MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON JUNE 16, 2000

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at ll:00 a.m. by President Jack McDonald. On roll call the following Elected Officials were found to be in attendance: Mayor Lesly Smith; President Jack McDonald; President Pro-Tem Sam McLendon; Councilman William Brooks; Councilman Norman Goldblum; and Councilman Allen Wyett. Also attending for all or part of the meeting were: Town Manager Robert J. Doney; Town Attorney John C. Randolph; Assistant Town Manager Thomas G. Bradford; Finance Director Jane Skittone; Assistant Finance Director Cheryl Somers; Public Works Director Al Dusey; Assistant to the Town Manager David Jakubiak; Human Resources Director William Crouse; Assistant Fire-Rescue Chief Kent Koelz; Assistant Police Chief Michael Reiter; Assistant Building Official Harry Ackerman; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. APPROVAL OF AGENDA

Councilman Wyett made a motion to approve the agenda as presented. The motion was seconded by Councilman Brooks and carried 5-0.

IV. TOWN MANAGER RE: CONSIDERATION OF FILLING OF POSITION

President McDonald said this Special Meeting was called to allow the Town Council to move quickly to determine the process and procedure to establish the chain of command and select a new Town Manager.

Town Manager Robert Doney said he conferred with Town Attorney Randolph, Human Resources Director Crouse, and Assistant Town Manager Bradford to evaluate the alternatives and options available to fill the position of Town Manager. Mr. Doney read the following comments from a memorandum dated June 16, 2000:

"In an effort to facilitate Mayor and Town Council deliberations relative to filling the Town Manager vacancy to be crated upon the commencement of my disability retirement which is scheduled at the August 11th Retirement Board Meeting, I offer the following options that I feel are available to the Mayor and Town Council to consider in the filling of this pending vacancy. As indicated in paragraph 5 in my memorandum dated June 14,2000, I recommend that the Town Council, at its meeting on July 11, 2000, consider the appointment of Assistant Town Manager Tom Bradford, as Acting Town Manager until the Town Council determines my replacement. However, in recognition of today's meeting, I recommend that the Town Council consider and appoint Thomas G. Bradford as Acting Town Manager, effective today if the Town Council is so inclined after discussing this issue. I also recommend that Chief Elmore continue as the individual responsible as the Acting Town Manager, in the event of Mr. Bradford's temporary absence, until the Town Council appoints a new Town Manager.

OPTIONS FOR FILLING TOWN MANAGER POSITION

1. Advertise nationally in the International City/County Management Association (ICMA) and statewide in the Florida League of Cities (FLC) publications. In this regard, attached is a copy of the Recruitment Fact Sheet prepared by Human Resources Director Crouse. The Department of Human Resources could shortlist the applications that will be received. Final interviews of the approved short list should be conducted by the entire Town Council and Mayor at a Special Town Council meeting. The Town Attorney should negotiate the employment contract (to be prepared by and approved for legal form and sufficiency by the Town Attorney) with the successful candidate, subject to approval by the Town Council at a Special Town Council meeting.

2. Employ a professional Human Resources consultant to assist the Mayor and Town Council and the

Director of Human Resources in the recruitment process.

3. Designating Thomas G. Bradford, Assistant Town Manager, as Acting Town Manager for a period of time to be determined by the Town Council. Upon conclusion of this time frame, the Mayor and Town Council may evaluate Mr. Bradford's performance to either offer Mr. Bradford a contract to fill this position or to proceed with any of the other options presented herein.

4. Acting Town Manager services, as the Town Council so designates, could be provided by a Range Rider from either the ICMA or the Florida City/County Management Association (FCCMA). A Range Rider is usually a retired former city manager that usually offers his or her services at little or no cost to the municipality requesting such service.

5. Any other option that the Mayor and Town Council may discuss and the Town Council may so direct."

Mr. Doney outlined the details included in the Recruitment Fact Sheet and noted that if the outline were followed, the new Town Manager would be on the job sometime between November 13th to December 4th, 2000.

President McDonald asked for comments from the Mayor and Town Council members regarding the options presented by Mr. Doney or to offer any additional options.

Councilman Brooks suggested phone calls be eliminated from the search process and referred to Option two as mentioned by Mr. Doney. He speculated the cost may be in the area of $25,000.

Mr. Doney clarified that all interviews should be done one on one.

