

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON THURSDAY, APRIL 13, 2006

I. CALL TO ORDER AND ROLL CALL

Mayor Jack McDonald *[arrived at 9:40 a.m.]*
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks *[arrived at 10:00 a.m.]*
Council Member Susan Markin *{arrived at 9:35 a.m.}*
Council Member Allen S. Wyett

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Director Planning, Zoning & Building
Charles Langley - Public Works Assistant Director
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by President Coleman.

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III. APPROVAL OF AGENDA

The agenda was approved with the following addition:

ADD as Item IV. - Condo hotel Conversion Parking Study by DKS Associates as Required as a Condition of Approval for Site Plan Review #7-2005 with Variances, Plaza Inn, 215 Brazilian Avenue.

IV. Condo hotel Conversion Parking Study by DKS Associates as Required as a Condition of Approval for Site Plan Review #7-2005 with Variances, Plaza Inn, 215 Brazilian Avenue.

Attorney James Brindell, on behalf of the applicant, requested approval of the Traffic & Parking Study provided by DKS Associates, Inc. He explained that the Town's traffic consultant, Gareth Klotz of American Consulting Engineers, had also reviewed the study.

Zoning Administrator Paul Castro commented that DKS Associates, Inc., had looked at a specific type of use, and that staff concurred with the conclusions made by DKS, and the Town consultant, American Consulting Engineers of Florida; staff would continue to monitor the situation.

Councilman Wyett moved approval of the recommendation of staff to accept the conclusions in the memorandum from DKS Associates, Inc., titled Condominium-Hotel Traffic and Parking Requirements. The motion was seconded by President Pro Tem Kleid. On roll call the motion carried 4/0: Affirmative votes cast by: Council Member Wyett, President Pro Tem Kleid, Council Member Markin, President Coleman. Council Member Brooks was not present for the vote.

V. UNDERGROUND UTILITIES- REVIEW OF TECHNICAL AND LOGISTICAL ISSUES

Town Manager Elwell advised that Deputy Town Manager Bradford would provide a brief update, followed by comments from Public Works Department Paul Brazil. Town Engineer Jim Bowser would review the report he had provided regarding the technical and logistical issues of the underground project, entitled "Burial of Overhead Utility Distribution Systems - Technical Memorandum - April 6, 2006."

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Mr. Bradford reported that policy questions, finance issues, cost estimates, etc., had been discussed in previous reports to the Town Council. Staff had believed that it was important that the Town Council review the realities of the construction associated with underground utility projects and had requested that Town Engineer Bowser prepare a technical report that would indicate a step-by-step technical and logistical plan.

Mr. Brazil reported that there were several issues to keep in mind in the discussion of underground utilities. Every street would present a different set of challenges, and there may be unique solutions on every street. The process would be evolving, and there had been a cooperative effort between Town departments, as well as between the public utilities. After Mr. Bowser's presentation, there would be some action items to be addressed.

Mr. Bowser reported that he would discuss the logistics of making the underground project happen. There were representatives from Florida Power & Light (FP & L), BellSouth, Adelphia, and Comcast in the audience, and they would be available to respond to any specific questions. The information to be presented today was the best information staff had to date, and there was a tremendous amount of coordination that would need to be done with the utility companies to get the project started.

Please note: The Technical Report of Town Engineer Bowser is included in its entirety beginning with the following page, with the comments and discussion taking place at the April 13, 2006, Special Town Council Meeting, following each subject matter or group of subject matters.

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Project Background

Discussion regarding the burial of the overhead electrical distribution system in the Town of Palm Beach has been ongoing for many years. Initially, aesthetics were the primary motivation behind these discussions. However, the widespread damage to the overhead electrical distribution system and the long periods of power outages caused by Hurricanes Frances and Jeanne in 2004 and Hurricane Wilma in 2005, led to calls from many Town Residents and Civic Groups to the Town Council to move forward with a Town wide burial of the electrical distribution system. Town Staff has been working with Florida Power & Light Company, BellSouth Corporation and Adelphia Communications Corporation / Comcast Corporation regarding the logistics of moving the existing overhead utility systems underground.

Florida Power & Light Company System

Florida Power & Light Company (FPL) has appeared numerous times before Town Council. From their presentations, it is important to first note several cautionary points regarding burial of their system. It is apparent that burying the overhead system will eliminate power outages due to falling tree limbs and poles breaking due to high winds. However, there can still be outages caused by storms to underground systems.

Trees that are uprooted can break underground wires. Flooding due to storm surge, failed drainage pumping systems, rainfall events exceeding the capacity of the drainage collection system or clogged inlets, may flood transformers causing them to trip out. FPL has advised that restoration of electricity must wait until flooded areas are drained. This is not believed to be a significant problem in the Town. If an area of the Town floods due to a failed storm water pump station or clogged inlets, the area will be cleared and or pumped down soon after Public Works staff returns to Town after a storm. In the case of flooding due to storm surge, salt water intrusion into the equipment may cause failures many months after a storm event. FPL has also noted that while power outages to underground systems versus overhead systems are statistically less frequent, outages typically last longer.

The existing FPL distribution system within the Town of Palm Beach lies within road rights of way and easements. A major portion of this system is in five foot wide rear utility easements which make operation and maintenance difficult. With the proposed undergrounding project, FPL will bury their facilities in rear yard easements only where there are paved alleyways present. Such paved alleyways must be a minimum of ten feet in width so as to provide access by FPL trucks. FPL will not underground facilities in

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residents' backyards which may be obstructed at some future time by fences, landscaping and the like. FPL's preference is to have the electrical distribution systems in ten foot front yard easements which are the standard for FPL on new construction. Under certain conditions, in lieu of front yard easements, FPL will locate in the adjacent road right of way. In these cases, the Town will a) bear the cost of future relocations caused by other construction activities, and b) provide acceptable alternative sites for relocation. FPL is currently developing an agreement defining the obligations of the Town in those cases where FPL facilities are to be placed within the road rights of way.

When looking at burying FPL lines in the Town, several "typical" scenarios are easily identified. No one option will fit everywhere. A preferred option for each roadway segment will be developed based upon existing field conditions. A discussion of these options follows.

Rear Yard Easements

FPL will bury lines in a rear easement only if there is a paved alleyway present. The easement needs to be at least ten feet wide, and that transformer and switch cabinet easements are dedicated outside the ten foot easement. This option is the most disruptive to Town residents and their properties. The creation of this easement may not be possible in many locations due to existing structures, pools, pool decks, fences and other obstructions.

