TOWN OF PALM BEACH

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON THURSDAY, NOVEMBER 18, 2004

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 10:04 a.m. by Town Council President Allen S. Wyett. On roll call, the following Elected Officials were present: Mayor Lesly S. Smith; President Wyett; President Pro-Tem Samuel C. McLendon; Councilmen William J. Brooks; Norman P. Goldblum; and Jack McDonald.

Also attending for all or part of the meeting were: Town Manager Peter B. Elwell; Town Attorney John C. Randolph; Assistant Town Manager Thomas G. Bradford; Public Works Director H. Paul Brazil; Town Engineer James Bowser; Acting Fire-Rescue Chief Andrew Cox; Finance Director Jane Skittone; and Town Clerk Mary A. Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President Wyett led the pledge of allegiance.

III. APPROVAL OF AGENDA

Councilman Goldblum made a motion to approve the agenda as presented. President Pro-Tem McLendon seconded the motion, and the motion carried 5-0.

President Wyett announced Item V. would be heard before Item IV. as Attorney Randolph had not yet arrived at the meeting.

IV. PUBLIC HEARING:
POTENTIAL FUTURE NON AD VALOREM ASSESSMENT FOR EMERGENCY SHORELINE PROTECTION PROJECTS–
RESOLUTION NO 65-04. [Peter B. Elwell, Town Manager]

Heard after Item 5.

Mr. Elwell noted the Town received Proof of Publication for the public hearing which was required by State law to be advertised four times, four weeks in succession, prior to the public hearing.

He explained that the wording in Resolution No. 65-04 is not conditional but makes a definitive statement that the Town is intending to move forward with an assessment process to defray the expenses of certain critically eroded coastal projects resulting from the recent hurricanes. He noted the wording of the resolution complies with State law, positioning the Town to be able to use the assessment tool in the future if necessary to address similar emergency situations.

Mr. Elwell continued the intent of the Town Council's previous action was not to fund the first round of the emergency work through an assessment process unless the Town Council directs that action at this meeting or in the future. He said it would be prudent to position the Town to be able to use the assessment process if needed in the next few months under emergency circumstances.

He reported that a question was raised regarding the appropriateness of the finding of the public benefit for this project and the spending of Town beach management dollars for this first wave of emergency restoration work. He said the Town Council received information from the Town Attorney and Bond Counsel for the Town confirming that the Council is on solid, legal ground with the decision that was made after discussion of the right kinds of things, weighing the pros and cons appropriately, resulting in a finding of public benefit that was appropriate to make the decision to move forward in this manner.

Mr. Elwell said in the absence of further direction from the Town Council to change the course of action, the staff will continue toward completion of the emergency work paying for that work with beach management dollars and would revisit the assessment question in the future only if conditions made it necessary to do so.

Councilman Goldblum made a motion to accept Resolution No. 65-04. President Pro-Tem McLendon seconded the motion.

Mr. Elwell read Resolution No. 65-04 by title:

Resolution No. 65-04

A RESOLUTION OF THE TOWN COUNCIL, TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA ELECTING TO USE THE UNIFORM METHOD OF COLLECTING NON-AD VALOREM ASSESSMENTS LEVIED WITHIN THE INCORPORATED AREA OF THE TOWN FOR EMERGENCY DUNE STABILIZATION AND OTHER EROSION CONTROL ALTERNATIVES FOR PROPERTIES AFFECTED BY EROSION FROM THE RECENT HURRICANES.

Attorney Randolph explained that this resolution allows the Town in the future to place the assessments on the assessment rolls to receive the assessments on tax bills. He continued that an assessment process would have to be followed in the future before that would happen, and passing this resolution would place the Town in a position in the future, after the assessment process, to give the property owners the benefit of receiving the assessments on their tax bills in the same way solid waste assessments are handled currently.

Jerry Frank, representing the Citizens' Association, said he understood the procedure could be used or not used as conditions would dictate. He continued that there would be a meeting of the beach front property owners called by the Citizens' Association and the Town to explain the procedure for the first process on December 23rd.

Mr. Frank questioned if a condominium owner would have the right in the future, should the sand wash away, to not be taxed for future renourishments?

Attorney Randolph replied a public hearing would be held to address the assessments with a determination made regarding the benefit to the upland property owners, and if the determination were made the benefits would be for the beach system as a whole, a condominium could not just opt out of the situation, and it would be harmful to the Town if particular property owners could opt out. He added evidence in opposition could be presented at the public hearing.

