

MINUTES OF SPECIAL TOWN COUNCIL MEETING OF APRIL 18, 1995

I. CALL TO ORDER AND ROLL CALL: President Smith called the Special Meeting of the Town Council to order at 4:30 P.M. on April 18, 1995, in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Ilyinsky, President Smith, President Pro-Tem McDonald, Councilmen McLendon, Shaw and Wyett. Also attending were Town Manager Doney, Town Attorney Randolph, Assistant Town Manager Elwell, Director of Public Works Dusey, Town Engineer Bowser, and Town Clerk Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Town Clerk Pollitt. The Pledge of Allegiance was led by President Smith.

III. APPROVAL OF AGENDA: Motion was made to approve the agenda as printed by Mr. Wyett. Seconded by Mr. Shaw. On roll call the motion carried unanimously.

IV. WATER SUPPLY ISSUES - MEETING ON TUESDAY, APRIL 18, 1995 at 2:00 P.M. BETWEEN COUNCILMAN SAMUEL MCLENDON AND MAYOR NANCY GRAHAM

Mr. McLendon addressed the Council, reporting that he, Mr. Randolph, Mr. Dusey, Mr. Doney and Mr. Elwell met with Mayor Graham and three members of her staff including the Deputy Town Attorney, Mr. Olson and Mr. Hobbs. The first item of discussion had been concern over the condition of the distribution system on the island, and the inquiry as to whether any preliminary work had been done on establishing the value of the system. Apparently, he said, the City of West Palm Beach planned to do a computer model of the system and would be authorizing that at their next Commission Meeting. Mr. McLendon said that he questioned whether they would look favorably upon the method of determining the replacement cost, less depreciation, using the original cost with a construction price index ratio basis minus depreciation. They had indicated they were not fully familiar with that and would like to look into the matter further with some of their experts. Mr. McLendon continued that he had asked about the possibility of wholesaling water and how a rate would be determined. Again, they indicated that was on their list of things to be looked into. Mr. McLendon brought up the Franchise Agreement issue regarding an agreement exclusive for potable water only, and he understood that they would lean favorably toward that with an adequate window to plan their system utilization to the west.

Mr. McLendon had asked what commitments they had toward water reductions that might be helpful to satisfy the mandated restrictions? They explained that they were extensively pursuing the utilization of renovated waste water, going to a tertiary sewage treatment plant and then working it in with a marshland finishing treatment before pumping it into their catchment area and canal system. He felt they were apparently moving well with that.

Mr. McLendon had asked about the possibility of the three different metering systems, if a wholesale arrangement were made. They responded that they would certainly want to meter on the West Palm side of the Lake so that the Town would own the underwater crossings and be responsible for their future maintenance.

Mr. McLendon also asked if the Town went to a non-potable system for irrigation but still purchased potable water from them, if they would be inclined to revert to a non-escalating rate structure, going with a uniform rate. The answer had been very negative on that--they did not think they could afford to have a different rate schedule in the Town of Palm Beach than in West Palm Beach and they wanted to keep their escalating rate there.

There was discussion of compromise on the surcharge--the question had been would they be willing to commit the surcharge monies to improving the water system in Palm Beach, and the answer was certainly not all of it, but that they would be willing to negotiate a portion of it.

Mr. McLendon added that it was agreed that when any water system improvements were normally earmarked from their system as a certain percentage of revenue, that a similar percent of revenue would be spent in Palm Beach.

Discussion was held concerning a friendly lawsuit and the timing for preparation. The consensus was that it should be done concurrently, and Mr. Randolph would be talking to the City of West Palm Beach.

Mr. McLendon remarked that it was not clear from their present rate structure what was done for meter replacement, since their rate booklet was misleading as they do not charge the customers for the meters in those cases. One of the items discussed was the contract review related to the use of hydrants and the charges attached, and a commitment was obtained that whatever was done in West Palm Beach would be done in Palm Beach.

Mr. McLendon asked staff for comments that could be added to his report.

Mr. Randolph addressed the Council, stating that Mr. McLendon had hit most of the highlights. He felt it was important to note that Mayor Graham indicated that she was looking at this as a fresh start, and was willing to consider any provision of a franchise that would be determined by both parties to be fair and reasonable. One of the points that Mr. Randolph felt was important was the following: previously in negotiations the City had indicated that they were going to be performing a hydraulic study in order to make a determination as to the efficiency of the system in the Town of Palm Beach as well as the City of West Palm Beach. They had since indicated that they saw no reason to go forward with that study, until and unless they knew that they were going to enter into a franchise with Palm Beach. Mayor Graham felt out of fairness that the City of West Palm Beach should go forward with that hydraulic study. The recommendation that came out of the meeting would be that the City of West Palm Beach Commission would consider it at its next meeting.

Mr. Randolph continued that the Mayor had indicated that the City of West Palm Beach wanted to work with the Town of Palm Beach on many things, and for that reason they wanted to work with the Town of Palm Beach on a friendly basis in this matter also.

Mr. Doney addressed the Council, commenting on the hydraulic study. He felt it very important that the study was now going to be put into motion, with the scope of work being reviewed by Mr. Olson and Mr. Dusey.

Mrs. Smith asked if the feeling after the meeting was towards a franchise agreement with the City of West Palm Beach or not?

Mr. McLendon replied that he thought it was too early to tell; that he would have preferred that the Administrator and the City Attorney had been there, but that he felt it went well.

Mrs. Smith asked if he felt that the fact that they were not there was, in effect, a stall?

Mr. McLendon replied negatively. Mayor Graham had mentioned that the City Attorney was in other negotiations, and they had seemed very cooperative.

Mrs. Smith added that it was her impression that Mr. McLendon came away from the meeting with a good feeling and that this had been a positive step.

Mr. Wyett commended Mr. McLendon on an excellent report and a meeting that had opened up avenues of communication. He commented on the necessity of a concurrent lawsuit on a friendly basis. In light of the possible negotiations on the surcharge, he suggested that a friendly lawsuit, and its related costs, be deferred until there was an opportunity for more specific conversations on surcharge compromise.

Mrs. Smith remarked that Mr. Wyett had instigated the issue of a friendly lawsuit a few months ago, and it had been the feeling of the Council that a lawsuit would be pursued if necessary. There were still many things that would have to be looked into and it was only considered as a possibility.

Mr. Wyett replied that he felt that the purpose of stating that the Council was prepared for a lawsuit had been accomplished, and that action could be deferred on it in order to allow further negotiations.

Mrs. Smith explained that it was not her impression that a friendly lawsuit would be entered into until Mr. McLendon felt that the time was right after his discussions with Mayor Graham.

Mr. Randolph remarked that the nature of the discussion with the City of West Palm Beach was that there was the possibility that if there was some agreement in regard to the surcharge by way of negotiations, there may not be a need for a lawsuit. It had been discussed that, at least initially, the City Attorney and Town Attorney should get together, simply for the purposes of discussing what the terms of a friendly lawsuit would be in the event one was filed. He added that if negotiations were such that both sides were happy with the results, it would not be necessary to go forward any further. He noted that he would need direction from the Town Council regarding the matter.

Mr. McLendon explained that there was a possible misinterpretation. The question relative to the surcharge was not that they would be willing to reduce the 25%, but that they would be willing to use it on the Palm Beach water system, and it was indicated that part of it might be. He did not feel that there was any indication that there was consideration of a reduction of the 25% surcharge per se.

Mr. Shaw asked if there had been any discussion of the issue of the Town installing a secondary distribution of a non-potable irrigation system?

Mr. McLendon replied that the issue of using the surcharge amount as a partial payment toward a dual system had not been discussed. He did not see the City of West Palm Beach agreeing to that. He felt that if it was decided that the system be purchased, or to go ahead with a non-potable dual system, that the two things were so interrelated that both should be done together.

