain in the agreement. Attorney Randolph pointed out the current franchise agreement does not address the surcharge issue. He felt the point is that they have gone for thirty years without assessing a surcharge and there had been comments made at the beginning of the negotiations that the City did not intend to impose a surcharge. He thought perhaps the City Commission may not have any intent of imposing a surcharge, as they have not imposed it for a thirty year period and they feel the Town should have faith in the City that they are not going to impose it but they want to have it addressed in the Agreement. Mr. Randolph thought the City could legally do that in the Agreement as the City is receiving something in exchange for giving up what some people think is a right, and others think there is no such right.

Commissioner Hookss stated nothing stays the same and what they haven't done years ago doesn't mean they shouldn't do it this year or next year, but to give away that right is a problem to her. She stated she bases this on the fact that no-one knows what tomorrow will bring and they needed to keep that option in place.

Town Council President Wiener went into the history, which she thought would let the City Commission know why the Town believes there should be no surcharge. She referred to an article which related to the first water system was the Flagler System with the idea that the Town of Palm Beach would be a major customer and they would be treated equally. She noted the article states "West Palm Beach - premium water rates for Palm Beach was suggested and met with favorable response as City Commissioners addressed growing demands on the West Palm Beach Water System Tuesday. The premium rate was recommended by Commission Van Burdick after John Simmons, Director of the City Water Department, stated local rates were about 20% lower than most other cities. 'Then why are we serving Palm Beach so cheaply?' demanded Burdick. 'We are not obligated to give them this nor did they have to pledge their credit for our bond issue.' Mayor Percy Hopkins agreed stating 'in view that our plant is running at capacity, the City should consider a higher rate for Palm Beach. He proposed a meeting with the Town Councilmen of Palm Beach to mull the possibility of boosting the rate. If they decide to build their own system, it's no skin off of our teeth', added Burdick. 'It would cost them more than to pay us higher rates and we wouldn't have to expand our system', noted City Manager Frank Lawler. Simmons agreed that Palm Beach uses approximately one-third of the West Palm Beach water supply. 'The average Palm Beach water bill,' Hopkins noted, 'is about ten dollars, while the West Palm Beach average is closer to three dollars.' 'But that's not because of higher rates', interjected Burdick, 'it just means they use more water.'

Mrs. Wiener noted that article was in the paper in 1961, so although we think things do not change, they do, and some things at the same time remain the same. She read from a letter from the Vice-President and Treasurer of the Florida East Coast Hotel Co. dated August 17, 1961, and it refers to the newspaper article she read: "We are aware of the fact that the Town of Palm Beach has a franchise with the City of West Palm Beach Water Department and this franchise does not expire until January 13, 1969. It is my recollection that full legal steps were taken to protect this franchise the time the Water Works were sold to the City of West Palm Beach."

Mrs. Wiener believed this indicates a partner situation and they have to go back to the time they starting discussing the new water contract and at that time, there were some members of the Council who wanted to contract with the DuPont Co. to receive a free RO system, so the Town would no longer have to be in the hands of West Palm Beach as to the water supply. She recalled she took exception to that as she didn't find it necessary and it was a high expense. She recalled there was a great hue and cry and demand upon the Council and because of the fact that she felt, despite several problems they have had over the years with the water system, as West Palm Beach has supplied the Town reasonably well through all the years and there was a relationship and she thought by taking away a 35% customer would create problems within the system that since 1961 has been greatly enlarged, and they would be sitting with a 65% capacity and those customers, which are mainly in the City of West Palm Beach would be paying a higher rate. She thought it was an unfair situation and considerable amounts of monies were spent by the Town researching alternate ways to

receive water in the Town and there were several members of the Council who insisted the Town stay with the City of West Palm Beach for their water supply.

Mrs. Wiener stated during the negotiations, members of the City's staff have appeared at the Town Council meetings indicating they wanted to assure the Council that they wanted the relationship they had with the Town to continue and the City would improve those items on which complaints have been received, and which the Town did not press during all those years and now we find ourselves at this strange crossroad. She recalled one of the reasons the Town Council does not want this surcharge language in the Agreement was simply because if the language is not there, that situation would not exist and the overtures they received during the time they were looking at alternate measures, they were told repeatedly to stay with the City of West Palm Beach and they would be treated as they have always been. She thought this gave them a background of what the thinking was for the Town and she hoped they could meet somewhere to make this right for all concerned.

Mayor Graham commented it has been her experience that the City's past practices of water and wastewater in terms of capital improvement, and in terms of how the system was operated has left a lot to be desired, but tremendous changes have been made and now DEP thinks they are one of the greatest, and they are positioning the City to have more water available and at the cheapest rate possible.

Mayor Graham asked Erik Olson, Director of Utilities for the City for his synopsis and she thought it may be informative for them to understand how progressive they have become in the last few years. She commented there is much the City is doing, not only to protect their water supply but to enhance it so they would always be able to fulfill the needs of their customers. Mrs. Wiener responded she and the other Council members have always felt very strongly that the City of West Palm Beach would do that and that is the reason they supported this situation and those people who told us we would be finding ourselves sitting across the table over a barrel and were so sure that the Town of Palm Beach needed its own water system. She recalled she did not agree and did not see the sense of it but perhaps she was wrong.