President Pro Tem McLendon said his first thought was to fill the position from within and that would include Mr. Bradford and could hopefully be stretched to include former Assistant Town Manager Peter Elwell. He said he was not interested in pushing for a long term interviewing process.

Councilman Goldblum said he believed appointing from within, but he thought the Council owed it to the Town to conduct a search that should be conducted by a search firm that handles executive searches. He said he encouraged Assistant Town Manager Tom Bradford to include his resume in the search process.

Councilman Wyett said his thoughts were close to Councilman Brooks' thoughts. He said there are a number of very good search firms who could narrow a potential list of candidates. He said he thought search firms would charge a percentage of the salary and recommended the Mayor be empowered to head the Council's side of the search committee to expedite the matter. Councilman Wyett said he approved of a modified Option two.

Responding to questions from Mayor Smith regarding the issue of the Sunshine Law as it pertains to the interview process, Attorney Randolph responded the option suggested was a good option and that required some budgeted money at the outset. He said he did not think a search committee was necessary if the Town Council selected the option of using an outside consultant. He said the recommendations from a search firm could be presented to the Town Council at an open meeting and interviews could be conducted from that list at an open meeting in the Sunshine.

Attorney Randolph pointed out if a committee were selected as an option as opposed to an outside consultant, that committee would have to meet in the Sunshine regarding all of the applications that it would receive.

Responding to a question from Mayor Smith, Human Resources Director Crouse replied that slightly over 160 applications were received the first time around for the Assistant Town Manager's position last year. Mr. Crouse said the process took approximately five months to hire an Assistant Town Manager and have him on the job.

Mayor Smith said she thought this may well be the most important decision this Town Council would ever make by appointing the Chief Operating Officer of the Town of Palm Beach and that affects every department, every citizen and every resident.

Mr. Crouse explained the length of search time is necessary to insure the top candidates are selected for the job.

Mr. Crouse reported that there are two acceptable ways to proceed when conducting recruiting and selection of candidates – in house and going outside. He said that an Atlanta consulting firm was used to recruit for the Town Manager's position when it was filled by former Town Manager Doug Delano. All of the advertising was done by the Town of Palm Beach, and the resulting applications were screened to twelve candidates. Those twelve candidates were interviewed by the consulting firms in the locations where those twelve individuals worked. Mr. Crouse said the firm returned to the Town Council with their recommendation of the five top candidates and served as the moderator on the interview panel with the

Town Council in the Town Council Chambers. After the final selection, a background check was handled by the Town, and the cost was approximately $24,000 in 1984, mostly for travel expenses.

Responding to President McDonald's request for identification of three or four consulting firms, Mr. Crouse said it would take approximately ten days to identify those firms and have an idea of the costs involved for a search. The firms would be identified on paper but would not be present in person. He said he would need until the July 11, 2000, Town Council meeting to have the firms represented in person.

Councilman Wyett noted the differences between consulting firm and search firms and suggested using an executive search firm.

Councilman Goldblum made a motion to hire an executive search firm that specializes in municipal employees and the information be presented to either a special Town Council meeting or at the July 11, 2000, meeting.

President McDonald said he thought this ought to be handled at a special Town Council meeting.

The motion was seconded by Councilman Wyett.

Former Mayor Yvelyne Marix, 1570 North Ocean Boulevard, said she agreed with Mayor Smith's comments regarding this was the most important thing this Council will do. Mrs. Marix said she agreed with the idea to hire a search firm and encouraged a nation wide search.

On roll call, the motion carried 5-0.

President McDonald set a Special Town Council meeting for Thursday, July 6, 2000, at 9:30 a.m. to discuss the selection of a search firm to fill the Town Manager's position.

Town Manager Doney said Mr. Crouse could prepare a package for the July 6th meeting identifying the scope of services and the cost for each search firm. This package will be presented to the Mayor and Town Council members before the July 6th meeting. Mr. Crouse will have notified the perspective firms that one of them will have to be present at the July 11th Town Council meeting.

Town Manager Doney requested the Town Council take action on his recommendation that Mr. Bradford be named Acting Town Manager.

Councilman Wyett made a motion to appoint Thomas G. Bradford Acting Town Manager effective June 16, 2000. Councilman Brooks seconded the motion. On roll call, the motion carried 5-0.

V. ANY OTHER MATTERS

Mayor Smith reported that she and Attorney Randolph attended a meeting of the Economic Council to study and receive input on the situation concerning St. Mary's and Good Samaritan Hospitals. The fourteen hundred pages released on Monday, June 12th, do not have the information that everyone felt was necessary to make a decision. She said the concern is that the hospital move will begin or action will be taken before the Attorney General has completed his report. Mayor Smith said a great deal of discussion was held to consider what action should be taken to stop that from happening. She said it was agreed that the Town of Palm Beach had taken the lead in speaking out against the actions and discussing a law suit, if necessary.

Attorney Randolph said at the conclusion of the meeting, the Coalition wrote a letter to each of the boards advising them of a resolution adopted by the Coalition. The resolution requested that no action whatsoever be taken to close either hospital until the investigation by the Attorney General's office was concluded. They further resolved that should any board involved with the governance of either hospital begin formal action to close either hospital, it is the intention of the Coalition to engage whatever legal means may be necessary to prevent any such closure pending the Attorney General's investigation and conclusions. He said the concern is that if the Attorney General's investigation is not completed by June 27th, which it will not be because it will take thirty to ninety days to complete the investigation, the Intracoastal Health Foundation may act on Cambio's recommendation, and the Coalition may have slept on its rights as the result of not taking any action before the Intracoastal Health Foundation acts. Mr. Randolph said he called the Attorney General's office with the intention of asking the Attorney General to get a commitment in writing from the boards that the boards will not take any action prior to the investigation being completed.

Attorney Randolph continued that absent the Attorney General doing that or if he does it, absent an agreement from the Boards in writing that they will not take any action, someone needs to be prepared to take action prior to June 27th. Mr. Randolph said the Boards had signaled that they are not willing to state in writing that they will not take any action prior to the investigation being completed. Mr. Randolph said the Town is the interested party in this case.

Mr. Randolph said a case similar to this took place in Boca Raton and said he was presenting the option to the Town Council to consider employing an attorney to act on the Town's behalf in the event a commitment is not received from the various Boards that they will not take action until the conclusion of the litigation. Mr. Randolph said he contacted Attorney Gerald Richman who will be available to the Town if the Town wishes to go forward with this issue. Approximately $10,000 would need to be budgeted as a retainer from the General Fund Contingency account. Mr. Randolph said, as part of that, if litigation were to be filed, that the Town should seek out donors to be plaintiffs in the case along with the Town, but clearly the Attorney General is the best plaintiff in this kind of case. He said it was everyone's hope that no action would be taken until the investigation has been completed, and once the investigation is completed if a no resolution is found to the satisfaction of the Attorney General, the best plaintiff is the Attorney General. Absent action by the Attorney General, the Town may want to be in a position to bring an action of some sort immediately, and that action may only be, at this particular point, an action to enjoin the Boards from taking an action until the investigation is completed.

President McDonald said he had some reluctance with hiring an attorney from a "standing" standpoint, because this is not the best plaintiff. To get an injunction, an irreputable harm must be shown and that is a difficult task. He said he did not want to be involved in a law suit where the Town is the primary plaintiff and is not the best plaintiff. It is not always easy to get out of law suits.

Mayor Smith said this was intended to stop the action of splitting the hospitals prior to the ninety days, and the Town is not committed to a multi-million dollar law suit. She added Attorney Richman would be commenting on that and other municipalities, the Economic Coalition, and the County would be contacted. Hopefully, once the hospitals knew the Town was ready to take action, they would grant the ninety day cooling off period and agree that nothing would be done until the Attorney General's report would be submitted. The Attorney General stated the office did not think they had enough information, and the submitted information was heavily edited and was insufficient to make a decision. Mayor Smith said she thought the Town should do something, but she would abide by the decision of the Town Council.

The following is a verbatim transcript of the part of the meeting dealing with the hospital issues:

NPG: What was the Economic Council's feeling about filing their own injunction?

JCR: They seemed interested in proceeding in the event they did not get the cooperation from the Boards that they requested and that was that they will not take any action until the Attorney General's investigation was concluded. The sole issue that remained open in that regard was who would come forth in filing a law suit.

NPG: And they couldn't file a lawsuit themselves like we are speaking about doing here?

McD: They could do that if they chose to, couldn't they, Mr. Randolph?

NPG: Has anyone approached that ..?

JCR: Well, it gets rather complicated because there are so many participants and you're talking about funding and who would participate, and how much, and it is just a really complicated thing if the Economic coalition were to bring such an action.

WJB: Skip, to refresh your memory, the attorney for the County, Denise Dytrych, said the County would not have standing at this time in the law suit. So, there were people in the Coalition that just couldn't be party to the suit.

JCR: Right.

McD: Well, what gives the Town of Palm Beach better standing than the County?

JCR: I think we stand on an equal plane with the County. I don't necessarily think that we have any better standing than the County.

ASW: I'm just looking for a solution. I happen to support wanting to make sure that they don't separate hospitals or don't close one down. What would be the problem if we appropriated a sum of money, let's say $10,000 to the Economic Council, as our support for a law suit that they would bring? That would be a lead funding that would allow them, without having to ask for anyone else's money to get going.

McD: Procedurally if you go to the injunction hearing, are you able to determine issues of standing at that hearing or would it just be on the injunction? Injunctive relief?

JCR: It would be on the injunctive relief. However, there is a possibility that the defendant would raise issues of standing as to whether or not the Town has the ability to go forward, but that was one of the reasons I suggested we hire Mr. Richman, because he could advise you as to issues of standing. I don't think we should take the position that the Town does not have standing. I think we are hiring him to look at that

for us.

McD: I'm looking at the time frame, though, John. I don't see how he is going to give us an opinion that Council is going to be able to consider before he has to file an action.

JCR: No, you wouldn't be doing that. You would be leaving it in his hands to make a determination. First of all, you would be giving him the authority to move forward in the event he deemed it appropriate to do so prior to the meeting.

LSS: As far as the County bringing suit, it has not been discussed nor was our action today discussed at the meeting yesterday. Obviously, none of the municipal representatives there had taken it to their Council or their Commissions. This is the first time that this is being mentioned. By the same token, we did not get into the Economic Council filing suit because of all of the municipalities and the various people involved. Also, the push is for the deadline being the 27th where the Intracoastal Board is supposed to take a vote and it is possible they may put the vote off. We would certainly like to see that happen, and that was requested. But, so far the Intracoastal Board has not given anything more than lip service to the Coalition and the Economic Council and that's why we brought to you today the idea the Town of Palm Beach take the lead in doing this if necessary.

McL: I don't understand, Skip, why the Attorney General, if they don't get these letters that they requested, why they wouldn't start a proceeding.

JCR: Well, they may and that is one of the purposes of my phone call is to see whether or not the Attorney General would take this action if they cannot get a commitment for the Boards to cooperate within the 90 day period.

McL: Cause they certainly have to be aware they have a deadline to do so.

JCR: If indeed, the Attorney General would indicate, "Yes, they would do that", then it would not be necessary for the Town to go forward.

McD: So what we are being asked to do at this point is to appropriate $10,000 to Mr. Richman and let him basically make the decision on whether he is going to file something or not. Correct?

JCR: No, I think you would have to give him more direction than that. You would have to give him the authority to file something for the purpose of enjoining any action that might be proposed to take place by the Boards by the 27th. I don't think you should just....

NPG: Only if the Attorney General doesn't do it.

JCR: This will be...there are two other options and one is that you may get the cooperation of the Boards and they may give you something in writing that they are going to participate. If they don't, then the Attorney General may take some action. If that doesn't happen, then this will be the approach.

ASW: Don't you think it would be very advisable to find one resident in this Town who has made major donations to the Hospital...

JCR: I think it should be incumbent upon the Town to have donors joined in this law suit, because that will certainly help with the matter of standing.

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McD: Will you repeat (the motion), Mr. Goldblum?

NPG: I make a motion that we hire Mr. Richman and his firm to prepare an injunction..Is that the right word for it, Skip?

JCR: Or a complaint that would include injunctive relief.

NPG: ..complaint that would stop the Boards from voting on, going forward with the closing of one of the hospitals.

ASW: Second.

The Town Clerk called the roll and the motion passed 5-0.

JCR: And for the record, it is my understanding that would only take place were we not to get the cooperation of the Boards through a letter in writing or an action of the Attorney General.

McD: And the appropriation will come from where, Mr. Doney?

RJD: General Fund Contingency.

WJB: The Intracoastal Board should, today, have the copy of the resolution and Mr. Elmore's, the Chairman of the Economic Council, that all went out last evening. So, they should have it today and then we can see..we have to pick them off and see where the votes are.

McD: That's a good point.

End of transcript.

VI. ADOUNRNMENT

The meeting was adjourned at 12:10 p.m.

Mary A. Pollitt
Town Clerk