Mr. Shaw replied that the Town should own all of the distribution system or none of it, and that a critical part of any approach by the Town was to concentrate on the fact that revenue would be derived from the irrigation system at a loss of revenue to the City of West Palm Beach, versus them being able to keep all of the revenue and giving the Town a dual distribution system. In order to hold on to revenue, it would make sense to the City of West Palm Beach to realize that there was an advantage to their coming to the Town and saying that they would put in a non-potable system, and come up with a good working compromise for it, without taking it out of their potable water source.

Mr. McLendon replied that there was merit to what Mr. Shaw had suggested, because if the City of West Palm Beach were operating a non-potable water business with the Town, the number of crossings would probably not have to be expanded, thus it could avoid another underwater crossing that had been contemplated with a non-potable system. He noted that it was too early to pursue the matter at the present time, but it was something to keep in mind.

Mr. Shaw remarked that evaluating agreement on a lawsuit would be difficult when a critical part of the City of West Palm Beach's revenue could be affected, as the contract would be negotiated based on incoming revenue.

Mr. McLendon said that he felt the 25% was cast in stone and the willingness of the City of West Palm Beach to move was based on how much of that 25% would be committed to the water system.

Mrs. Smith asked Mr. McLendon what the next step would be?

Mr. McLendon replied that he had discussed with Mayor Graham that in the next meeting individual paragraphs of the draft Agreement would be gone over.

Mayor Ilyinsky remarked that he was most comforted by Mr. McLendon's statement that Mayor Graham would discuss the return of part of the surcharge to the water system in Palm Beach.

Mrs. Smith asked Mr. Randolph what the next step would be?

Mr. Randolph replied that after the Council had given direction to the Water Committee, the appropriate staff members would attempt to further discuss the terms of the Agreement with the City of West Palm Beach.

Mrs. Smith asked if there was a possibility that after the Council looked at the draft Agreement it could be sent to the City of West Palm Beach for review, prior to another meeting with Mr. McLendon?

Mr. McLendon said that he would prefer to get an eyeball reaction to things, but perhaps that would be a more efficient way to do things.

Mrs. Smith asked Mr. Randolph if it would be stipulated in a friendly lawsuit that there would be no appeal on a decision?

Mr. Randolph replied that was not necessarily so, and that was something that should be discussed--that if it was going to be a friendly lawsuit, the terms would have to be agreed upon by both sides. He noted that if both parties do not come to full 100% agreement on the terms of a lawsuit, then it would not be a friendly lawsuit, and a decision would have to be made to go forward with an unfriendly lawsuit.

Mr. Wyett stated that he would like to concentrate on settling the surcharge issue, because that was the key issue, in his opinion.

Mr. McLendon said that he did not see that the surcharge would be reduced.

Mr. Wyett explained that he did not take the position that the surcharge would be completely eliminated, but was more interested in how it would be spent. The water distribution system in the Town was in dire need of improvement, and perhaps some of that money could be used to improve the system.

Mr. McLendon replied that Mayor Graham had committed to negotiations to use part of the surcharge for improvement.

Mr. Wyett asked if there had been any discussion regarding the inverse rate and capping it in its present ratio?

Mr. McLendon responded that single family homes in the Town were impacted by these rates, but when the total number of gallons sold in the West Palm Beach system and in Palm Beach was considered, the dollars associated with the unit cost involved an infinitesimal difference.

Mr. Wyett noted that a number of properties in the City of West Palm Beach had access to well water, which was not possible in Palm Beach, and water from the C-51 Canal was being used by one golf course in the City. Also, some of the large properties in Town had more than a quarter acre, with very large water bills.

Mr. McLendon replied that he had not looked at individual water bills, but at categories of accounts, which included both small lots and big estates.

Mr. Doney commented that it was his understanding that after the Water Committee Meeting on April 6, Mr. Randolph and staff were to discuss the remaining issues and then report back to the Water Committee. There would be then be a Water Committee meeting, after the meeting today with Mayor Graham, which would finalize the efforts on the draft Agreement, so that at the May 9 Council Meeting, the Town Council could vote on the Agreement to be advanced to the City of West Palm Beach.

Mrs. Smith agreed with that, as did Mr. McLendon.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

Mr. Shaw made a motion that the meeting be adjourned. The meeting was adjourned at 5:20 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn