

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING UNDERGROUND WIRING HELD ON NOVEMBER 15, 2005

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting of November 15, 2005, was called to order by Town Council President William J. Brooks at 1:30 p.m., in the Town Council Chambers. On roll call, the following elected officials were found to be in attendance:

Mayor Jack McDonald
President William J. Brooks
President Pro Tem Norman P. Goldblum
Councilman Denis P. Coleman
Councilman Richard M. Kleid
Councilman Allen S. Wyett

Others in attendance for all or part of the meeting were:

Town Manager Peter B. Elwell
Deputy Town Manager Thomas C. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
Paul Brazil - Public Works Director
Alan Brown - Acting Recreation Director
Eric Brown - Public Works Assistant Director
James Bowser, Town Engineer
Veronica Close - Director of Planning, Zoning & Building
Susan Eichhorn - Town Clerk

II. PLEDGE OF ALLEGIANCE

President Brooks led the Pledge of Allegiance.

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III. APPROVAL OF AGENDA

Councilman Wyett made a motion to approve the agenda as presented. The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.

IV. CONSIDERATION OF ALLOWING MILLING AND RESURFACING OF NORTH COUNTY ROAD AFTER DECEMBER 1. [H. Paul Brazil, Director of Public Works]

Town Manager Peter Elwell advised that Hurricane Wilma interfered with the planned milling and resurfacing work that was scheduled to have been done prior to Thanksgiving on North County Road from Sunset to Via Linda. He explained that the contractor was able to schedule the work after the first of the year, which was right in the middle of season. He advised that staff was asking Town Council for direction in making a policy decision; weighing the inconvenience of having this type of work done in season or waiting until May 1, 2006 to begin work.

Councilman Wyett stated that it was desirable to keep Town roads in first-class condition, and that the traffic patterns in that area were very vital. He said that if the work could not be completed before January or February, it was his belief, the residents would prefer to wait until April or May.

Councilman Wyett requested that staff look at the far north end for milling and resurfacing next year, as residents have complained that the roads there were badly in need of repair.

Councilman Kleid agreed that this work should be done. He said that it was unfortunate the work could not be done due to the hurricane, and that to minimize the impact on the residents and on Town roads, the work should be delayed to the spring/summer season.

Councilman Wyett stated that he hoped temporary repairs would be done, if there were any serious problems on those roads.

Town Manager Elwell advised that anything dangerous would be addressed on an emergency basis.

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President Pro Tem Goldblum made a motion to conduct the milling and resurfacing of North County Road after May 1, 2006. The motion was seconded by Councilman Kleid. On roll call, the motion carried unanimously.

V. CONTINUED CONSIDERATION OF A POTENTIAL TOWNWIDE PROGRAM TO PLACE OVERHEAD UTILITY LINES UNDERGROUND

President Brooks advised that Larry Casey, who represents Congressman Shaw, would be given a time certain of 2:00 p.m.; and Senator Ron Klein, who was expected to be present, would be given a time certain of 2:15 p.m. He acknowledged the presence of Mr. Jamie Titcomb and Mr. Ed Chase of the Florida League of Cities; Attorney Robert Wright, representing the Town on this issue. He acknowledged Tom Bradford, Deputy Town Manager, for the yeoman work he had done in presenting the back-up materials.

Deputy Town Manager Thomas Bradford discussed the background for the potential undergrounding of utilities in the Town. He explained that the Town had been diligently researching the viability of underground utilities since the summer of 2003. He stated that the Town, in August of this year, according to the Management Time Line, came up with cost estimates for the Royal Poinciana Way Demonstration Project. He advised that even though the Town could do it for slightly less than what FPL would charge, the savings was not significant enough to warrant the Town undertaking the liability and oversight of the project. He explained that the Town Council decided there was more research that needed to be done relative to the pricing; and particularly, the numbers that had been extrapolated from the numbers generated by the demonstration project.

Mr. Bradford noted that it had been requested that a meeting be held for the sole purpose of discussing underground utilities. Since this meeting was called, Hurricane Wilma hit the southern part of the state. He noted that legislation had been proposed, from both the federal and state level, to help facilitate undergrounding. The subject of utility reliability was on the front burner for the entire state and not just the Town of Palm Beach.

Mr. Bradford explained that the material to be discussed had been broken down into two major components. The first component to be reviewed by Mr. Wright were those issues that could relate to the Florida Public Service Commission. He stated that he would review all of the other issues.

