

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON OCTOBER 28, 1996**

I. CALL TO ORDER AND ROLL CALL

The Town Council meeting was called to order by President Lesly S. Smith at 1:15 p.m. on October 28, 1996, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky; President Lesly Smith; President Pro-Tem Jack McDonald; Councilmen Sam McLendon; Leslie Shaw; and Allen Wyett. Also in attendance were: Town Manager Robert Doney; Assistant Town Manager Peter Elwell; Town Attorney John Randolph; Director of Public Works Al Dusey; Town Engineer James Bowser; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The Pledge of Allegiance was led by President Smith.

III. APPROVAL OF THE AGENDA

Mr. Wyett made a motion to approve the agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

IV. CONSIDERATION OF PROPOSED WATER FRANCHISE NEGOTIATIONS WITH THE CITY OF WEST PALM BEACH

Mrs. Ann Herman addressed the Council before the beginning of the discussion and requested that everyone support the Council and attend the joint meeting to be held in West Palm Beach on October 29, 1996.

Mr. McLendon reminded everyone of the change in location for the meeting. The meeting will be held in the basement of the Police Station on Banyan.

Mrs. Smith said the Council had copies of the suggested changes and the new agreement that was returned from the City of West Palm Beach. Mrs. Smith called on Mr. McLendon as Chairman of the Water Committee to begin the discussion.

Mr. McLendon referred to his memorandum after the September 9, 1996, meeting and the October 7, 1996 meeting with Mr. Sanders, the Chief Liaison - Assistant to the Mayor - for water issues. Mr. McLendon reported that he and Erik Olsen met on Tuesday, October 22, with Pat Brown. Mr. Brown and Mr. Olsen had seen copies of the two memorandums and offered to honor the request for the surcharge to be included as water revenue. This would affect the allocation of construction allotment in future years; however, the revised agreement, received by the Town on Thursday, October 24, did not contain all of the language. The surcharge was included in the hydraulic study construction, but the renewal and replacement on any normal construction activity still contained the provision that the allocation would exclude the surcharge from the revenue consideration. Mr. McLendon stated he did not know if that was an oversight or a case of not living up to promises.

Mr. McLendon said he learned that Mr. Brown had reviewed a tape of the Council minutes where the Council discussed water issues.

Mr. McLendon said he reminded Mr. Brown and Mr. Olsen that every dollar spent on improvements for the water system since the City of West Palm Beach has owned it has been paid for by revenue bonds which means that water revenues have paid for all of the improvements--not one dollar of City General Funds has been spent for that purpose. Mr. McLendon said he reminded Mr. Brown and Mr. Olsen that the analysis of water consumption and cost data for single family homes showed that Palm Beach single family homes pay 36.5% more per gallon than the West Palm Beach single family homes. Additionally, if the 25% surcharge is added to the 36.5% that equals 70% difference.

Mr. McLendon said he was very much opposed to have any reference in the agreement to the surcharge which may indicate an obligation on the part of the Town of Palm Beach to that surcharge and may destroy any future legal plans to offset the surcharge. Mr. Brown told Mr. McLendon he would have to notify the Commission of the risk of taking that position if the surcharge was not mentioned in the agreement.

Mr. McLendon reported he did not mention the issue of the four times per day pressure drop as opposed to the drop in pressure of one or two times per day. Since the discussion with Mr. Brown and Mr. Olsen, the Town had received a letter

from Michael Brenner, Assistant City Attorney, with the revised agreement.

Mr. McLendon said that Mr. Sanders indicated at their meeting that the City of West Palm Beach would have some room for movement on the surcharge cap numbers, and the indication was the City of West Palm Beach was willing to agree to a five year cap. Mr. McLendon said he would have reservations about the five year cap and questioned if the Town's irrigation restrictions would reduce the water use. The new proposed agreement had a five year cap and not the seven to eight years as indicated by Mr. Sanders.

Mr. McLendon noted the City of West Palm Beach changed the Contract's term from 50 years to 30 years which was agreeable to him.

