

MINUTES OF SPECIAL TOWN COUNCIL MEETING OF

MAY 27, 1993 AT 5:00 PM

Roll Call

I. CALL TO ORDER AND ROLL CALL: A special meeting of the Town Council of the Town of Palm Beach was called to order by Council President Weinberg at 5:00 PM on Thursday, May 27, 1993 regarding emergency dredging of the Lake Worth Inlet by the U.S. Army Corps of Engineers. On roll call, the following elected officials were found to be in attendance: Mayor Ilyinsky, President Weinberg, Councilwomen Smith, Douthit and Royal. Councilwoman Wiener was absent. Also attending the meeting were Town Manager Doney, Town Attorney Randolph and Ms. Reedy. Representing the Port of Palm Beach at the meeting were: Mr. Hoff, Chairman of the Port of Palm Beach and Mr. Murphy, Executive Director of the Port.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mr. Weinberg. Pledge of allegiance was led by Mayor Ilyinsky.

Approval of Agenda

III. APPROVAL OF AGENDA: Agenda was approved as printed.

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IV. PROPOSED EMERGENCY DREDGING OF LAKE WORTH INLET BY THE U.S. ARMY CORPS OF ENGINEERS - CONSIDERATION OF ADDITIONAL TOWN ACTIONS - Mr. Weinberg asked Mr. Randolph for his report on the status of the dredging.

Mr. Randolph said the Town had directed him to file an injunction against the dredging which was proposed at the Inlet on the basis that the sand which would be taken from the Inlet would be dumped in depths of approximately 30 feet which would not benefit the Towns beaches. He said the Council had no objections to the dredging, but only to the manner which the sand would be disposed by the Corps.

Mr. Randolph said that during the last several days they had attempted to resolve this in a manner which would benefit both the Town and the Port of Palm Beach. Mr. Randolph said the Corps are the key as to how the dredging is to be done, and he has been in touch with them as recently as today. He said he has received some agreements from the Corps which he feels would be beneficial to both parties.

Mr. Randolph said the Corps feels that there is approximately 160,000 cubic yards of beach quality sand presently located in the inlet and at the mouth of the inlet which is available for dredging. The Corps has indicated that they feel that with a minimum dredging of 40,000 cubic yards the inlet could be made safe for navigation. He said they have agreed that they would dredge no more than 40,000 cubic yards of material on approximately June 11, 1993 with the McFarland which is the dredge which was proposed to be used initially. The 40,000 cubic yards would be dumped where all of the dredge material was originally anticipated to be dumped, in approximately 25 to 30 feet of water.

Mr. Randolph said that upon completion of the emergency dredge, the Corps would then agree to return in October, and dredge the remaining material which they estimate to be approximately 120,000 cubic yards. In addition, to make up for the 40,000 cubic yards of sand taken out in the emergency dredge, they will deposit an additional 40,000 cubic yards of sand on the beach. That material would be obtained either from advanced maintenance dredging or by widening the existing settlement basin located at the end of the north jetty. Mr. Randolph said the Corps has indicated that they have sufficient funds for this project which will be made available in the fall.

Mr. Randolph said he also has been in touch with the DNR which is responsible for the issuance of the water quality certification. That certification is necessary in order to allow the Corps to move forward with both dredges. Mr. Randolph said he has been advised that if the conditions are acceptable to the Town, the Corps and the Port of Palm Beach, they will be made a part of the water quality certification permit.

Mr. Randolph said he was bringing this to the Council as a compromise which he feels might be a positive resolution to the problem. He said the Town would be receiving a letter from the Corps listing all the terms and conditions which he has presented. He said the conditions would also be subject to approval by the Port of Palm Beach which would be the sponsor or the project.

Mrs. Douthit asked if funds were available for both the dredgings. Mr. Randolph answered affirmatively.

Mr. Randolph said most of his discussions had been with the Corps, and with DNR. He said he has not had direct discussions with the Port of Palm Beach, but it was his understanding that the Corps have had discussions with the Port. Mrs. Smith asked if those discussions had occurred since the Port had announced that they were suing the Town? Mr. Randolph said that was his understanding.

Mr. Weinberg asked Mr. Murphy, Executive Port Director, Port of Palm Beach since 1985, if what has been stated here today represents the understanding of the Corps?

Mr. Murphy said that was the understanding. He said they had had conversations today with both the Corps and, Kirby Green with the DER in Tallahassee, and also with the pilots and the Port of Palm Beach. He said the concern here is with safety because the channel has been narrowing. He said that Colonel Salt, District Engineer with the Corps in Jacksonville met in Washington on the 26th of May with the highest levels of representatives of the Corps along with Representatives Tom Lewis and Clay Shaw. Mr. Murphy said the key to the dredging is that they have the money to do this now and in the fall.

Mr. Murphy said they were in agreement with the letter, but they could not concur with the exact total of cubic yards. He said it could possibly be only 30,000 cubic yards. Mr. Murphy said that the pilots and the Corps were the ones who will determine what portion of the shoaling has to be dredged, and if they can only bring back the depth to 28 feet at the entrance then that would have to be the guide in the channel. Since the entrance to the channel is the guiding draft and they can't go deeper in the channel than what the entrance is, then there might be less cubic yards. Mr. Murphy said the restriction is to remove not in excess of 40,000 cubic yards. He said

the only time the McFarland can come to this area is between now and June 11th. Even if they had a hydraulic dredge they probably would be restricted because of the turtle nesting season, but a solution to that problem would be if they could deposit the material in 10 feet or less of water.

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Mr. Murphy said the permit has to be modified and the Corps has already spoken to Mr. Green in Tallahassee and they have started to work on the modification of the water quality certificate. He said this would be a one time waiver or agreement between the Corps and the DER. What they are calling it is a one time modification.

Mr. Weinberg asked if that wouldn't be between Corps and the Port of Palm Beach. Mrs. Douthit said this distinctly comes in on the Town because the letter says "no more than 40,000 cubic yards" and this is what Mr. Murphy is objecting too.

Mr. Murphy said he doesn't object to it, he just can't agree with it because no one knows what it will be. He advised the Captain and Pilots of the McFarland will take some soundings and review it. He said they are asking that the channel entrance be opened back up to 400 feet, and now it is 200 feet or less, and possibly when they are finished sounding, they will only be able to open the entrance to 325 feet and the question is, is that acceptable for safe navigation. He felt it was a foregone conclusion that the authorized depth will not be reached, but they are working for an authorized or workable depth of 28 feet.

Mr. Murphy said the Port has lost ships, principally the molasses ships, which usually carry 25,000 tons, but at 28 feet in the channel, at high tide they probably only carry about 22,000 tons.

Mr. Randolph said it was his understanding that with the Staff's discussions with the Corps, the 40,000 cubic yards would make the channel safe, and the recommendation which is coming from the Town is "not in excess of 40,000 cubic yards". He said the agreement the Town is presenting to the Port of Palm Beach is based on 40,000 cubic yards. Mr. Randolph said he would not recommend that the Town enter into an agreement which allows the pilots or the Port to look at the dredging at that time, and then request more than the 40,000. He said if the Town is going to remove its objection, he would recommend that it be removed on the basis of a specific number and not leave that number up in the air for a later time. He said it doesn't matter if it's plus or minus 500 or 1000 of the 40,000 cubic yards, but if you start getting more then you are running into problems.

Mrs. Royal asked how does the Town make sure that the Corps stays at 40,000 cubic yards or less. Mr. Randolph said the Corps has represented to the Town that it would provide us with surveys, not only in October but for the 40,000 cubic yard dredging. He said he thought we could also obtain logs from the McFarland to assure us of the amount of sand which has been picked up and dropped by them.

Mr. Randolph said he didn't like the language concerning the funding which states "we have sufficient funds programmed specifically for this project at this time". He said he would want to make sure that they have sufficient funds programmed specifically for this project to accomplish the work. He indicated this work will be done in a subsequent fiscal year, and therefore cannot give a guarantee that the Congress will have the funding there, but assurances from the Corps have been received that they intend to do this dredging, and that the money will indeed be there for it, but they can't bind the U.S. Government for the subsequent fiscal year.

Mr. Murphy said he didn't think the Town needed to worry about the funds. He said the government programs projects a year ahead of time or at least nine months ahead of time.

Mrs. Smith said they didn't program this dredging a year ahead of time or else we wouldn't be in this emergency situation. She said approximately a week ago was when the word "emergency" was first used. Mr. Murphy said that's not the cause of the emergency. Mrs. Smith said that's when the emergency meeting was called, because of the emergency dredging of the channel.

Mr. Murphy said that part is correct but that's not the cause of why there is this problem. Mrs. Smith said she understood that, but when he spoke of an increase in the rates of Florida Power & Light, that didn't just occur in the last week. She said those barges were out there, and they knew there was a dredging problem more than a week ago. She said this was not something the Town of Palm Beach has precipitated over the months, but something which was brought to the Town's attention about a week ago, and the Town is trying to resolve this with the Port of Palm Beach and the Corps of Engineers and protect the Town of Palm Beach and its beaches for its citizens, while working with the Port.

Mr. Randolph asked if the Council would like to speak with Mr. Bonner of the Corps of Engineers in Jacksonville, and if so the call should be made now. Mrs. Smith said she would very much like to speak with Mr. Bonner since the Town doesn't really have anything in writing.

Mr. Randolph said he has a draft of the Corps proposal, and he has made recommendations for some changes which Mr. Bonner says he will incorporate in the draft. Mrs. Royal asked if that was to delete "at this time" in paragraph three. Mr. Randolph answered affirmatively. Mr. Randolph continued, stating in paragraph two Mr. Bonner has agreed that the balance of "beach quality material" (120,000) cubic yards will be removed this fall and placed on the beach in the Town of Palm Beach at a location or locations south of the inlet; a paragraph will be added that "the Corps will provide the Town with log records of the McFarland to satisfy the Town that no more than 40,000 cubic yards of material is dredged, and additional surveys will be provided in the fall to assure the Town as to the amount of material removed."

Mr. Doney placed a conference call to Mr. Bonner of the Army Corps of Engineers in Jacksonville, FL at 5:27 PM.

Mr. Randolph said he had spoken to Mr. Bonner just prior to this meeting in regard to the draft letter which was faxed to the Town. He said one of the issues discussed was the financing. He indicated the Town wants to be assured that the work will be done in October. Mr. Bonner said they have part of the money now and the remainder has been budgeted in the FY1994 budget which has been presented by President Clinton to Congress. He said they expect the money to be there, but since Congress has not yet acted on the FY1994 budget, to say that absolutely we have the money would be beyond the authority Mr. Bonner has.

Mr. Randolph stated it was his understanding that the removal of 40,000 cubic yards of material would make the inlet safe for navigation. He said it's very important to the Town that no

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more than the 40,000 cubic yards be removed, and if the Town removes its objection to the dredge, and the material not being placed on the beach they want to be assured that not more than 40,000 cubic yards be removed at this time. Mr. Randolph asked Mr. Bonner if that was the representation of the Corps. Mr. Bonner said that was correct. He said that was the Corps intent, and working with the Port Authority the Port would advise the Corps of where the material can best be removed.

Mr. Randolph said it was also his understanding that there are ways of monitoring the amount of material that is taken out to assure the Town that not more than 40,000 cubic yards of material is removed. Mr. Bonner said that was correct, and it was the Corps intention to provide the Town with records from the vessel as well as the surveys following the dredging.

Mr. Randolph asked Mr. Bonner if there is more than the 120,000 cubic yards of beach quality material remaining in the inlet in the fall as a result of a storm, would that additional material be dredged and placed on the beach. Mr. Bonner said that was correct, and it was the intention of the Corps that any material removed from the channel will be placed on the beach.

Mr. Randolph said that perhaps Mr. Bonner's phrase could be included in the letter. Mr. Bonner asked Mr. Randolph if basically what the Town wants is the Corps not to limit the amount of material placed on the beach. Mr. Randolph said that was right. He said they want at least the 120,000 plus the 40,000 cubic yards of material, but obviously if there is more material the Town would want that also. Mr. Bonner said that language could be added.

Mrs. Royal asked Mr. Bonner that if the June dredging of the 40,000 cubic yards turns out to be not enough to make the channel safe, what then would the Corps do? Mr. Bonner responded the next step would be to schedule the dredging for the October time frame. Mrs. Royal asked if the Corps would leave the channel in that condition until they can give the Town sand after the turtle nesting season. Mr. Bonner responded affirmatively. Mrs. Royal asked if they would be under pressure from the Port to continue dredging in June. Mr. Bonner said the reason they have an opportunity to do the dredging now, is that the McFarland is in the district to do research work on turtles. The McFarland is a Corps of Engineers vessel so they don't have to go through the process which would be necessary if they went through a contractor. Mr. Bonner said if they are not able to use the McFarland the dredging would have to go through contract, and to do that they would have to modify plans and specifications, and that would require about a month, advertising would take another month so after awarding a bid, checking bonds, and notice to proceed would bring the dredging to the October time frame. Mr. Bonner said when they contract dredging, they can place the material where ever they desire.

Mr. Randolph said the Corps was assuring the Town that they would take no more than 40,000 cubic yards of material, but assuming the McFarland is available, and arrives in this area, and the Corps says we need another 30,000 cubic yards taken out in order to make the channel safe, what would be the Corps position if that occurred? Mr. Bonner said the Corps has a commitment to the State and the Town of Palm Beach that they would not do that without Town approval. Mr. Randolph said he and Mr. Doney would be in touch with Mr. Bonner to formalize the letter.

Mr. Murphy said the Corps of Engineers has the dredging permit now, and it definitely says that all dredged material will be placed on the beach.

Mrs. Douthit asked Mr. Murphy if the channel is dredged on a regular 18 month basis. Mr. Murphy said it was dredged on an as needed basis. Mrs. Smith asked when was the last time the channel was dredged. Mr. Murphy said he thought it was October 1990, but he wasn't sure.

Mr. Randolph said the Town has never objected to dredging the inlet, only to the placement of the sand at sea rather than on the beaches. He said if the Town wishes to remove their objection on the basis of the conditions discussed here tonight he would suggest a motion along the following lines:

"That it be moved that the Town remove its objection to the emergency dredged material not being placed in 10 feet of water or less south of the Inlet subject to the conditions discussed here this evening as represented by Staff and by the Corps, and subject to such conditions being ratified in writing by the Corps, and briefly again that is, that not in excess of 40,000 cubic yards of material be removed from the inlet during this emergency dredging in June, and that the Corps return in October to dredge at least 120,000 cubic yards of beach quality sand from the inlet and place it on the beaches with an additional 40,000 cubic yards of beach quality sand to be placed on the beach's south of the inlet to make up for the 40,000 cubic yard dredging in June. The understanding being that if there's more sand in the inlet that would also be deposited on the beach."

Mrs. Smith asked Mr. Randolph what was the status of the lawsuit of the Port of Palm Beach against the Town of Palm Beach. Mr. Randolph said he had received a letter from the Port's attorney, Mr. Cook in which he indicated that the Corps would file a suit to receive a mandatory injunction to allow the dredging of the inlet by the end of the week unless it hears from the Town, in writing, that it is removing its objection to the dredging, and attorney Cook invited the Town to add whatever conditions the Town would impose as a result of removing the objection. Mr. Randolph said if the Council goes forward with this compromise, he would write Mr. Cook notifying him of the conditions upon which the Town removes the objection.

Mrs. Smith asked if the Port would withdraw their action if the Town withdraws its action. Mr. Hoff said it would be withdrawn as soon as he returned to the Port. Mr. Murphy said it was their recommendation that the two attorneys meet and resolve the problem.

Mrs. Douthit moved that the Town remove their objections to the dredging of the inlet with a limit of 40,000 cubic yards as per the agreement in the faxed letter and the telephone conversation. Seconded by Mrs. Smith.

Mrs. Royal said she would like to amend the motion to include the remarks by Mr. Randolph. Mrs. Smith said that Mr. Randolph's remarks are included in the motion.

On roll call, motion carried.

V. ANY OTHER MATTERS. None.

VI. ADJOURNMENT. There being no other matters, meeting was adjourned at 5:45 PM.

Adjournment

Grace T. Peters, Town Clerk