1) Underground Utilities Issues Possibly Involving the Florida Public Service

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Commission [Robert S. Wright, Esq.]

Attorney Robert Wright advised that he had been doing public utility work in the State of Florida for twenty-five years. He stated that he has had the privilege of working on undergrounding matters for a long time, beginning in about 1989 or 90 when he worked for Golden Beach. He explained that since he became engaged by the Town, he had been working closely with Mr. Bradford.

Attorney Wright discussed the following agenda items that were listed in Mr. Bradford's memorandum to the Mayor and Town Council dated November 10, 2005, relating to the topics that may have Public Service Commission (PSC) implications.

- ▶ The concept of municipalization of the electrical utilities system in Palm Beach.
- ▶ The Town's ability to purchase the FPL system in light of the Franchise Agreement language.
- ▶ The issue of having to pay twice if the Town converts to underground now and purchases the FPL system at a later date.

Mr. Larry Casey, on behalf Congressman Clay Shaw, reviewed the Congressman's proposal to offer an opening message to Congress related to the problem with utility lines; Congressman Shaw's first initiative was to present an Underground Utility Bill that would offer depreciation from fifteen years down to one year for utility companies to bury utility lines. He stated that this bill might not solve all of the present problems, but it was coming from a senior member of Congress who served on the Ways and Means Committee; and it was a bill of great importance that should be considered. He noted that they were looking for solutions to the problem; and they were part of the team working with the Town and with other municipalities to find those solutions.

Mr. Casey explained that Congressman Shaw was filing, this week, a National Catastrophic Insurance Fund Bill. He mentioned that the Tax Relief Bill that came out after Hurricanes Katrina and Wilma offered a lot of new mechanisms for municipalities

In response to President Brooks, Mr. Casey advised that the Underground Utility Bill would be coming through the Ways and Means Committee, but the National Catastrophic Insurance Fund Bill would be coming through a couple of different committees, with a component of it coming out of Ways and Means. He stated that Congressman Shaw had spoken to a few members of Congress, on a bipartisan basis, regarding sponsorship for the Underground Utility Bill, and there were some

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Democrats and Republicans that had signed on. He noted that there was a lot of support on the National Catastrophic Insurance Fund Bill.

President Brooks requested that Mr. Casey keep Mr. Elwell or Mr. Bradford informed as cosponsors were signed on.

Mr. Casey advised that he would, and that it was desirable to have the Town of Palm Beach and other municipalities from the League of Cities involved in the decision making process. He stated that FPL does have to be part of this discussion and that they were integral to this process, and that FPL had been a good partner.

Councilman Kleid stated that he believed the Town had a powerful ally in Congressman Shaw. He suggested that staff should be instructed to come up with ideas for modifications to this bill, and the Council should have input into it. He said it was important if a bill was drafted, that it was a bill that would be helpful to the Town. He noted that he was not sure that it would be helpful in its present form; and perhaps, the Town should look to send a message, in order to get a bill that was beneficial to similar communities as well.

Councilman Wyett asked that if the Town reaches an agreement with FPL, and builds a municipal utility, which it then sells to FPL, would the Town be included in any depreciation schedules and not precluded, because the process was started before the bill became effective?

Mr. Casey stated that if an agreement was reached before this bill was put into effect, they would be willing to showcase the Town's efforts, which could become a model for other communities around the country.

President Brooks reviewed Mr. Wright's letter to Mr. Bradford dated August 30, 2005, noting the portion pertaining to legal strategies for the Town. He suggested that, in addition to the legal strategy, the Town energize a comprehensive political strategy as well. He advised that was the reason he invited Mr. Titcomb of the Florida League of Cities to be present today. He explained why it would be a comprehensive proactive political strategy.

- ▶ The experts say that there will be a fifteen to twenty year cycle for hurricanes.
- ▶ The decennial census release of 2010 will show the State of Florida to be the third most popular state in the Union surpassing the State of New York.
- ▶ The consumer ends up paying for the expenses of hurricanes such as Frances, Jeanne and Wilma. The costs that consumers pay should be part of a credit.
- ▶ FPL requested, from the PSC, a 19% rate increase because of fuel.

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- ▶ FPL has been a good corporate citizen with their people making herculean efforts to get the electric back up.
- ▶ Delivery system was outdated.

