

MINUTES OF SPECIAL TOWN COUNCIL MEETING OF MAY 18, 1993

Roll Call

I. CALL TO ORDER AND ROLL CALL: A special Town Council Meeting was called to order by President Weinberg on May 18, 1993 at 4 PM in the Town Hall Council Chambers. In attendance on roll call were President Weinberg, President Pro Tem Wiener, Councilwomen Douthit, Smith and Royal. Absent was Mayor Ilyinsky. Also attending were Mr. Doney, Attorney Randolph, Mrs. Peters, Mr. Elwell, Mr. Jakubiak and Attorney Sachs.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. Pledge of Allegiance was led by Mrs. Wiener.

Approval of Agenda

III. APPROVAL OF AGENDA: Agenda was approved on motion of Wiener/Douthit. On roll call, the motion carried unanimously.

Lake Worth Inlet Dredging

IV. CONSIDERATION OF ADDITIONAL TOWN ACTIONS REGARDING THE EMERGENCY DREDGING OF LAKE WORTH INLET BY THE U. S. ARMY CORPS OF ENGINEERS. Mr. Doney explained there has been communication in the last few weeks between the Town Attorney and the Town Staff with the Corps of Engineers, Department of Natural Resources, Department of Environmental Regulation, Palm Beach County, the Port of Palm Beach and others regarding the proposed emergency dredging at the Lake Worth Inlet.

Attorney Randolph advised they have administratively and politically been in touch with the Army Corps of Engineers, that the sand which is going to be dredged from the Port be placed not on the beaches as this would interfere with the turtles, but it be placed in depths of ten feet or less. He believed the Town was in touch on a daily basis with the Corps of Engineers and DNR and it is understood the Corps is about to order the McFarland hopper dredge to this area to do this dredging next week. He wished to bring this matter to the Council's attention as all of this communication has been to no avail and the question is whether or not Council wishes staff to do anything more on this item and one thing that could be done is to file an injunction against the Corps of Engineer to keep them from dredging. He would intend to show that the Town would be irreparably harmed if this dredging does take place and the sand is not placed close to the beaches. He reported the Town has not had the benefit of bypasssand since May of 1990 as a result of the discontinuation of the Sand Transfer Plant and it would be an easy enough task for the Corps to take this 120,000 cubic yards of sand that is in the Inlet and put it at a place near the Town beaches where it will be of benefit. He has taken the position that it would be irresponsible not to do so and there would be irreparable harm and the Town has an entitlement to this sand in the Inlet.

Mrs. Douthit asked if Mr. Dusey knew what the quality of the sand was that was proposed to be dredged and would it be compatible with the Town's beaches? Mr. Dusey responded the Town has not checked the quality of this sand but it may be that the Corps may have. He recalled that sand is traditionally excellent beach quality sand that makes its pass through the north jetty into the Inlet.

Mr. Doney noted that historically the entrance channel and the inner channel has had good beach quality material, however, the sand in the turning basin is not good beach quality sand. He reported normally the good quality beach material is the one that is placed on the beaches south of the south jetty and the other sand is dumped at sea.

Mr. Weinberg called for public comment and Mr. Martin Mets, Deputy Port of Palm Beach Director for Operations and Marine Services addressed the Council, advising that in this capacity he has been involved with the Corps, the State and the local people in regards to the dredging issue and the beach nourishment. He emphasized that the Port of Palm Beach wants material of beach quality to be placed on the beaches where it will benefit everybody, however, in this case, there is a safety issue which is of concern. He noted the channel is only 50% useable and the pilots have placed a restriction on vessels arriving and departing the Port, as the material in the channel could cause the speeding up of the accretion process.

Mr. Mets indicated he has been advised by the Corps that with the right sea conditions, there could be additional shoaling and the Corps has advised him today that if there is an injunction filed against the Corps, they will not come down with the McFarland dredge and it could be two or three months down the line before they could send another piece of equipment. He reported the Corps has advised the sand which would be dredged would be of a size that would be of benefit to the beaches south of the south jetty. He advised the State disputed the Corps' finding on the movement of the material of Palm Beach size sand to the shoreline as they analyzed sand size that was from Cape Canaveral or Fernadino Beach area which is smaller. He stated it is due to the turtle season that the sand cannot be placed directly onto the beach.

Mr. Mets stated his concern that a tanker or barge coming into the Port with products for Florida Power & Light would be restricted to the south half of the channel and if there was a vessel departing, there could be an incident occurring. He did not think they wanted to have a petroleum incident here in the County.

Mr. Mets noted the Gulfstream is very close to the entrance jetties and some of the ships must come in with a series of momentums and movements to get into the channel and his concern was for those passenger and cargo ships also. He believed there was a safety issue.

Mr. Mets believed the sand that would be dredged and placed in the deeper water would eventually come onto the beaches but that issue could probably be debated forever.

Mrs. Douthit asked about the equipment. Mr. Mets responded it is a Hopper Dredge named McFarland and it is the only piece of equipment the Corps has available and it can dredge the material up. Mrs. Douthit asked where did they want to put the sand after it was dredged to which Mr. Mets responded they want to put the dredged sand in water depths of approximately 30' or closer. He advised the McFarland must leave this area on May 26th to fill another commitment in the Philadelphia area. He advised when they do the side casting the material can be placed in 20' of water, but they cannot get it into the 10' of water which the Town has requested.

Mrs. Douthit asked if they could compromise and put the sand in 12 or 13 feet of water? Mr. Mets responded this type of hopper dredge cannot and needs a draft of about 20 to 22 feet. Mrs. Smith asked when they were notified the McFarland had to leave these waters on May 26th? Mr. Mets stated he had this information about a month ago. Mrs. Smith advised there was no mention of this timetable to the Town of Palm Beach in the letter dated May 11th. Mr. Mets stated he was not familiar with the letter as this is a Federal responsibility and the Port does not get involved in what the Corps will be doing. He recalled the Corps is Congressionally authorized to maintain the channel and what the Port does on a daily basis, upon reports from the pilots who come and go through this channel, when they see there is shoaling either visibly or by sounding methods, the Port then advises the Corps who then take the soundings. He understands where the Town is coming from, but they are almost a sideline participant as the Federal Government has the responsibility and the monies to do the job.

Mr. George Hoff, Chairman of the Board of the Port of Palm Beach, addressed the Council emphasizing if the sand is not removed from the channel, there could be drastic consequences. Mrs. Douthit responded she resents them putting the blame for an oil spill on the Town and she asked why they wanted to do it during turtle season and without the proper equipment, and wondered if they could do a third of the job to make the channel safe and then come back later in the Fall and put the sand on the beaches. Mr. Hoff advised he didn't mean to infer it would be the Town's fault if there was an oil spill, but wanted to explain is that what happens is they are dealing with the Federal Government who does what they want and the McFarland is the only dredge which is available at this time. Mrs. Douthit suggested they do a third now and come back in the Fall to do the rest.

Mr. Elwell advised the staff did propose to the Corps the suggestion made by Mrs. Douthit as a compromise in order to enable the sand to get into the ten feet of water, and this was one of many alternatives suggested, however, all of the alternatives would have required some adjustment of the Corps' thinking regarding its obligation under Federal Statutes to do the work at the least cost. He felt part of the problem was the Corps was being extremely inflexible and while they recognize and declare this situation an emergency to the extent of readjusting their schedule and sending the McFarland down from Jacksonville, they do not recognize it as a sufficient emergency to hire the appropriate dredge on an expedited basis to come and do the work that would get the material into the ten feet of water. He stated the Corps explained that to send the McFarland to do just a part of the job would be costly as the full cost would again have to be paid to finish the job in the Fall.

Mrs. Wiener recalled when the Town has a problem with the ships anchored in the Channel and they make the Port aware of it, the Town's pleas are not heard and now they have a situation and the Port representatives are here saying it is the Federal Government not the Port's problem. She commented that this Council is here to protect this Town and she can see no valid reason why something can't be worked out, and thinks that to save this Town's beaches was a lot more important than anything else and she believed any able pilot should be able to maneuver the Port's channel and she didn't view this as a serious problem. She noted the other side of the coin is they have the situation with the cost of oil. She didn't believe they could save the world and no-one is paying any attention to the Town of Palm Beach, so this Council wants to do whatever is necessary to help the people in the Town.

She felt the deposit of the sand thirty feet away from the shore is not acceptable as it is not of the Town's making as the Army Corps of Engineers created this and then we have the situation at the Port, and somebody has to care about this Town and if it is just this Council, that so be it. She would like to get the Port's cooperation if possible and suggested they do nothing.

Mr. Mets stated he would like to see the separation of the sand transfer from the dredging and he agreed the sand transfer is a state-wide issue and it should be addressed by the Corps. He felt there was a lot of commonality in their concerns. Mrs. Wiener agreed except when the Port is expanding, then there is none at all.

Mrs. Royal asked if the Coast Guard had issued a Mariner's Notice on the safety of the inlet? Mr. Mets stated he has not seen it. Mrs. Royal did not think it was that big of a problem as yet or they would have seen this notice from the Coast Guard.

Mrs. Royal asked when they were first made aware of the problem and wondered why they could not anticipate these things in a timely fashion, so the equipment that would benefit the Town could be on hand to do the job? Mr. Mets responded the Coast Guard is not involved in the depth of the channel and is more involved with the navigation aspects and to answer the second question about planning, they must take into consideration Mother Nature as once the channel is dredged, it is the sea's conditions that will for the most part predicate as to how the shoal will start to develop and how fast it will develop. He recalled on the average, the dredging would be done every one and a half years or so, but there have been times when dredging was not necessary for two or three years and on the other hand, the channel could be dredged and a major storm would develop and there will be material in the channel immediately starting up another shoal. He advised he has no control over that and then they have to deal with the Federal Government and how they go about their funding for the various projects.

Mr. Weinberg asked if the suggestion made by Mrs. Douthit on doing a part of the project now and finishing it up in the Fall and asked if the Port would join with the Town to request that type of a solution to this problem? Mr. Mets responded they can join in support of that proposal but what the Corps will do about it he is not sure. He advised once the dredging is done, they will monitor the channel and will let the Town have copies of that, but they cannot control what Mother Nature does to the channel. He advised he would like to see a study done of the channel and the jetties and the Sand Transfer to address the long term solution as this a long term problem.

Mr. Weinberg believed there was a peculiar circumstance here as both the Town and the Port are victims of the Corps and everybody is wondering what can be done. Mrs. Douthit commented the Port will profit from this and the Town has not had one penny's worth of profit from this.

Mr. Elwell advised the Town and the other coastal municipalities learned about this situation on April 12th at a Beaches and Shores Council meeting and the Town Council was advised the next day at a Council meeting. He believed it was worth considering the suggestion about doing the hot spots now and finish the job later when sand can be placed directly on the beaches after the turtle season, and perhaps if there was a joint effort, the Corps might take that suggestion more seriously. He advised this had been proposed and they were under strong pressure from the State of Florida to handle it that way but the Corps rejected that idea.

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Mrs. Douthit asked how much sand could the McFarland remove in the time they would be here? Mr. Mets responded they would be working 24 hours a day going in and out of the channel and they could remove a lot more material by doing the bottom dump than by doing a side cast dump. He advised they cannot guarantee they will be able to remove all of the material but do guarantee that on May 26th, the McFarland will leave Florida and whatever they have accomplished would be better than what they have right now. He estimated that barring delays, they would be able to remove a majority of the shoaling material.

Mrs. Smith noted this will solve the Port's problem but what will it do for the people in Palm Beach who are concerned about their beaches. Mr. Mets responded they do want the Corps to place the material as close to the beach as possible. Mrs. Smith responded this machinery is not going to do that and if earlier on, the Port people had stated they would work with the Town of Palm Beach to see that the proper dredge comes down to put the sand on the beach or in ten feet of water, they wouldn't be having this discussion. She agreed with Mrs. Wiener that the Port did not cooperate with the Town and all they were concerned with was the expansion of the Port and now that they have a big problem, they are coming here but the Council's concern is for the people in this Town, and not for the Port.