Mr. McLendon said that the City of West Palm Beach did not agree with Mr. McLendon's position that the water mains that were paid for by others and owned by the City should be given consideration; however, the phrasing in paragraph 4 of Mr. Brenner's memo referred to "all portions of the potable water distribution system located within the City...." and the aforementioned pipes were located in Palm Beach, not the City of West Palm Beach. The City of West Palm Beach maintained the water pipes ad infinitum and was taking the position they were entitled to be paid for them. Mr. McLendon suggested that the Town of Palm Beach could maintain the water lines in the same way the sanitary sewer lines are maintained.

Mr. McLendon said that the hydraulic model was promised by the City of West Palm Beach in December, 1995, and almost a year has passed with no model. Mr. McLendon said he assumed the City had a draft of the hydraulic model, and it may contain some information that the City does not want to share with the Town. The City had promised to provide that to the Town soon. Mr. McLendon said he believed the City could incorporate language concerning the area of the size of lots for the regulatory issue regarding the highly escalating rates into the rate schedule.

The City of West Palm Beach appeared to be willing to hold the surcharge at 25%. Mr. McLendon indicated the City is not giving anything, because the law states the surcharge cannot be above 25% unless public hearings are held where the City would have to prove the costs were justified. If and when the City went to a cost of service type rate schedule which the City indicated they would be considering, the City reserved the right to use the inverted or increasing rate schedule. Mr. McLendon said an inverted rate schedule is not a cost of service rate schedule, because the cost decreases with the number of gallons sold. The City had rejected the reproduction cost less the depreciation method of determining the value of the system, and wanted the price to be based on the revenue produced. Mr. McLendon said the pipes are in very poor condition, and the Town should not pay a big price for a system with pipes that have to be repaired immediately.

Mr. McLendon pointed out that in March of 1995 a commitment was received from Mayor Graham confirming the conclusions reached previously. This commitment included an agreement to have a friendly lawsuit and to *consider*, not promise, to have part of the surcharge allocated to the Town of Palm Beach's piping system. The City Administrator at the meeting in August stated Mayor Graham had no right to make those commitments at the March meeting.

Mr. McLendon said he did not know how the Town could arrive at anything beyond "a simple give them permission to service" with the present conditions without referring specifically to the surcharge. Mr. McLendon asked Mr. Randolph to address the "down side" of not having a water agreement with the City of West Palm Beach? Mr. McLendon said his recommendation, at the moment, was not to have a contract.

Mr. Randolph said the City of West Palm Beach had the obligation to continue to serve water to the Town of Palm Beach in the event no contract existed. From that standpoint, the Town was at no risk of not having water as a result of not signing a contract. The "down side" would be possible improvements to the system. Without a contract, the City would be required to maintain the system and not jeopardize the health, safety, and welfare of the Town's residents. The extent of the City's obligation would be to continue to provide the Town with a viable system. The City would not necessarily have to provide a hydraulic model or go forward with short or long term capital improvement plans.

Mr. Randolph said a question would arise if the City of West Palm Beach would be required to provide water to the Town forever, without a contract. The City could not leave the Town high and dry, but reasonable notice could be given that would be determined reasonable by the Courts in the event the Town submitted a challenge. The Town would have to seek other water sources if that type of action would be upheld by a court of law. Mr. Randolph advised that distinct possibility existed if the City would give reasonable notice.

Mr. Wyett thanked Mr. McLendon for the work he had done in this regard during the past two years. He remarked that if it was decided to go without a contract, planning would have to be done for alternative sources for water. He pointed out that he understood that there were plans for expansion of the water system in order to increase providing capacity, and that there was no protection in the contract against future expansion expenses for the Town. He noted that he was concerned with the water pressure in the extreme north and south of Palm Beach. He suggested that a rate guarantee to condominiums, as well as the inverted rate issue be investigated, which could be a back door to a rate increase.

Mr. Shaw also expressed concern with water pressure, suggesting that some reference be made in the contract to a standard pressure, rather than merely a minimum pressure.

Mr. McLendon stated that he did not believe that the Town was being treated any differently than anyone else in the West Palm Beach system, other than the surcharge paid by the Town. He expressed concern with the policy of the South Florida Water Management District putting the environment as the number one priority, agriculture as the number two priority and urban water supply as the third priority.

Mr. McDonald commented that he was opposed to the Water Agreement both legally and economically, and that the Town needed to become more self-sufficient regarding its water supply.

Mrs. Smith stated that the comments she heard today were not started two years ago, and that she had been sitting on the Town Council for almost four years and discussions and negotiations on a water contract had been held during that time with many concerns of 1993 being solved with the current proposed contract. She stated that she believed it was vitally important for the protection of residents of the Town that a Water Contract with West Palm Beach be implemented, and that Mr. Wyett and Mr. McLendon had made great accomplishments with the proposed Water Contract. She suggested that negotiations continue with the Water Contract.

Mr. Wyett stated that the purpose of this meeting was to come together in order to have one united opinion tomorrow at the meeting with West Palm Beach. He suggested that the Council talk about the 25% surcharge, the offer of a five year freeze, any counter offers, and the length of the contract. Staff could then handle the technical aspects.

Mr. McLendon asked Mr. Randolph how the word "surcharge" could be handled in the Agreement, without making it a commitment forever?

Mr. Randolph replied that there were two ways of handling it--not addressing the surcharge at all in the Agreement; or allowing it in the contract with the statement that it would not pre-empt the Town from challenging it at any time. Currently the Town had the ability to attack the surcharge, however, once the Agreement was signed there would no longer be that ability unless it was specifically left out of the Agreement, or language was added which would allow the Town to challenge it in the future.

Mr. McDonald asked if the City of West Palm Beach could give a termination of water during pending litigation, if the Town filed a lawsuit to determine the application and validity of a surcharge?

Mr. Randolph replied that litigation could take a year to two years, which would not be a reasonable notice period from the City to put the Town on its own system.

Mr. McDonald commented that litigation would not cause the Town to lose anything.

Mrs. Smith expressed concern about the sort of conditions which would be in a contract that would be signed if a lawsuit was lost.

Mrs. Smith asked Mr. Dusey what his relationship was with the City of West Palm Beach regarding the maintenance and repair of water mains?

Mr. Dusey replied that the City had been very cooperative regarding projects replacing storm sewer lines, however, they had not done much regarding aged lines in need of repair. He stated that the City had worked fairly quickly repairing the water main near the north bridge, however, the situation was known to them a year or two before then and they could have acted to prevent it.

Mr. McDonald summarized that maintenance of the system had been done only when it was practical, therefore, the City had not really provided any kind of reasonable, quality maintenance on a regular basis.

Mr. Dusey explained that if the City continued with non-maintenance of the system, there would probably be more water main breaks requiring spot repairs, however, it was very expensive to make repairs rather than implement a replacement program.

Mrs. Smith asked if Mr. Dusey could give a dollar figure regarding costs to repair or replace all of the pipes under the Town of Palm Beach?

Mr. Dusey replied that figure could be determined.

Mr. Shaw asked Mr. Dusey if there was the possibility of an accelerated schedule for replacement of water mains by West Palm Beach?

Mr. Dusey replied that as the Town worked on projects, the City was offered the ability to join in, which they had done. Any acceleration would have to be negotiated.

Mr. Shaw remarked that he saw no mention of a re-use program in the proposed Water Agreement or the impacts and obligations associated with it.

Mrs. Smith asked Mr. McLendon if he had mentioned the possibility of no contract to the City officials he had met with.

Mr. McLendon replied that had not been addressed, however, he had brought up the fact that he was opposed to having the word "surcharge" validated in the contract, and the response had been that the risk in omitting that from the agreement would have to be evaluated.

Mayor Ilyinsky expressed that he had heard few complaints about the surcharge, and people should understand that the word "surcharge" was a legal term that had to be used. He suggested that there should be a game plan for the meeting

with West Palm Beach, and advised that the Council take a position of unity.

Mr. Guttman remarked that he had observed that Mayor Graham had implored the two municipalities to work together in a partnership looking towards a long term solution, and he urged that the adjoining communities jointly study the issue and come to a long term plan.