President Brooks explained that FPL and other utility companies have many very smart lobbyists and that anything going to the PSC would be lobbied to death. He advised that the PSC, by law, could only set rates and regulations, but they could make suggestions to do otherwise.

President Brooks stated that he believed the Town was in an extremely advantageous position and that, in a few months, a Democratic primary and a Republican primary would take place. He said that what must be done was to contact the two representatives in the Democratic party, Representative Smith and Congressman Jim Davis; and in the Republican party, Chief Financial Officer Gallagher and Attorney General Christ to develop a plan that involves FPL, but does not dictate to FPL. He stated that they should be given 100 to 150 days to do so. He explained that Miami-Dade, Broward, and Palm Beach Counties were all without power, and would also be looking for a plan. He noted that FPL had an obligation to their shareholders, and added that FPL has been a good corporate citizen.

President Brooks discussed what some of the components for the plan should be. He advised that what he would like to do was to limit the financial impact on taxpayers, on citizens, and on consumers.

President Brooks stated that Mr. Wright had pointed out several issues. as did Mr. Coleman weeks ago.

- ▶ The Town pays for a municipal system;
- ▶ The Town gives the system to FPL;
- ▶ The Town buys the system back paying for it again.

President Brooks advised that it was legal to do that, but asked if it was just, right, proper, or fair? He stated that these were questions that must be paid attention to in order to come up with a plan that was favorable for everyone, and that the time for studying this issue was over. He stated that Mr. Wyett's point that there needed to be a credit for the monies that had been expended, was exceptionally valid. He asked Mr. Titcomb and the Florida League of Cities to join in this. He explained that it must be a collective, collaborative effort, but not one that points fingers. He said to get this solved FPL needs to be involved and encouraged to help. They should not be pushed off to the side.

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Councilman Coleman asked Mr. Wright how the rates of municipalities that have taken over their utility systems compare to FPL? He added that this question might be unfair.

Mr. Wright responded that he did not have the information available, and would get back to Councilman Coleman with an answer this week.

Councilman Coleman asked, if Mr. Wright knew of any reason, except for anticipating a political legislative disaster, why FPL should be cooperative in a venture where the Town wants to eventually take over the system? He wanted to know if there was anything the Town could do that would urge FPL to cooperate rather than stonewall the Town?

Mr. Wright replied that FPL was an electric company, in the business of selling electric and that was what they wanted to continue to do.

In response to Councilman Coleman, Mr. Wright stated that the title passes, if the Town puts in the lines, under the present system, when each section of the new underground system was completed and ready to be placed into service.

In response to Councilman Coleman regarding the Town putting in a parallel system, which the Town would start on March 31, 2011 when the agreement between the Town and FPL ends, Mr. Wright responded that he thought that was a great idea.

Councilman Coleman commented that the Town would need to get legislative relief, regulatory relief, or develop a parallel system in order to put lines underground, and asked Mr. Wright what other choices were available.

Mr. Wright stated that he did not see any other realistic choices. He thought that the Town should ask FPL to negotiate for appropriate credit or for something less than full fee simple ownership. He agreed that he did not think FPL had any incentive to agree to that.

Councilman Kleid commented that it appeared from Mr. Wright's presentation, that the Town had options, but they were difficult options. He advised that he did not see the Florida Legislature doing anything immediately, and noted there were lots of problems and it was a hard road for the Town to travel to get FPL to cooperate.

In response to Councilman Kleid, Mr. Wright agreed that it was a hard road. He explained that he also agreed with what President Brooks said, quite strongly, but for somewhat different reasons. The position of the Town of Palm Beach and other municipalities that were interested in

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getting their facilities undergrounded, in a political sense, were unlikely to find a better time to go to the legislature, and the PSC to try to fix these things.

Councilman Kleid stated that he thought FPL had a unique opportunity to be a leader rather than an entity that was slow to respond. He said this situation reminded him of private corporations who have not policed themselves and had then been the recipients of government legislation. He stated that most entities like to police themselves in order to do their best, initially, before being forced to do so. He said what he was really saying to FPL was that it would be a great opportunity for them to come and show their spirit of cooperation in getting this job done, because it seemed clear to most residents that undergrounding was a way, not only to protect the citizens from disruption of electrical power, but a savings to FPL, in the long run, because of the great expense inflicted as the result of hurricane damage..