Mr. Mets stated he believed the material will come onto the beach. Mrs. Smith stated that was not good enough. Mr. Weinberg asked what would happen if this dredging is not done? Mr. Mets responded he has no quarrel with the Town of Palm Beach, but if there is an injunction, he believed the Port would take the Corps to court to ask that they maintain the channel and that is where the opposition would be, however, that would be up to the Port Commissioners as to what the next line of action would be. He advised they would have to suffer the consequences of maintaining the channel in terms of the loss of economic opportunity, lost revenue, lost jobs, and businesses that may leave as if the channel cannot be maintained, people won't want to do business with Palm Beach County, as the safety issue is a high priority. He stated they may have to wait until October and if there is an incident, the Port would simply say they tried to get the dredging done and that would be their position.

Mrs. Smith asked the Town attorney what legally can this Council do to protect the people in the Town and the Town's beaches? Mr. Randolph replied what has been suggested is injunctive relief in the event they do not get the cooperation from the Corps as was anticipated. He believes all has been done administratively and politically and short of any results, he knows of no other way other than by way of injunctive relief. Mrs. Douthit asked if an injunction is filed, does everything stand still? Mr. Randolph responded that would depend upon what the Judge has to say and he would attempt to get into Federal Court as soon as possible.

Mrs. Douthit recalled they have been talking about boat traffic and oil spills for years and as far as she can recall, no special concern has been shown by the Port until today when they state this is a serious threat.

Mrs. Smith asked how they would get the Corps to agree to do one-third now and do the rest later as she didn't think that would happen. Mr. Weinberg commented perhaps if there is a joint effort with the Port, there may be a chance. Mrs. Smith did not think so. Mr. Weinberg believed they should work with the Port to see if this will work. Mrs. Smith asked the Port representatives exactly what would they be doing for the Town? Mr. Mets asked the Council to bear in mind the Port has no authority over what is done in the channel as that is a Federal responsibility, and dredging of that channel whereby they would dredge and take the material and place it in a near shore area and they state it will wind up on the beaches and that would be a benefit to the Town of Palm Beach as he looks at it. Mrs. Smith did not believe it would benefit the Town if the sand is dumped in at 35', it will not come up to the beaches. Mr. Mets felt that was the major benefit that would occur. Mr. Smith felt that was no guaranty.

Mr. Hoff addressed the Council believing there was a lack of communication here and he wanted to assure the Council that the Port is not in the business of refurbishing beaches, but is in the Port business and is concerned about the economy of the Port. He agreed that there doesn't seem to be much in the dredging to benefit the Town, but in the future, he would like to see the Town and Port have better communication and he can't help the boats being anchored in the inlet and he can't help about the noise, but he thought there were things they could try to do in the future and he hoped if there was a lack of communication that they would correspond with him directly and he will look into whatever is the problem as he would like to be a good neighbor.

Mr. Randolph stated they will continue to do what can be done on an administrative level without having to go to court regardless of what action is taken today. Mr. Weinberg asked if the attorney thought court action would be successful? Mr. Randolph believed they would have to demonstrate irreparable harm on the part of the Town and he believed that could be supported; and they would have to show an inadequate remedy at law and he would state there was not an adequate remedy at law as once the sand is lost, it will be lost forever and he believed they had good arguments in that regard.

Mrs. Wiener pointed out the Corps of Engineers is the reason for the problem, so she viewed this as the Corps' moral obligation as they elected to have that channel and in fact, it behooves them to treat the Town in a little better fashion. Mrs. Douthit believed the Corps could give them a better dredge. Mr. Weinberg believed in time they could get the proper equipment but at this moment, the McFarland seems to be the only one available.

Mrs. Smith asked if it was possible for the Port to apply to the Corps for another dredge as a compromise to not start a injunction procedure? Mr. Hoff responded if an injunction is filed, they will not send out the dredge, so it would be the Port the Town would be hurting.

