TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MONDAY, DECEMBER 11, 2006

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order on Monday, December 11, 2006, at 10:00 a.m. in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
Council Member Allen S. Wyett

Others present for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Town Attorney John C. Randolph
Public Works Director Paul Brazil
Finance Director Jane Struder
Town Clerk Susan Eichhorn

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by President Coleman.

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III. APPROVAL OF AGENDA

The Agenda was approved through motion of Council Member Brooks, seconded by President Pro Tem Kleid; the motion carried unanimously on roll call.

IV. UNDERGROUND UTILITIES

A. Review the Results of the Citizen Survey.

Mr. Roger Pynn, President Curley & Pynn Public Relations and Marketing Communications, addressed the Town Council, stating that his presentation today would share the results of a study conducted regarding the public perceptions of the underground utility project, conducted in order to allow an informed recommendation regarding the public education program. He stated that his firm believed very strongly that any public relations/information program needed to be grounded in solid research. Dr. Susan Schuler, University of South Florida had provided the data for the project. The study was conducted via mail, and was designed to determine general awareness of the concept, level of support or opposition, concerns or opinions, and the depth of those concerns expressed. The study had been conducted in late October and early November, and targeted one hundred per cent (100%) of the Town's households. Due to the seasonal nature of the Town, the survey had been conducted by mail in order to enhance reaching both year round and seasonal residents. Both voter registration records and Town resident listings were used to ensure that the greatest possible number of constituents were being reached.

Mr. Pynn then presented a Power Point presentation of the survey results. He concluded that the survey indicated an 83% overall support, with 66% strongly supporting, showing that a strong majority favor undergrounding utilities in Palm Beach. Given that the PSC decision on the FPL proposed credit would not come until after a February referendum, a sizeable percentage of residents wanted more information. Regardless of when the referendum is held, those findings indicate that more information should be provided to residents about the potential credit, and the impact that it would have on the long term cost of the project. More than half of the respondents wanted more information, and largely, that information must come from the PSC. There seemed to be a clear question about the potential outcome of a referendum if held before the PSC action was taken.

Mr. Pynn advised that the research indicated that the process, cost, and timeline were areas where residents needed more information. Aesthetics and reliability were important, as were cost and construction-related traffic.

Mr. Pynn made the following recommendations for public education:

- A public information program should focus on enhancing resident knowledge, particularly on the PSC situation, and the process, timeline, and costs for undergrounding.
- More detail should be provided on the benefits regarding changes in reliability and vulnerability to storm damage, as well as aesthetics and safety.
- Send a follow up to the survey communication.
- Develop a dedicated Web site.
- Host at least one Town meeting.
- Provide presentations for local organizations.
- Develop a Q & A style brochure.
- Create outlets for feedback from residents.
- Plan regular update mailings addressing concerns.
- Provide e-mail updates through existing system.
- Work closely with local news media.

Mr. Pynn suggested that the Town Council strongly consider a delay in the referendum, since respondents were concerned with costs and the actions of the PSC. Until costs were clear, it was possible that support for the concept would not translate into support for a referendum. The numbers showed that possibly as high as fifty-one percent (51%) could be asking for a delay.

Council Member Brooks suggested that, based on the survey results, discussion should take place regarding postponing the referendum.

Town Manager Elwell explained that the results of the PSC Hearings were not anticipated until at least the spring; a referendum could not be held when residents were largely out of Town; there was also a provision in the Town Code that limited the time of year when a referendum to issue bonds could be held in the Town. An ordinance change would be required in order to hold a referendum before next December. Consideration could also be given to the November statewide election, or the next Town election scheduled for February 2008.

Council Member Markin suggested a chart indicating the property value increases overtime, so that property owners can see very readily the true project costs for the duration of the time of the bond.

President Coleman commented that it was critical that the public understand the PSC rate based information.

Public Comment:

- Elizabeth Murphy, 265 Park Avenue, commented regarding renters being mailed the survey, and that safety and reliability was important in the educational campaign.

Mr. Bradford explained that both registered voter lists and lists from the Property Appraiser's office where used, so renters were not contacted.

- Alec Flamm, 2000 South Ocean Blvd., commented regarding:

    1) The economics of by-passing residents when easements were an issue – he had suggested that lumping contiguous areas with easement problems as a community, allowing them a choice to give easements as a community, or the Town could make efforts to get them a hardened overhead system.