Councilman Wyett stated that he had learned after the hurricane, from the out of town people working on the Town's system, that the system was antiquated, and was 1960's technology. He noted that Palm Beach has a very valuable franchise, and he did not know of any other community of the Town's size that generated that amount of revenue for an electric company. He called upon FPL to realize that they have a responsibility to the community here, and in Florida, at large. He said that nine-ten years ago when he sat on the Public Works Committee, FPL had indicated that underground wiring was not as reliable as overhead, however technology had changed since that time, and that FPL and the Town should work as if they were partners. He advised that the Town knows they have a big bill to pick up, but the Town does not want to pay twice nor does the Town want to be paying excessively. He suggested that perhaps the Town should contract, pay for the system through municipal financing, sell it, and let FPL pay the Town back through the depreciation schedules. He advised that a plan of action was needed, the residents want action; and the Council cannot continue to just hold hearings, they must have a plan, and they must move forward in a reasonable period of time.

In response to President Pro Tem Goldblum, Mr. Wright stated that there was not a municipality that had made a deal with their provider or received any settlement, payment or rebate for undergrounding that he was aware of. He noted that it was possible for a municipality to enter into an agreement based on terms that were mutually negotiated between the municipality and the utility company, and that was what he was working toward on behalf of Palm Beach and Jupiter Island.

Mr. Wright stated that the only incentive he could think of for FPL to do this was if they could enter into a mutually agreeable and satisfactory arrangement with the Town of Palm Beach to underground at a reasonable cost with a fair longer term provision, for the Town to buy it out, if they

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ever decided to. He noted that there was a good chance the Town would decide not to.

In response to President Pro Tem Goldblum, Mr. Wright advised that the utility companies own the lines of new developments that underground their lines. He stated that the contractor pays the difference of cost between new underground and new overhead, and contractors may choose to install the lines themselves.

Councilman Coleman stated that he would like to review for Council, and bring them up to date, on conversations Mr. Elwell and he had with Mr. Macon of FPL. He explained that he had asked Mr. Macon if there was any way that the Town of Palm Beach and FPL management would be interested in starting to work together, making them pioneers for the State of Florida? He reported that Mr. Macon listened and came back several days later stating that his management had no interest in having discussions about anything except about FPL ownership of the utility. The reason he mentioned this was to cast a certain amount of reality on the hopes for construction engagement.

Councilman Coleman suggested that the Council might consider drafting one letter to all four gubernatorial candidates appraising them of the Town's concerns and asking them that they look at these issues. It would be a non-partisan letter, since it would be going to all four candidates, at the same time. He said that he thought it could be done with the leadership, the Senate and the House, in Tallahassee as well, because he thought the Town was more likely to get action on the state level before seeing it on the federal level. He mentioned that if they started to see progress, FPL might be more receptive to discussion, but the Town must find ways to bring pressure to bear on FPL.

Councilman Wyett stated that the Town has to consider putting in a municipal system so that they can tell FPL that they should either be cooperative or by 2011 the Town would have a municipal system. He noted that he believed that the Town's neighbors would follow suit because a municipal system makes sense; FPL had to stop stonewalling, or the Town needs to find a way to force FPL to negotiate, or the Town needs to get to a new system.

Councilman Kleid advised that he also had a very nice conversation with Mr. Macon but did not make any progress other than the fact that they should be talking to each other. He noted that he believed now they were in a different place, after Hurricane Wilma, and that FPL might be more responsive now and the Town should continue to pursue a dialogue with them.

Mayor McDonald stated that he agreed that the pressure that the Town can exert at the state level was important. He advised that he and Peter had just returned from a productive trip to Tallahassee where they met with several Senators and House members, and recommended that be done twice a year, because it was very important to not only speak to Town representatives but to

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other House and Senate representatives. He advised that the best way to accomplish that was to actually see them in person, visit them on days other than House Days when they can be met on a one on one basis. He mentioned that the Town has a good lobbyist that also recommends this plan of action.

Town Manager Peter Elwell discussed the idea of drafting a letter with an official, formal statement from the Town Council to the political leadership of the state on this issue. He stated that staff would prepare the letter for placement on the November 30, 2005 Town Council Meeting Agenda.

President Brooks stated that he did think it would be advantageous to write to the four gubernatorial candidates and thought that maybe that would be where Mr. Titcomb comes in, because there were other municipalities that were looking for relief. He noted that the Town was trying to lessen the impact on the residents, the consumers. He said that FPL also had been the victim of the hurricanes.