Mr. Mets stated he talked to with Mr. Richard Bonner, the Deputy District Engineer for the Corps in Jacksonville who told him that if an injunction was filed, they would not send the McFarland to the Port. He is reporting back to the Corps after this meeting about the decision made by this Town Council. Mrs. Wiener asked when another piece of equipment would be available? Mr. Mets responded if the Corps does not use the McFarland, they will put this out to bid and that would be 30 days to put the specs together, 30 days to advertise, 30 days to evaluate and the contractor has 30 days to get his paperwork together and go through the pre-dredge conferences after which they will be on site, and this looks like four to five months. Mrs. Wiener asked if he was saying that the Army Corps of Engineers will send the McFarland or send nothing to which Mr. Mets agreed. Mrs. Wiener thought with a little pressure, perhaps that could change.

Mrs. Royal understood the Corps can circumvent their bidding requirement in an emergency situation and an injunction might be considered as an emergency. Mr. Hoff stated he was not familiar with their procedure. Mr. Randolph believed the Port has declared an emergency but he was not sure the Corps considered it an emergency.

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Mr. Hoff stated the Corps considers a vessel going aground an emergency and he did not believe they declared this an emergency. Mrs. Wiener asked if there was anyway at all by using this particular vessel of getting the sand closer to shore to which Mr. Hoff responded he is not an expert on this and they would have to ask that question of the Corps.

Mr. Elwell believed there were ways to get it closer to shore but it would require a second handling of the sand material and the issue becomes flexibility and the cost and the Corps has not found any of these alternatives to be acceptable. Mrs. Royal thought perhaps an injunction might encourage the Corps to be more flexible.

Mr. Hoff reported there are no dredges hanging around waiting to be called and what they are dealing with is the Port is completely out of the picture and if the Corps believes the sand is high enough, they will bring in their equipment and dredge on their call and not on the Port's call and it would be difficult to do what the Town wants, although he would love to do it, but it is a tough call.

Mrs. Wiener believed the only answer was to get the court involved in this as if the Corps didn't want to be reasonable and the Town Council cannot force anyone to do anything and can only do the best of what they know how to do and she moved that the Town Council seek injunctive relief. Seconded by Mrs. Royal.

Mrs. Smith noted the letter from the Corps was sent to the Palm Beach County Engineer and asked what was his position on this project to which Mr. Mets responded he did not know. Mrs. Smith believed the County Engineer wanted the sand to be put into ten feet or less and she thought part of the position they find themselves in today is a lack of communication from the Port with the rest of the County and the Town of Palm Beach and other coastal communities. Mr. Mets responded the Port is not in the beach nourishment business as they have to work with the Corps on that and they really have no say as to where the material is going to be distributed. Mrs. Smith thought they could be more communicative with the Town. Mr. Mets responded he has never been in this type of situation prior to this time as historically the sand is placed on the beaches.

On roll call, the motion carried with a 3-2 vote with Mrs. Wiener, Mrs. Smith and Mrs. Royal voting for the motion and Mrs. Douthit and Mr. Weinberg voting against the motion. Mrs. Douthit stated she voted against the motion as she didn't believe they had gone far enough into the letter from Mr. Kirby Green of DNR dated May 11, 1993.

Mrs. Royal did not believe the Town should be in the Foreign Aid business and building beaches for Brazil.

Mr. Doney referred to the letter alluded to by Mrs. Douthit from Mr. Green and if the Town is successful, there is another obligation that comes along with that in that the DNR would require additional monitoring and it will be a cost issue. Mrs. Wiener thought they had to see what happens first with the injunction. Mrs. Douthit felt the letter means nothing as the Corps has indicated if the injunction is filed, they won't send the McFarland down, but if the injunction failed and the sand is dumped 30' off shore, the letter would have no bearing as at 30', there will be no sand.

V. ANY OTHER MATTERS. None.

VI. ADJOURNMENT. Meeting was adjourned at 5:06 PM.

Adjournment

Grace T. Peters
Town Clerk