Attachment "A" illustrates the burial of the FPL lines in the rear easements. To do this, FPL is asking for a ten foot easement that is to remain clear for use by service vehicles. Additional easements for placement of the transformers and switch cabinets will need to be located outside the ten foot easement. In addition to FPL facilities, BellSouth, Adelphia / Comcast Cable, if also located in the rear easement, will need to locate their above grade boxes outside the cleared ten foot easement and will require an additional easement. The proposed BellSouth and Adelphia / Comcast Cable easements are not shown on Attachment "A".

Front Yard Easements / Adjacent Right of Way

FPL's standard practice on new construction, and preference for this undergrounding project, would be to have a ten foot front yard easement dedicated with increased sized easements for the switch cabinets. The Town is concerned that the ten foot front yard easements will prove to be a significant burden to the residents, and have asked that, where possible, the feeder and lateral wiring be placed in the road rights of way. FPL is developing the criteria under which this will be allowed. If FPL agrees to their lines

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being placed in a road right of way, it would be conditional that the Town give written assurance that if future construction projects, regardless of the party responsible, conflict with the FPL feeder or lateral distribution system and said system would need to be relocated, then the Town will pay for said relocation or adjustment and provide a location acceptable to FPL to which to relocate. As mentioned earlier, an agreement is being developed by FPL to memorialize this policy.

Attachment "B" illustrates the option of a front yard easement or burial in a road right of way. Attachment "B" illustrates a typical undergrounding installation on a north end roadway between North Ocean Blvd. and North Lake Way. The feeders on this example run north - south on both North Ocean Blvd and North Lake Way. Each feeder will require one six inch conduit with one six inch spare conduit placed for future use. Every place where a "T" occurs in a feeder, a switch cabinet must be placed. Attachment "B" illustrates that a switch cabinet is needed to be placed at mid-block on both the east and west sides of the block. The number of "T's" in the line can be reduced if one switch cabinet is used to feed two streets. The number of transformers is dependent upon the electrical load from each property. From one to eight houses can typically be placed on one transformer. The number of transformers, and therefore the locations of the transformers, will not be determined until the design is completed.

Local Road North shows the FPL lines to be buried in the roadway with the transformers in a ten by ten foot easement on private property. Local Road South shows the FPL lines to be buried in a ten foot front yard easement. The transformers are located within the same ten foot easement. The transformer locations on this example roadway are based upon one transformer for every four houses. A ten foot easement on private property on both sides of North Lake Way is required. In this example, the east side easement is for burial of the feeder lines and the west side easement is for transformer and service line feeds. A 20 foot by 20 foot easement is shown at mid block for the switch cabinet.

Town Staff believes that the financial exposure to the Town is minimal if FPL locates within Town rights of way since we are the permitting agency for other utilities and we have a significant influence on directing other projects to design around the FPL system. It should be pointed out that there are FPL lines buried in the Town today. In the last 20 years, we do not know of one instance where FPL has been asked to relocate their underground system. We do recall numerous Town projects that were designed around FPL. We expect this to continue in the future.

With respect to Florida Department of Transportation (FDOT) right of ways, Town Staff is able to comment on FDOT projects but often have little influence on final design and construction of their underground infrastructure. It is common for FDOT to ask utility

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companies to relocate to avoid their construction. Financial exposure along FDOT right of way would be limited where easements can be obtained on private property from adjacent owners. In the instance of Royal Poinciana Way, easements from The Breakers and the Royal Poinciana Plaza may be obtained. Along South County Road, The Breakers and Bethesda by the Sea Church have sufficient land to grant an easement without major disruptions to their property, but private properties to the south and the downtown district may be a problem. However, the Town's financial exposure on State rights of ways may be less than one might think.

FDOT is undergoing a major upgrade to their systems on SR A1A. Segments are complete from Lake Worth Road to Sloan's Curve and from Royal Palm Way to the Flagler Memorial Bridge as well as SR 704, Royal Palm Way. Upgrades to FDOT underground systems, most notably storm drainage, have been made or will be made by the end of 2008. It is unlikely that improvements beyond 2010 by FDOT will increase the size of these systems. Undergrounding the overhead utilities within FDOT right of way after the FDOT improvements will allow the new utility systems to be built around FDOT infrastructure and future maintenance and reconstruction of the FDOT systems should not conflict with the FPL lines. It should be noted that, as previously mentioned, the Town will be responsible not only for any costs incurred in a relocation, but also providing satisfactory relocation sites. This could present challenges if there had previously been reluctance to provide the Town an easement at a given location.

FPL has provided to the Town a document titled "FPL Underground Devices Used in OH (Overhead) to UG (Underground) Conversions dated February 13, 2006. This document, provided here as Attachment "C", is an excellent document which illustrates the typical FPL equipment which is to be used with this undergrounding project. Dimensions, photographs and setbacks are noted.

April 13, 2006 Discussion and Comment:

Town Engineer Bowser reported that it was anticipated that when the design phase began, Town staff and representatives of the three utility companies would review each street, with the goal to locate the wires with the least impact on Town residents.

Councilman Wyett commented that there had to be a better way to pursue easements on North Lake Way, as the front of every single home (gates, walls, vegetation) would be affected by the easements of a total of 20' on the road.

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Town Engineer Bowser replied that staff would review the design ideas for refinement, as they gained additional input. He explained that directional boring would be used, which would allow clearing to be limited to a 10' x 10' area that was required for the easement only.

In response to President Pro Tem Kleid, Mr. Bowser replied that it would take a great amount of extra wire to place easements along North Lake Trail; in some places there was not an access often enough on Lake Trail to be able to get wires in; staff would look at Lake Trail as an option.

Town Manager Elwell underscored that some of the tone in the technical memorandum may sound or feel more negative than was intended, because this was the first opportunity to go through the realities of the impact of this work. While the work was being conducted, there would be some significant impacts to the particular properties on the streets of the Town, and they would need to be worked on to minimize them as best as possible. The goal of staff has been to present a report that clearly and openly said how cumbersome some of the work would be, and then to tackle the issues in a way that would reduce impacts to residents as best as possible. He explained that the preference for a front easement had been an evolving issue, and early on it had been the expectation of staff that rear yard easements would be used as often as possible. He remarked that it warranted some conversation with FP & L today about the necessity of a 10' clear paved surface in the rear. FP & L had been very flexible in discussing being in the right-of-way, wherever possible. The last resort would be to have to take any linear easements out of the front yards in order to run wire. Wherever possible, the system would be designed to be in the right-of-way. Because of the volume of utilities already in those easements, the necessity for more boxes could occur, because of the difficulty of running connecting wires under the roadway where there were already many utility wires.

Councilman Wyett suggested that there were a number of east/west streets where the easements between the properties backed up to each other from 3' to 6', and that residents in those locations should be given the opportunity to grant easements to the rear in order to widen the easement to 10', so that the disruption was not in the front of their properties.

Mr. Rod Macon, Florida Power & Light (FP & L) responded to comments:

- **In explanation of the Sanibel/Captiva Island flooding situation as it related to the underground utility system: He explained that while an underground**

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system solved many of the potential problems of an overhead system, it would present a few new potential problems, and one of them was flooding. It was his understanding that in the Sanibel/Captiva Island area, in order to repair the underground system, a temporary overhead system was needed in order to get the power back to customers, and to buy time to replace the underground system.

- ▶ The size of the transformer would depend upon the amount of electrical demand from the homes that it was serving; there was a limit as to the size of the transformers available to FP & L.
- ▶ The Phipps Estate underground wiring currently in place, was an example of what underground wiring equipment would look like.
- ▶ The possibility of using underground sub-surface equipment in a pilot test case; to date no underground transformers had been available from any manufacturer.
- ▶ Elevating the concrete platforms that hold equipment in order to reduce the flooding potential.

The Town Council discussed the following points:

- ▶ Creating a feeder system, allowing individuals or groups to take the initiative as to how to connect on a street by street basis.
- ▶ Width of area taken up by utility lines under the roads.
- ▶ The goal of placing all utilities in the right-of-ways when possible, taking future maintenance of each utility into account.
- ▶ Landscaping/screening of transformers and switch boxes.
- ▶ The challenge of placing utilities in the right-of-way on North Lake Way.
- ▶ How many obstacles existed in the rear yard easements, such as pools, vegetation, etc., and the expense of clearing rear yard easements.
- ▶ Informing architects of the need for future easements as they design new construction, and requiring the provision for easements in plans.

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- ▶ The offer of Llwyd Ecclestone, resident, to provide a site review of communities that already have underground wiring in place, so that the Town Council members could see equipment in place.
- ▶ The potential for negative reaction to rear easements, and the potential damage to existing structures with front yard easements, as brought forward by Jorge Sanchez, of Sanchez & Maddux Landscape Architects. He encouraged the use of the road right-of-way where possible.
- ▶ Focus on the positive aspects of underground wiring, as compared to what is currently in place.
- ▶ The appointment of an Advisory Citizen Committee to gather the concerns of citizens.
- ▶ In the feeder only option, the burying of feeder lines requiring more switch cabinets.
- ▶ Designing a Phase I area/section before moving forward, so that the impacts may be suitably assessed.

PRESIDENT PRO TEM KLEID MOVED THAT THE TOWN COUNCIL ACCEPT THE INVITATION OF LLWYD ECCLESTONE TO TOUR SOME UNDERGROUND PROJECTS [UNDERSTANDING FROM TOWN ATTORNEY RANDOLPH THAT IT WOULD BE FINE, AS LONG AS THERE WAS A MEMBER OF THE PRESS PRESENT, AND A CLERK TO RECORD WHAT TRANSPIRES]. MOTION SECONDED BY COUNCILMAN BROOKS. ON ROLL CALL THE MOTION CARRIED UNANIMOUSLY.

Town Manager Elwell indicated that staff would coordinate with the Town Council to schedule the tour.

Regarding front yard versus rear yard placement, Town Engineer Bowser noted that there may be opportunity to provide some decorative screening with the approval of the utility companies, and perhaps ARCOM and Landmarks. Utility companies would not want to put out any more boxes than were absolutely necessary, since they would be responsible for their maintenance.

BellSouth Corporation

BellSouth Corporation (BellSouth) systems typically follow the FPL pole lines, although there are significant portions of the Town with buried underground duct bank systems. As noted with the FPL system, the location of placing existing overhead cables underground will be determined at the design phase. The use of front, rear and side easements as well as road right of way may be used. While finalization of the burial options for BellSouth have not been made, the Town continues to meet with BellSouth to define these options. We will review what is known to date.

BellSouth has advised Town Staff of their intent to upgrade the Town from a primarily copper based system to a fiber optic system. This will be an unexpected benefit to Town residents who will gain access to a variety of upgraded services from BellSouth as well as having an infrastructure in place that will allow expansion of services in the future as they become available. To provide this upgraded system, BellSouth must provide an increased number of "cross boxes", which convert communications data from the fiber optic cable to a copper cable which service each residence and business. Layout of these cross box locations will be at the design phase and must be coordinated with electrical and cable facilities to avoid conflicts between the systems' components.

Town staff envisioned BellSouth remaining in the rear easements if they existed there today. BellSouth has reviewed this option and given the condition of many of the Town's rear easements, that is, obstructed by trees, walls, fences, hedges, etc., it is now BellSouth's intent to move to the front of the properties. To rebuild utility systems in the rear easements will be a significant challenge, as well as being a very costly endeavor. Current estimates presented by the Town Manger's office have not included costs to clear the rear easements and if building in the rear easement option is chosen, a detailed review will need to be made to estimate the clearing costs involved.

BellSouth's request to the Town is that with the undergrounding project, the Town provides a clear path for the new facilities. This would include all required easements or rights of way. However, BellSouth states that it may not be in the best interest of the Town residents for BellSouth's contractors to install the conduit, some of which would be by open digging. Rather, it is BellSouth's request that the Town install conduits for BellSouth's use. Adelphia and Comcast cable companies have made a similar request. A directional boring contractor could install conduits for both telephone and cable at the same time, reducing cost and disruption to the residents.

BellSouth has provided to the Town copies of slides used from a presentation by Bob Lowen, BellSouth, which helps illustrate the layout of the BellSouth system and typical

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facilities used. These are contained in Attachment "D". As noted earlier, additional cross boxes will be needed above ground as well as additional manholes to support the upgraded fiber optic system.

A note of caution. While the upgrade to a fiber optic system will bring an expanded list of services from BellSouth, additional above ground cross boxes will be needed where the fiber optic system meets the portion of the copper wire system that is to remain. Also, the fiber optic system relies on FPL power to keep it running. Should the FPL system fail, battery back ups will keep BellSouth running for "hours". In the event of a long power outage, BellSouth would need to bring in generators to get their systems running. While BellSouth does bring in some generators to bring service on line to critical areas, many areas of the Town will remain out of service until FPL power returns. The Town buildings are on a fiber optic net and is supported by Town maintained generators so phone service should be maintained for essential services during power outages.

April 13, 2006 Discussion and Comment:

Comments of Robert Lowen, Project Manager, BellSouth, in response to Town Council questions regarding:

- ▶ **The durability of fiber optic versus copper.**
- ▶ **Revenues coming out of an improved system.**
- ▶ **Removal of electrical poles and where BellSouth would put wires if not underground.**
- ▶ **Any upgrade of the system also available and beneficial to anyone else allowed to use BellSouth lines.**

ADELPHIA COMMUNICATIONS CORPORATION / COMCAST CORPORATION

Adelphia Communications Corporation (Adelphia) is selling the service area within the Town of Palm Beach to Comcast Corporation (Comcast). The companies are in a transition phase and representatives of both companies have attended meetings regarding the undergrounding project.

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With respect to Adelphia / Comcast Cable, they are reviewing their systems to determine the magnitude of their rebuild. Expansion of the fiber optic net within the Town as well as providing additional feeds to the island are under consideration.

Cable systems typically follow BellSouth's path for service. As noted above, BellSouth is looking to move to the front of the properties and requested that the Town provide conduiting for their use. Adelphia's cables will be put along side BellSouth wherever their lines are installed.

Attachment "E" is a portion of an email reply from Adelphia to Deputy Town Manager Tom Bradford which responded to a series of questions posed by the Town. These answers give additional insight into the Adelphia plans and concerns regarding the undergrounding project. Attachment "F" is a series of photos which illustrate the typical Adelphia cable facilities in the Town.

April 13, 2006, Discussion and Comment:

Klayton Fennel, of Comcast, commented that sharing fiber was technologically possible, however, state laws may prevent doing that; in addition, Comcast did not want to share their proprietary network with anyone else.

FRONT YARD vs REAR YARD PLACEMENT

There are pros and cons as to where the newly buried utilities are placed. Front yard placement is preferred by the utility companies for ease of future maintenance and service to the properties. This option is typical on newly constructed developments, and can be viewed at the Town's Phipps Estate subdivision. The difficulty with the Town's project is to place these systems within a built-out community. The disruption to existing decorative features on private property will be significant in some locations. Design of screening options, acceptable to the utility companies and the Town, may soften the impact. However, as one Town resident told Town Council, the visual impact and disruption to the properties placing the utility company structures in the front yards is far less than the visual impact of the existing overhead systems. Clearly this project will have an impact, but to many, the net positive impact will be worth it.

With respect to use of the rear easements, FPL's requirement to have a driveable roadway to maintain their facilities virtually eliminates consideration of FPL remaining in the rear easements. As for telephone and cable systems, maintaining those systems in the rear easements is possible, but to do so will require a significant project to clear said

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easements to allow placement of the service pedestals. Trees, fences, walls and other obstructions must be removed at a significant cost and effort. A drawback noted by BellSouth and Adelphia / Comcast Cable regarding remaining in the rear easements, is that service to their systems remains difficult. Access is often denied by Town residents, especially if the service outage is not affecting their property. The utilities are also concerned that after initial construction, vegetation and other improvements will screen or obscure the pedestal locations, making locating, especially at night, difficult. Town Staff is therefore recommending that if these systems are placed in the rear easements, the service pedestals be grouped together and that concrete pads be installed to preclude vegetation and other encroachments from being placed too close to said pedestals.

Project Phasing

Town Council has asked that burying of the overhead utilities be completed in phases. The total number of years to complete the project is dependent upon how many months a year the contractors work and the number of crews working at any one time. Each utility system can be broken into sub-sets, where portions can be rebuilt with minimum disruption to the functioning of the existing systems. As we move into this project, each utility will provide to the Town the limits of these sub-sets so the number of phases can be defined. To accelerate the construction schedule, multiple phases could be worked on at one time. Town Council has discussed allowing work to proceed year round to shorten the total time the undergrounding project will take. A seven to ten year project to convert the system has been mentioned.

There is a great uncertainty, however, as to how long the undergrounding project will take. All utilities agree once Phase I has been completed, the time to complete the overall project will be easier to define. The utility companies and Town Staff have agreed that Phase I will be from Onondaga Road north to the Lake Worth Inlet, and from Sloan's Curve south to the south Town limits. Exhibit "G" is a portion of the FPL system maps which illustrate the areas of Phase I.

A note of caution. Each utility company has stated that they have no plans to add staff to accomplish this project. While the use of outside contractors to complete the construction is typical, many job elements must be completed using existing staff. Time availability of this staff committed to the Town undergrounding project may become an obstacle to timely construction should the utility service areas be hit with natural disasters or other communities move towards undergrounding which would divert staff and contractors away from the Town's project.

Schedule

Attachment "H" is a preliminary schedule for the project which was developed by the Public Works Department. Some individuals believe that this schedule is too ambitious, others believe it is too conservative. Many individuals in the Town want the project to proceed as quickly as possible. Town staff is committed to meeting this desire.

Staff is concerned that there are many unanswered questions regarding the logistics of the project and the proposed schedule is subject to revision. There is a great concern regarding the acquisition of the necessary easements. A tremendous effort is needed to 1.) identify the easement locations, 2.) have the necessary legal descriptions and sketches prepared and 3.) obtain resident signatures and have the necessary documents recorded. The utility companies do not want to begin preparation of their construction documents until the necessary easements have been acquired.

Once Town Council directs staff to proceed with the project, the utility companies will begin the design phase which will define the locations of the service lines and the above and below ground structures. Town staff, along with the utility companies, will review the said design in the field and locate the structures to minimize the impact upon the existing streetscapes. This will define the areas where easements must be acquired. Upon acquisition of the easements by the Town, the utility companies will proceed with preparation of the construction documents.

Once Phase I construction documents are completed, the Phase I project will move to the construction phase. At that time, work will begin on the Phase II design with the intent that Phase II construction will immediately follow the completion of Phase I.

The schedule is based on the following assumptions:

1. Utility company initial project planning / design, two months to complete.
2. Easement document preparation, two months.
3. Easement acquisition, six months.
4. Construction document preparation, two months.
5. Contractor selection and mobilization, four months.
6. Burial and removal of new and existing systems, twelve months.

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The time to get the first phase of the project to construction is estimated to take sixteen months. Many uncertainties exist. Town Staff expects the planning and design of the first phase to take longer than subsequent phases as we encounter new situations which will take additional time to get the needed answers. The answers to these questions will be applied to the future phases, thus we expect future phase planning and design to move more quickly. Once the first phase construction is complete, second phase construction is planned to begin immediately. Every effort will be made to expedite the beginning of the first phase. The schedule does not take into account natural disasters which may divert construction crews away from this project.

Easement Acquisitions

The location of easements necessary to complete the burial of the overhead utility systems will be determined as a cooperative effort of Town Staff and the three utility companies. The utility companies have agreed to remain as flexible as possible regarding the location and number of above ground boxes. The utility companies don't want to put out any more infrastructure than is needed since they will have to maintain these systems in perpetuity. There will be a significant amount of removal and repair / replacement of hedges, walls, fences and other decorative features. A field review will be made to minimize the extent and therefore the cost to remove and replace / repair existing features.