Councilman Coleman made a motion to direct staff to draft a letter to be reviewed at the Town Council Meeting to be held on November 30, 2005; to be sent to all candidates seeking state office and all county officers. The letter would indicate who it was being sent to; that it was non-partisan; that the Town was representing this narrow position; and that the Town seeks their support; and wants to know their position in order to inform the citizens of the Town regarding this vital matter.

Councilman Coleman advised that staff should use whatever language was necessary so that the Town Council did not get into an area of electioneering or politicking, but shows that the Town was simply trying to represent their constituents.

President Pro Tem Goldblum seconded the motion.

Councilman Coleman then amended the motion to include the drafting of a second letter to be sent to neighboring municipalities informing them as to what the Town was doing and why; the conversations the Town has had; the reception the Town has received from FPL; and enlisting their support, as well.

President Brooks asked staff to add to the first letter that the Town does not expect a turnaround answer, but they could be given over 120 days to respond. He asked Mr. Titcomb if his organization could assist the Town in disseminating that information to brother/sister municipalities?

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Mr. Jamie Titcomb, Executive Director of the Palm Beach County League of Cities, which works for all thirty-seven (37) municipalities in the County. He assured the Council that everything discussed today was on the minds of every municipal citizen across the state. He agreed with some of the comments made today, and that this was a unique opportunity as far as the and timing to address these issues.

In response to President Brooks, Mr. Titcomb stated they would be more than happy to get the information and the ideas out, not only to the thirty-seven (37) municipalities in the Palm Beach County League of Cities, but at the Florida League of Cities Legislative Conference in Orlando, which starts tomorrow. He stated that he would be very happy to share this information or help the Town craft it and hand carry it to the various legislative actions committees. He noted that he sits on both the Legislative Advocacy Committee at the Florida League level, as well as the Federal Action Strike Team (FAST) which deals with some of the federal implications of these issues. The Town has been an excellent municipal partner in the Palm Beach County League of Cities as well as the Florida League of Cities, and would welcome involvement, not only at the local level, but statewide and nationally..

In response to Councilman Wyett, Mr. Titcomb explained that the Palm Beach County League of Cities completed its legislative agenda for this upcoming session, which was in draft form. He noted that it would be presented to all the cities and the entire Palm Beach County legislative delegation at next week's annual legislative round table and all Palm Beach County Municipal Councils Administrations.

Councilman Wyett stated that he would like the Council to request Mr. Wright to draft, for review of the Town Council and for the review of the Florida League of Cities, a list of legislative actions that would aide municipalities in negotiating with Florida Power and Light and other electric companies in the State of Florida. The purpose of this letter would be to bring them all together in a mutually cooperative mode that would not deprive privately held/publically held electric companies of their franchises; but would not force municipalities to spend \$66 million or more as a gift to the utilities; and to say here it is, now it's yours without any recourse.

Councilman Wyett stated that he wanted to bring to the attention of this community that power companies were about to engage, across America, into a whole new venture. He noted that utility companies were supplying the municipalities they serve with television, internet, and phone services using their power lines. He advised that, in the future, the power companies would be the major competitors of cable, telephone and internet; and if the Town put in a reliable system such as the type being discussed, FPL would be a very big beneficiary of that system.

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Mr. Titcomb added that, on Thursday of this week, at the legislative conference in Orlando the legislative agenda for the Florida League of Cities was to be finalized; that there was a committee that specifically dealt with telecom and utility issues. He noted that some of the language the Town was seeking, was being worked on and also finalized.. He welcomed any specific written verbiage that the Town might like entered into that process. He asked they get that information to him right away, and he would do his best to get that into that system as well.

Councilman Wyett requested that Mr. Wright draft a list of legislative actions that would aide municipalities in negotiating with power companies. Councilman Coleman agreed to including the request in his original motion.

Town Manager Elwell clarified the motions made by Councilman Coleman and the suggestion made by Councilman Wyett:

- ▶ Draft a letter to the gubernatorial candidates as well as other candidates for statewide office, and existing office holders, in the positions of political leadership, across the state, expressing the Town's position and request for action.
- ▶ Draft a second letter that would be similar in describing the Town's work and asking for assistance, and to join in the effort to neighboring municipalities throughout Palm Beach County through the Palm Beach County League of Cities.
- ▶ Request Mr. Wright to draft a list of legislative action items.

Town Manager Elwell advised that these items would be considered at the November 30, 2005 Town Council Meeting.

