

**MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING
HOLD ON MONDAY, NOVEMBER 1, 2004**

I. CALL TO ORDER AND ROLL CALL

President Allen S. Wyett called the Special Town Council meeting to order at 10:00 a.m. in the Town Council chambers on Monday, November 1, 2004.

On roll call, the following Elected Officials were found to be in attendance: Mayor Lesly S. Smith, President Wyett, Councilmen William J. Brooks; Jack McDonald; and Norman P. Goldblum. President Pro-Tem McLendon arrived at the meeting at 10:05 a.m.

Also attending for all or part of the meeting were: Town Manager Peter B. Elwell; Town Attorney John C. Randolph; Public Works Director H. Paul Brazil; Town Engineer James Bowser; Coastal Projects Administrator Sandra Tate; Finance Director Jane Skittone; Assistant Finance Director Cheryl Somers; Assistant to the Town Manager Sarah E. Hannah; and Town Clerk Mary A. Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. APPROVAL OF AGENDA

Councilman Brooks made a motion to approve the agenda as presented. The motion was seconded by Councilman Goldblum and carried 4-0 on roll call as President Pro-Tem McLendon had not arrived at the meeting.

IV. Proposed Extension of Application Deadline for Erection and Display of Unattended Symbols Relating to private Religious Displays in Bradley Park
[Peter B. Elwell, Town Manager]

Town Manager Elwell summarized that the ordinance requires no less than 60 day advance notice to the Town primarily to allow any appeals and resolving of any matters prior to displays

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

being erected with this year being the first year of implementation during which the Town experienced two hurricanes in September. He continued the staff's recommendation is to change the 60 day deadline to 20 days for this holiday season only (November 26, 2004, until January 10, 2005), and because of the short time left before this holiday season starts, the Town Manager will act on the application within 10 days of said decision or by December 3rd, whichever occurs first with the Town Council hearing the appeal of any denial at the next regular Council meeting following the filing of the notice of appeal.

Councilman MDonald made a motion to approve the change in the application filing deadline from 60 days to 20 days for this year only. The motion was seconded by Councilman Brooks and carried 4-0 on roll call as President Pro-Tem McLendon had not arrived at the meeting.

V. Coastal Protection Matters

[Peter B. Elwell, Town Manager]

A. Update on Phipps Ocean Park Beach Restoration Project

Town Manager Elwell reported that Phipps Ocean Park permitting process with the Corps of Engineers, based on the communications from many parties to the Jacksonville Corps District staff, may hold some promise that a negotiated permit with acceptable terms may be obtained for the Phipps Ocean Park restoration project without proceeding to the South Atlantic Division Office in Atlanta with an administrative appeal or on to federal court thus saving literally years and hundreds of thousands dollars. He added further discussion would take place at the November 9th Town Council meeting.

President Wyett complimented Town Manager Elwell on his accomplishments with the Corps, but mentioned that Reach 8 is now in extremely difficult shape as a result of the recent hurricanes and questioned if the Corps would be agreeable to consider Reach 8 at this time?

Mr. Elwell responded no doubt exists regarding the critical erosion of Reach 8; however, some other emergency permitting may be required such as providing rip rap or revetment support for ocean front seawalls to protect properties. He continued Reach 8 may not be considered an emergency project by the State or the Corps of Engineers but rather a long term project for long term beach stability, and the long term beach management program needs to be separated from the emergency protective measures that need to be taken presently or in the future as necessary for emergency events.

Mr. Elwell said the staff is working toward a solution that would provide an acceptable permit for Phipps Ocean Park as it is not a reasonable expectation the Town will receive everything

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

it had sought; i.e. for example the Corps is compromising as well as the Town, and he cited the instance where the Corps required additional mitigation on a 3.2 acre reef constructed by the Town, and after sand buried some of the existing mitigation during the hurricanes, the Town recognized some additional mitigation needs to be added and is working with the Corps to that end. He explained that the permit will be presented to the Town Council for their action and if the modified permit is not acceptable to the Town, the option is to continue with the appeal and perhaps into federal court to pursue the entire project.

B. Update on Lake Worth Inlet Sand Transfer Plant

Public Works Director Paul Brazil summarized the significant damage to the Sand Transfer Plant: electrical lines, water well piping, discharge pipe attached to the north jetty; pump motor; and electrical components inside the plant. He said the estimate for the repairs will be approximately \$350,000 with FEMA probably paying for the majority of the restoration costs for the existing plant; however, long term, staff continues to pursue an upgrade to the facility including a second story and extension of the outlet pipe further south.

Mr. Brazil reported the Corps of Engineers has mentioned abandoning the plant; however, staff does not agree with that recommendation and would like Council's permission to continue working with the County, the Port of Palm Beach, and possibly the Army Corps of Engineers to achieve a long term upgrade of the facility.

Mr. Elwell mentioned substantial federal funding was available for this project some years ago, and the Corps has not moved that money into the implementation process. He continued that if the project were sponsored locally and moved forward on the local initiative, the federal money should be captured to complete the project.

Councilman Brooks said the Town should move in conjunction with the County and attempt to recoup the moneys involved from FEMA.

Mr. Elwell said the FEMA portion is separate, and staff was seeking the approval of the Council to become involved locally to push the project forward.

Councilman McDonald made a motion to approve the restoration of the Sand Transfer Plant.

Mayor Smith questioned if discussions regarding the Sand Transfer Plant were held with Tim Murphy over the past twelve years who indicated money was available and the process was held up for the design only.

Mr. Brazil replied the Corps was waiting for the permit process currently, and the

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

conversations, including the possibility of abandonment, were with Tim Murphy. He added that Palm Beach County does not agree with the abandonment and would like to join the Town to aggressively take care of the plant.

Responding to the Mayor's questions regarding funding, Mr. Elwell said the Town does know if federal funding is available; however, if the Corps determines that maintenance of the Inlet will be addressed, not including the upgrading of the Sand Transfer Plant, the federal money will be lost.

Mayor Smith suggested the Town set up a meeting with the County and the Port as soon as possible to start the project rolling.

Councilman Goldblum made a motion to go forward with the Sand Transfer Plant upgrade with the County and the Port of Palm Beach.

Mr. Elwell clarified that a motion was on the floor for the first part of it which is the affirmation the Town should go full steam ahead with the emergency repairs which are already under way. He said after that, the second motion would be appropriate.

Councilman Goldblum said his motion was to go ahead and design the new plant and work with the other agencies to do the improvements.

President Pro-Tem McLendon stated his concern was to have sand at 14 ft./second through the 12 inch pipe under the Inlet where 45 gallons/minute were needed and suggested a parallel pipe should be added between the plant and the valve pit to extend the out flow pipe to the south.

Mr. Brazil replied those issues would be addressed during the final design phase keeping in mind a larger pump may be involved. He added that Palm Beach County has a design for the new Boynton plant which should go out for bids shortly, based on the bids, prices should be available within 30 days with estimates added for additional work including the extension of the pipe line to the south.

Mr. Elwell reiterated the plan, as outlined by Mr. Brazil, will move the project along, and if authorized at this meeting, the staff would present an update with recommendations for the future at the December meeting.

Mayor Smith suggested updates should be given at the November 9th Town Council meeting.

Councilman Brooks, noting that Councilman McDonald made a motion supporting the Staff's recommendation, said he would second that motion to direct staff to proceed with the restoration of the existing Lake Worth Inlet Sand Transfer Plant.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Councilman Brooks said he would like to second Councilman Goldblum's motion directing staff to pursue the possibility of an agreement with the US Army Corps of Engineers whereby the previous Federal funding appropriation for an upgrade to this facility would be made available to the Town so that (together with the Port of Palm Beach and Palm Beach County) we can assume local control over moving this project forward.

William Guttman, Palm Beach Civic Association, said his concern was that the Town would have difficulty obtaining the federal appropriation for the new plant and questioned if Councilman Clay Shaw was contacted who is second in command on the Appropriations Committee in the House of Representatives.

Mr. Elwell responded that was a call the Town could make immediately.

Roll call on motion 1 (Councilman McDonald's motion): The vote was 5-0.

Councilman McDonald requested the second motion be repeated.

Town Clerk Pollitt read as follows:

'Staff further recommends that Town Council direct staff to pursue the possibility of an agreement with the US Army Corps of Engineers whereby the previous Federal funding appropriation for an upgrade to this facility would be made available to the Town so that (together with the Port of Palm Beach and Palm Beach County) we can assume local control over moving this project forward.'

Roll call on motion 2 (Councilman Goldblum's motion): The vote was 5-0.

Responding to Jerry Frank's concerns regarding the closing of the Sand Transfer Plant, Town Manager Elwell said the Corps indicated they may walk away from the project or abandon the upgrade project which is the first time the Town has heard that possibility expressed. He said the federal government has an ongoing responsibility to maintain the Inlet at a 35 ft. depth for shipping in and out of the Port, and there was a possibility the federal government could be persuaded to maintain the Sand Transfer Plant as a more efficient method of completing the task of keeping the Inlet clean in lieu of dredging it more frequently. He continued that may be unnecessary if the Town and local groups assume the responsibility of pushing the project forward and taking the federal reluctance out of the equation.

Mr. Frank reported from the Lake Worth Inlet Management Study that 12 million cubic yards of sand was not put on the Town's beaches because of the Inlet, and if the plant had been constructed correctly in the first place and had operated for the five years that it was inoperative, according to the study those 12 million cubic yards of sand would have been on the beaches.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

C. Review of Proposed Emergency Protective Measures

1. Public Property

Public Works Director Paul Brazil reported the Town Staff recently completed, before the hurricanes, a series of surveys and cross sections for the Atlantic shoreline and this exercise will be repeated with the results showing the damage that occurred and where sand has gone. He noted that the Mid-Town Beach lost approximately 205,000 cubic yards of material from the dry beach, although it is expected that the vast majority lost from the dry beach will remain in the active zone, either in the project area, or downdrift in Reach 5 where it will help renourish that area. He pointed out the Mid-Town project performed as expected during the storms, protecting upland properties and structures.

Mr. Brazil said the sand that has washed into Reach 5 may be significant enough to reduce the renourishment of Reach 5 as a separate project, to be determined from the completed beach profiles. He continued the Town has two options regarding Mid-Town beach: one would be to initiate a project to replace the sand that moved away from the beach immediately or accept the FEMA money for the sand loss but hold the money in reserve for the next Mid-Town renourishment project. Mr. Brazil reported that the consultant, Coastal Planning and Engineering, recommended the Town continue to monitor Mid-Town, initiate a project at a future date if necessary possibly in conjunction with another beach restoration project which would significantly reduce the unit cost of the work and staff agreed with that alternative.

President Pro-Tem McLendon made a motion to receive the FEMA monies to be placed in the beach reserve fund. The motion was seconded by Councilman Goldblum and carried 5-0 on roll call.

Mr. Brazil reported that roadway restoration projects have been initiated on Old South Ocean Boulevard consisting of a sheet pile wall, the rocks in place reassembled at the toe of the wall, and sand fill adjacent to the wall. He added the roadway will be rebuilt with curbing and a drainage system with a cost estimate of \$700,000 and completion in approximately 14 weeks. He noted that DEP indicated an emergency permit will be required, and the Engineering Department is working with DEP to move forward with that process.

Councilman McDonald questioned how the Town assumed responsibility for the road as it was originally a State road?

Mr. Brazil replied it was originally a State road, given to Palm Beach County, with that question coming up between the two hurricanes.

Attorney John C. Randolph said he contacted the County Attorney's office, and the Town

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

is taking the position that Old South Ocean Boulevard is a County road, but due to the immediacy of the situation, the Town will make needed repairs but will look to the County for reimbursement at a later time. He continued that issue is unresolved, but the Town continues in discussions with the County.

Responding to additional questions from Councilman McDonald, Mr. Randolph replied the County contended that although the road is under the County's control, the road maintenance is the responsibility of the Town.

Mr. Elwell added that the Town did not accept the County's argument; however, it was critical to repair the road before the legal issue was settled.

Mr. Brazil said the dune and plantings at the Par 3 Golf Course suffered significant losses with erosion into the fairway grass requiring a mitigation process, and staff recommends the Town Council authorize staff to immediately begin work to bring 15,670 cubic yards of material into the area at a cost of \$266,390. He added that consideration of dune plantings should be delayed until summer to allow the winter "northeasters" to pass.

Councilman McDonald made a motion to approve the recommendation made by Mr. Brazil. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 5-0.

Mr. Brazil reported that significant losses were also noted at Phipps Park as well as other beach access points owned by the Town estimated at a cost of \$144,840 to complete the work at Phipps Ocean Park and the cost of the beach access work is estimated to be approximately \$340 with no dune plantings planned at this time. He continued that the total estimated cost for sand placement at Town-owned properties south of Sloan's Curve is approximately \$411,570, including the previously authorized amount for the Par 3 Golf Course.

President Pro-Tem McLendon made a motion to approve the \$145,000 cost as requested by Mr. Brazil. The motion was seconded by Councilman McDonald.

Councilman Goldblum requested costs for Alternative 1 as the \$145,000 was the cost for Alternative 3.

Mr. Brazil responded that Alternative 1 would cost approximately \$50,490 for Phipps Park.

Councilman Goldblum requested the remainder of the damage requests be heard before this amount was approved as Mr. Brazil had submitted three alternative plans that should be considered in total and not one by one.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Mr. Elwell pointed out the essential differences between the properties the Town has custodial responsibility for versus the issue of providing shore protection for that entire section of the Town, public and private property.

Councilman McDonald said he agreed with that approach to separate public and private property cost issues.

Councilman McDonald made a motion to proceed as described by Mr. Brazil and in his October 26, 2004, memorandum entitled 'Emergency Shoreline Protection Projects for Public Properties'. Councilman Brooks seconded the motion and it carried 5-0 on roll call.

Mr. Brazil reported a significant amount of sand was lost from in front of the Palm Beach Country Club seawall with scouring on the seawall as waves hit the wall. He continued that an independent engineer stated the wall was in poor condition before the storms and a rehabilitation or reconstruction project should be undertaken. He identified two alternatives: 1) rebuild the entire wall at an estimated cost of \$1.7 million; or 2) construct a toe wall similar to the wall built at Mid-Town Beach for an estimated cost of \$850,000. He explained the reconstruction would require lengthy permitting plus the road may be closed for an extended period of time while the toe wall would consist of placing rip rap boulders on a solid foundation up to approximately elevation 4.5 NGVD greatly reducing the stress on the wall, and the wall should serve the Town for many years.

Mayor Smith said her recommendation would be to go ahead with the toe wall as the current wall has served the Town well for many years.

Councilman Brooks made a motion to direct staff to proceed with construction of a toe wall at an estimated cost of \$850,000.

Responding to Councilman Brooks question regarding the Town's responsibility for maintaining the seawall, Mr. Elwell said this wall is called the Country Club Seawall but the wall actually protects North Ocean Boulevard and is the Town's legal obligation. He added the toe wall will provide a very substantial measure of protection while the wall would be analyzed for potential additional work that may be necessary to provide additional shoring or the toe wall may be a sufficient solution for a very long time with additional information provided to the Town Council as it becomes available.

President Wyett questioned if the wall was owned by the Country Club or the Town?

Mr. Elwell responded the staff will explore the possibility that the wall may be on private property but the public obligation is based on a 1940's deed documentation and the protection of the roadway.

Councilman Goldblum recalled discovery was made that an easement was given to the Town

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

on the east side of the Country Club to construct North Ocean Boulevard with a similar easement granted on the west side to construct North Lake Way and the Bike Trail.

Councilman Goldblum seconded Councilman Brooks' motion to construct the toe wall. The motion carried 5-0 on roll call.

Mr. Brazil reported that a 200 foot section of bicycle path washed out opposite the Palm Beach Country Club but has been restored; although this section is very vulnerable to future storms. He continued that the two hurricanes washed away most of the earthen berm exposing a low bulkhead with loose concrete rubble lying behind, and Town staff will return to Town Council at a future date with alternatives to provide added protection to the area.

President Wyett said he recalled the seawall runs along with the bicycle path for quite a few miles, and the seawall belongs to the property owners and is the responsibility of the owners

Mr. Brazil replied that in most cases it is private property, but at the end of the roadways such as Country Club Road, the Town has the responsibility.

President Wyett said he was attempting to determine if the property along the Bike Trail is treated differently from the property at the end of the roadways.

Mr. Brazil said work needs to be done in the area due to flooding situations, and if the property is Town owned, it will be pursued in that manner, and the matter will continue to be researched.

Mr. Elwell added the issue of protecting the public's continued use of Lake Trail is the same as the situation on the east side of the Country Club where the issue is protecting the public's use of North Ocean Boulevard.

Councilman Goldblum said the original easement stated clearly that the Town is responsible for maintaining all of the property in the easement, lake side and ocean side.

Mr. Brazil continued that significant damage occurred to the three finger piers at the Town Docks at the Town Marina. He identified the finger piers as 16E and 16W on the Brazilian Docks as sustaining significant damage to the decking and approximately 35 feet also on the Brazilian Docks needs to be replaced; pile caps were damaged on slips 7W and 7E and need to be replaced; and slip number 12 on the Australian Docks needs to have two pile caps and six pile caps replaced.

He added that minor damage occurred throughout the marina that included power pedestals, wood piles, sewage lines, and dock entry gates resulting in costs from both storms estimated to be between \$180,000 and \$200,000 with the work currently in progress.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Mr. Elwell said this work does not require Town Council approval as the work is considered emergency repair during the storms' aftermath and these costs were included in the \$9 million estimate provided to the Town Council previously.

Mr. Brazil reported that a bulkhead at the west end of Jungle Road that protects the D-16 stormwater pump station had a partial failure, and the estimated cost to restore the bulkhead and the adjacent area is \$30,000 with the work already under way.

He continued that the bicycle path south of Lake Worth Road had approximately 12 washouts, and the Florida Department of Transportation is designing a repair that will provide bank stabilization in an effort to prevent washouts in the future estimated to cost between \$300,000 and \$400,000. He noted that Town staff initiated a project in advance of FDOT to restore the path so that Town residents may again use the path at a cost of approximately \$25,000 to be completed no later than November 12, 2004.

2. Private Property

Town Manager Elwell summarized the actions that were taken at previous Town Council meetings to provide protection to ocean front properties that suffered very serious erosion into the dunes which was particularly true in areas south of Sloan's Curve, although some areas north of that area did require the Town's attention. He continued that a process was started positioning the Town to impose assessments should the Town Council choose to do that, either for this or future projects. He said the staff and consultants have prepared three different alternative plans for ways continuous dune restoration could be accomplished between Sloan's Curve and south Town limits.

Public Works Director Brazil explained the scope of work and the three alternatives with costs as follows:

Alternative 1	\$ 371,960
Alternative 2	678,470
Alternative 3	1,208,020

Mr. Brazil advised the placement of sand on the beaches may be sacrificial to prevent further erosion with weather conditions during the next few months being the deciding factor.

Responding to Councilman Brooks request for a legal understanding of the placement of sand on private properties, Attorney John Randolph replied the Town was precluded from spending public monies solely for the benefit of private properties with the reasoning that the general public is taxed for items for the benefit of the general public, and if the line is crossed, some members of the public will object who pay taxes for public purposes. He advised that the Town Council needs to make a

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

determination as to whether there is a public benefit in the event public funds are used for that purpose. He said the question is 'Whether or not in placing sand on these private properties, there is a public benefit beyond simply helping the private properties that are involved'.

Mr. Randolph said he understood if this were done as an emergency measure, a public benefit may be construed if this action was utilized as shoring up for a long term project that has yet to be put in place.

Mr. Elwell continued this project relates to the overall beach renourishment program, and the Town Council previously determined that the Townwide beach management program is a program of public benefit, restoring the beaches of the Town to good health and providing overall protection in an integrated way with the multiple projects that are involved for the entire shorelines of the Town with a general public benefit for the Town not to mention the recreational benefits resulting from the projects. He said storm protection has driven the recommendations and actions for beach management, and bonds were issued to construct the projects as quickly as the permitting process will allow.

Mr. Elwell explained that this work is necessary at this time only because of storm damage that was beyond expectations had the Phipps renourishment been done, and the intent of the work is to tide the Town over and is not a permanent solution to any erosion problem but is an interim emergency action to combat the critical erosion problem. He said the minimum threshold has been met for public benefit for the action and the Town Council has a policy decision to make to determine if the action meets that threshold for the Town to fund the projects. He added the work would be done on the landward side of the mean high water line.

Comments from the Public:

Madelyn Greenberg, 3360 South Ocean Boulevard, Board President speaking for 90 condo owners and adjacent property owners, said the lack of sand is an extreme emergency and created a desperate situation. She continued that the process of assessing only the affected condo owners would be unreasonable, unfair, and an unacceptable financial hardship and burden on the owners. Ms. Greenberg said the Town has an responsibility to protect all of its residents and real estate in some of the buildings has been devalued because of the loss of sand, and the project should not only be considered a public safety issue but as an investment for the Town to reestablish property values for the long term. She also requested the Town consider a longer term solution to reinforce the dunes.

Ted Wagner, 3400 South Ocean Boulevard, President of the Atriums Condominium Association, said his photographs (presented to the Town Council) showed the destruction of the dunes which was very serious and any future storm surges could easily collapse the dunes at 3400 South Ocean Boulevard. He expressed concern for the concrete infrastructure of the building and requested immediate prioritized actions for the entire shoreline of the Town of Palm Beach. He said

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

the only possible action to pay for the sand is to have the Town pay for the dunes and the beaches.

Brian Reeves, Vice-Chairman of the Citizens' Association, said the Town should pay for the sand as it has paid for other beach and sand emergency projects.

Dick Kleid, President of Beach Point Condominium, 2660 South Ocean Boulevard, said he was aware of the legal problem posed by the expenditure of funds to benefit private property without showing a public interest. He suggested that A1A is the only north/south route out of Town and enhanced sand dunes would be some protection for A1A if another storm occurred.

Leon Shapiro, 3300 South Ocean Boulevard, recalled a situation in West Hampton Beach on Long Island where the road was washed out and approximately 200 houses were washed out to sea by two storms. He continued the residents sued the Army Corps of Engineers for failing to provide jetties with the outcome requiring the Corps to maintain the beaches for 30 years. He questioned why sand could not be dumped on the beaches in the south end and why the Corps could not be sued for failing to protect the beaches?

Sten Lilja, 1330 North Ocean Blvd., complimented Mr. Elwell and Mr. Brazil for their factual presentations at this meeting including the mention of using rip rap. Dr. Lilja said the Town has a very specific Code that deals with the issues before the Council at this meeting. He recalled that in 1960 the Town improved the seawall in front of his North Ocean Boulevard property where the Code was very explicit requiring him to pay 50% of the costs and the Town paid 50% of the costs. He referred to two ordinances, one in 1960 and one in 1966, regarding the revetment on South Ocean Boulevard and recommended the Town Council review those two Codes and apply them properly.

Harold Nectow, Citizens' Association, questioned the amount of money FEMA is expected to pay to the Town for hurricane damages.

Mr. Elwell responded the bottom line will evolve from the processing of the claims with insurance companies and FEMA, but an accurate estimate is hopefully 70% of \$9 million or approximately \$7 million.

Mr. Nectow questioned if the Town could proceed immediately if options 1 or 2 in Mr. Brazil's October 25th memorandum were approved and not option 3?

Mr. Elwell replied the Town would proceed immediately if either option 1, 2, or 3 was chosen.

Mr. Nectow said the beach restoration and dune restoration should be done after the emergency measures and expressed concern regarding any future situations requiring residents to pay for additional emergency measures.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Allen Horowitz, President of 2500 South Ocean Boulevard Condominium Association, reported his condominium building has lost over forty feet of dune in the north area adjacent to Par 3 Golf Course with the sand within four feet of the retaining wall, part of the foundation of the condominiums. Mr. Horowitz said the condominium owners he represents have confidence that the Town Council, the Mayor, and the Town Manager will take the correct actions and reaffirmed comments of other speakers before him.

Jerry Frank, Citizens Association, said if the Sand Transfer Plant had been in operation and upgraded, this meeting may not have been necessary. He recalled the bond issue was issued on the basis to protect property and cited the critical eroded condition of reaches 7 and 8. Mr. Frank urged the adoption of Option 3 in Mr. Brazil's October 25th memorandum.

The following is a verbatim transcript of the discussion immediately prior to the motion made regarding Private Property and the motion itself.

Following comments from the Public:

Wyett:

Is there anyone else who wants to come forward? In that case, we will return the conversation to the Council.

Mr. Elwell.

Elwell:

Thank you, Mr. President.

I would like to clarify a couple of things from the comments that have been offered. First of all, the fundamental question that you are addressing is the public benefit/private benefit question, and it is not a question of whether or not sufficient funds are available. I would like to make it clear that if you determine there is a sufficient public benefit to this work, that indeed we do have sufficient funds to back up – reflected that, and let's make sure that everybody understands here, for the discussion, that for at least this time, and we can have some further conversation about that depending on your determination of this matter, but at least for this time, the \$1.2 million that would be needed to do even the fullest alternative 3 approach to the work on private property along with that which you have already authorized for public property, those funds are available from the Beach Management Accounts.

In addition, I think, that Mr. Frank made an important point for you to weigh in his comments just now, that if we are blessed with good weather, and if we don't have storms and waves sufficient to wash this sand out before we come along and do the beach restoration work that will follow along behind, then, indeed, there would be some sand that would be placed now that would not need to be placed later as part of the beach project and

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

so there would be some savings to that beach project at that time, based on the work that you would be doing now. I think that is an important factor to weigh here in terms of the potential public placement of this sand on private property. You need to weigh against that what we know which is that if we are not blessed with good weather is that the sand may be sacrificial. We may need to place it again, but nevertheless, the point is well taken that this could potentially reduce the long term cost of beach restoration.

There was reference made by one of the speakers to the ordinances and that specific ordinance, Dr. Lilja, that you traveled under many years ago is a provision of the Town Code regarding ocean front roadway protective seawalls that is distinguishable from what we had discussed earlier today, and I think also from what we are discussing now, but particularly from earlier in that it relates to the rehabilitation of privately owned seawalls. Seawalls that were constructed privately and are owned privately, but where they do provide a public benefit of protecting the ocean front roadways and the utilities and so the Town is authorized by Code to actually go in and make repairs when emergency repairs are needed so that those walls don't fail if a private property owner is not maintaining the wall in a condition that keeps it safe and sturdy and protecting the roadway, that the Town can make the necessary repairs and share that cost with the abutting private property owner. So, there is indeed a provision, but it doesn't really directly relate to the discussion you are having today.

Finally, on the question of Mr. Nectow's point about the – being able to proceed immediately, regardless of the decision you make to today, we can proceed immediately or all but immediately. We will proceed as fast as we can to mobilize and actually perform the work that is necessary. I don't think any of this conversation is about whether or not this work is necessary. We all recognize the critical erosion. We know we need to get out there as quickly as we can and address it. We will be doing that, regardless of your decision. If your decision is to have some sort of assessment process, that assessment process will follow along the work that is going to be done. The Town would front the money and construct the work and would collect reimbursement through the assessment process. If in the alternative, you determine the Town is going to pay for 100% of the cost of this, it is like any of these other Town emergency projects, we will be proceeding as quickly as we can to simply get the work done.

Wyett:

Mr. McLendon.

McLendon:

Yes, I think it might be appropriate at this time to move inclusion of this work in with what's the Shore Protection Area Project and include the sand that we have been talking about for the last ½ hour in with the public funding budget – pay for it out of the project funds.

Wyett:

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

We have a couple of questions – go ahead, Norman.

Goldblum:

In looking at the three different alternatives, I don't see any beach renourishment coming very quickly. So, the more sand we put on the beach now in these dunes, the better off we are that we don't have to replenish that sand a year or two years from now. So, I first thought that alternative one would cover us in an emergency, but as I now look at it, in looking when we have beach renourishment coming from the Corps of Army Engineers permits and all that nonsense, we should go to alternative three, and I still stick by my story that we have to protect the property, we have to protect the tax base, and **I would like to make a motion that we go with alternate three and the Town should pay for it.**

Randolph:

I guess since Mr. McLendon made the motion, he could just include alternate three in his motion.

Goldblum:

Okay. I'll second it.

Wyett:

Mr. Brooks.

Brooks:

Yes, Mr. Randolph, perhaps if you could help, only in the sense of phraseology with Mr. McLendon, to cover the legal points that we had in response to my question that you and Mr. Elwell so ably enunciated, I'd feel more comfortable if that could be incorporated into Mr. McLendon's motion as seconded by Mr. Goldblum.

Randolph:

I think Mr. McLendon did define it in one respect in regard to attaching this work to the project that is forthcoming, and I think there have been other statements made here today which have – by property owners – that have explained why they feel this is a public benefit, so what are those public benefits?

Brooks:

I would just like the words 'public benefit' in the motion, sir. That's all I am saying.

Randolph:

Okay.

McLendon:

That sounds good.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Wyett:

I would like to clarify a few points. I am in favor of the motion and will vote for it; however, it should be clarified for the public that one major storm, even a storm less than the two storms we just sustained, could wipe out all of the sand that we put in – one swoop, and that we agree that we put on more sand in proposal three – it will not protect private property. Nature can wipe out dunes just as we have seen in front of 2500, wiping out an enormous dune. I am familiar with that dune, because I lived at 2500, and it was one of the biggest dunes originally when I lived there, let's see, 14 years ago was the last time. I lived there 17 years, and just climbing up and down the stairs on that dune originally was enormous.

So, we also should be paying attention to what happens in section 3 – 4 – if these dunes are wiped out before we can do beach restoration. We should have some discussion about that, because it is a likelihood we could not do beach restoration, correct me if I am wrong, before next November.

Elwell:

Right. Would you like me to address that now?

Wyett:

...before turtle season.

Elwell:

That's correct. I can address it now or I can address after the other Council members have a chance to offer their comments, which I really prefer.

Wyett:

Either way. I see Mr. McDonald's light, so he may wish to address that.

McDonald:

Yes, I would like some clarification of Mr. McLendon's motion. Is this to approve this on an emergency basis? This one time? Or is this intended to be an ongoing renourishment or placement of sand on the beaches if this occurs again? So, is this a one time placement of sand or forever?

McLendon:

Not necessarily, Jack. The situation should be looked at if it comes again.

Elwell:

May I, Mr. President? I think your point, Mr. President, in that question and answer go directly to the heart of the potentially temporary nature of the work that is going to be done, and we should address that indeed before you vote. The back up alluded to this, and I would like to make it quite clear as a recommendation from staff that if you decide that there is a

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

substantially enough public benefit to this work for all of the reasons we've been discussing for the last hour or so, and so the Town is going to pay 100% of the cost at this time. Our strong staff recommendation to you is that you do that based on the current emergency, based on the findings of public benefit in this particular discussion and based on the fact that we do have available funding because of the delays in constructing the planned beach projects, there is some additional interest that came into the fund that would allow us to be able to afford to do this without any additional burden on the taxpayers at this time. For those reasons, we would recommend to you that in deciding to proceed with this as a publically funded project but knowing that it might need to be revisited – we might need to construct something very similar, only a matter of months from now if we get bad northeast waves for a week or two straight which we sometimes do in the winter time – sometimes the weather is apparently beautiful but the waves are high because of the weather conditions regionally in the southeast United States. When that happens and we get those northeast waves for an extended period, we can have serious beach erosion even when we are not having stormy weather. Because all of that could happen, and we could be in this situation again later this winter or in any case before we are able to construct the beach restoration projects. It's important for the overall policy making that you will need to do on this issue in addressing future situations that we continue on with the public hearing on November 18th and otherwise of the steps that are necessary to position the Town to be able to use the assessment method in the future if the circumstances of a future emergency are determined by you to be appropriate for an assessment rather than for public payment for 100% of the cost.

So, again that doesn't go directly to the decision that you are making today, but I think it addresses your concern, Mr. President, and it addresses certainly the question that Mr. McDonald posed about is this one time or is it multiple times? We would strongly urge you to make this decision as a one time decision, based on the circumstances for this situation that had been discussed today, but to continue on with the process of enabling the Town to use the assessment method in case a future circumstance, similar to this, might be more appropriate for assessments rather than payments from the beach fund.

Wyett:

Peter, I wasn't necessarily discussing an assessment. I am also asking you to study as to what the Town can afford should we need to renourish the dunes a second or a third time, because the money has to come from some source.

Elwell:

That's correct, and what I'm suggesting to you is that the monies that have been set aside for the long term beach management program are sufficient at this time to bear this \$1.2 million cost for the work that would occur this time.

Wyett:

But we have the second time or a third time when we may have the residents coming to us

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

asking us to pay for it another time, and I think we should be prepared to know where the funds are coming from should we decide to make a decision other than an assessment. We may decide an assessment is correct, but we may decide an assessment is incorrect, and we should be prepared to make that decision.

Elwell:

Yes, sir, and I would suggest we address that at that time rather than now, because we don't know when that will occur. We don't know – there is reimbursement that we are anticipating but have not yet received certainly as we go continuing on through this recovery process from FEMA and the insurance carriers and all of those things together, I think it would be information that you would need to have in current – in real time – at that point in the future to make that decision.

McLendon:

Right.

Elwell:

You did make one other point....

Smith:

I have a few questions.

Wyett:

Mayor.

Smith:

Mr. Brazil, please, can you tell me how many projects does the \$1.2 million cost cover?

Wyett:

It's really \$1.1 million.

Smith:

Well, on my thing it says \$1.208 million. That's what it says on my paper. How many projects does that cover? And how did you determine – is that the entire list that we have before us?

Brazil:

Yes, it is the entire list, public property only. I'm sorry, private property only. We already segregated the public property. We've also segregated the other municipalities. So, that number is for all of the private properties listed here.

Smith:

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Right. And you are going to do the alternative three with the slope on all of them. Are you using the revetments, the rock revetments on any of these properties where the water is lapping at the seawalls?

Brazil:

No. This is above mean high-tide only, and it consists of sand only.

Smith:

Okay. Thank you.

Goldblum:

My question – In a – I think we should make a study, we're putting sand there now, but we should study about putting rock revetments all along that area for future storm protection. I think – you understand what I'm saying –

Brazil:

The permitting there is very extensive and would have to be done by the private property owners. It is for their – and it would be very difficult – Army Corps and DEP both don't find hardening to be an appropriate solution. As an emergency, perhaps they would consider it, but on a wholesale plan of attack for an entire area, I don't think it would be permissible, practically.

Elwell:

If I might address that further. He's right, and that may be indeed what is necessary in front of the small handful of properties. I think we have talked about it being something like five or six properties here, and somebody in this room has a better handle than I do.

Goldblum:

Well, we're doing it on South Ocean Boulevard now.

Elwell:

Yes, sir. That's to protect the roadway, and we are talking about doing it on North Ocean Boulevard to protect the roadway. Where you are doing it as an immediate emergency protection of structures, that's a different situation from doing it as general storm protection to what is otherwise a natural dune system, and that's where...

Goldblum:

We're doing an emergency protection right now, sand, we're going to vote on that, but I think we have to look in the future to find out some way besides just putting sand on the beach of protecting those properties. It's a private job.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Elwell:

We can look into that, but what Mr. Brazil is alluding to is the fact that we could right now assist those individual private properties that have a particular problem – you're addressing with this decision you are making as a matter of public policy, a project for an entire area of the Town. There are a few isolated properties within that area that have a worse situation than the others, because their improvements stick out further to the east and are more exposed to the ocean, and they may indeed, for their own particular benefit at those locations, need to do something more substantial than just rely on this beach work, this dune work, that is proposed. We can certainly help them to get in touch with the right type of coastal engineers, get in touch with the right people at DEP and the Corps, and we can facilitate a process of them trying to do for themselves what the Town is doing to protect the roadways that we have talked about earlier in this meeting. We could do that right now.

The broader question of using rip rap or revetment as a large scale replacement or supplement to the beach restoration program in the Town is something entirely different in terms of both the amount of funding it would require to implement and the small probability of obtaining permits from either the State or the Corps of Engineers to do that in areas that are otherwise a more natural dune system.

Goldblum:

All right. The only thing that I recommend is that individual condos and hotels look into it on their own, because we might not come back a second time with an emergency allocation.

Elwell:

We are ready today to begin helping them with that process for any who wish to pursue that. One other thing, Mr. President, if I might, I wanted to follow up on – you had made the point that we can't expect any beach restoration under the best of all circumstances until next November – that is correct, and I think it is important for all of us to understand – there is even if we are able to work out favorable terms for our permit with the Corps of Engineers as we are not hopeful of – that because of the sea turtle nesting season, you can only construct these projects between November and April or so. You get them started as early in the winter season as you can and complete them usually around January or February. That would be our intent with the Phipps project but obviously would need to be doing that one year from now. It is not something that can be completed during this upcoming season because of the necessity of getting the plans revised to match the permit which has to be revised and then getting out to bid and then getting out and constructing it.

So, that would be work that would be done a year from now, and some urgency work would be done as quickly as possible and then as we all have discussed, might need to be done again between now and next November.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Wyett:

And there is a hurricane season in between. I would also like to address the number of condominiums that have these walls that protrude out and are in most danger. They are going to be receiving sand the way their neighbors are, and that sand will be the first to wash away. We're doing it because we want to be fair, but the chances of that sand staying very long is very suspicious, extremely short, and therefore we are willing to help you to this degree of telling you what plans you have to do to help yourself, and the only real long term help is to get a more solid approach to protecting your property. The plans are available from Paul. He can help you with the plans. The Town cannot do that work. It is much more permanent work, and you would be putting your head in the sand if you didn't immediately start to work.

Brooks:

Is that a pun, Mr. Wyett, or are you just being poetic?

Smith:

Yes. What sand?

Wyett:

Well, the sand we are going to give you, provide for you. That sand is not going to help you as it will help your neighbor a little longer period of time. I would not depend upon it as being your salvation. If there is a situation that you are going to do more to help yourself if you really look for a long term solution. So, please if any of you are in the audience or if you have friends who are waiting for you to come back to tell you what happened, contact the Town for what suggestions we can give you and then proceed to help yourself.

Smith:

I think a lot of the information is already in our Coastal Management Plan which we did. I don't believe we need another study. I think the plan will be able to cover whether the rock revetments would be helpful on the seawalls.

Brazil:

I have already spoken to a few organizations and am trying to help them down that road.

Smith:

All right. Shall we call the question?

Wyett:

Yes.

Randolph:

I want to clarify since there was some discussion back and forth on this. I understand the

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

intent of the maker is that this is an emergency one time funding, and that you will look at each one as it comes later on.

McDonald:

I think Mr. McLendon said the opposite.

McLendon:

Yes, I did. That was before Peter and you clarified some of the issues, so as far as the motion is concerned, it is for a one time emergency.

Randolph:

Based upon public benefit discussed here today.

Smith:

Right.

President Wyett called the question.

On roll call the motion carried 5-0.

Brazil:

If I could, Mr. President. We are going to need everybody's help in doing this work – access, agreements, easement agreements, things like that. We'll be approaching everybody individually, but anything anybody can do to help me for access would be greatly appreciated.

Elwell:

Under coastal, I would just like to make it clear then, that based on the action you have just taken, we will indeed be holding the public hearing on November 18th at 10:00 a.m. in this room regarding the assessment procedure, not for the purpose of imposing any assessment on this project but for the purpose of addressing the potential use of that tool for funding future work.

End of verbatim transcript.

VI. Proposed Award of Contract and Authorization of Funding for Townwide Community Satisfaction Survey

[Sarah E. Hannah, Assistant to the Town Manager]

Ms. Hannah reported that Staff budgeted for a Townwide Community Satisfaction Survey and solicitations to vendors were sent out in September requesting proposals for both telephone and mail-in surveys. She continued that certain questions regarding the uniqueness of Palm Beach were

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

to be included, and two proposals were received. She announced the Committee assigned to review the proposals selected O'Neil Associates as the recommended vendor.

Councilman Brooks said it was impossible to do a random, scientific survey of the Town of Palm Beach and referred to his many years of involvement with Channel 5 who eventually gave up trying to do a survey. He noted that 60% of unlisted phone numbers for Town residents is frightening, and the seven minutes to question residents for the survey is unrealistic. He added that some residents actually are in residence only a few months out of the year, and he could not support spending the money for a survey.

He continued that the 33480 zip code is desirable with up-scale marketers, and the Neilsen Company has been unable for years to place a meter in Palm Beach.

Bill Guttman, Palm Beach Civic Association, said if a survey would be possible, that would be a good idea, not just for the Strategic Plan purposes, but to track the goals and objectives in the performance based budgeting adopted by the Town. He suggested residents may be more willing to respond to surveys or come up with mechanisms to tap into their opinions as they are aware of the objectives the Town is attempting to measure through a public relations effort.

Mr. Elwell said O'Neil Associates explained how they would overcome the hurdles to conduct a survey in Town, but it was important for the Town to try to conduct a survey at least once using the phone survey, the random digit dialing, and an experienced firm to create meaningful questions and receive the best possible input. He urged the Town Council to approve the request for the survey.

Mayor Smith said, with the lack of success with the forums last year, no forums should be held this year, if no surveys were done, perhaps the two associations could poll their members but not under the umbrella of the 'Civic' or 'Citizens' Associations as those responses would be given with biases toward the Associations.

Mr. Guttman said he would work with the Town, on behalf of the Civic Association, on a preliminary mailing urging all of the Association's members to respond to the survey conducted by the Town. He asked Harold Nectow to join him in those efforts.

President Wyett commented that he agreed with Councilman Brooks; the survey was a waste of time and money.

Councilman Goldblum suggested the business groups be omitted from the survey and citizens only should be surveyed.

Mr. Elwell responded if the business community was excluded, the cost savings would be approximately \$10,000.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 11/01/2004

Councilman McDonald made a motion to approve the survey, with great reluctance, to conduct the survey once, excluding the business community at a cost of \$20,000; with \$5,000 from the Contingency account and \$15,000 already in the budget. Councilman Goldblum seconded the motion.

Councilman Brooks requested Mr. Elwell show the survey to individual Council members before the survey is used and questioned if the firm cannot develop a random, scientific sample, the fee would be adjusted accordingly?

Ms. Hannah replied the firm would keep trying until they get that random sample.

Councilman Brooks responded a cut off should be determined.

On roll call the motion carried 4-1 with Councilman Goldblum casting a negative vote.

VII. ANY OTHER MATTERS

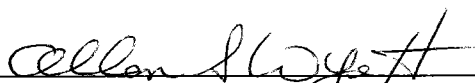
Harold Nectow informed the Town Council that no voting machines were delivered to the South Fire-Rescue for the November 2nd election.

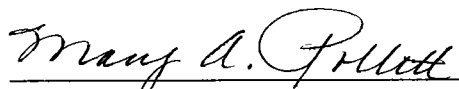
Town Clerk Pollitt replied steps were taken to insure the delivery of the machines before 5:00 p.m. on November 1st.

There were no other matters.

VIII. ADJOURNMENT

The meeting was adjourned at 12:28 p.m.


Allen S. Wyett, Town Council President


Mary A. Pollitt, Town Clerk