Mr. Frank ascertained with Attorney Randolph that work could be done on private property although the property owner did not agree to the work.

Ed Lustbader, 2580 South Ocean Boulevard, clarified the meeting date with the ocean front property owners was scheduled for November 23rd, not December 23rd. He complimented the Council for their action and criticized the Corps of Engineers for their lack of dealing with the beach issues earlier. He reported the beach by his building is dangerous with the beach falling off onto the rocks.

Harold Nectow, Chairman of the Citizens' Association, questioned the length of time the Army Corps of Engineers will require to correct Reach 8?

Mr. Elwell cited the improved communications between the Town and Corps of Engineers including the State of Florida that may provide optimism that the project will move forward more quickly than Reach 7.

Mr. Nectow replied that if Reach 8 is not done within the next three or four years, a major problem will occur. He recommended that the Town should meet members from the Citizens' Association to form a different strategy rather than come to a conclusion at this meeting committing to something.

Mr. Elwell responded the action at this meeting creates an option down the road with no down side that would allow more flexibility at the time an emergency needed to be addressed.

President Wyett added the Council is concerned with all the projects in the Town.

Eileen Curran, 3170 S. Ocean Boulevard, said as a member of the former Shore Protection Board, coastal engineers speaking to the group indicated that reaches 7 and 8 were the most critically eroded beaches in the Town of Palm Beach, and any consideration of those two reaches would be appreciated.

Councilman McDonald requested Councilman Goldblum include the ratification of the previous decision of the Council and all of the public comment supporting the decision in his motion.

Attorney Randolph suggested that issue be a separate motion from the adoption of the resolution.

On roll call, Councilman Goldblum's motion to approve Resolution 65-04 carried 5-0.

Councilman McDonald made a motion to ratify the decision that was made at November 1st Town Council meeting and incorporate all the public comments and supporting comments for the Council's decision. The motion was seconded by Councilman Brooks.

Attorney Randolph said the Town Council received his comments and the Bond Counsel's comments regarding this issue including the fact that the Town Council recognized a paramount public purpose stated at the last meeting. He continued that decision would stand a challenge, but in light of additional information and communications, the Council could clarify and ratify previous decisions by clarifying 'the paramount public interest' based upon 1) the previous record made by the Town Council; 2) the emergency nature of the project; and 3) the statements supporting the paramount public purpose which were included within the letter from

Edwards & Angell dated November 15th and the letter of November 16th from Jones, Foster which included a statement from Dr. Dean who indicated there was a paramount public purpose in protecting the dune system, because it is part of the entire littoral system of the Town and because of the protection it would offer for upland properties and because of the protection of the tax base.

Councilman McDonald said he covered all of that in his motion.

Responding to Councilman Goldblum, Attorney Randolph said the phrase 'this emergency is indeed reflected in that emergency – the State of Florida Department of Environmental Protection first amended emergency final order'.

Rick Miller, Bond Counsel, Edwards and Angell, said the Town has the foundation for a paramount public purpose determination; that restoration of the dune system will protect the health, safety, and welfare of the residents. He said that was the key find, and either general monies or a special assessment could be used to pay for the sand, and a judge would have a difficult time questioning the findings of the Council.

On roll call, the motion carried 5-0.

Town Manager Elwell mentioned a letter received from Dr. Sten Lilja with a response prepared by Attorney Randolph regarding the ocean front protective seawall ordinances of the Town. He reported that Dr. Lilja was concerned that the Town had not properly interpreted those sections of the Code, but Attorney Randolph's letter concluded the Town acted appropriately under those sections of the Code particularly addressing the question of the Town's obligation to maintain and protect the seawall that is seaward of Ocean Boulevard across the street from the Palm Beach Country Club. He added that was a question addressed at the November 1st Town Council meeting.

V. REQUEST BY URS ON BEHALF OF FDOT FOR COMPLETE CLOSURE OF ROYAL PARK BRIDGE FROM 6 P.M. MONDAY, NOVEMBER 22, 2004, THROUGH 6 A.M. WEDNESDAY, NOVEMBER 24, 2004.

[Peter B. Elwell, Town Manager]

Heard before Item IV.