Councilman Coleman amended his motion to include in the list of legislative action items, the words specific legislation.

President Pro Tem Goldblum seconded the motion. On roll call, the motion carried unanimously.

Town Manager reviewed for Senator Ron Klein the earlier discussion regarding the potential municipalization of the Town's FP&L facilities.

President Brooks added that Larry Casey, Representative for Congressman Clay Shaw, spoke earlier to discuss Congressman Clay Shaw's proposed bill coming out of the Ways and Means Committee.

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Senator Ron Klein addressed the Town Council and members of the community, and discussed the following issues:

- ▶ Power and all of the implications associated with being without power, and the realization that power was a statewide issue, not merely a South Florida issue.
- ▶ Insurance - the idea of a National Risk Catastrophe Pool.
- ▶ Florida Utility Task Force legislation.
- ▶ Ownership of power lines.
- ▶ A Utility Task Force to address generators.

Councilman Coleman thanked Senator Klein for coming. He asked what the Town could do to give FPL incentives, so that the Town would not have to enter into a competition with FPL, and if there was anything that could be done on the state level for FPL's own enlightened self-interest and the Town's own interest?

Senator Klein stated that Councilman Coleman's assessment was accurate and there did appear to be, statewide, a tremendous amount of interest in being fair. The state regulated monopolies as to tariff, but the state did not get into nuances. He explained that laws could be passed as well as regulations that could direct certain activities, such as the issue of the investment.

Senator Klein remarked that he found it annoying when the County Commission or when cities contacted him to inform him that an independent electrical contractor had to be hired to give them an independent assessment of costs because they did not believe they were getting the right information.

Councilman Kleid commented that there would be a budget if the legislation was passed; and then Senator Klein would have the opportunity to hire their own experts. He explained that the Town would like to hitchhike on, using those experts, at Senator Klein's expense. He stated that the Town, in order to get objective figures had to go out and hire, at the Town's expense, experts who would question those figures. He explained that normally when experts were hired, lower estimates had been received. The Town would like FPL to be a little more cooperative than they had been in the past.

Senator Klein noted that when the Palm Beach County Commission hired an electrical

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contractor, FPL came in later, and was critical of the analysis. He said that they were entitled to do that, but suggested that they all come together. He advised that they were all on the same team, wanting good reliable power, and should all be working together determine the costs.

Councilman Kleid stated that the problem could be solved a lot faster if FPL would be more cooperative, which would be for the common good of everybody. He noted that then all committees and all legislation could be avoided.

Public Comment:

Mr. Alec Flamm, 2000 South Ocean Blvd., addressed the Town Council, stating that he had chaired a committee that had been studying the underground subject for well over two years. Its purpose was to develop as much information as possible to help elected officials make decisions. He noted that he had chatted with some folks who had come in from Detroit, Michigan to help bring the electrical system back after the hurricane, and one of the comments had been that the wiring and components being used here had been banned in Detroit in 1960!

Mr. Flamm remarked that putting in an underground system, then giving it to FPL, and then having to purchase it back, was not fair. He suggested that argument was more saleable at the legislative level, than having a dialogue with FPL in trying to get them to change their ways. He noted that 37% of the FPL system was underground, however, when statistics were requested from FPL, the response was that they did not have the figures in a form that would be useful. He stated that he could not believe that the data was not readily available.

Mr. Flamm stated that FPL had put forth a herculean effort in getting the electricity back after the recent hurricanes, and that the issue appeared to be corporate. He encouraged the need for staff to move forward and obtain a hard estimate from FPL, which could be scrutinized by a qualified expert. He stated that he was most encouraged by what he had heard today from the Town Council, and from the legislative representatives here today.

Ms. Elizabeth Murphy, 265 Park Avenue, addressed the Town Council, submitting her written remarks for the record. She reviewed some of the direct and indirect costs related to the voters decision on whether or not to pay for underground utility lines. She noted that voters must be educated on the reality of the costs in their roles as utility customers, taxpayers and insureds.

Dr. Charles Falcone, consultant to the Civic Association and a member of the Jupiter Island Commission, addressed the Town Council, stating that a task force for undergrounding had been

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created in Jupiter Island, and negotiations were taking place with FPL at this point. The engineering estimate had been completed, and he recommended that the Town of Palm Beach also obtain an engineering estimate. He explained that he believed that it could be done less expensively with independent contractors, rather than FPL. He addressed the easement issue, noting that FPL was insisting that facilities be built on easements across resident properties, not within the Town right-of-way along the road. Jupiter Island was a barrier island, and there was a big right-of-way along the road. He suggested that it was perfectly appropriate for an organization who builds a facility to include its overhead in a bid, however, FPL overheads should not be charged when someone else was hired to do the job. He also suggested a coordination of efforts.