Mayor Graham responded there have been many changes in regards to lack of water, problems with water in the entire County and even some were moving to have a County-wide Water Authority. She knows certain cities are worried about future water supply and the City of West Palm Beach has tried to be very aggressive and progressive to ensure none of them had to worry about that. Mrs. Wiener asked about the situation with the deepening of the N Canal and enlarging the pump station at the L-8, would that give them enormous amounts of water? Mayor Graham responded the City with the Everglades settlement felt if they didn't get to the table, the water supplies would have not been protected and they bid very strongly at the table so their lobbying efforts could ensure they were protected. Mrs. Wiener commented perhaps this is someplace where they could meet, as what she is saying, they don't want the Town of Palm Beach people to be faced with a surcharge, but it doesn't mean they can't meet someplace else on something else.

Erik Olson, Director of Utilities, reported the water supply is something they have worked strongly with the South Florida Water Management District and asked to be a part of the Everglades settlement process, so they could be in a position to receive greater quantities of water into the N Canal System and into the Water Catchment area. He noted the project is approximately a five million dollar project and they have applied for State and Federal funding to assist. He indicated this is critical and it will give them additional water supplies into the supply source itself. He commented that some of the additional programs are Aqua Storage Recovery (ASR) and the City currently has that in its bond program and are beginning to install the first ASR well at the Water Treatment Plant.

Mr. Olson advised they are looking to install upwards of ten of these in the Water Catchment Area to store upwards of a billion gallons of water. He noted they want to install a large scale re-use program since this is critical for water supply. He believed they need to nail this down for ten to twenty years down the road, as they don't want to find themselves in a position where they don't have water to sell. He believed they would be one of the few cities that will have a water supply, even in those times when there is a water shortage.

Mr. Olson explained another thing they are doing is land acquisition around the buffer areas, primarily to not only act as a buffer system, but to be in a position to utilize the wetland recharge and have wise water re-use. He stated the aspect is they are spreading the assets over the entire customer base so they will see a benefit.

Commissioner Koons recalled he was appointed to the Planning Council years ago, which was an interesting body made up of government officials of cities and counties and they were taking a look at broader issues and he was Chairman of the Water Committee. He learned that the water in this area was from one area and the SFWD could drop a couple of boards in the Catchment area and limit the amount of water for the City. He recalled Erik Olson came on board about that same time and he requested from him a written report on whatever needed to be done about the water supply. He recalled in the middle of all this was the Everglades settlement which will divert tremendous amounts of water to the south and he thought there will be coastal cities in the County who will not have the water they need.

Mr. Koons recalled another issue was the capital improvements that need to be made which they were not doing and he remembered talking to Mayor Ilyinsky about this, recalling the Town was looking at RO Systems and he didn't think it made sense to put that next to a marina but rather it should be done at the water plant. He believed they wanted to extend the agreement and there is no doubt there would be a surcharge clause in the agreement, by Statute, and they also reached the conclusion that they wanted to have the same rate payer in Palm Beach and in West Palm Beach and they also wanted to skew the rate upwards, as the more they used, the more they would pay, as they thought that was very fair. He thought this would serve a purpose in Palm Beach. He recalled at the same time the Town was going through the water process, there was a drought and the SFWMD was adamant in everyone adhering to the rules. He advised now the bonds have been issued and it may be a little late, but the improvements will enhance Palm Beach and he felt the statutory surcharge should stay in place and the rate structure should stay in place. He thought there was an obligation to address the capital needs with Palm Beach and the hydraulic studies needed, and these issues need to be addressed. He agreed they have waited too long to address those issues as he was ready to sign this agreement in 1991, but there were some questions and he asked Mr. Olson what if we don't sell Palm Beach water to which Mr. Olson responded to him they just couldn't do that. He believed there are other people who are not going to have water because of the way the well fields

Capital
Improvements

are structured and because of the way the water will flow south, and Mr. Olson told them he needed Palm Beach in the system, as there is no doubt they add a certain profit and he needs the R&R funding to upgrade the whole system.

Mr. Koons recalled when the document came back from Palm Beach, he made the statement that they were not successful in communicating the way they should and he wished to extend the existing franchise agreement, keeping Palm Beach as their customer, but it just wasn't done and even though there was a proposal on the table, they didn't do it.

Mrs. Royal commented she doesn't necessarily agree with the statement made that the aqueous crossing causes the water to be more expensive for the Town of Palm Beach and asked if there were any other reasons why water delivered to the customers in Palm Beach costs more than the water delivered on the mainland. Mr. Olson responded they haven't done any studies on that, and they know that there are additional costs, but they haven't expended any monies for the studies to pin that down, but the peculiarities in working in the Town, for example the time period, the season versus off-season, and there are constrained hours for working on the Town's rights-of-way and there are constraints on the space they operate within in the rights-of-way with other lines. Mrs. Royal believed that would be true of any infrastructures. Mr. Olson agreed, reiterating they haven't done any studies. He stated the crossings are estimated to cost approximately two and one half million dollars for each replacement and they have already budgeted for one, and would like to have a hydraulic model made of it to come up with a more specific location for the crossing which would best benefit the Town. He reported that typically this is a very expensive project and the permitting process with today's circumstances is quite different than it was when they first installed the water plant originally.

Mayor Ilyinsky asked if the crossings now used are the original ones to which Mr. Olson responded affirmatively, noting one was installed in 1926 and needs replacement. Mrs. Royal asked if those costs would be picked up in the City's R & R program? Mr. Olson responded they budget for their R & R replacement, and it is a very conservative replacement program and they budget eight per cent, which is not enough to significantly replace major infrastructure changes, such as this crossing, and does not give them a lot of money to work with on a typical basis. He recalled that major capital investments are generally done by bond issues.

Councilwoman Lesly Smith commented her problem with this is the City did consider it imminent with regards to water and with regards to Palm Beach, so they obviously considered that a big plus in getting the credit rating, and the bonds have been issued. She announced the Town has a tremendous responsibility to the people in Palm Beach and she did not think a surcharge to help the City with their budget shortfall was an obligation on the part of the Town, as this Council has to protect their customers and if a surcharge is not acceptable to their townspeople, it is something they have to hold very firm on. She believed that in any business, it would not be wise to alienate their biggest customer as at the moment, there is plenty of water. Mr. Olson emphasized when he and Mr. Koons and Mayor Graham addressed this subject, the history had gone back to the original conception of the program and he did not want to infer there were not problems with water in the Town of Palm Beach and quite often the City of West Palm Beach staff was there to work with the customers in Palm Beach on their customer complaints, and it is not a problem for them to operate within the Town of Palm Beach and he doesn't want to infer that, although there are some practical reasons for both the Town and the City to come back together and develop the 30 year franchise agreement.

Mayor Graham did not believe there were any issues, other than the surcharge, which could not be worked out. She believed the fundamental issue is the Town of Palm Beach's constituents don't want that provision in the agreement for a surcharge and the City of West Palm Beach people do not want that provision waived and they want to keep this right they may have, for whatever reason down the road, it may ever be imposed.

Mr. Warshauer did not believe the discussion was on imposing a surcharge but was merely taking away the right that the City has had to impose a surcharge which has been there for the last thirty years. Mrs. Wiener announced that was a right the City had and there is nothing that could be done about that, however, there was serious discussion on the fact that the surcharge would not be imposed as the City and Town have worked together with that understanding. She recalled there were serious discussions that not only would there be a surcharge but on how it would be spent, and that has ruined the relationship and she doesn't know if that was an error in the Press or a political grandstanding, but it was a tremendous change from the conversations that have been held throughout the negotiations.

Mr. Warshauer recalled the discussions on the surcharge have been before the Council members many times over the last five years, and it has never been imposed. He stated this was a reflection by Mayor Graham in her memorandum but has never been discussed by the City Commission, nor has it been acted on. Mayor Graham recalled there were a number of Commissioners over the years who wished to impose the surcharge and she was simply stating if they did decide to impose it what she would like to see done with the extra benefits. She didn't mean they should or shouldn't, but there were a number of times there were suggestions to impose it and she strongly believed if it was imposed, it should be set aside for something special.

Mrs. Wiener believed each looked at it in their own fashion and to her, it looked like a very strong recommendation as if her Mayor sent a notice of that kind, it would show to her the direction in which the Mayor was aiming and that is what they wanted to do. Mayor Graham responded if the Commission decided to impose the surcharge, as there were a number of Commissioners who moved to try and get it imposed and if they were going to do that, she felt strongly and she still feels strongly that a recommendation should be made as to how it should be spent.

Mrs. Smith commented how it came as a surprise as the Town of Palm Beach Town Council had not heard before there were suggestions on imposing a surcharge, and it sounded to them that it was a done deal. Mr. Koons commented this was a major issue of discussion before last week. Mrs. Wiener thought there was a different interpretation. Mr. Shaw believed that it was a change in position when they started to explain how they were going to spend it, as before it was an idea, and now they are talking about how they were going to spend it. He thought the purpose of the Statute was not to create a revenue source outside of the water portion and the purpose of the Statute is that the surcharge should be used within the water utility.

Mr. Weinberg explained he used to be a business man and looked at the buck, which they all do, and he would like to ask a question if they are concerned with the principle of surcharge or the

principle of monies to be collected, as if they do away with the surcharge, it could be the Town could help pay for things which need to be paid for, and they would not be in a position of taxing their constituents. He believed if there were revenues necessary to keep up the plant, he thought as citizens of the community, they all have the responsibility to do the right things in that manner.

Mrs. Wiener believed there was another way to approach it and there can be a meeting of the minds. Attorney Brown commented he believed the City had the right to impose the surcharge, which is in essence a tax, and it does not have to be spent within the water utility and can be transferred to the General Fund and often is transferable.

Mayor Graham did not believe they were going to make any headway on the issue and wondered if there was some movement that could be made that would allow them to get there in a different way, as she doesn't see them getting beyond this point at this time.

Commissioner Sara Nuckles commented she sees the issue of water as a global discussion. She recalled a few months ago, the National Geographic Society issued a special issue on water, which was referred to as a precious resource. She was cognizant of the fact that in South Florida water is a valuable resource and her thoughts were and she respectfully asked all to thoughtfully consider what she was saying that the Town would partner with the City to provide a reasonable return and rationale to make the long range to keep the investment necessary to protect this valuable resource. She felt the dearth of water and the desire for the very highest quality of water and the health concerns they have in the country and the world are evidenced by a tremendous growth in the bottled water as a marketable beverage.

She believed that the City has made tremendous efforts to bring the City's water plant to excel many other water systems throughout the State and the expectation for quality in this area is still very high. She believed Palm Beach County, West Palm Beach and Palm Beach have a high standard and are not known for wanting to be the cheapest and the least, and that is our reputation. She thought the Town of Palm Beach is a preferred customer for the City of West Palm Beach and have a first priority in the sense of a business and she believed the City of West Palm Beach was willing to treat the Town in that style. She thought it was possible that they can partner in providing the cost of quality so all of them together will have one of the best and most readily available water sources in Florida, and it will be a hot commodity. She thought there are several ways they can look at in doing that, such as:

1. partner in terms of contributions to the income statement through revenue stream;
2. look at a contribution to the balance sheet side of it with direct investment in the cost of providing the production of this high quality product.

She advised she did spend five years in a local community and it has always been the case that a customer who is not part of the immediate proprietary interest on the utility will pay the higher rate, as that is a straight-across-the-board kind of expectation, but that is not something the City has to do.

She did not believe they needed to tie this issue of water and how they want to deal in partnership with Palm Beach to the other issues and needs in the City of West Palm Beach, as those needs will be addressed in one way or the other.

She believed the Mayor had to think that way and as an administrator she has to think that way, but these will be addressed one way or another. She believed on the water long range attention needs to be looked at and that is what she is asking them all to look at today, and it may look like the cost will be high, but if they look at the total or where they are going to be ten or twenty years down the line, it may not be as high as it appears.

Mayor Graham reported she was an environmental attorney and specialized in ground water and contamination and in getting the systems back up to speed, and the water supply in this County is a problem. Mrs. Nuckles agreed they are trying to address all of these issues.

Mrs. Wiener responded she would like to answer some of the points brought out and especially in the framework of the surcharge, recalling they have talked about upgrading the system and they all know why, and that is because that system was not up to par as the Town paid and there were a number of issues, such as the pressure and they didn't find themselves on the doorstep of the City Commission yelling and screaming and we have dealt with them in good faith as they could have broken the contract but stayed with them in good faith.

Mrs. Wiener heard the statements that the people who have a share in it have the greater interest, but she felt they all knew, if they would lose their 35% customer, the Town of Palm Beach, the water rates will go up. She knew no one wins in a war and they want to solve this in a way that avoids the surcharge. She thought they would both lose if they walked away from each other. She asked if there was an opinion from the City's side of the table that there is another way to solve this, or is there a mindset that they needed to stay with the surcharge.

Mayor Graham believed there was a consensus that the City will not expressly waive the right to do that but that they are willing to look at discussing other options. Mrs. Hookss felt they should not waive the surcharge. Mrs. Wiener responded that is a major problem noting they are talking about money and she wondered if there was some other way of handling this and perhaps look at the other issues? Mrs. Smith asked if they were saying it is an either/or circumstance and either there is a surcharge or there will be a surcharge. She noted the 25% figure is what threw her as it sounded like that they wanted to keep the right to have the surcharge perhaps, and asked if they were looking at other options in place of the surcharge and they might consider the Town of Palm Beach contributing financially in another way and asked if they were thinking about that? Mayor Graham responded they are thinking about it.

Mr. Warshauer responded he was not willing to write out of the contract the City's statutory right to impose a surcharge. Mrs. Wiener commented then there is no agreement that there is another way to solve the problem. Mr. Warshauer responded there may be another way but he is not giving up that right. Mrs. Wiener pointed out they couldn't have it both ways. Mrs. Nuckles indicated they would like the right to continue the option but not necessarily to exercise it. Mrs. Wiener did not believe the Town was willing to open up another door. Mr. Warshauer commented that door has been open for thirty years, as it has always been there.

Mr. Randolph stated there were two different concepts here and he believed what he was hearing that the Town of Palm Beach was not willing to waive that no matter what alternatives might be had, the City of West Palm Beach is not willing to waive it in the future. He thought there may have been some willingness, even though the City is not willing to waive the right to allow the issue to be explored and come back with a means of addressing the issue and he thought they needed to resolve that.

Mr. Shaw believed they stated they were looking at a bottom line but what they were actually looking at is benefits from both sides of the water agreement and the need to produce a model water utility. He commented the Town is not opposed to that and maybe the Town should not be the customer but the partner and that might be another approach as if they are a one third user, they may want to look at what will happen if there was a partnership arrangement. Mr. Warshauer commented the way he sees it, the Town is a partner now as the increase in water rates which was the first in many years and it was very large, and that is paying for the bond money that is doing all these things to make the City of West Palm Beach have the best water system. He is not saying they need any money but he doesn't want to do away with the right to a surcharge written out of that agreement.

Mayor Graham stated the City is not willing to waive that but she thought she heard the Town ask if they could discuss other options and she thought it was worth pursuing, however if the Town wanted an expression from the City to waive the surcharge, she must tell them they are not prepared to do that.

Attorney Randolph stated they can go away from the table without the issue being explored or the position of each of the parties can be recognized but they should both look at it to see if there is another way to resolve it. He did not know what that methodology would be, but it may be an open option which will give them room for discussion as otherwise they will go away from the table with nothing on that particular issue.

Mayor Graham thought they needed to talk about the alternatives.

Mr. Brown recalled this issue was brought before the City Commission and now what he is hearing the Town saying is if the City wanted to impose the surcharge, the Town would like to be able to talk with the City at that time to see what other things could be worked out, and he stated if that is what he is hearing, that can be a part of the Agreement.

Mrs. Wiener commented that if they wake up tomorrow or five or ten years from now and are in a mode where they are planning to impose the surcharge, we could all sit down and talk about another way of doing that. Mayor Ilyinsky felt that was a colossal ray of sunshine and if the attorneys are going to come up with language which will make everyone happy, he would be willing to go along with that.

Mayor Graham indicated if there is to be a surcharge, they will sit down at the table and discuss it. Mr. Koons commented he heard Palm Beach state they may be interested in participating in the capital expenditures and if there is more sophisticated upgrading of the system that the City of West Palm Beach needs, they should come to Palm Beach and talk about it. Mayor Graham pointed out staff talks with Palm Beach regularly. Mr. Koons responded that may be so but there are water quality issues, water pressure recalling the bond issue was planned for stuff that was being addressed three years ago and the next time they all come to the table, it might be substantially more in terms of water quantity and he believes he heard the Town say they would be willing to participate more in that and he is targeting the water plant in the City and perhaps years from now it may be water charges versus property taxes and he would like a clarification. Mrs. Smith did not think that was discussed. Mrs. Wiener noted they were in a happy mode.

A break was taken and meeting was reconvened at 3:47 PM by Mayor Graham.

Attorney Randolph clarified that each of the parties are strong in their resolve with the City of West Palm Beach not wanting to waive the ability to have a surcharge and the Town of Palm Beach does not want a surcharge, but they have agreed to have the respective staffs look at alternatives whereby the City would not waive its right to surcharge and in the event they were going to surcharge in the future, they would be willing to sit down with the Town and discuss that and offer alternatives which might be available at the time.

Mayor Graham agreed that was what she heard. Mr. Weinberg asked if it would not require a mutual agreement. Mr. Randolph believed that could be worked out at the staff level.

Mr. Brown agreed they would be willing to discuss alternatives but if there was no agreement reached on the alternatives, the City of West Palm Beach would still have the authority that it has at this time, as he thought that was essential. Mr. Randolph agreed that is what has been said but he hoped when he meets with Mr. Brown he will be able to change his mind.

Mrs. Wiener used an example taking 25% of what the figure was to be charged the customers of the Town of Palm Beach and that is what they wanted to do, surcharge wise, and they should come to the Town and point out what the figure is, and somewhere in that figure, the City could propose a particular project which they wished to do and offer it to the Town, but she didn't think it would be appropriate for them to come with a figure that would be 100% over the water project, and it would have to be within the financial realm of what the 25% would do. Mayor Graham believed they were limited to that by law. Mrs. Wiener noted they are talking about an alternative.

Mr. Randolph advised the next subject would be rate proportionality, advising they tried to build in some sort of a percentage cap on the inverse rate structure as the City could not create a rate block structure which happens to fit the customers in the Town of Palm Beach, in a manner which it would not attack the City of West Palm Beach customers. He reported this came out of the agreement as an alternative proposal was made that they thought would protect the Town of Palm Beach customers. He recalled Diversified Utility Services was involved in the last rate making study for the City of West Palm Beach and it was indicated by the Town's consultant that they thought the rates finally decided upon were fair and in proportion with the inverse rate block structure. He stated it was thought that perhaps without putting a cap on it, they could indicate the proportions of the inverse rate block structure would remain the same throughout the term of the agreement, absent a future cost of service study. He indicated this is not saying they can't do it but please do it with a cost of service study. Mayor Graham recalled they were going to do a rate study and have a rate hike, so they were trying to deal with the language to protect them from

the iffiness that existed at that time and if that doesn't exist, what Mr. Randolph is saying seems to be reasonable. Mayor Graham did not believe there was a problem with this until they do another rate structure. Mr. Olson responded that would be true for a period of time but the difficulty he would have is that over a thirty year period of time, to look into the crystal ball and ask themselves twenty years from now what circumstances would be in such a way that it may not be related to cost of service analysis and it could be a criteria that would be totally independent of that and what they would be doing is presetting their rate structure today, based on what it might be twenty years from now. He noted they want to have some ability both with the City and with the Town to look into the future and say there should be some flexibility in developing the rate making process.

Mrs. Wiener asked if the wording could be put into the agreement which would say "currently acceptable criteria" and whatever that criteria would be is what would apply.

Mr. Wright interjected commenting the regulatory agencies may force them into it as a methodology, and secondly, if the limitation is put into the agreement, it may eliminate one of the options they have of surcharging. Mrs. Wiener commented the whole point is not to worry about thirty years from now and not to bind, and suggested that if South Florida Water Management District makes a decision, they could not overrule that decision. Mr. Randolph indicated they tried to address that in the incorporated language. Mr. Olson thought the issue comes down into the wording which allows some flexibility that they can look at it and state based on circumstances which may exist five or ten years down the road, they do have the flexibility to change the conditions. He stated the nervousness comes from presetting something, the rate block issue, which would be based on certain circumstances.

Mr. Randolph believed there was some flexibility provided in the language as if regulatory authorities impose different principles, the municipalities would have to be bound by those and it states the rate adjustment shall be applied uniformly to all rate structures. He didn't believe they were attempting to bind them in this but the Town likes the structure the way it is set up and does not like the increase anymore than other customers would like it, but they like the structure, but if it is changed in the future, they ask that it be done through a cost-of-service study, in which the Town would have some input. He felt they also dealt with the outside regulatory authorities in this language by saying if they imposed regulations, they would be bound by those regulations and in the final sentence state that any rate adjustments in the future would be applied uniformly to all the rate structures.

Mr. Olson thought the question falls back onto the City Attorney to see if there is a flexibility there that they can live with or is there something there that they don't perceive sitting here today and the attorneys can work it out.

Mr. Brown stated the cost of service implies there are certain criteria and standards which may not be of a conservational nature and the City might have its own initiative to change these and if the main concern is that it be applied equally, they have basically conceded that point and he believes this language can be worked out between himself and Mr. Randolph, but he would like to make the ways the rates should be changed be a little more flexible, so it would not cover just the cost of service. Mayor Graham agreed noting the bottom line is that it would be applied proportionately. Mrs. Smith and Mrs. Wiener agreed. Mr. Randolph believed it could be worked out at the staff level.

Mr. Brown asked to address the next issue which is the level of service and performance standards, recalling what the Town had asked for in the last round of negotiations was the water pressure problem. He noted it would be difficult to maintain a certain pressure all of the time and would be proposed by the City to the Town was in order to upgrade the system to get the pressure up, they are coming up with a description of a hydraulic model and what it will do is pinpoint the weakness in the system and they would make improvements based on the hydraulic study. He stated if they would proceed in good faith down a path to make improvements to the water system, based on sound engineering criteria and if it doesn't work, they don't want to be in default of the agreement. He proposed they try to come up with something that would deliver as high a quality of service and pressure as is possible, but they don't want to be in default for going through a process which is prudent and make capital improvements and then find it doesn't work. Mrs. Wiener thought if they did something in good faith and it didn't work, she thought what might be incorporated into the agreement is they would proceed to do something else and asked if that was a problem? Mr. Olson thought that was a reasonable plan and it would be their intent that any plan would be successful and their intent in getting into a capital improvement program is in getting with Town staff and get ideas and information from their historical records and they would give it their best proposal as to what they believe would make it happen, but if it doesn't exactly accomplish what they thought would happen, they would go back to make whatever changes are necessary. Mrs. Wiener thought they needed to have a set time frame for that. Mrs. Smith pointed out her concern is the time frame as they are talking eighteen months for the hydraulic model, then study it, and five years to do the actual work, so they are talking seven years, and it is just hoped that there would be sufficient water pressure. She did not like the language "average pressure" as she considered that too vague.

Mr. Olson advised a lot of the improvements would be done immediately, as they are working on some programs which will begin this year, but there is a certain amount of difficulty for instance with the Intracoastal crossing, as that does require an analysis to make a determination of where to put it and once that is done, then they have to go through the permitting process, which could take two years, so there are some physical constraints just to get the improvements on line. He noted a lot of programs are now being put together in the first bond issue and their intention is to work with the Town staff to work on these programs and focus on the pressure problems and it wouldn't necessarily take seven years to accomplish everything, but the issue they wish to look at is if they don't achieve the desired results, they should continue on within a reasonable time period. Mayor Ilyinsky agreed.

Mr. Randolph recalled the two concerns which brought them to this point were:

- (1) the "average" pressure of 45 psi, he didn't think that protected the Town's residents and wanted to find another word, if possible for "average".
- (2) initially when they were talking about signing the agreement, they talked about an hydraulic study and capital improvement, but as it stands now, the hydraulic study will not be completed when they are asked to sign the agreement. He would like to see some language in

the agreement which will prescribe a level of performance which needs to be maintained, despite what the hydraulic study comes up with, which may address this issue.

Mayor Graham felt it had to be a number which would be recognized as an acceptable pressure. Mr. Olson responded there are some numbers generally accepted in normal operational practices, some of which are health related, for example 20 psi is a health related issue and generally accepted in the industry. He stated when they leave that point they get into the pressure set by the American Water Works and generally accepted programs will set 35 to 45 lbs as a minimum to operate on an average basis, like somewhere in the 40 lbs. He stated then you get into whether 50 to 55 lbs should be operational with 60 lbs being the upper limits, but they ran into some problems as when a number was put down in the franchise agreement, they should be careful as there are constraints in not being in a position to have control over it. He cited as an example if the South Florida Water Management District were to implement certain stages of drought restriction, they mandate the water pressures be lowered so they must be careful the agreement is worded in such a way to handle that situation.

Mrs. Wiener felt that anyone in the water business knows that whatever it takes to have a normal shower, that would be the pressure acceptable. Mrs. Smith asked if there was a specific water pressure required to operate the fire hydrants? Mr. Olson responded a certain amount of gallons per minute flow is required and there is a certain bottom line pressure required and they will recalculate the flow to 20 psi to determine the capacity of the fire hydrant under certain conditions, so there is a flow that they relate to but not the pressure.

Mayor Graham believed they could use the word "average" in different ways as "average" to be the standard in the industry may be different than to what Mr. Randolph was referring. Mrs. Wiener thought when they said "average" they were talking about something in the middle and that may not be what they are talking about. Mr. Olson gave an example stating they would shoot for 50 psi for the general running average throughout the year, but in an apartment building as they move upwards, they would lose a pound of pressure for every 2.31 feet so typically in a high rise apartment, a booster pump is installed in the system to maintain certain reasonable pressures for the showers and the toilets.

Mr. Randolph believed they were right in regards to the pressure question as this goes beyond that and goes to the issue that Mr. Brown stated earlier with regards to improvement to the system and the Town's concern is what happens if the improvements are made to the system and the problems are still not solved. Commissioner Hookss believed what would happen is the Town would notify the City and there would be a reasonable period of time within which it would be addressed, but the Town initially has to make the City aware there is a problem. Mr. Randolph asked the Town Council if they agreed and they did.

Mr. Randolph noted the next issue is the exclusivity as the Town has always looked at it as a potable water franchise and there are so many new systems coming on stream with regards to gray water and so many properties in the Town that may have the capability of using gray water, and it has been suggested the agreement be non-exclusive in regard to non-potable water, so as to allow the Town to explore its own remedies with regards to its large users, such as the golf courses, etc., and thought that might be some benefit to the City. He realized this does not go as far as they had initially talked about the Town being able to explore having its own ASR facility and all that has been dropped. He commented the request is with regards to non-potable water that it be non-exclusive so the Town can explore its own remedy. Mr. Koons did not understand how the Town could go its own way on this subject as the City owns the waste water plant which will generate the water which will meet the government standards and they would be delivering the system to the Town and he didn't know why they wouldn't do this together. Mr. Olson responded the City is in the process of acquiring land as a buffer system around the catchment area and he believed that re-use will be mandated, but more specifically it is a water supply issue for the City, as they need to have re-use to a recharge to their aqua system indirectly into the catchment area, so what they are intending to do is develop a large scale program and there are economies to scale in putting together something like this. He stated they would like to be in a position to have the flexibility and support of the Town in order to be able to implement that type of a program on a large scale basis. He didn't believe the Town wished to develop its own capital reuse program strictly to serve the Breakers Hotel, for instance. He stated what he would like to do is be able to serve this thing to recharge the system as golf courses are down the road and it is not practical at this point, but they wish to develop a large scale wetlands program for a recharge basis and would like the permission of the Town in this process to get the exclusivity in such a way so a large enough system could be developed to make it economical to serve anybody and originally it would begin as a wetlands system and not a golf course system.

Commissioner Nuckles left the meeting at 4:20 PM.

Mrs. Wiener questioned how would the Town get the gray water back and would they have to pay the same rate for gray water as they do for potable water? Mr. Olson responded if they are allowed to have the exclusive aspects of development, and first of all, the Town would not be initially required to put something together at the golf courses, but the Town would receive the benefit of the City implementing a re-use program for the wetlands and basically would have a source of indirect water supply. He added the Town would receive that without paying the direct costs associated with building the capital improvements necessary for the project, so they would be receiving the benefits associated with that without being the direct payer of it. Mrs. Wiener noted they would be paying the same rate for the gray water and the Town is sending it back to the City and then the City sends it back to the Town. Mr. Olson responded it is the same principle as ASR and in the current bond program, there is enough money in that program to put up ASR wells and to the City, it is a water supply issue and what they are doing is to make sure there is water available, especially during a drought. He indicated this is the same principle as the re-use program, and it is an assurance they will have something at a later date, but they would not be required to pay all the capital investments up front and the City is trying to develop a large enough system in such a way that it will be economical for them to do so. He stated ten or fifteen years down the road, if it comes in such a way that they had the ability to serve the Breakers Hotel re-use water, and that will be extremely difficult.

He noted at the wastewater plant, they would end up with components of construction taking place and the cost would increase for the City to be able to operate a generic system of re-use as opposed to the multiple little systems going in all different directions. He advised they would prefer to do something that would be on a one-time basis and will serve the needs of everybody

economically, without putting the costs onto any particular entity and would be a part of the rate structure because it is a water supply issue for them.

Mr. Shaw commented the Town is not asking not to be included but only for the right to choose, as the Town may agree with them one hundred per cent that it is a mutual advantage to be a part of the program, however, an independent may find, such as the Breakers, that they would like to pursue their own avenue, and the Town doesn't want to find themselves in a restrictive agreement to not allow an independent to deal with the gray water or the non-potable water issue. Mr. Olson believed a compromise could be as the City obviously doesn't know what the criteria or circumstances would be at a later date when the Breakers would be available to use the gray water, and suggested the Agreement be worded in such a way that would give them the flexibility at that time, if indeed, there was a reuse program to supply the Breakers, the City would negotiate the appropriate fees at that time, and it would be set up at that time because there is no idea of what the costs will be.

Mr. Brown pointed out that the City now supplies all the water to Palm Beach including the irrigation water for all the facilities in Town and the irrigation is a large percentage of that water supply. Mr. Olson responded it is approximately 65 to 70 per cent. Mr. Brown felt if that was the case and the gray water becomes available in the Town and a third party does come in and picks up the gray water, the City is losing. Mr. Olson interjected it becomes a competition issue.

Mr. Randolph believed if the real concern is the competition issue, he thought they would agree legally that there is nothing to preclude an independent property owner from providing their own water if they have the means to do so. Mr. Randolph felt the main concern with the City is competition from third parties and not the ability of the Breakers or Par 3 or Palm Beach Country Club to establish their own systems on their property. Mrs. Smith pointed out Par 3 is owned by the Town and the other two were private. Mrs. Wiener had a feeling the City had won this round as she didn't see the Town of Palm Beach sitting down with another water company. She thought if they went forward with this contract, then obviously, when they get to the point of the gray water, non-potable water, the Town will continue to have the households in the Town use it, but any large customer, such as the Breakers, or the private golf course who wants to install their own is perfectly welcome to do that, but the Town is not welcome to go to Lake Worth and ask for gray water and she thought that was reasonable. Mrs. Wiener asked the Town Council of Palm Beach if anyone had a problem with this to which the response was no.

Mr. Randolph did not believe the terms of the Agreement were an issue, and stated the only reason they brought up the term was if they do not come to an agreement in regard to everything, it wouldn't serve the Town's purpose to sign a thirty year agreement, so they thought they could talk about shorter terms, such as five or ten years and in the event they did something the Town didn't like, such as imposing a surcharge, at that time, the Town would have the opportunity to renegotiate.

Mrs. Wiener recalled they talked about many changes that are occurring rapidly and for both sides of the table it may make sense to have the thirty year contract with five year intervals as an option to remove certain things, or they could sit down and negotiate because a new thing came along and it looked like a more reasonable way of doing it.

Mr. Koons pointed out when there is a bond issue, they should look at the assets they are basing the issue on and what is being pledged, as they still will have the debt load and they should be in a position to show where the revenue stream is. Mrs. Wiener asked if they were planning to do a lot of work in the first two years? Mr. Olson responded arbitrage requires it be done within a three year time period and they have two issues of bonds, one in 1992 and one in 1995 and one is underway at the present time and they intend to get those elements within the first issue completed and they want to be in a position to issue the 1995 debt load here and basically set the second program in line.

Mr. Brown believed the City's stand on this is if they were not able to reach a long term agreement by the expiration date of the current franchise, they would do some interim temporary extensions until they could get a long term agreement nailed down, because of the issue of going into a major reconstruction of a infrastructure project without knowing there was a long term agreement. Mr. Randolph understood the need of the City for a long term agreement and agrees it should be, however, he wishes to advise the Town Council if they can't come to terms which are completely satisfactory, an option may be to have the thirty year agreement with five year review periods, so that there would be an opportunity to look at it every five years.

Mr. Randolph indicated the next item was purchase price methodology and he believed that was pretty well resolved, although in the memo distributed today, there was some discussion on the method of evaluation with regards to income approach versus depreciation approach and the Town would rather see it as the depreciation approach and he doesn't believe that was discussed but what was discussed was the method of arriving at the price, with the selection of an engineer, and the City suggested an MAI appraiser and if those two could not come up with an agreement, those two would select a third person and they would come up with a purchase price. He noted there would be no averaging but would be resolved by having the third arbitrator. Mr. Brown recalled the formula in the agreement was the replacement cost less depreciation and this could be a subject of negotiation at their next meeting.

Mr. Randolph believed the other items were pretty much resolved at the staff level as they are minor items and most of the substantive issues were discussed.

Mr. Koons asked if the City Commission was comfortable with all of these items as he wanted to be sure they coordinate the capital projects. Mayor Graham agreed they would have to do that. Mr. Brown stated that is in the draft and they have discussed it and it could be tightened further. He stated they will also nail down, when they meet, an agreement on what the capital improvement projects their mutually designated experts will state what should be done and then go ahead and implement that program.

Mrs. Wiener reminded the City Commission that there is a time table here as this franchise expires in February and she didn't want to wait until that time to finalize this agreement. She hoped that it could be finalized within the next thirty to sixty days. Mayor Graham agreed there needed to be a time table. Mr. Koons suggested it be done by the fourth of July. Mrs. Smith hoped it would be before that time. Mayor Graham thought it should be within 45 to 60 days to which all agreed. Mrs. Hookss wondered if they could shoot for 45 to 50 days. Mr. Shaw stated he would like

MINUTES OF THE JOINT MEETING HELD WITH THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH AND THE
TOWN OF PALM BEACH TOWN COUNCIL ON MARCH 15, 1994

it to be considered at the May 10th Council meeting. Mr. Randolph believed that he and Mr. Brown could get together and perhaps have something ready for the April 12 Town Council Meeting.

There being no further business, the meeting was adjourned at 4:34 PM.

Grace T. Peters
Town Clerk