Clara Scott, Florida Department of Transportation, presented the plans for switching to the four lane configuration on the Royal Park Bridge proposing to close the bridge Monday evening at 6:00 p.m., close the bridge all day Tuesday, and reopen the four lanes at 6:00 a.m. Wednesday morning. She explained this would be concurrent with Royal Poinciana Way having four lanes of traffic open during that time. She continued that the following items would be completed during the shut down time on the bridge: switch the maintenance of traffic; switch control gates; redo electrical connections; and completely check the bridge, the final, functional checkout as required for safety purposes before traffic is allowed on the bridge.

Dan Barbato, Royal Poinciana Way contractor, said final striping will be finished after Saturday, November 20th, with permanent configuration to follow.

Councilman Goldblum suggested three east bound lanes on Royal Poinciana be opened although one of the lanes will be striped for parking.

Mr. Barbato offered to work with the Palm Beach Police Department to accomplish that.

Councilman Brooks questioned alternatives to closing the bridge for the requested length of time.

Ms. Scott responded all options were considered; however, the moving of the gates causes the loss of the ability to control traffic delineation resulting in a safety risk plus the checking required additional time.

Responding to questions from Mayor Smith regarding the completion of the Royal Poinciana project, Mr. Barbato replied that all work would be completed by Wednesday, November 24th.

Mayor Smith identified the area in front of the Post Office on North County Road as a bottle neck area, but regretted removing any parking from the merchants on Royal Poinciana Way on the Tuesday before Thanksgiving and suggested working with the Police Department to keep the traffic moving.

Mr. Elwell said it would be helpful if the Town Council did not direct specific actions regarding the parking lanes because of safety issues and competing interests of the merchants who have suffered during the projects, but allow the project managers in the field to work with the Police Department to determine appropriate actions based on the conditions on Tuesday morning. He continued that he would recommend that as long as Royal Poinciana Way's travel lanes are completely open by Monday, November 22nd, the closure be permitted from 6:00 p.m. on Monday until 6:00 a.m. on Wednesday to allow the bridge to open with four lanes of travel.

Angela Kahoe, City Transportation Engineer for the City of West Palm Beach, said the City of West Palm Beach wants to work with the Town to improve the traffic situation and suggested if the Royal Poinciana Way lanes are not open during this closure, that the bridge closure be moved to a Friday, Saturday, and Sunday in December. She said she would coordinate the handing out of leaflets prior to the bridge closing if the November dates are adhered to. Ms. Kahoe identified the middle bridge openings as the main culprit in the traffic problems experienced recently in West Palm Beach with the Coast Guard not cooperating with any changes in the schedule.

Mr. Elwell said he agreed with Ms. Kahoe regarding the completion of the Royal Poinciana Way lanes being completed before the bridge was allowed to close for the requested days and postponing the bridge closure to December 3rd, 4th, and 5th if the Royal Poinciana Way project was not complete.

Ms. Scott replied that she believed the Royal Poinciana Way project will be open, and it was not necessary to commit to alternate dates at this time. She offered to work with the contractor and Town staff to work out the details as the closing date approached.

Jim Bowser, Town Engineer, reported that he attended a meeting on November 17th, regarding the Royal Poinciana Way project. He said he told the contractor no lane closures would be allowed on Royal Poinciana Way if the middle bridge were closed.

Mr. Barbato reiterated all the lanes on Royal Poinciana Way would be open by 6:00 p.m. Monday evening; open for the duration on Tuesday and if lane closures are needed, they will be closed after the middle bridge opens on Wednesday morning.

Yvelyne deMarcellus Marix, 1570 North Ocean Boulevard, requested consideration be given to doing the work with the bridge closed on Saturday and Sunday, not weekdays. She said if the bridge is closed on Tuesday, the Building Department could contact contractors and tell them they cannot work on Tuesday.

Councilman Brooks made a motion to approve the request for the bridge closing from 6:00 p.m. on Monday, November 22, to 6:00 a.m. on Wednesday, November 24, with the condition no lane closures for any reason on Royal Poinciana Way during that time be allowed until the middle bridge reopens. The motion was seconded by President Pro-Tem McLendon. On roll call, the motion carried 5-0.

VI. FURTHER CONSIDERATION OF THE PALM BEACH PUBLIC SCHOOL 1921 BUILDING. [Robert L. Moore, Director of Planning, Zoning, and Building]

Town Manager Elwell advised the Mayor and Town Council that no action was taken at the School Board meeting held earlier during the week of November 15th. He said the only reason for having this on the agenda was in case some precipitous action was taken at that meeting, and a full report will be available at the December 14th Town Council meeting.

Mr. Elwell reported Planning, Zoning and Building Director Robert Moore was present at the meeting although the issue was not on the School Board agenda; however, the issue was not addressed. He continued that independent engineering work was authorized by the Town Council; that engineer has been hired; and additional work is being done by all parties concerned for final consideration at the December 14, 2004, meeting.

The Town Council took no action on this item.

VII. REQUEST FOR FIREWORKS DISPLAY PERMIT BY PALM BEACH SYMPHONY. [Andrew Cox, Acting Fire-Rescue Chief]

Ray Robinson, Music Director and General Manager of the Palm Beach Symphony, said the symphony was giving a performance on March 15th, 2005, and cited his 9/30/04 letter to Timothy Pompos and the Palm Beach Code, Section 46 - 79, requiring institutions to come before the Town Council for permission to hold such a display.

He explained the March 15th performance would finish the season with a work first performed in London in 1747 by George Frederic Handel celebrating the treaty for the end of the Austrian succession with fireworks as it was originally performed.

Councilman McDonald made a motion to approve the fireworks noting the group met the conditions of a hardship. President Brooks seconded the motion.

George Carter, Events Coordinator, Palm Beach Symphony, explained the fireworks would be similar to the SunFest fireworks.

Mr. Elwell said the staff recommended approval of this request with three conditions:

All of the requirements of NFPA 1123, *Code for Fireworks Displays,* and the Florida Fire Prevention Code regarding fireworks displays are met;

Contact the Town's Fire Prevention Division to schedule Fire-Rescue personnel to monitor the display to ensure public safety and code compliance. The cost of such special assignment to be borne by the event sponsor;

The event sponsor shall provide the Town of Palm Beach with a Certificate of Insurance evidencing their general liability coverage (including Property Damage Liability and Bodily Injury). The limit of Liability shall not be less than $5,000,000 per occurrence. The Town of Palm Beach shall be named as an additional insured as respects to General Liability policy with a copy forwarded to the Town's Risk Manager at 360 South County Road, Palm Beach, Florida 33480. There shall be no less than 30 days notice of cancellation.

The motion was amended to include the three staff recommendations.

Sue Gibson, 226 Pendleton Avenue, requested communications be sent to residents in the neighborhood regarding the times of the fireworks to allay the frightening of pets in the area.

Mr. Elwell offered to provide a list of addresses for area residents to the Palm Beach Symphony.

On roll call, the motion carried 5-0.

VIII. UPDATE REGARDING COMMUNICATIONS WITH FLORIDA POWER AND LIGHT. [Thomas G. Bradford, Assistant Town Manager]

Assistant Town Manager Bradford reported on the November 10, 2004, meeting with Florida Power & Light representatives.

Mr. Bradford said FPL stated the Town was the first entity in the history of the company to attempt to pursue underground facilities using its own contractors as opposed to FPL contractors; although FPL will work with the Town. He continued that the Town has the right to construct but the design of a new system and removal of the old overhead system is in question. He said the subjects of depreciation, rear yard easements, and burying of utility lines were discussed. Mr. Bradford said Town Engineer Jim Bowser is moving ahead with the necessary pre-planning coordination resulting in a binding cost estimate or a binding contract utilizing the Town work force. He recommended contacting experts regarding depreciation relative to regulated utilities in Florida, and these could be attorneys, accountants, and CPAs.

Councilman Brooks questioned FPL's reluctance in providing a depreciation schedule.

After hearing Councilman Goldblum's comments regarding other municipalities who are attempting to have FPL bury lines, Mr. Bradford said he would contact Sewell's Point and Boca Raton to find out where they are on the issue.

Mayor Smith said that Boca Raton has approximately half of their lines underground.

Mr. Bradford verified, responding to Mayor Smith's question, that the lines and system would belong to FPL after the Town did all of the work.

Councilman McDonald said he recommended hiring legal assistance as soon as possible to go forward with a plan and protect the Town's interests.

Mr. Elwell requested staff research the issue further regarding the need for legal assistance and the kind of legal assistance including the costs involved before presenting that to the Town Council.

No action was taken by the Town Council. This item will be on the January 11, 2004, Town Council Agenda.

IX. PROPOSED SETTLEMENT AGREEMENT WITH ADELPHIA COMMUNICATIONS REGARDING OUTSTANDING RATE MATTERS– RESOLUTION NO. 66-04. [Thomas G. Bradford, Assistant Town Manager]

Mr. Bradford summarized that Adelphia Cable, in late November, issued three different types of FCC forms indicating rate increases covered by the areas in those forms. He continued in Spring 2004, the Council authorized staff to work with consultants to analyze one set of those forms, form 1235, increasing basic cable rates by $4.37/month. Mr. Bradford said in the course of the following months, the Town offered a settlement to Adelphia, and Adelphia was interested.

He continued that Adelphia agreed to drop their base rate from the current $11.50/month to $10.00/month for 2005; to forego 100% of the $4.37/month upgrade that had been filed; and to drop the appeal of an order that the Town Council approved in May that went to the FCC. He added that the Town agreed not to challenge their future filings for the forms 1240 and 1235, and, if approved, the savings for Town residents is estimated to be not less than $4.5 million over 12 years and depending upon future decisions by Adelphia, the savings could be up to $4.9 million over 12 years.

Mr. Bradford said staff recommends approval of Ordinance No. 66-04.

Councilman Brooks, referring to Section IV. Authorizing Town Manager to Execute Agreement on the fourth page of Mr. Bradford's November 15th memorandum, recommended that part be made a part of the existing Adelphia contract which was signed three or four years ago, adding that this addendum be assignable with the contract when the contract is moved otherwise all the benefits would be gone when a new purchaser took over the cable system.

Mr. Bradford responded the contract cannot be legally or unilaterally amended including the franchise agreement approved by the Town Council in 2000; however, this agreement is applicable to their successors and assigns.

Councilman Brooks made a motion to approve staff's recommendation including Resolution No. 66-04. Councilman McDonald seconded the motion.

Mr. Bradford read Resolution No. 66-04 by title:

> A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A RATE SETTLEMENT AGREEMENT BETWEEN THE TOWN AND ADELPHIA CABLEVISION OF WEST PALM BEACH, IV, LLC AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

On roll call the motion carried 5-0.

X. IDENTIFICATION OF LEGISLATIVE PRIORITIES FOR 2005.
[Peter B. Elwell, Town Manager]

Mr. Elwell identified the following list of priorities for 2005 for Smith and Ballard:

1. Underground wiring

2. Hurricane related issues – rules and/or funding for addressing some of the needs for the local governments - double deductibles and other insurance issues on behalf of the residents

3. Potential changes in marina regulations to allow marinas to request boats leave the marinas prior to the storms if necessary

4. Unfunded mandates that might be imposed upon the Town by the State Legislature

Motion made by Councilman Goldblum to accept the recommendations of the Town Manager. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

XI. WAIVER OF INSURANCE COVERAGE IN THE MATTER OF DONNER VS. TOWN OF PALM BEACH– <u>RESOLUTION NO. 67-04</u>.
[Peter B. Elwell, Town Manager]

Mr. Elwell read Resolution No. 67-04 by title:

RESOLUTION NO. 67-04

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A COVERAGE AGREEMENT RELEASE IN THE MATTER OF WILLIAM I. DONNER VS. TOWN OF PALM BEACH AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

Councilman McDonald made a motion to approve Resolution No. 67-04. Councilman Brooks seconded the motion. The motion carried 5-0 on roll call.

XII. PROPOSED PURCHASE OF AERIAL PLATFORM LIFT TRUCK.

[H. Paul Brazil, Director of Public Works]

Public Works Director Paul Brazil explained the vehicle replacement program for FY05 included $60,000 for the replacement of an aerial lift truck, and the least expensive lift truck that meets the department's needs is $79,157. He added that the difference of $17,157 would be offset by a $18,500 reduced purchase price for a tree truck in the replacement program.

Councilman McDonald made a motion to approve $79,157 for the aerial lift truck. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

XIII. ANY OTHER MATTERS

There were no other matters.

XIV. ADJOURNMENT

The meeting was adjourned at 11:55 a.m.

Allen S. Wyett

Allen S. Wyett, Town Council President

Mary A. Pollitt

Mary A. Pollitt, Town Clerk