    2) The survey results concerning the acceptable annual payment, and the higher valued properties.

    3) Taking a proactive negotiating position with BellSouth and Comcast. Those utilities would be benefitting by savings on maintenance, repair, etc., with the PSC credit tariff.

- Lloyd Ecclestone, 190 South Ocean Blvd., commented that the resident payments associated with bond issues could be deducted from their tax bill; that he supported the delay of the referendum, and urged a referendum in November.

- Yvelyne Marix, 1570 North Ocean Blvd., commented regarding the tax deductibility aspect, and the fact that some residents, in the fixed income group, would not be able to use the tax deduction. She stated that there was a different viewpoint of condominium owners and home owners, and that was something to clarify.

In response to Council Member Wyett, Town Attorney Randolph advised that there was not a way to include a "hardship" provision in ad valorem bonds.

After further discussion, **President Pro Tem Kleid moved that the referendum proposed for February 6, 2007, be postponed to a date to be determined when the Town Council believed that the cost factors were more precise, and the public had sufficient information to cast an informed vote, however, in the interim period, the process leading to undergrounding is to be continued uninterrupted. The motion was seconded by Council Member Brooks. On roll call, the motion carried unanimously.**

B. Review of Items Not Covered in R.W. Beck Townwide Cost Estimate.

Deputy Town Manager Bradford advised that there were three or four things that the Town Council would receive information on today. *[Memorandum of Mr. Bradford, dated December 6, 2006, to the Mayor and Town Council is included in its entirety below]*. The following items would be discussed: review of the items included in the R.W. Beck cost estimate, including inflation and other cost drivers; consideration of postponement of the February 2007 referendum; data on permits regarding secondary service; the general obligation bond. All aspects of the project were outlined in the Project Management Timeline, which was updated as needed. Weekly timelines were issued to all Town staff involved with the project, and all consultants involved with the project. Town staff intended to meet with the utility companies very shortly to begin negotiations for contracts.

Mr. Bradford began discussion of the items included in his memorandum:

STAFF RECOMMENDATION

Staff recommends that the Town Council receive this report, ask any questions and provide direction as deemed appropriate. Specifically, staff is recommending Town Council:

1) Review the results of the citizen survey on UG
2) Review and comment on listing of items not covered in R.W. Beck townwide cost estimate.
3) Consider postponement of the February, 2007 referendum for reasons to be enumerated.
4) Review data provided on permits issued since 1984 (as an indication of the percentage of buildings in Town having UG secondary service). Make a determination of whether to include the cost of secondary service in the costs to be borne by the Town or to be borne directly by the property owner.
5) Review and, if so inclined, adopt the GO bond resolution referendum, with ballot language.

GENERAL INFORMATION

"Legislative" Update

The PSC conducted the hearings on the hardening issue on December 5. All indications were that the current PSC proposal on the proposed hardening rules would remain the same with no modifications. The PSC adopted the hardening rules with only minor modifications. Therefore, cost savings projected from the adoption of this rule remain valid.

The first PSC hearing on the proposed 25% credit tariff was to occur no earlier than December 19. The first hearing has now been set for February 13, 2007. The MUUC study conducted by Power Services, Inc. found that the credit should be 50.54%. This is a very important hearing for the Town and others serious about UG in their community. Town funding for this effort is discussed later in this report.

Project Status

All significant aspects of the project are outlined in a Project Management Timeline (PMT) disseminated to all staff and consultants. The PMT is updated as needed and weekly timelines and assignments are sent to staff and consultants by email reminding them of their time sensitive responsibilities.
All utility companies have been contacted by Roy Young and are on notice of the intent to commence negotiations. The Town's negotiating team is scheduled to meet on

December 8 to prepare for utility negotiations in late December. Meetings with BellSouth and Comcast are set for December 20 and 21.

Based upon the requests made by the Town Council on November 14 and the schedule of items to be completed for the UG Project, the following items are scheduled to be addressed at the special Town Council meeting on December 11:

- **Underground Utilities Survey Results** - Last month the Town Council was advised that the presentation of the survey results would be presented at the December meeting. Accordingly, Roger Pynn of Curley & Pynn will be in attendance to present the survey results and answer any questions about the findings. The survey results indicate that Palm Beach residents overwhelmingly favor the concept of UG, but there are some conditions to this support which will be reviewed in detail. A "PowerPoint" summary of the survey results is attached for your review.

