

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MAY 2, 2005

I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting of May 2, 2005 was called to order by President Brooks at 3:30 p.m. in the Town Council Chambers. On roll call the following elected officials were found to be present:

Mayor Jack McDonald (arrived at 3:35 p.m.)
President William J. Brooks
President Pro-Tem Norman P. Goldblum
Councilman Denis P. Coleman
Councilman Richard M. Kleid
Councilman Allen S. Wyett (via teleconference)

Others present for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Town Clerk Susan A. Eichhorn
Attorney Allen R. Tomlinson

II. APPROVAL OF AGENDA

Councilman Coleman made a motion to approve the agenda as presented. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

III. POTENTIAL SETTLEMENT OF FLORIDA BLACKTOP VS TOWN OF PALM BEACH, CIRCUIT COURT CASE NO. 02-7446 AI, 4TH DCA CASE NO. 4D04-1816

Town Manager Peter Elwell advised that Attorney Allen R. Tomlinson, a partner in Jones, Foster, Johnston and Stubbs, had been directly involved with this litigation, and was present to answer any questions that the Town Council might have.

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Town Manager Elwell advised that the matter for consideration today was the negotiated settlement among the parties involved in Case No. 02-7446 AI, 4th DCA Case No. 4D04-1816, in an amount of \$2,100,000. He explained that the pros and cons had been discussed based upon the advice of the appellate attorney on behalf of the Town, Jane Kreusler Walsh. He explained that the current judgment was in excess of \$2,330,000, with interest accruing in excess of \$400 per day, and that the \$2,100,000 payment would fully settle the matter; the Town would make a payment of \$2,100,000, as compared to the current judgment which was in excess of \$2,330,000 (a difference of approximately \$230,000 between the accrued judgment and the settlement figure). He explained that, as a term of the settlement, if the Town ever pursued a claim against the engineer, URS/Dames & Moore, who designed the D-12 Project, and if the Town recovered damages in such a suit, the first \$232,010.71 of the net recovery in such litigation, would go to the other parties in this case – that is, Florida Blacktop and Telcon Construction, Inc. Anything above and beyond that would be net recovery to the Town.

Town Manager Elwell advised that the source of the funds for settlement would be the reserve for catastrophic exposures and emergencies, within the Town's risk fund. That reserve fund would be replenished later this summer when the budget amendment was done; the sources for the replenishment would be the remaining funds in the project account, and a portion of the proceeds from the sale of the Pike Road property.

In response to Councilman Kleid, Attorney Tomlinson advised that the Town had sole discretion in bringing a claim against the engineers; in his opinion, the research done so far indicated that the Town would have a claim against URS/Dames and Moore that could potentially result in a judgment in excess of \$230,000.

Councilman Kleid made a motion to accept the settlement of \$2,100,000 with the condition that if an action is brought by the Town against the engineer (URS/Dames and Moore), the plaintiffs would share in the first \$232,000.

Town Manager Elwell clarified that in the event that there was a claim filed, the Town would first recover its legal fees and costs, then the first \$232,000 beyond that would go to the other parties; everything above and beyond that amount would go to the Town. He also clarified that it was important for the Town Council to decide whether or not this settlement was a good business decision on its own merits, separate and apart from any expectation of what might be recovered in the future.

Councilman Kleid indicated that he had stated in his opening remarks that he believed that this was a good settlement.

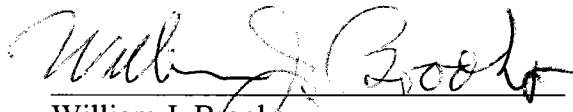
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Attorney Tomlinson made a further point of clarification in regard to the sharing of proceeds in any claim against URS. He explained that as their agreement sits between Florida Blacktop and Telcon, right now, Florida Blacktop would be the one that would get a share of the recovery, not Telcon. It did not make a difference to the Town, but he noted that he did not want the record to be other than the way that he understood the matter.

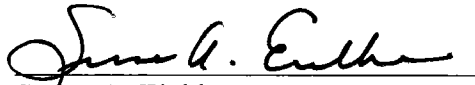
Councilman Kleid amended his earlier motion to accept the settlement of \$2,100,000 in the Florida Blacktop vs Town of Palm Beach Circuit Court Case No. 02-7446 AI, 4th DCA Case No. 4D04-1816, to include taking into account the remarks of Town Manager Elwell and Attorney Tomlinson. The motion was seconded by President Pro-Tem Goldblum. On roll call, the motion carried unanimously.

IV. ADJOURNMENT

There being no further business, the Special Town Council Meeting of May 2, 2005 was adjourned at 3:45 p.m.


William J. Brooks
Town Council President

ATTEST:


Susan A. Eichhorn
Town Clerk