Once the conceptual design and easements have been finalized, Town Staff will begin the preparation of easement documents. These documents will be sent to the property owners for signing. Please be aware that Town Staff believes that the easement locations are "non-negotiable". That is, if we allow the residents to work with Town Staff on the easement locations, we expect many individuals to suggest putting the easement, and above ground box on someone else's property. If this is allowed, we cannot determine when, if ever, we would be able to acquire the necessary easements to construct this job.

Town Staff has estimated, or allotted, six months to acquire the necessary easements. The project cost estimate at this time does not include any funding for acquisition of easements. If a property owner refuses to grant an easement, in order to keep the project moving, Town Staff is recommending to Town Council that eminent domain be used to acquire the needed easement(s), allowing the project to continue.

Sequence of Work

This section will give a brief description of what can be expect once construction crews mobilize in the Town and work begins. For BellSouth and Adelphia / Comcast Cable company, we envision one directional boring company to install conduits for both entities during one boring operation, and if possible, the same company will install the electrical conduiting. We expect that most excavation will be with small excavators or hand digging, although new manholes in the roadway system for the BellSouth system will be with larger equipment. Service runs to the houses will either be maintained "as is", that is through an existing underground service line, or new service runs will be placed. Coordination between the home owner and BellSouth , Adelphia / Comcast Cable companies is needed should the access point to the home or business need to be changed. It has not been determined how the telephone and cable companies will install the new service wires. If clear access exists, direct burial of the service lines is possible. If significant obstacles exist on the property, conduits installed by directional boring may be necessary.

Work activities for FPL will be much more disruptive as the wire and conduits are larger. Initially, a directional boring contractor will mobilize and begin installation of the conduit system. After conduit installation, underground utility contractors will mobilize. Rights of ways and easements will be excavated to connect directionally bored conduits with sweeps and junction boxes. Structure slabs are placed and conduits extended above grade. Conduits are extended to splice boxes to be used a service point of contact. Wire crews will mobilize to pull feeder and lateral wire. Transformers, switch cabinets are installed. Wires are connected to the equipment and wires placed to the service point connections. Concurrent with the FPL wire pull, private electrical contractors are pulling permits from the Town's Building Department to install conduit and wire from the buildings to the new FPL service connection point. FPL energizes the new underground system. Private electrical contractors obtain releases from the Town Building Department to make connection to the new underground system. Electrical contractors coordinate with FPL to transfer service from overhead system to underground system.

Upon transfer of all services in a particular phase to the new underground system, FPL de-energizes their overhead system and BellSouth and Adelphia / Comcast deactivate their old systems. FPL, with assistance from BellSouth and Adelphia / Comcast, mobilize crews to remove overhead systems and poles.

Extension of Private Service to New Feeder Systems

The project cost estimate includes a line item to make a new service connection from a building to the new FPL system. In nearly all cases, services which are now located in a rear easement must now be routed to the front of the property. (Any existing underground electrical service on a property will be re-used if practical and cost effective.) The cost to perform this work is the responsibility of the individual building owner. There are two ways to get this done.

The first is for the owner to install a new service line utilizing a contractor of their own choice. Payment will be directly from the owner to the electrical contractor. If requested, the Town will provide a list of contractor names who are qualified to do this work.

The second is to have a Town hired contractor make the new service line connection. In this instance, the cost of the installation will be billed to the owner. They will have the choice to either make a lump sum payment, or the Town will assess, allowing the property owner to pay off the balance over a period of years through the annual tax billing. The cost will include reasonable restoration costs and interest on the loan. There may also be a charge passed on from BellSouth and / or Adelphia / Comcast cable. The mechanism to charge the residents may be either with direct billing to the owners, or to the Town who may then assess the property owner.

Town staff had previously recommended to Town Council that an assessment mechanism be established as noted above, allowing the property owners to pay the construction costs over time.

Staff has changed its' position on this issue and is now recommending that the coordination and payment to connect service lines between the new FPL lines and the buildings be the sole responsibility of the property owners. This change in position was based upon the opinion of staff who now believe that the Town should not enter private property to construct what is considered a privately owned piece of infrastructure and to use public financing to accomplish same.

If it is the desire of Town Council to establish an assessment program to assist Town residents to pay for the service line connections for electric, telephone and / or cable, staff recommends that a cap be placed on the amount of loan. If approved, details of the assessment program will be developed and brought back to Town Council for final approval.

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 13, 2006

April 13, 2006, Comments and Discussion:

Town Engineer Bowser noted that at this point, staff was not recommending the assessment program. Town Manager Elwell acknowledged that staff recognized the complexity involved in completing all of the work that needed to be done in making a system operational. Staff had formulated a strong consensus recommendation that private property owners would need to be responsible for the service line connection. He explained that it may be possible to provide some sort of group rates.

Cost Estimate

The Town Manager's office has previously presented a cost estimate for the project. The estimate takes into account the following items : design fees, labor and equipment to bury FPL, BellSouth, Adelphia / Comcast Cable, service connection to FPL system, easement document preparation and recording fees, consulting fees, bond costs, and contingency . What has not been defined or estimated include: property appraisals and easement acquisitions, rear yard easement clearing and restoration, front yard easement and right of way clearing and restoration, roadway milling and resurfacing, Town project management, and an inflation factor.

Refinements to this cost estimate will be made as policy decisions are made by Town Council and their financial impacts are quantified.

On January 30, 2006, FPL announced "Storm Secure", a five-point program to strengthen the electric grid. Attachment "I" is a copy of the press release. One element of this plan is FPL's commitment to increasing its underground facilities. This plan offered to invest 25 % of the cost of converting overhead lines to underground for local government-sponsored conversions. The cost estimate presented by the Town Manager's office included the 25 % reduction in the cost of burying the FPL lines.

April 13, 2006, Comments and Discussion:

Town Engineer Bowser noted that the FP & L's commitment to provide 25% funding of converting overhead lines for local government sponsored conversions was with the caveat that all utility lines would be buried, and there would not be any overhead system in place. If the feeder only option was used, the 25% would not be applicable.

Financing Options

There are several alternative financing options available to the Town. The Town's bond counsel appeared before Town Council on March 31, 2006 and discussed the financing options available to the Town.

Summary

The undergrounding of the Town's aerial utility systems would represent the largest Public Works project ever undertaken in the Town. It will impact every resident and business during construction. But more importantly, it is believed that once completed, a tremendous benefit will be derived from both system reliability and aesthetic beauty.

This memorandum has tried to answer some of the questions surrounding this project. More questions will be raised as the project moves forward. As the utility companies move towards the undergrounding, some of the answers here will change as more thought is put into the project and new policies are developed. The Town must remain flexible and understanding with any changes. Updates and revisions to this technical memorandum will be made as additional information becomes available and regular updates to Town Council will be made.

There are many questions still to be answered. These include:

1. Cost - The estimates prepared to date are likely to change as the project scope is refined and the utility companies begin to prepare more detailed plans. To date, we have focused primarily on the actual burial costs, but there are many incidental costs to the project. While we can categorize these items, it is impossible to determine their exact costs at this time.
2. Easements - The various alternatives to bury the utility lines require varying degrees of easement acquisition. The least impactful is to put FPL, BellSouth and Adelphia / Comcast Cable in the roadways. Once the easements are identified, acquisition will be a challenge. How do we handle the taking of an easement if a resident refuses to grant one or an owner cannot be located? Will Town Council authorize the purchase of easements or are we to pursue acquisition for free? Would it be equitable to pay for some but not others?
3. Project Phasing - Town Council has tentatively decided to work year round rather than limit work to the season, that is, May 1 to November 30. We may want to limit work to

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the off season in the business districts or along major roadways, e.g. SR A1A, and work year round in the residential areas. When do we have the existing overhead systems removed? This is believed to be very disruptive operation and Town Staff would recommend that the removal occur in the off season. Delaying the removal of the overhead system to the "off season" may cause a particular phase to take more than one year to complete.

4. Service Line Connections - Town Staff has now recommended that the service line connection costs between a building and the newly laid underground system be the responsibility of the property owners and not be included in the over all project cost. Do we expect the owners to contract individually with electricians to do this? Does the Town perform this work and invoice for the work? Will the Town finance the work and prepare an assessment roll allowing the owners to pay for the work over time? What will BellSouth or Adelphia / Comcast Cable charge for service line connections?

5. Easement Clearing - Easement clearing will cause a considerable disruption to walls, fences, landscaping and flat concrete and paver systems. A question is who is to restore these areas? Impact to these systems is inevitable, but satisfying the adjacent property owners with the quality of work by Town contractors could be difficult. Staff is therefore recommending that the restoration be left to the property owners. A question is whether the Town will participate with paying for the restoration costs or not.

6. Roadway Milling and Resurfacing - This project will cause a considerable number of roadway cuts and it is a reasonable project cost to include milling and resurfacing of the roadways. If Town Council agrees with milling and resurfacing the roadways with the project, staff will begin preparation of cost estimates to do this work. Please note that coordination with other utility work such as storm drainage, sanitary sewers and water mains will be made. It will be staff's goal that after a roadway is milled and resurfaced, no planned roadway cut will be made for five years. Due to this condition, a roadway may not be milled and resurfaced immediately after the undergrounding project if other infrastructure work is planned within five years.

7. Street Lighting - There have been requests by Town residents that the street lighting system be upgraded when the undergrounding project is underway. There is a Town policy regarding cost sharing between the street owners and the Town for installation of street lighting. If directed by Town Council, staff could solicit petitions from residents on streets who desire to have lighting installed. The Town's portion of the lighting project could be included as a project cost.

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8. Access to Private Property - While utility companies have a right to access private property via easements to operate and maintain their systems, this project is so extensive, limiting work activities to only the easement areas and rights of way may be difficult. Should the Town pursue right of entry easements from the Town residents to ensure that no conflicts occur regarding private property rights?

9. Service Line Connections - Switching from the old utility infrastructure to the new assumes a cooperation from Town residents. What can be done to force uncooperative Town residents to move their services so the old infrastructure can be deactivated and removed?

Town Engineer Bowser commented regarding installation of conduits for the system; BellSouth had opined that the Town would prefer hiring the contractors and overseeing the work, rather than using their subcontractors. Staff was considering installing the conduits for cable and telephone at the same time; the Town would contract that work. The Town would seek to use the same contractor that FP & L would be using; the advantage was that using the same company would minimize the disruption.

- ▶ **BellSouth and the cable company using the same conduit system as the temporary water mains that run from Orange Grove to Mediterranean that are already nested in the BellSouth conduit system.**
- ▶ **Comcast, Adelphia and BellSouth traveling on the same fiberoptic network may be able to be technologically accomplished, however, there would be regulatory issues for each company.**

In response to Council Member Wyett, regarding the necessity of additional staff, Town Manager Elwell replied that additional staff would be needed. As a very preliminary assessment, he considered that one additional person would become responsible for the field work. As staff learned more of the particulars, that may change.

Public Works Director Brazil commented that alternatives were being reviewed regarding staffing, such as contractual help for certain phases of the work, etc. Staff was exploring reasonable alternatives.

After discussion, Council Member Brooks recommended that Mr. Golboro, Mr. Flamm, and Mr. Ecclestone become a committee to advise on the project,

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interacting with the person hired to become responsible for the project. He noted that he did not want to see any additions to the staff because of costs that were concomitant with a staff employee as distinct from a contractual employee.

Mr. Elwell advised that staff was willing, ready and able to work with a committee delegated to advise on the project, however, a formalized committee would involve Sunshine Law compliance. He noted that staff could work with people on an informational basis and from time to time talk to them about a particular issue, without the formality of a committee.

Council Member Wyett urged the civic associations to nominate a committee who could send reports to the Town Council.

Town Attorney Randolph advised that as long as the committee was strictly volunteer, and not based upon a decision that came from the Town Council, the committee could be an ad hoc committee separate from the Town Council altogether.

Council Member Markin concurred with keeping individuals, such as Mr. Ecclestone, available as advisors.

Public Comment:

Isabelle Furlaud, 745 Hi Mount Road questioned dealing exclusively with FP & L, since the contract with them would be up in approximately five years, and the Town could then buy electricity from whoever it wanted to buy it from. She suggested that consideration should be given to what is going on in Jacksonville and Orlando in order to review alternatives.

Sam Boykin, Jamaica Lane, commented regarding the possibility of a list of subcontractors for the use of citizens for service connections, and the length of time to complete the project.

Town Engineer Bowser replied that as each phase was completed, the next phase would begin. It may be possible to do more than one phase at a time. It was a work in progress.

Mr. Elwell responded as to the occurrence when a particular resident was not interested in participating – it was expected that some individuals would not choose to grant an easement, and in those instances, it was the staff recommendation

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that the Town take the easement by eminent domain. That, of course, was subject to consideration by the Town Council.

Ralph Del Deo, Fairview Road, suggested that if a list of subcontractors was provided to citizens, the Town engage in some sort of negotiation as to how much the contractors would be allowed to charge per foot, rather than having each individual negotiate a price.