- **Delineation of Items Not Covered by Cost Estimates** – The Town Council requested that specific items as well as those apparently not listed in the R.W. Beck cost estimate be delineated and that an attempt be made to cost out each item. The specific items requested by the Town Council or items not covered by the RWB estimate are as follows:

    - **Inflation** – R.W. Beck has factored in inflation in their latest attachment. Inflation is estimated to be approximately 5.7% per year across the board, but varies by item being forecasted. Adding inflation to the previous cost estimate of $60.3 million increases the estimated cost of the project to $76.14 million.
    - **Easement Acquisition** – There is no scientific, fail safe way to estimate these costs. Only an estimated 10% (285) of the affected parcels in town (2,851) may require an easement in lieu of using right-of-way. Of this 10% many will work with the Town to avoid litigation. If litigation begins, there is no way to predict the extent of legal costs with any real accuracy. Recall that litigation cannot stop the Town from securing the easement, stop the project or slow it down if the Quick Take process is used, which is intended. To start somewhere, I will assume that 50% of the 285 parcels will go to litigation, 143 cases. I have determined an estimated market value of land in one future project area along North Lake Way to be $268 per square foot. Securing an easement is not a complete taking of land. An easement only constitutes a use of that land. Ownership will still reside with the property owner after condemnation. The value of an easement is estimated to be 25% of the value of the land, or in this case

$67 per square foot. Estimated square footage needed per easement is 300, 50 square feet for a transformer (half the transformer easement will be on another adjacent property) and 2.5 feet along the linear frontage of the property for another 250 square feet. Total estimated easement cost is $20,100, plus fees. Attorney fees are estimated to be $20,000 per parcel. Total estimated easement acquisition cost per parcel - $40,100 x 143 parcels = $5,734,300.

- **Betterments** – Examples of "betterments" are fiber optic lines, below grade switch cabinets and extra conduit for future needs. The Town should take the position that all betterments are the responsibility of the utility companies unless the betterment has been requested by the Town. Technology exists to place switch cabinets underground, but this has not yet been approved as an FPL standard. Underground switch cabinets are twice the cost of above ground switch cabinets. This is an example of a betterment that could be requested by the Town that would cost more than the standard service. Current project cost impact - $0.
- **Bonds and Insurance** – Damages will be the responsibility of the contractor, utility or Town, whichever is doing the work. This is the norm and as such it is a cost of doing business that is built into the contractor's rates charged to the owner. This also means that this cost is included in the going rates used by R.W.Beck in their cost estimate prepared for the Town UG Project. This cost typically runs about 3% of the cost of the work and is built into the rates charged for equipment and manpower. Project cost impact - $0.

  A surety bond, or performance bond, is required to ensure the timely performance of a construction contract by a third party upon the default of the general contractor. The face amount of the bond is typically 2% of the value of performance, but can vary depending on the presumptive reliability of any given contractor. This was not included in the R.W.Beck cost estimate. Project cost impact - $974,490.
- **Contingency for BST & CATV** – The R.W. Beck engineer felt that no contingency was needed here because he felt that the high end of construction numbers were used in this estimate which should suffice for this relatively simple work compared to the FPL conversion. Additionally, these estimated numbers were based on complete installation costs. Therefore, contingency was included in the numbers provided. Project cost impact - $0.
- **Engineering Design Expenses for BST & CATV** – This typical cost driver is not listed in the R.W. Beck cost estimate. However, the engineer, upon questioning him about this, advised that the cost for the underground

installation was based on average complete installation cost. Therefore the cost estimate includes this design cost. Project cost impact - $0.

- **Permitting Costs** – These costs should be gratis to the Town and gratis to the utility companies or their contractors, but the timely filing of permits should be necessary for record keeping and other requirements such as filing as built drawings with Public Works and/or PZ&B to keep the Town's GIS up to date. If a resident's meter box, for example, needs to be upgraded to Code, a permit paid for by the property owner would be required. If the property owner wishes to provide a secondary utility service that is in excess of the standard used by the utility companies a permit will be required and the resident should be expected to pay for that permit. Project cost impact - $0.
- **Interest Earnings on Construction Fund Proceeds** – Based on work done by Michael Hole of Citigroup, the Town's financial advisors, working off the latest R.W. Beck inflation adjusted cost estimate, I adjusted Mr. Hole's numbers to include the noted additional cost drivers contained herein. I estimate that $8.427 million can be expected to be garnered in interest from investment of idle funds in the construction fund anticipated to be created for the UG Project. These funds can be used either to reduce debt service payments or to reduce the amount of funds borrowed. I made the assumption that the Town Council would want to net fund the construction fund thereby reducing the total amount of funds to be borrowed. Project cost impact – ($8.427 million).

