



TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON TUESDAY, NOVEMBER 6, 2007

1 I. CALL TO ORDER AND ROLL CALL

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3 The Special Town Council Meeting was called to order at 1:30 p.m. on November
4 6, 2007, in the Town Council Chambers. On roll call the following elected officials were
5 found to be present:

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7 Mayor Jack McDonald
8 President Richard M. Kleid
9 President Pro Tem Denis P. Coleman
10 Council Member William J. Brooks
11 Council Member Gail Coniglio
12 Council Member Susan Markin

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14 Others present were:

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16 Town Manager Peter Elwell
17 Town Attorney John Randolph
18 Director of Public Works Paul Brazil
19 Town Engineer Jim Bowser

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22 II. PLEDGE OF ALLEGIANCE

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24 President Kleid led the Pledge of Allegiance.

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27 III. APPROVAL OF AGENDA

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29 The agenda was approved through a motion of President Pro Tem Coleman,
30 seconded by Council Member Brooks. On roll call, the motion carried
31 unanimously.

1 IV. REACH 8 BEACH RESTORATION PROJECT

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3 President Kleid recognized Steve Martino, on behalf of Senator Martinez, Jessica
4 Gruse, on behalf of Senator Nelson, Josh Maddock, on behalf of Congressman Klein, and
5 the representative for Senator Atwater. He requested that all stand and introduce
6 themselves.

7
8 Director of Public Works Paul Brazil referred to his memorandum dated
9 November 6, 2007, and included in the backup material, to provide a report on the Reach
10 8 Beach Restoration Project as follows:

11
12 • **State Issues**

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14 1. Mitigation:

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16 The State would require 8 acres of mitigation, which would lead to
17 a \$3 million impact to the project.

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19 2. Board of Trustees:

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21 The Board of Trustees (Governor and Cabinet) empowers the
22 Florida Department of Environmental Protection (FDEP) to
23 authorize the use of State lands for these types of projects if they
24 believed it was appropriate.

25
26 The Florida Department of Environmental Protection might decide
27 to send this project to the Board of Trustees.

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29 The Board of Trustees meets twice monthly, and the Town would
30 request placement on the December 18, 2007, Board of Trustees
31 agenda, but it might not be heard until January. The meeting
32 would not be limited to the use of State lands, but the entire project
33 would be reviewed.

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35 • **Federal Issues**

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37 The Town has worked with the following two advisory agencies through
38 the U.S. Army Corps of Engineers (Corps).
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1. The U.S. Fish and Wildlife Service was responsible for sea turtles and other species on the dry beach, and needed to revise an existing Biological Opinion for this project.
2. The National Marine Fisheries (NMFS) was responsible for sea turtles and other species in the water. The Corps has requested NMFS to explore the need for another Biological Opinion from the water side, and that Biological Opinion could take 130 days.

Mr. Brazil noted that the Town had argued the point that a second Biological Opinion was not necessary, but the Corps might consider that it was necessary. It was now in the hands of the NMFS to decide if they believed it was necessary. He advised that once the Town had that answer, it could be a prolonged period of time before that study was finished.

Actions for Town Council's Consideration

1. The Town had a choice of two options regarding FDEP mitigation.
 - The Town could accept the FDEP's interpretation of the amount of mitigation that was necessary, and move forward with that part of it, requesting that they expedite finalizing that. The Town could continue to work with them in order to show why the Town might not need to go to the Board of Trustees.
 - The Town could continue to argue the point concerning mitigation, which would delay the job. There were no guarantees of the project being done this year, and there were no guarantees that the Town would prevail in that argument.
2. The Town could continue to argue the point with the Corps and NMFS that a second Biological Opinion was not necessary. If the argument was lost, the Town would need to find a way to help these agencies expedite this, up to and including offering the Town's assistance in drafting the Biological Opinion.
3. The Town should continue to work with Senator Atwater, Congressman Klein, and the two U.S. Senators to attempt to expedite the last of these

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1 issues; or the Town could hold its ground, debating some of these issues
2 with the possibility that the job might not be done this year.
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4 Town Manger Peter Elwell advised that on the Federal side, the Town did not
5 have much choice and needed to fight aggressively in order not to have a second
6 Biological Opinion. If the Town was forced to do the second Biological Opinion, the
7 Town's consultants should be offered the opportunity to assist in getting this done in less
8 than 130 days.
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10 Mr. Elwell advised that on the State side, there was a clear choice to be made as to
11 whether or not the Town continued a dialogue regarding the amount of mitigation. The
12 decision that had to be made on the State side was complicated by the fact that there was
13 uncertainty on the Federal side.
14

15 Mr. Brazil commented relative to the additional \$3 million, noting that the project
16 had been anticipated to cost approximately \$16.3 million. The proposed bond was for
17 \$17 million and there was an additional \$4 million, in reserve, in the coastal account.
18 The fact that the State would reimburse the Town 20% on the entire job had not been
19 factored in. The Town would receive, in terms of reimbursement, approximately \$3.4
20 million, if the job came in near the \$16.3 million.
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22 Council Member Brooks noted that he had calculated that if it took 130 days for a
23 second Biological Opinion, it would be close to turtle season, and questioned whether the
24 Town would have to wait until November 2008.
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26 Mr. Brazil responded that the Town would have to wait until the next season if it
27 took the entire 130 days.
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29 Council Member Brooks requested that the staff of the Town's political
30 representatives, who were the audience today, relay the concerns of the Town to them.
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32 Council Member Markin commented on the additional 3 acres of mitigation,
33 which led to a cost increase of \$3 million. She questioned what basis did the Town have
34 to make the argument regarding whether the additional acreage was or was not required.
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36 Mr. Brazil explained the two different approaches used to calculate the amount of
37 exposed hardbottom: a snapshot view and time averaging.
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1 President Pro Tem Coleman questioned what would occur if the sand washed
2 away next year; whether the Town mitigated or would have an opportunity to re-mitigate;
3 and whether the Town had permanent rights to put sand down.
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5 Mr. Brazil responded that the Town could only put sand down in the template that
6 had been approved. He noted that another permit would be required to add more sand to
7 a mitigation project, but additional mitigation would not be required. The mitigation was
8 forever.
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10 In response to Mr. Elwell, Mr. Brazil advised that the permits used to be for ten
11 years, and he believed that they would be from now on for one to two years.
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13 In response to President Kleid, Mr. Brazil advised that the acreage of mitigation in
14 Reach 7 was 3.1 and .8. He noted that the difficulty with this project from the beginning
15 was that there was so much exposed hardbottom out there.
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17 In response to Council Member Coniglio, Mr. Brazil responded as follows:
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- 19 • The first request by the Corps to the NMFS to determine if a second
20 Biological Opinion was required did not have a time frame associated with
21 the response. The response was expected to be timely.
- 22 • The NMFS would be writing their own Biological Opinion and could
23 come back with a decision that the Town was having a huge adverse
24 impact on turtles and other species foraging in the near shore, and
25 effectively block it for some period of time while it was being negotiated
26 or litigated.
- 27 • The mitigation could again be increased if there was another storm.
28

29 In response to Council Member Markin, Mr. Brazil advised that the Town has had
30 several conversations with many people regarding the discrepancy of the acres of
31 mitigation, and he believed that the State was very entrenched in their determination.
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33 Town Manager Elwell noted that there had been numerous conversations relative
34 to the fairness of the process. The State was very strong in their position and was sticking
35 to that position, because it was the standard way for them to approach this question.
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1 Council Member Markin questioned how the Town believed they could win this
2 argument, since the State was entrenched in their way of thinking and were consistent in
3 how they assigned the acreage, having done that in other locations, as well.

4
5 Town Manager Elwell explained that was the reason for identifying, in Mr.
6 Brazil's memorandum dated today, that if the Town pursued that route, the project was
7 expected to be delayed and could end in litigation.

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9 **Motion made by Council Member Coniglio, seconded by President Pro Tem**
10 **Coleman, to accept the change in mitigation to 8 acres. On roll call, the motion**
11 **carried unanimously.**

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13 The consensus of the Town Council was for staff to use every effort to move this
14 project along and to use whatever help was offered.

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16 President Kleid made the following comments:

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18 "As for me, this obtaining of these permits for the Reach 8 Beach Restoration
19 Project has been a very frustrating process. The Mayor and Town Council have made this
20 a top priority for over two years, and the Town has expended considerable money and
21 effort in seeking these permits, both from the Federal Government and the State. The
22 Town has enlisted the support of U.S. Senators Nelson and Martinez, Congressman
23 Klein, Senator Atwater, Assembly Members Brandenburg and Domino, and had
24 contacted everybody that the Town thought could help, and had even reached out to the
25 residents of the Town who indicated they might be of some help. Every time, despite the
26 erosion of the Town's beaches and promises from both Federal and State officials to
27 make the permitting process faster and easier, the actual fact is that the bureaucracy is
28 moving at a snail's pace. I know that people are going to ask what can residents do, and I
29 remember a year or two ago Mr. Coleman saying that you have to write and address your
30 congressmen, your senators, etc., and not just once a week but every couple of days. We
31 really have to galvanize another effort in that direction."

32
33 Council Member Coniglio expressed concern over the path the Town was taking
34 on the referendum.

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36 In response to Council Member Coniglio, President Kleid responded that the
37 referendum on December 18, 2007, covered two subjects: the drainage project and the
38 beach restoration project. He noted that if the referendum was postponed, it would

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1 postpone the drainage portion of the referendum, as well. He advised that he believed a
2 message had to be sent to the officials that the Town was moving ahead full steam.

3
4 Town Manager Elwell commented that staff would appeal to the State, and would
5 request that if this project was to go to the Governor and Cabinet, that it be placed on
6 their December 18, 2007, agenda. He noted that there was still time for residents to write
7 letters to the FDEP, before the FDEP made its final permit decision. He advised that staff
8 would work with the Citizens Association and others to try to generate those letters.

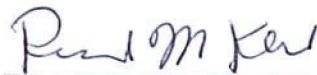
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10 Council Member Markin noted that she wanted to send a message to the Town's
11 representatives that they needed to put pressure on the various agencies to speed up the
12 permit process.

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14 V. ANY OTHER MATTERS

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16 There were none.

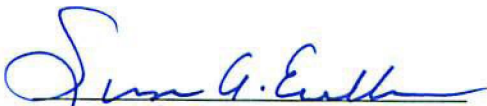
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19 VI. ADJOURNMENT

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21 There being no further business, the Special Town Council Meeting was
22 adjourned at 2:00 p.m.

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26 Richard M. Kleid
27 Town Council President

28 ATTEST:

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32 Susan A. Eichhorn
33 Town Clerk
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