

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON NOVEMBER 20, 2006

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order at 9:30 a.m. in the Town Council Chambers, by President Denis Coleman. 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 was not in attendance

Others in attendance for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Town Attorney John C. Randolph (via telephone)
Director of Public Works Paul Brazil
Town Engineer Jim Bowser
Director of Planning, Building & Zoning Veronica Close
Town Clerk Susan Eichhorn

II. PLEDGE OF ALLEGIANCE

President Coleman led the Pledge of Allegiance.

STC 11-20-06

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III. APPROVAL OF AGENDA

President Coleman noted that at the last regular Town Council meeting, an item regarding the condominiumization of hotels was added for discussion at the December 12, 2006, Town Council meeting agenda. He requested that the item also include discussion regarding time sharing.

The Agenda for today's meeting was approved through motion of Council Member Brooks, seconded by Council Member Markin. The motion carried 4/0, as Council Member Wyett was not in attendance.

IV. SUPPLEMENTAL FUNDING FOR US ARMY CORPS OF ENGINEERS' LAKE WORTH INLET DREDGING PROJECT.

[H. PAUL BRAZIL, DIRECTOR OF PUBLIC WORKS]

Director of Public Works Paul Brazil addressed the Town Council, reporting that the Army Corps of Engineers (Corps) and the Town of Palm Beach had been working together for the past year or more to place sand on the dry beach at the north end of the Island. The sand would come from the annual maintenance dredging that the Corps did for the Port of Palm Beach. The Corps had allocated \$2.4 million for the work this year. The Town was originally going to pay the incremental cost difference for the Corps' disposal by the near shore, versus their putting it on the dry beach. The Corps had now informed that they were willing to spend their entire \$2.4 million towards the project. Their low bid was just over \$2 million, therefore, hypothetically, the Corps may be able to do one-hundred percent of the project, with one small exception – the Town's responsibility to do some additional monitoring for shore birds and for knocking down the scarps after the sand was placed.

Staff was requesting the allocation of a contingency fund, for approximately \$300,000, in case the volume goes over the anticipated 100,000 cubic yards, or that the Corps is faced with some unanticipated delays, or change orders, to the contract. The Florida Department of Environmental Protection (FDEP) was willing to cost share 50% of its expense with the Town, so of that \$300,000, FDEP would reimburse the Town \$150,000. Staff was requesting that the Town Council authorize the expenditure of up to \$316,000, (\$300,000 for the sand placement; \$16,000 for the environmental work).

Town Manager Elwell added that staff was not asking the Town Council to appropriate money that was not already designated for coastal purposes. In fact, the expectation had been

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that staff may have needed to spend upwards of \$1 million for this project, as reflected in the FY2007 budget.

Tim Murphy, Army Corps of Engineers, addressed the Town Council, expressing appreciation to the elected officials for allowing the project to move forward. He commented that Peter Elwell, Paul Brazil, and Sandy Tate had been wonderful to work with, and he was very impressed. He noted that the ground work for all of this had been done five to ten years ago by former Public Works Director Al Dusey, and Town Engineer Jim Bowser.

Mayor McDonald expressed appreciation to Mr. Murphy for all of the help he and the Corps had given the Town.

Council Member Brooks moved approval of the staff recommendation for the expenditure of \$316,000 (funding to come from the FY2007 budget for the pay-as-you-go portion of the Coastal Management Program). The motion was seconded by Council Member Markin. On roll call the motion carried 4/0, as Council Member Wyett was not present.

Mr. Paul Rampell, representing John and Marion Castle, property owners, questioned whether the Town had a policy with respect to the allocation and sharing of some of the sand that was dredged and spread along the Town's beaches.

Town Manager Elwell replied that there was an adopted program that included the entire Island, with a variety of projects in between. There were particular environmental permitting challenges in some areas of the program, and staff would be happy to go over the program in detail with Mr. Rampell to determine how it would affect the property of Mr. and Mrs. Castle.

Dr. Sanford Kuvin commented regarding a related article in today's Palm Beach Daily News, which may have been perhaps misleading as to phrases in the article which said that this was the first time that the Corps had given the Town free sand, and he stated that was not the case. He explained that the Corps had been giving the Town free sand for over a decade. Secondly, the article indicated that the sand would be deposited at El Mirasol, however, he clarified that it would begin at the south jetty, and make it's way south.

Town Manager Elwell clarified that it was indeed the first time that sand had been put on the dry beach. There had been an improving relationship with the Corps for years, and there had been progress made on the Sand Transfer Plant. The method recently had been to place sand in the near shore area, which was more beneficial to the Town than the prior method, but not as beneficial as placing it on the dry beach.

V. CONSIDERATION OF REGULATION TO PROHIBIT SUBMITTAL OF NEW APPLICATIONS WHEN A PROPERTY HAS BEEN CITED FOR AND HAS NOT RESOLVED CODE VIOLATIONS.

[DENIS P. COLEMAN, TOWN COUNCIL PRESIDENT]

President Coleman suggested that, if a person was convicted of a code violation by the Code Enforcement Board, that until compliance was met, approval would have to be obtained from the Town Council before they could file any application.

Council Member Markin questioned if it would be restricted to the property in violation, or would it expand to the owner, who might own more than one property.

President Coleman replied that it would be restricted to the property, however, legal advice was needed to define specifics.

Town Manager Elwell commented that the purpose today would be for the Town Council to define what it would like the regulation to be – that kind of a discussion would frame the research that Town Attorney Randolph would do between now and the December meeting, so that the topic could be addressed more fully at that time.

President Coleman clarified that the purpose was to encourage people to be in compliance with the Code, because there is no other leverage at this time. He suggested that a broad interpretation of the regulation would be better.

Council Member Kleid commented that it was interesting that there was a maxim in the law which states, in essence, that if you go into a court of equity, you must go in with clean hands. Therefore, he suggested that if the applicant was going to ask for permission to do something, the applicant should not ask for permission if they were in violation of the Town's own laws. He stated that he was in favor the regulation, and that it should be limited to the property itself.

Council Member Brooks commented that he supported considering such a regulation.

Town Manager Elwell advised that Town Attorney Randolph would be asked to bring a report on this subject to the December Town council meeting.

VI. CONSIDERATION OF LIMITATION ON COMMISSION MEMBERS' TELEPHONE PARTICIPATION IN PUBLIC MEETINGS.

[RICHARD M. KLEID, TOWN COUNCIL PRESIDENT PRO TEM]

President Pro Tem Kleid commented that he had attended a Town meeting where there were several people participating by telephone, and it proved to be quite unsatisfactory, part of it due to technical difficulties. He also addressed the issue of whether people should be allowed to participate by phone. At present, as he understood it, the rule was that a commission member could participate by telephone, and that would be counted as participation and not as an unexcused absence. He expressed concern regarding someone being able to voice their opinion, and also vote, when there were visual presentations that would be unseen by that person. He suggested that there were three possible conclusions: continue to allow phone participation; limit the amount of phone participation; or eliminate phone participation completely.

Council Member Markin agreed that there needed to be some restrictions on phone participation to some degree, noting that the current process was not technically suitable.

Council Member Brooks commented that he was opposed to eliminating phone participation completely. He observed that there was also citizen participation that sometimes could not be heard, as well as body language that was missed during phone participation. He suggested that there be some limitations, in some manner or degree, to phone participation.

Mr. Bill Diamond, Wells Road, commented that a large number of meetings were held via video conferencing today in the corporate world. He presumed that when the facilities in the Town Council chambers were upgraded, that the technology would allow video conferencing.

Mr. Royall Victor, Via Tortuga, commented that the Civic Association had presented a series of recommendations in May of this year to the Town Council. The primary thrust of the report had been to look at upgrading and improving the Town Commissions and Boards, in order to provide an opportunity for them to be of greater service to the Town. Loosening the rules with respect to phone participation would be counter to those suggestions.

President Pro Tem Kleid noted that people who applied for Town boards and commissions know that many of the boards/commissions operated on a twelve month basis.

Town Manager Elwell commented that it was planned to do all of the technical upgrades that would fully modernize the Town Council Chambers. He expressed concern regarding the limitation of phone participation, and suggested that perhaps a limitation for an individual member could be considered, as opposed to a per meeting limitation. He also noted that there were alternate members, explicitly so that a full complement of members could be present at times when full standing members were not able to attend.

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Council Member Brooks suggested that legislation be considered, realizing that it would be temporary, until state of the art equipment could be attained. If a regular board member was out of town, the senior most alternate would have the ability to cast a vote. If that regular member wished to participate, that should be in a passive mode only, without the ability to vote.

President Pro Tem Kleid noted that another important consideration was whether participation by phone was considered an excused or unexcused absence.

Mrs. Wendy Victor, Landmarks Preservation Commission, commented that some Commission members made the effort to fly back for meetings during the summer months. She maintained that it would be hugely disruptive to the Commission to have regular attendance by phone. She noted that it took alternate members two to three years to come up to speed on preservation issues, and it would not work if two or three alternates voted in the absence of regular members.

Town Manager Elwell clarified that the current Code allows two unexcused absences and an unlimited number of excused absences for people who missed meetings for valid reasons.

President Pro Tem Kleid moved that telephone participation not be allowed; that a member would be able to participate by telephone and speak and listen, but that the member would not be allowed to vote, and it would be considered an unexcused absence.

Town Manager Elwell advised that reducing the number of unexcused absences would require an ordinance amendment, and that should be dealt with as a separate matter. He suggested that if the majority opinion was that phone participation would be an unexcused absence in any case, therefore, telephone participation would not be allowed.

Council Member Brooks commented that the governance of the Town was a twelve month operation.

President Pro Tem Kleid amended his motion to state that effective as of January 1, 2007, telephone participation is hereinafter prohibited at the board meetings, for a board member; the board member must be physically present.

Councilman Markin seconded the amended motion. On roll call, the motion carried 4/0, as Council Member Wyett was not present.

It was the consensus of the Town Council not to address, at this time, the number of unexcused absences as identified by ordinance.

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VII. CONSIDERATION OF ESTABLISHING PROCEDURES FOR CREATING BOARDS, COMMISSIONS, COMMITTEES, AND PANELS.
[ALLEN S. WYETT, TOWN COUNCIL MEMBER]

Town Manager Elwell noted that he would speak with Council Member Wyett to determine whether this item would be added to the December 12, 2006, agenda.

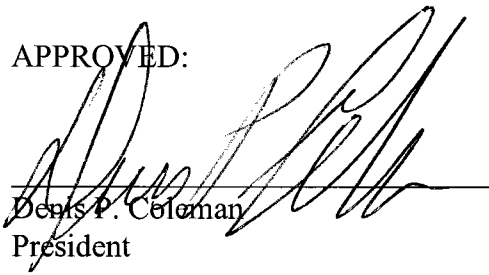
VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

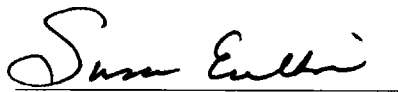
There being no further business, the Special Town Council meeting of November 20, 2006, was adjourned at 10:23 a.m.

APPROVED:



Denis P. Coleman
President

ATTESTED BY:



Susan Eichhorn
Town Clerk