Summary of Additional Estimated Costs to Factor into Palm Beach UG Project Cost Estimate

Cost Driver	**Estimated Cost**
R.W. Beck Cost Estimate	$60,314,800
Inflation	$17,585,711 [(1)]
Easement Acquisition	$5,734,300
Betterments	$0
General Liability Insurance	$0
Surety Bond	$974,490
Contingency , BST & CATV	$0
Engineering Design, BST & CATV	$ 0
Permitting	$0
Construction Fund Interest Earnings	($8,427,772)
Total Revised Cost Estimate [(2)]	**$76,181,529**

Key:

(1) R.W. Beck inflation cost estimate adjusted to include the new cost drivers indicated in this table.

(2) This is the amount to be borrowed.

How would this increased cost estimate affect the Town and its residents? The table below shows the anticipated impact.

Debt Service Scenarios for Updated Estimated Costs

Project Cost	Finance Tool	30 Year GO Bond Interest Rate (2)	Annual Debt Service (3)	Property Owner Annual Cost, per $1 million of Taxable Value
$76,181,529	30 yr. GO Bond	4.51%	$4,751,036	$403
$63,230,879 (1)	30 yr. GO Bond	4.51%	$3,943,579	$335

Key:

(1)– Cost if FPL proposed 25% credit tariff is adopted by the PSC and the "hardening" tariff is adopted by the PSC.

(2)– Market rate as of 11/06/06

(3) - Includes 2% issuance cost on top of the project cost

Based upon the estimated cost per $1 million of taxable value shown in the table immediately above, it behooves us to see what this will actually cost the typical property owner by property type. The table below attempts to depict this for you.

2006 Average Property Value by Property Type and Estimated Annual UG Project Debt Service Payment

Property Type	Average Taxable Value	Annual Debt Service	Annual Debt Service w/ 25% Credit
Single Family Residential	$3,024,518	$1,219	$1,013
Condominium/ Cooperative	$498,602	$201	$167
Commercial	$5,023,619	$2,025	$1,683

If we now focus on the residential properties above (where the voters reside) and also look at pages 8 and 13 of the Curley & Pynn PowerPoint we see on page 8 that cost is the number one concern among survey respondents. Page 13 tells us that if we can keep the annual debt service payment to between $500 and $1,000, 62% of the voters responding to the survey should support the project. Because of the single-family residential numbers above, as well as for other reasons associated with the findings of the survey, **I believe that it would behoove the Town to postpone the referendum and focus now on securing the maximum credit tariff possible from the PSC (hearings begin on February 13th) to financially benefit all town property owners and increase the likelihood of the referendum passing when rescheduled.**

- **Data on Existing UG Secondary Services** – The Town Council requested that research be conducted to determine the number of new UG secondary services permitted since 1984, the year the Town adopted an ordinance to require all secondary service lines to be UG. The intent is to quantify the possibility that people may become concerned that they are being asked to pay twice for UG secondary service. Once for their own property, and a second time for the Town's UG project. The permit data gathered reveals the following:
  1) The Town only has permit computer records for 1995 through 2006.
  2) Years 1984 through 1994 can be estimated based on the average annual number of permits in number one above.
  3) Permit numbers do not coincide with staff field observations. In other words, the computer permit data is not reflective of what we think is a greater amount of UG secondary service in the field. Tim Wright, Chief Electrical Inspector, has indicated 85% of the structures in Town have UG secondary service in his opinion based on his observations over the years he has worked for the Town. Last month, I indicated it appeared to be between 66% and 75% based on what I had observed these last few years.
  4) Permit records show 342 permits issued for such work from 1995 through 2006 for an average annual amount of 29 permits. If 29 permits per year are added from 1984 through 1994 that equals 319. Total estimated permits issued for UG secondary service – 661. With there being 2,851 parcels affected by the UG project, based on these numbers only 23% have converted to UG secondary service, which conflicts with field observations.
  5) All of this could be irrelevant. The overwhelming majority of property owners that currently have UG secondary service will need to abandon that service because it traverses through the rear yard to the point of service at the building. All new UG service will come from the front yard to the point of service at the building. While it is true that those property owners that converted to UG secondary service in the past have paid that cost themselves, if we change course now and make all property owners pay for the cost of secondary service directly, we really will be causing those who have already converted to pay twice as opposed to the currently chosen option of having the Town bear the expense of standard secondary service in its overall project cost.

- **Resolution for Referendum and Ballot Language** – This resolution was completed by Town Bond Counsel Rick Miller and Mark-David Adams of the firm Edwards and Angell. This is provided to you for adoption should you wish to proceed with the February 6th referendum question.
- **Funding for PSC Hearings on Local Government Credit Tariff** – As of December 6 the MUUC has proceeds of $87,492 available for the PSC Hearings on the FPL Credit tariff wherein the MUUC study findings of a 50% credit can be considered. The Town's contribution of $12,000 is included in this figure. There is a surplus of funds from the original study, so those cities that paid are entitled to a prorated share of the surplus. We anticipate that the overwhelming majority of cities will allow the surplus to apply to the cost of PSC credit tariff hearings. **It would be helpful if the Town Council would consider a motion allowing the Town's share of the surplus to go toward the cost of PSC hearings.** The fixed estimated cost of legal and engineering to represent municipal interests before the PSC on this subject is $128,500. Shall the Town make up any difference needed (approximately $41,008) to enable the larger UG credit to be considered by the PSC?

FUNDING/FISCAL IMPACT

If the Town Council moved forward with conversion of overhead utility lines to underground, there will be significant costs incurred as previously estimated above and in past status reports.

ATTACHMENTS

- Curley & Pynn Power Point of survey results entitled "Citizen Perceptions of Utility Undergrounding."
- R.W. Beck Conversion of Aerial to Underground Utilities Projected Cash Flows (Inflation Factor)
- Draft Resolution, with ballot language, for February 6, 2007, referendum.

Discussion took place regarding the report of Deputy Town Manager Bradford:

Council Member Markin noted that the annual cost per million for property owners would be approximately $1,000 annually over the term of the bonds. She suggested that the total amount for the entire term of the bonds should be made clear to the residents.

President Pro Tem Kleid asked if there had been any thought to by-passing the particular homes where there was potential easement litigation?

Mr. Bradford replied that it had been discussed in the past; those properties could be carved out, however, if a project area was delineated and the project began, and it was then discovered that there was a handful of properties with right-of-way issues, they could not then be carved out. The way the credit tariff was currently written required conversion of one-hundred percent (100%) of the properties in any given project area.

Council Member Markin questioned whether there would be costs for additional staff or additional staff time delegated to dealing with issues relative to the underground project.

Mr. Bradford replied that project management costs were approximately three percent (3%) of the entire project would be attributed to the staff people that would be needed to oversee the work during the course of the project. That information was included in the R.W. Beck cost estimate. The Town Council had indicated that they wanted staff to be either a contract person, or a consulting engineering firm.

Motion made by Council Member Brooks to allow the Town's share of the surplus of funds from the original Municipal Underground Utilities Consortiuim (MUUC) study to apply toward the cost of the upcoming PSC hearings; also to make up the difference between what could be raised by the cities to go before the PSC, in an amount not-to-exceed $41,800. The motion was seconded by Council Member Wyett, and carried unanimously on roll call.

C. Make a Final Determination of Whether to Include the Cost of Secondary Service in the Costs to Be Borne by the Town or to Be Borne Directly by the Property Owner.

D. RESOLUTION NO. 86-06 A Resolution of the Town Council of the Town of Palm Beach, Florida, Providing for the Issuance of General Obligation Bonds for the Purpose of Financing All or a Portion of the Costs of Burying Overhead Utility Lines Located Within the Town of Palm Beach, Florida in the Principal Amount of Not Exceeding __________ Million Dollars ($_____________), Calling for a Bond Referendum of the Qualified Electors of the Town of Palm Beach to Be Held on February 6, 2007, as to Whether General Obligation Bonds for Such Underground Utility Project Should Be Issued; and Proving an Effective Date.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further business, the Special Town Council Meeting of December 11, 2006, was adjourned at 11:23 a.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk