

SPECIAL TOWN COUNCIL MEETING HELD ON DECEMBER 19, 1995

I. Call to Order

The meeting was called to order by President Pro Tem Jack McDonald on December 19, 1995, at 8:00 a.m. in the Town Council Chambers. Mr. McDonald led the Pledge of Allegiance.

II. Roll Call

On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Pro-Tem Jack McDonald, Councilmen Samuel McLendon, Leslie Shaw, and Allen Wyett. President Lesly Smith was absent. Also attending the meeting were Town Manager Robert Doney, Town Attorney John Randolph, Public Works Director Albert Dusey, Risk Manager Barbara Martinuzzi, and Town Clerk Mary Pollitt.

III. Approval of Agenda

Motion made by Mr. Shaw and seconded by Mr. Wyett to approve the agenda. The agenda was approved as printed.

IV. Reconsideration of Request by Lubavitch Center of the Palm Beaches to Place a Menorah Display in Bradley Park for Chanukah

Mr. Randolph said, based on actions taken on December 18, he requested this special Town Council meeting take place.

Mr. Randolph summarized that the Lubavitch Center of the Palm Beaches requested, at the December 12, 1995, Town Council meeting, placement of a menorah in Palm Beach, and that request was denied. On Thursday, December 14, 1995, at approximately 4:30 p.m., the Lubavitch Center filed, in the Federal Court for the Southern District of Florida, a law suit, Lubavitch Center of the Palm Beaches and Rabbi Sholmo Ezagui vs. The Town of Palm Beach Council, Mayor Ilyinsky, Robert Doney, Lesly Smith, Jack McDonald, Allen Wyett, Leslie Shaw, and Sam McLendon. The complaint contained with it a memorandum of law and asked for a temporary restraining order or preliminary injunction to have the court mandatory enjoin the Town to allow the construction of a menorah in Bradley Park. Immediately upon this case being filed, Mr. Randolph said he received a telephone call from the Federal Judge's Judicial Assistant who indicated the Judge wanted a response filed, in his chambers in Miami, by the close of business on Friday. Mr. Randolph said he prepared that response.

Mr. Randolph pointed out that the major thrust of his response was the fact that the Town Council was being asked to rule on this matter too quickly. Many considerations were to be had regarding this issue, and for the Council to be approached on this matter on December 12th, three days before the display was to be erected in Bradley Park, was not reasonable. Mr. Randolph said he was advised on Friday that he was on call for a hearing in Federal Court on Monday at approximately 3:30 p.m. The reason he was on call was that if the Judge were able to rule simply on the briefs that had been filed, the Judge would have done so. Mr. Randolph said he received a call at 10:30 a.m. on Monday morning from the Federal Court indicating that the Judge wanted Mr. Randolph to appear at 3:30 p.m. Monday. Mr. Randolph said he took the witnesses, Mr. Doney and Mrs. Pollitt, with him, and everyone was fully prepared to go to hearing regarding the matter.

Mr. Randolph said that Mr. Doney, Mrs. Pollitt, and he appeared before Judge Graham of the Federal District Court, and Judge Graham indicated that he was prepared to hold a hearing on the matter on Tuesday at 1:30; however, he hoped that the Town Council would give consideration to granting the placement of the menorah. Mr. Randolph reported that Judge Graham indicated he read the transcript, all of the briefs, and all of the cases. Mr. Randolph said his impression of Judge Graham's reaction to the information was that the Judge did not believe that the Town Council's actions were supported under the case law. Judge Graham thought it would go better for the Town if the Town would voluntarily grant this rather than being forced through the legal proceedings that would follow, and he sent the two parties to his magistrate for resolution of the problem; however, if the issue could not be resolved with the magistrate, the Judge would see the parties at 1:30 p.m. Tuesday.

Mr. Randolph reported that Mr. Doney, Mrs. Pollitt, the Plaintiffs, and he were escorted by the Judicial Assistant across the street to another courtroom. The Magistrate, Judge Brown, met with the Plaintiffs for approximately one-half hour and then met with the Town's representatives. Mr. Randolph said Judge Brown had no authority to rule on the case; however, Judge Brown had read all the transcripts and, in his personal opinion, did not see how the Town could win the case. Judge Brown indicated that perhaps the Town had an argument regarding the timeliness of the

application, but that he would not count on winning on that aspect, and as far as the substance of the case was concerned, he did not see how the Town could win in the long run.

Mr. Randolph stated, at this point, Mr. Doney and he contacted Mr. McDonald, and Mr. McDonald called the Special Town Council meeting in order for the Town Council to hear the previous remarks.

Mr. Randolph said the Town's choices are:

1. The Town can attend the hearing in Miami and take the appropriate witnesses and pursue the matter in front of Judge Graham.
2. The Town can, on the basis of what has been said and advice given from the Federal Court, go ahead and reconsider the matter and give consideration to the placement of the menorah in Bradley Park.

Mr. Randolph added that if consideration of placing the menorah in Bradley Park is given, the Town Council can consider reasonable time, place, and manner restrictions as set forth in Mr. Randolph's memorandum. One of the suggested restrictions was for a sign that indicated: "This is not endorsed by the Town of Palm Beach....". Mr. Randolph suggested those considerations be followed if the Town Council decided to grant the placing of the menorah in Bradley Park.

Mayor Ilyinsky stated he had no comments regarding the matter.

Mr. Shaw said, "A week ago, today, the Town Council heard the request of one individual to place a Menorah in Bradley Park. His gift to our community he calls it.

"But as with the Trojan horse, his gift is not what it seems. The learned rabbi talks of the festival of lights and his sharing with us the celebration of Chanukah.

"But let's look back in history. Chanukah is not just about lights, but about victory too; the victory of the Jewish people over their enemies. On the 25th of Kislev in the year 165 B.C., the temple was rededicated; it was the first Chanukah.

"What we have here is a different kind of victory. The victory of one person who imposed his will against that of the many residents of our town through legal maneuvering.

"Our constitution is not perfect, which is why there are amendments, federal court rulings and often changes to those rulings years later. The freedom of speech is granted in the constitution, and the court has ruled that freedom extends to a religious expression.

"With no visible ties to our community, it appears that in his form of democracy, the wishes of the majority do not rule. I hope I am wrong and that he will reconsider.

"As we have been told today, we have little choice but to grant this request.

"I hope that as a town we too can express our right to expression. I for one, will not go to see the lights, for they do not signify a rededication, but a battle lost. We now have what the benevolent victor deems appropriate, what will he bring us next?

Come sunset, I will join with my wife and daughter and light our chanukia. In the peace and tranquillity of our home we will remember the victory of the first chanauka and the joys of many that followed.

I move approval of the request of the Lubavitch Center of Palm Beach Gardens to erect this menorah in Bradley Park."

The motion was seconded by Mr. Wyett who stated he wished to avoid a law suit. Mr. Wyett said he thought the members of the community would understand that the menorah is a symbol of light, hope, and freedom. It is not endorsed by this Council or the Town of Palm Beach.

Mr. McLendon responded he felt a sense of frustration because of all of the efforts that have been done to promote harmony--this seems to be a step in the wrong direction. Mr. McLendon agreed that the Council did not have any viable alternative.

Mayor Ilyinsky responded that he stood on the remarks he made at the last Town Council meeting on December 13, and he had not changed his attitude.

Bert Shapero, 235 Sunrise Avenue, addressed the Town Council and stated he is an attorney and a resident of the Town who has appeared before the Town Council on other matters. Mr. Shapiro spoke as a private citizen and not on behalf of the Lubavitch Center or the particular Rabbi involved.

Mr. Shapiro took issue with Mr. Shaw's comments and said it was not just the rabbi himself who is imposing his will on the community. There are other people, including himself, who believe that Jewish symbols as well as Moslem symbols or any other good faith religion, not a "hate" group, but a religion who wishes to celebrate a holiday should have the ability to put that on a public lawn. The Constitution as we know it, changes. What the original Founding Fathers did for the Federal government and what we have passed as far as State Constitutions affects the meanings of the words. The words have to change. If they don't change, it is like a stick in a storm. If people are not flexible and do not change, then the stick will break. If our Constitution does not change with the times or the meaning of it does not change with the times, then it breaks. That is why we have a U. S. Supreme Court and a Florida Supreme Court. If the Council were not to grant this request, as far as having a menorah in Bradley Park, in effect it is favoring the establishment of Christian religions because the Christmas tree is really a Christian symbol. Mr. Shapiro stated that, as a reformed Jew, no Christmas tree or Chanukah bush is in his house. When children go to a public park and they see just a Christmas tree, if they do not see a menorah or another symbol regarding Chanukah, then basically in order to publicly celebrate their feelings toward that holiday, they have to adopt a Christian symbol. For that reason, and for that reason alone, Mr. Shapiro believed the Town Council rather than establishing any religion, is basically establishing and seconding the approval of the freedom of the practice of religion.

Mr. McDonald asked for additional comments from the public. There were none.

Mr. McDonald requested that Mr. Randolph list the suggested conditions since the motion did not include any conditions.

Mr. Randolph replied that in his memorandum, dated December 12, 1995, he indicated that if Bradley Park is a traditional public forum and open to the public for expression of first amendment rights, it is open to private religious speech as well as secular private expression. The government's right to limit protected expressive activities is sharply circumscribed. However, the government may impose reasonable content neutral, time, place, and manner of restrictions. In the event the Mayor and Town Council make a determination to allow the placement of the menorah as requested, the following considerations should be entertained:

1. The Town should have no involvement in the placement of the structure. The Town's only involvement should be in the granting of the request for permission for the applicant to place the menorah in the park.
2. The applicant should bear all costs associated with installation, maintenance, and removal of the menorah.
3. It is reasonable to request that the applicant bear all costs of restoring the ground upon which the menorah is placed to the condition it was in prior to the placement of the menorah.
4. It is understood that no power supply is available at the requested location. Power for electricity therefore cannot be provided by the Town. Any and all responsibility for lighting shall be with the applicant, and then only upon approval of the appropriate departments of the Town.
5. It is recommended that a sign, if any, erected in conjunction with the menorah read in the following form:

"This display is provided by a private organization at no public expense and does not constitute an endorsement by the Town of Palm Beach of any religious doctrine."
6. The menorah should be stabilized by the applicant in a manner satisfactory to the Town so as to assure that its placement does not present a public safety hazard.

After Mr. Wyett questioned who would supply the sign, Mr. McLendon suggested the Town should provide the sign.

Mayor Ilyinsky asked where the sign would be located in Bradley Park? Mayor Ilyinsky suggested the sign should be located far enough back from the sidewalk to deter anyone from destroying it.

Mr. Randolph suggested that either Mr. Dusey or a representative of the Town should be present when the menorah was installed.

Mr. Doney said he and Mr. Dusey discussed the possible placement and, if necessary would contact Mr. Randolph when they were in Bradley Park to verify the exact location.

Mr. Shaw amended the motion to include the six items as mentioned by Mr. Randolph. Mr. Shaw asked if the menorah presents a problem, would the security of the menorah and the area around it be covered financially by the movement?

Mr. Randolph replied negatively. If there were be a need for police involvement from the standpoint of traffic or public safety, that is a responsibility of the Town.

Mr. Shaw asked if the menorah requires a permit or permit fee?

Mr. Randolph replied negatively.

Mr. McDonald asked Mr. Wyett if he would withdraw and remake his second to the motion. Mr. Wyett replied he withdrew his second and remade it.

Mr. McDonald called the question.

On roll call, the motion carried unanimously.

V. Any Other Matters

Mr. Wyett made a motion to request that a report by the Public Works Department be added to the January 9, 1996, Town Council agenda, concerning their study for charging for commercial trash.

The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

VI. Adjournment

The meeting was adjourned at 8:25 a.m.

Mary A. Pollitt, Town Clerk