Mr. Wyett pointed out that the official position of the Town Council should be decided regarding contract/no contract, and acceptability of the surcharge percentage.

Mr. Shaw remarked that the actual percentage of the surcharge was not the issue, but rather the use of the dollars from the collection of the surcharge. He made a motion that the Town Council accept the fact that a contract was desired, that the draft contract was a beginning point as far as the basics, with some specifics being addressed. The motion died for lack of a second.

Mr. Wyett made a motion to negotiate the contract, and that the Town Council immediately discuss what position it would take regarding the surcharge and the length of the contract; seconded by Mr. Shaw.

Mr. McLendon stated that he would prefer a contract, although it should include language that would not lock in a 25% surcharge forever. He commented that he was in favor of working in cooperation with the City of West Palm Beach, but cautioned that any participation from the Town would be with its dollars, with the City participation being with water revenue dollars, which was already 25% of the Town water dollars.

Mr. Wyett stated that it was his belief that the only reason the City of West Palm Beach wanted a contract with Palm Beach was so that they could make the assertion (such as they had in their last bond issue) that Palm Beach customers used 33% of the water, which could affect their ability to borrow money.

Mr. McDonald remarked that time seemed to be on the side of the Town from a negotiating standpoint.

Mrs. Smith asked Mr. Randolph his opinion of continuing the negotiations with the representative attorneys, as opposed to the two municipalities discussing them.

Mr. Randolph replied that it was a policy decision on the part of the Town Council, and staff had been attempting to negotiate for a lengthy period of time, and specific direction would have to be given to staff in order to negotiate.

Mr. Wyett stated that the surcharge was \$1.3 million, which was 25% of the current water cost, which would mean that basic water costs were \$5 million, and he asked Mr. Bowser for his comments.

Mr. James Bowser, Town Engineer, commented that he had questioned the validity of the amount of the surcharge, because the City had come up with the number for the year before the whole year had expired.

Mr. Wyett then stated that at the rate water costs were scheduled to go up, by the year 2006 the basic water bill would be \$8 million, with a surcharge of \$2 million, and if the Town lost in court the full 25% would be imposed for the future. He urged that the City be asked to cap the surcharge and sign a contract so that Town residents would save future monies in this regard.

Mr. Shaw pointed out that residents understood water conservation, and big users would be cutting back drastically in the next few years, and concern should be directed to how the surcharge money was spent, rather than the actual percentage of the surcharge.

On roll call, the motion of Mr. Wyett to negotiate a contract, discussing surcharge and length of contract, passed unanimously.

Mr. Wyett suggested that at such time as \$1,320,000 may be equal to or less than 12.5% of the annual total of non-surcharge revenue collected by the City from consumers within the Town, the surcharge rate shall then and thereafter be fixed at 12.5%.

Mrs. Smith pointed out that the City had accepted that cap proposal for a period of five years.

Mr. Wyett pointed out that a large bond issue may have to be raised to do major renovations, which would also raise water rates, nearly doubling in the future.

Mr. McDonald suggested that a 12.5% surcharge be proposed for the term of the contract.

Mr. McLendon stated that it was his understanding that the present capacity was 47 million gallons per day, so he did not see plans for expansion in the near future. He would be willing to submit the proposal for a 12.5% surcharge.

Mr. McDonald suggested that a unified position be taken to include a 20 year contract.

Mrs. Smith summarized that the position of the Town Council would include a 20 year contract, with a cap on the surcharge, and suggested that a letter go to the City under the Mayor's signature, with the meeting scheduled for tomorrow being canceled.

Mr. Wyett disagreed with the length of the contract, stating that the longer the term of the contract, the better for the Town, as water would become scare in the future. He made a motion that the length of the contract be proposed for 50 years, with a cap of 12.5% on the surcharge; seconded by Mr. Shaw.

On roll call, the motion carried unanimously.

Mrs. Smith recommended that the City of West Palm Beach be notified that the meeting scheduled for October 29 be canceled.