Mayor McDonald commented that FPL was the only utility company that had contacted him right after the storm, and came in and gave an update. BellSouth was invisible, as was Adelphia.

Mr. Rod Macon, of Florida Power & Light, addressed the Town Council, offering to help with providing information for a referendum question. He stated that there seemed to be a perception that FPL was opposed to going underground, which was simply not true. He stated that he did not know of one question that had been asked of FPL that had not been answered.

In response to President Pro Tem Goldblum, Mr. Macon replied that during normal times, underground wiring had some advantages and disadvantages compared to overhead. The reliability of service to customers for FPL was twice as good as the national average. Reliability was measured in the minutes that an average customer was out of electricity in a given year. The average in the nation was about 138 minutes; FPL's number at the end of 2004 was 69 minutes. In terms of normal reliability, underground facilities did not suffer as many interruptions – the frequency with which the power goes out. Underground was better in that regard. In terms of duration, typically underground stayed out longer, because it was harder to fix.

Mr. Macon explained that there was typically no purely underground system in the FPL system. Typically, there were hybrid systems, so it was very difficult to do a pure comparison. The Town of Palm Beach was served by five electrical substations. There were 11 feeders, or main lines, that came out of those five substations, all of which existed on the mainland. There were overhead facilities that extended from those substations to the water's edge, so even if everything on the Island was underground, it would not be a pure underground system. A hybrid system would have a frequency range 10-20% better; duration averaged 20-30% longer.

Mr. Macon explained that FPL was in the business of delivering electricity and selling it on a retail basis, and to ask FPL to sell part of its system, whether it was here in Palm Beach, or any place else, was, in effect, asking FPL to sell a part of its business. FPL was not interested in selling

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a part of its business. The issue of a credit, therefore, was somewhat of a moot point. If a conversion was eventually done on the Island, residents would not be paying for the full cost of the conversion; it would be a differential cost. Once that conversion took place, residents would not be paying for the maintenance and the upkeep and replacements on the underground system. That was the responsibility of FPL. Mr. Macon explained that FPL was operating under the rules and regulations of the State of Florida.

Mr. Macon explained that one of the key factors in providing underground service was extra cost, and the customer was asked to pay the differential so that the extra cost did not end up being subsidized by all of the rest of the rate payers.

Regarding easements, Mr. Macon explained that if underground facilities were put in the road right-of-way, a liability would be accepted for the future. That was why private easements were requested for underground wiring; it protects FPL, and in turn, the general body of rate payers. He noted that there were some areas where an easement on private property would be very difficult to achieve, and in those cases, FPL would consider putting the cable in road right-of-way, provided that some sort of an agreement could be worked out to provide protection for the general body of rate payers. There was still the issue of the switch boxes, transformers, etc., which had to be on private property.

In response to Councilman Wyett, Mr. Macon explained that all utility poles do not necessarily belong to FPL; some of the poles belong to BellSouth; if there was a conversion, the Town would need to work with BellSouth and Adelphia to let them know about it; FPL would not remove the poles entirely until they had removed their facilities from the poles. He suggested that the best thing to do would be to speak directly with Adelphia and BellSouth.

Mr. Macon explained that typically, the process that FPL would follow when someone requested putting overhead facilities underground, began with a ballpark estimate from FPL, an order of magnitude estimate, which cost nothing. That estimate could be done for the entire Town within a matter of a few weeks. That estimate had not yet been requested from FPL. If that estimate looked acceptable, then the next step would be the payment of an engineering deposit, so that the job could be engineered, and a binding estimate could be done.

President Brooks remarked that the stage had been reached where the issue must be politicized by the Town of Palm Beach. He noted that residents had already paid for the substantial costs incurred by FPL, for overtime, etc. following the hurricanes, and suggested that a credit be issued for that. He requested that Mr. Macon submit the questions asked today to the corporate level of FPL.

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Mr. Macon replied that prior to Hurricane Andrew, FPL could buy insurance to protect the system; after Andrew, that became impossible. The Public Service Commission (PSC) then wanted FPL to self-insure, and allowed FPL to collect a small amount each month from its customers to pay for these kind of events in the future. FPL then collected a rate of approximately \$20 million per year. Last year, three hurricanes hit, and the expenses went way beyond what was in the self-insurance storm fund; the PSC then allowed FPL to collect an extra amount from customers, to pay for expenses that were made last year. He stated that he did not know the basis on which FPL could offer a credit for monies that had been collected to pay for expenses that had been incurred last year.

In response to Councilman Kleid, Mr. Macon replied that FPL would discuss the idea of the Town indemnifying FPL for the problems with the right of way.

Mayor McDonald commented that BellSouth had basically said that they were not interested in doing undergrounding Town wide, but would do little areas of the Town, which meant that they would not have any inducement at all to take their poles down once FPL had removed service. He noted that they also were invisible during the hurricane, and that BellSouth blamed their inability to provide service almost totally on FPL lines. He suggested that all three utilities should be encompassed in the underground wiring conversation.

In response to Councilman Coleman, Mr. Macon approximated that it would not be unusual for overhead facilities to last 40 to 50 years; it would be typical that underground systems would last about half that length of time.

Mayor McDonald pointed out that a letter from BellSouth said that they were using a January 2004 Edison Electric Institute Report as the basis for their conclusions, and that the key benefit of underground lines was improved aesthetics, and that reliability benefits associated with burying existing overhead power lines are uncertain, and in most instances do not appear to be sufficient to justify the high price tag.

Mr. Macon responded that he generally agreed with that. He explained that new developments were often undergrounded because the developers pay the difference in cost.

In response to Town Manager Elwell, Mr. Macon replied that utilization of the rear yard easements in the Town could be discussed, however, typically, FPL wanted to be in the front yard. He explained that rear yard underground wiring usually became a problem because of fences, and landscaping that tended to grow up around the system. If there was a ten-foot wide path that was empty, and there was a guarantee that it would stay empty it could work, but in his experience, it just did not happen that way. He explained that when overhead vs. underground system costs were

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looked at on a life-cycle cost basis, the overhead system always had won in the past, in spite of hurricanes. He stated that there was not a doubt in his mind that the State of Florida would take another look at the figures now, since there had been many hurricanes during the past few years, and the circumstances had thus been extraordinary.

Mr. Samuel McLendon commented that he believed that approximately 80% of the electric services in Town were in back yard easements, and that he had submitted a detailed report in the past.

President Brooks thanked Mr. McLendon for the comments, and mentioned that the report could be utilized by Mr. Elwell and Mr. Bradford in their discussions with FPL.

Town Manager Elwell remarked that there were many issues brought forward in the memorandum, dated November 10, 2005, of Deputy Town Manager Bradford, and many of those had not been discussed today, and would best be left for another day. The one decision that seemed to be pending at this point, was the official request of the estimate of the overall Town wide conversion costs from FPL. He suggested that FPL be requested to provide a confirmed price for obtaining a binding cost estimate, and then an informed decision could be made about how to proceed. He noted that a thumbnail cost estimate would be done gratis, however, a binding cost estimate would not be gratis.

Mr. Macon added that the binding estimate was binding for approximately 180 days; if the project was a multi-year project, the binding estimate would only be a starting point.

Councilman Wyett moved that FPL provide a thumbnail estimate of totally converting the Town of Palm Beach to underground wiring. The motion was seconded by Councilman Kleid.

Town Manager Elwell requested that the motion include a request for a thumbnail estimate of the entire Town system, as well as for the north/south and access streets.

Councilman Wyett amended the motion to include the request that FPL provide a thumbnail estimate of totally converting the Town of Palm Beach to underground wiring, as well as a separate estimate for the north/south and access streets.

On roll call the motion carried unanimously.

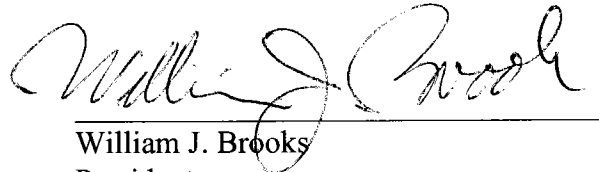
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VI. ANY OTHER MATTERS

There were none.

VII. ADJOURNMENT

There being no further business, the Special Town Council Meeting of November 15, 2005, was adjourned at 5:00 p.m.



William J. Brooks
President

ATTEST:

Susan A. Eichhorn
Town Clerk