Mr. Alec Flamm commented regarding the following points:

- ▶ Motivation for undergrounding being beautification, and the mistaken idea that the facilities would be unsightly.
- ▶ The obligation of the engineers to bring forward the issues they must confront to make the project a success, and the fact that the entire Town may not be involved in all of the issues – for example, the rights-of-ways were technically feasible in 80-90% of the Town.
- ▶ Comments from the consultant retained by the Palm Beach Civic Association

Policy Decisions:

Town Manager Elwell referred to several items on pages 11 and 12 of the technical report of Town Engineer Bowser

Item No. 2. - Easements

Mr. Elwell mentioned that there was an equity question about a free easement versus a paid easement. Staff was recommending asking residents to grant the easements as a community spirited gesture, as part of facilitating the project. If staff stayed that course, some residents would grant the easements, and some would not – a policy determination would be needed on that issue, because that would affect schedule and costs.

It was the consensus of the Town Council to move forward with requesting the granting of easements from residents with no compensation.

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Item No. 3. - Project Phasing

Staff was proceeding based on year round work. Mr. Elwell explained that the Town Council may wish to create some hiatus times during the project so that the community got a breather, and possibly think about the possibility of directing staff at some time in the future to schedule the project in certain ways that would create some breaks.

Regarding the removal of the overhead equipment, Councilman Brooks commented that an increasing number of citizens live in the Town year round, and he recommended that work continue year round, rather than adhering to the concept of doing disruptive work in the off-season.

Town Engineer Bowser explained that quite a few cranes and pole trucks would be utilized in removal of overhead equipment, which would be very disruptive. The points were being brought up today so that the staff could receive the input and desires of the Town Council.

It was the consensus of the Town Council to move ahead with year round construction.

Item No. 4. - Service Line Connections

Town Manager Elwell advised that, absent any direction from the Town Council to the contrary, staff would proceed with the service line connections being the responsibility of the private property owner. If possible, staff would position the Town to be helpful in that regard, which may be providing a list of contractors qualified to do this kind of work, or it may be as much as doing some kind of bidding process per unit cost for the residents to take advantage of too. At this time staff was not sure how far it could go, but understood that the further it could go, the more helpful it would be to residents. Staff would formulate some specific recommendations and keep the Town Council informed. He clarified that the fundamental policy decision was that the Town Council had concurred with staff's recommendation that the individual property owner in every instance would be responsible for making their connection to the system.

Item No. 5. - Easement Clearing:

Town Manager Elwell advised that there were a number of issues that were presented by the clearing of easements.

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Town Engineer Bowser questioned who would do the repair of the cutting, if there was a need to make a cut-out in a front or side yard. He explained that staff was extremely concerned that an owner would not be satisfied on the repair.

Council Member Brooks recommended to the Town Council that the easement clearing issue should be subject to further discussion and additional information.

Item No. 6 - Roadway Milling and Resurfacing

Item No. 7 - Street Lighting

Town Manager Elwell advised that both of the above issues had emerged as being important to the residents of certain areas of Town, and staff had tried to include programs related to those amenities and infrastructure along with the undergrounding project. There was a fundamental policy question that would need to be addressed regarding scope and cost of the project, as to whether these would become elements of the undergrounding project, or whether they were separately addressed through planning and budgeting and separate programs of the Town.

Mr. Elwell explained that in the roadway milling and resurfacing, there would be situations where the surface of a street would be disturbed while the project was ongoing, and there would be some restoration that would be appropriate. There may be an opportunity to merge the roadway resurfacing and street lighting together, as long as it was done wisely. The caveat there was that there were other infrastructure work that would need to be done. If there was a location where it was known that the street would be resurfaced relatively soon on the street where the undergrounding took place, in those instances, staff would recommend that a patch rather than a full resurfacing be done. When the next piece of work was completed, a full resurfacing would be completed. In other situations, a full resurfacing of each affected street could become the norm, if the Town Council directed that would be part of the undergrounding project. To do it that way would mean adding costs to the undergrounding project, rather than funding it and planning it separately. Direction from the Town Council was needed in that regard.

Council Member Wyett suggested that a survey be taken of all of the streets to determine their condition. If a street was very bad now, then something would need to be done on a more immediate basis. Regarding street lighting, he remarked that the lighting on the northend must be improved, as a public safety issue.

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Town Manager Elwell noted that a full discussion regarding the resurfacing would take place during the budgeting process, as previously directed. Regarding street lighting, the importance of improvement of lighting in the community was an issue that staff was aware of. He explained that if street lighting upgrading and complete road surfacing would become two components of the undergrounding project, then planning the work would become a different endeavor and the cost of the project would become larger. If both things were done separately from the undergrounding project, it would reduce the scope and cost of the undergrounding project. Policy direction would be needed within the next few months.

Council Member Markin commented that the cost of re-paving would be necessary no matter if it was added to the undergrounding project, or as an added on cost. The roads needed re-paving, and as a bonus to the northenders, who would undertake the pains of being on the leading edge of burying FP & L lines could at least be assured that they would have newly paved roads throughout the northend post burying the FP & L lines.

President Pro Tem Kleid commented that the road paving project was one of great concern, and one that could not be resolved today, due to the fact that two Council members were no longer present. He suggested that the issue be taken up another day, along with the street lighting issue.

Item No. 8 - Access to Private Property:

Town Manager Elwell noted that the specific issue here was that because the utility companies would need to do work outside of their easements in order to physically complete the work, it may be necessary to seek a right of entry agreement for the private entities to gain access to portions of the private property in order to complete the work in the public spaces. That detail could also be addressed another day; it could be dealt with at the same time the easement issues were further discussed.

Item No. 9 - Service line connections:

Town Manager Elwell explained that service line connections would be the responsibility of private property owners and there was a question as to what to do with an owner who did not get the work done, and was not connected to the system when the switch was ready to be thrown. Staff would do further research on how to approach those situations.

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V. ANY OTHER MATTERS

Town Manger Elwell reported that a development had occurred yesterday with a reaction from U.S. Fish and Wildlife to the communications that had occurred to date. They indicated that they felt positive about the project; that they understood what a critical emergency it was; that they still had the technicality that they were very concerned about; that they felt optimistic that they would be able to complete their report, and by the end of this month, the biological opinion for the project would be modified to extend to the area south of R-132, and the Town would be granted an extension to May 15, 2006, to complete the work. At the same time, they said that because all of the details were not completed, the Town should not do any work in the area that was in question until such time that they could complete the process and issue approval to work in that area, as well as the extension of time. Mr. Elwell stated that he did not believe that was enough to allow him to come before the Town Council, at this time, and recommend that anything different be done, because the Town would then be traveling completely on good faith. In the meantime, it would be hoped that no turtles would nest in the questionable area; if a turtle nest was to be laid in that area during the next few weeks, that could be the end of work.

Mr. Elwell related that a conference call had been made this morning, expressing the necessity of having something from U.S. Fish and Wildlife in writing that would convey their strong sense of optimism. Staff had requested that the Town be allowed, effectively immediately, to begin relocating turtle nests out of the area, if one were to appear. He explained that the agency did not feel it could do that, but had proposed that they would send the letter including their statement of optimism, without a guarantee, that they would be able to issue authorization to work south of R-132, with the extension to May 15, 2006, and that if that happened they would grant permission at that time to relocate any turtle nests that had occurred in R-132 between now and then. He explained that was quite extraordinary, because normally a turtle nest relocation would occur when the nest was initially found.

Mr. Elwell recommended that staff try to work with this; that for the next 48 hours the Town stay the course, and continue working in the manner that it was currently doing. There was the possibility that a turtle may nest at any given time, and that would stop work in the area south of R-132. As long as a nest did not show up, the work would continue. If the letter from U.S. Fish and Wildlife did finally occur, staff would respect the terms of that letter, focusing work north of R-132, and continue working with U.S. Fish and Wildlife to get the biological opinion amended and receive the formal, full federal government approval to proceed as described: complete the work that staff had

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intended to complete; be extended to May 15, 2006 in order to be able to complete it; at that time (sometime around the last few days of April or first few days of May) relocate any nests that may have occurred between now and then in the area south of R-132. He explained that he was requesting further direction from the Town Council, as to proceed in the manner described, or whether some other approach may be desired.

Mr. Elwell noted that it was a calculated risk, and the downside was that if something occurred in the next ten days or two weeks that would cause U.S. Fish and Wildlife, in the end, not to approve an amended biological opinion and not to approve an extension of time, that would be very bad outcome for the Town.

Director of Public Works Paul Brazil reported that completion of the project in the sections of R-132-134 would take approximately two weeks.

Councilman Wyett moved approval of the recommendation of Town Manager Elwell.

In response to Council Member Brooks, regarding the timing of the final letter, Mr. Brazil acknowledged that he expected to receive a draft of the initial letter late today or early tomorrow. The final version was expected by close of business tomorrow.

Town Manager Elwell clarified that by the close of business tomorrow, staff expected to have the letter; in the absence of that staff would stay the course and continue on the way it had been approaching the job.

Town Manager Elwell noted that it was part of his recommendation that, in good faith, while the details of the letter were being accomplished, that the Town stay out of the area south of R-132. However, if the letter could not be finalized by the end of the business day tomorrow, staff would go back to the approach that had been taken to the job this past week. If the letter was finalized by the end of the business day tomorrow, staff would stay out of R-132 until the subsequent letter with all final approvals was received near the end of the month. It would be right up against the April 30th deadline.

Council Member Brooks suggested that Mr. Wyett's motion be supported for the time being, and that the action be re-visited if the letter was delayed. He noted that there was not room for turtles to nest in the area south of R-132, and the sand itself may not be compatible for turtle nesting.

Council Member Brooks then seconded the motion made by Council Member Wyett.

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Mr. Brazil clarified that the final decision/review of the biological opinion was not due to the Town before the end of the month from U.S. Fish and Wildlife.

Council Member Wyett clarified that the motion to approve carried the condition that if the letter should not come through in a timely manner, the Town Council would reconvene to review the situation.

Mr. Elwell clarified that if the positive, optimistic letter did not get finalized by the close of business tomorrow, staff would go full steam ahead in the manner that had been envisioned up until yesterday evening, including the work that would be needed south of R-132. He stated that he wanted to be very clear about what would happen if the letter WAS received. The motion indicated that if the letter was received, and staff stayed out of that area until such time as the final approvals came through, the downside risk of that was too great. He stated that he needed direction as to the majority vote of the Council as to the calculated risk of waiting for that final approval towards the end of the month, versus staying the course that had been charted.

President Pro Tem Kleid noted that he would tend to vote against the motion, since there was a problem in the fact that if the second letter was not received, the area south of R-13 would essentially be abandoned.

Council Member Wyett clarified the motion supporting Mr. Elwell's recommendation, with the condition that the Town Council reconvene if the course of action needed to be changed.

Mr. Elwell explained that there would not be a reason to reconvene in the meantime, because staff expected that it would take several weeks for the different agencies to provide final approval. If the Town Council agreed to the course of action recommended, it would be agreeing to stay out of the area south of R-132 until final approval was received.

Mr. Brazil noted that part of the request was for a final extension to May 15, 2006; right now the permit was only good until April 30, 2006. He explained that the approach right now was to do an even amount of work across the entire area, which was a much improved condition from what was there now.

In response to Mayor McDonald, Town Manager Elwell recapped the conversation that had taken place up to this point: The U.S. Fish and Wildlife Service had given its first indication of its opinion about what the Town was asking for; that opinion is a positive one – they understood the emergency nature of what was proposed. Because

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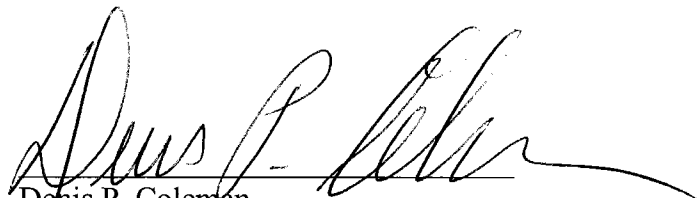
federal law required a biological opinion for the segment of beach south of R-132, they wanted all agencies to work together to modify that biological opinion, in order to provide their official approval before the Town went into the area with trucks. The Town had indicated that they could not do that on a handshake, and that some formal exchange was needed in writing – the fact that U.S. Fish and Wildlife expected to issue approvals, but also would agree to the critical issue of turtle relocation; that the Town could relocate any nests that would occur between now and then, at the time that the Town would commence that work. He further explained that the collaborative approach would require that the Town take the calculated risk that an issue may arise that would result in the final approval not being issued.

After further discussion, Councilman Wyett withdrew his motion.

Mr. Elwell replied that it was therefore the direction, by consensus, to proceed with the current course of action; if the situation changed for any reason, another Town Council meeting would be called. Otherwise, staff would proceed with the reiterative direction to proceed south of R-132.

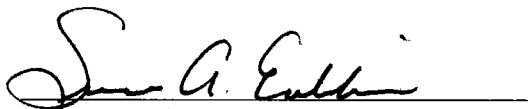
VI. ADJOURNMENT

There being no further business, the Special Town Council Meeting of April 13, 2006, was adjourned at 12:55 p.m.



Denis P. Coleman
Town Council President

ATTEST:



Susan A. Eichhorn, Town Clerk