Mr. McDonald made a motion that the meeting with West Palm Beach be canceled; seconded by Mr. McLendon.

Mr. Doney asked when staff input would be addressed?

Mrs. Smith explained that West Palm Beach should know as soon as possible if the meeting would be canceled, and staff input would be addressed later.

Mr. Wyett stated that he believed it would be a gross error to cancel the meeting, and that he would like the City to see that the Town Council was determined and united at the meeting tomorrow.

On roll call, the motion to cancel the meeting on October 29 carried 3/2, with Mr. Shaw and Mr. Wyett casting negative votes.

Mr. Randolph remarked that consideration must be given to the fact that the City of West Palm Beach had advertised the meeting, and expressed concern to the response of canceling at this time.

Mr. McDonald commented that the revised contract had only been submitted a few days ago, however, the Town Council could reimburse any advertising expenses incurred.

Mr. McLendon suggested that the presentation to the City Commission be limited to the points addressed by Mr. Wyett, stating that he would reverse his vote on the motion if necessary.

Mr. Doney stated that there had been very little time to review the revised draft of the Water Contract.

Mr. Bowser stated that he had made his comments based on the draft Contract received in early September, but he had only had a chance to review the highlighted changes in the document received for the meeting tomorrow.

Mr. Doney explained that the hydraulic model was one of the principle points in the Contract, and he suggested that more time was needed for Town staff to comment on that and other main issues in the Contract.

Mrs. Smith asked if the faxed notice that the meeting had been changed from the City Hall to the Police basement had only been received at 10:30 A.M. this morning?

Mr. Doney replied affirmatively.

Mayor Ilyinsky asked Mr. Doney if it was his feeling that the meeting be canceled tomorrow because of insufficient time for staff and Town Council to study the changes and differences in opinions concerning the Contract?

Mr. Doney replied that he was suggesting that the meeting be attended and the timeliness issue explained at that time.

Mr. Wyett explained that the motion had included only discussion of the number of years of the contract, and a maximum 12.5% surcharge, with a deferral of all technicalities for the two staffs to work out. He suggested that a time limit be imposed on the proposals for the City of West Palm Beach to accept or counter offer. When that was finished the technicalities would be ironed out.

Mr. McLendon reopened the question to reconsider; seconded by Mr. Wyett. On roll call, the motion passed 3/2, with Mr. McDonald and Mrs. Smith casting negative votes.

Mr. Wyett suggested that the Town Council request that the West Palm Beach Commission come back within 30 days with a response on the Town proposals. He explained that the proposal included a contract for 50 years, at a 12.5% surcharge, and a response within 30 days--anything else would come later, since if these points were not agreed upon there would be no other issues.

Mr. McDonald made a motion to postpone the meeting scheduled for October 29, 1996 because of the late submission of the revised contract, and insufficient time; seconded by Mr. McLendon. On roll call, the motion carried 4/1, with Mr. Wyett casting a negative vote.

Mr. Doney confirmed that the Mayor would sign the letter asking for a postponement.

Mrs. Smith clarified that the proposal discussed by the Town Council today could be discussed at the Town Council meeting, and the recommendations could then go to the City of West Palm Beach.

Mr. Elwell clarified that the letter would be a simple postponement letter, with nothing about the substance of the Contract included.

Mr. Shaw stated that he understood the purpose of this meeting had been to go over the proposed Contract, take notes, and determine what the Town Council wanted to change.

Mrs. Smith explained that the function of the Town Council today was to review what was going to be done at the meeting scheduled for October 29, 1996, and that the City of West Palm Beach would be informed of the proposals of the Town Council.

Mr. Wyett suggested authorizing Town staff to study the Contract, and make any changes in the Contract.

Mrs. Ann Herman addressed the Town Council, stating that perhaps more of an explanation should be made to the City of West Palm Beach regarding the postponement of the meeting and the discussions that had taken place today.

Mrs. Smith stated that this could be put on as an agenda item for the November Town Council Meeting, at which time a date could be arranged for discussion of all information, with a Special Town Council Meeting then being set for review.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 3:20 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn