

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON THURSDAY, APRIL 6, 2006 AT 2:30 P.M.

I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting of April 6, 2006, was called to order in the Town Council Chambers at 2:30 p.m. by President Denis P. Coleman. On roll call, the following elected officials were found to be in attendance:

Mayor Jack McDonald
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
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
Susan Eichhorn - Town Clerk

II. PLEDGE OF ALLEGIANCE

President Coleman led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Council Member Wyett moved approval of the Agenda. The motion was seconded by Council Member Brooks. On roll call the motion carried unanimously.

President Coleman stated that public comments would be taken after the presentation by staff.

IV. DUNE RESTORATION PROJECT IN REACHES 7 AND 8 - CONSIDERATION OF AUTHORIZATION TO PROCEED WITH TRUCKING OF SAND TO PROPERTIES SOUTH OF THE LAKE WORTH PIER

Mayor McDonald summarized what had occurred thus far: Because of threatened litigation to the primary trucker/hauler of the dune restoration program, the hauler pulled out of doing the job. A resident referred a contractor from Miami, and on the 22nd of March, the Citizens Association called a meeting at the South Fire-Rescue Station, and discussion took place, with arrangements to meet the contractor. When the job was explained to that contractor, he felt that there was no way that he could complete it by the April 30, 2006 deadline. Immediately, that same day, an extension was requested from the Florida Department of Environmental Protection (FDEP) through a waiver of the expiration so that the job could be carried forward into May. There was no response to that request made on March 24, 2006, so on April 1, 2006 Congressman Shaw and Senator Atwater met with Mayor McDonald, and Town Manager Elwell at the South Fire-Rescue Station with some of the board members of the two access buildings and further discussion took place. On April 3, 2006, a conference call with the FDEP was held, along with the Florida Fish and Wildlife Commission to discuss all aspects of our request for the waiver of the additional time. All agreed that there would be forward movement on the extension, and an answer was expected later that day. There had not been an answer that day, and there had not been an answer yesterday, and Mayor McDonald advised that he had suggested to the Town Manager that a Special Town Council meeting be called today so that the Town Council could be briefed on the subject, and make some decisions.

Town Manager Elwell advised that it was his understanding that the promise that had been made was that FDEP would make contact with the U.S. Fish and Wildlife Service to make sure that they too would expedite this in the manner that the state had promised to expedite it. He stated that he believed that all of the agencies had made good on those commitments. What it would lead to substantively was not known, and because of the uncertainty about that, the options that are left for

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 6, 2006

the Town to take would be weighed today.

Mr. Elwell summarized the current status of the project: it would not be known today or in the next few days about an extension of time. It would be sometime next week, at the earliest, that would be known for sure. It is being considered by four of the regulatory agencies – two at the federal level and two at the state level: FDEP, Florida Wildlife Conservation Commission, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers. The permit allowing to proceed with the dune project up until April 30, 2006 was still in place. A decision today would be based on the amount of work that staff thought could be completed between now and April 30, 2006, if there was not an extension of time granted. The reason that a decision must be made soon, was because if staff waited long enough to receive final work on the extension, and the extension was not received, there would not be any work that could be done meaningfully. There was still enough time in April that there would be a substantial amount of work that could be completed prior to April 30, 2006, if the Town Council authorized proceeding today, however, there would be some downside risks.

Mr. Elwell explained that an issue had been raised by U. S. Fish and Wildlife concerning the biological opinion, which was part of the federal environmental permitting process. The biological opinion affected Reaches 7 and 8, but did not include all of Reach 8. Staff was traveling under that biological opinion with the blessing of the Army Corps of Engineers for the permit for the dune work. In the further review of consideration of whether or not to grant the time extension, the biological opinion was reviewed, and U.S. Fish and Wildlife had raised the question of whether a permit should ever have been issued to allow work outside of the boundaries of that biological opinion. That meant that the southern boundary of the biological opinion was just south of the Meridian Building in Town. The cut off point was 150' south of some point in the Meridian Building. The Meridian Building would receive sand with what would be recommended by staff today, as well as everything to the north of them. The Halcyon Buildings and the Atrium Buildings would not receive sand yet. As of today, staff was prohibited from relocating turtle nests in front of those buildings and from doing any work in front of those buildings, because of the fact that the U. S. Fish and Wildlife was now saying that the federal authorities should not have allowed a permit that allowed the Town to work outside of the area of the biological opinion. That issue was unresolved at this hour, however, staff was still hopeful that because of the severely eroded beaches in the area, and the fact that there was really no sustainable turtle nesting habitat there, that an argument could be sustained that the Town should be allowed to proceed in front of those buildings. Also, there were three buildings further south – the Patrician, the Claridges and La Bonne Vie, that because the structures of those buildings extended so far to the east, there was no dry beach and there was no work activity that could be done for this dune project. They would ultimately receive beach restoration when a permit was obtained that would allow it.

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 6, 2006

Mr. Elwell explained that north of the Meridian Building, staff could, if so directed by the Town Council, proceed with the project in the same manner as previously described – trucking the sand over the Par 3 Golf Course, with agreements with condominium buildings as well, who had feed the Town from the previous restriction of how many trucks per hour could run through the property. Staff believed that being able to run the more aggressive schedule of trucking would allow the use of two sites, the Par 3 Golf Course on the north, and one of the two condominium buildings for the south access – the desire was to use the 3360 Building access because it was wider. However, the 3360 Building, at this moment, would not receive sand from this project. The 3200 Building would receive sand from this project, and staff might use only that property for that reason, even though it was somewhat more problematic logistically.

Mr. Elwell noted that previously, a 50% closure of the Par 3 Golf Course had been mentioned, however, the Recreation Department had offered that just one hole could be closed, and a discount offered to players for 17-hole rounds.

Mr. Elwell explained that running the trucks more than 12 hours per day would allow a very large proportion of the work completed by April 30, 2006, if it started immediately. That was a decision that would be made today. If authorization was given today, the project would be mobilized immediately, and the trucks would be delivering sand to the area south of the Lake Worth Pier by early next week, with the intention that every property where sand was allowed, would receive as much sand as possible, in as even a manner as possible, between now and April 30, 2006. There would be no full construction of the project in front of some, and absence of sand in front of others. If the issue regarding the biological opinion was resolved, then the additional five buildings would be back into the project and would also equally receive sand prior to April 30th. If the extension of time was granted by the regulatory agencies, work would continue south of the Lake Worth Pier.

In response to President Pro Tem Kleid, Mr. Elwell confirmed that the Town did hold a valid U.S. Army Corps of Engineers permit to do the work all the way south, and the same permit was held through the State of Florida. The State of Florida was not quibbling over this matter, however, the U.S. Fish and Wildlife Service had legitimately consulted the biological opinion to determine if there was anything in there that may cause them to feel differently about working in May, as compared to the fact that they had signed off previously that there were no objections to the project. They determined that there was a hiatus – that the biological opinion that the Town was traveling under stopped at the Meridian building, rather than going all the way south. U.S. Fish and Wildlife has told the Town that it would not be allowed to relocate any turtle nests in the area south of the Meridian Building, until further notice. The Town had responded that the character of the beach was the same north and south of that point, and the Town ought to be allowed to proceed. Further review

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 6, 2006

of the matter as now taking place; there was legal authority that prevented nests being relocated and trucks running to the south of that point.

In response to Council Member Marking, Director of Public Works Brazil advised that without the extension, approximately 50-75% of the project could be completed within the allowed time frame.

Council Member Wyett moved approval of moving forward with all haste to complete the dune restoration program. The motion was seconded by President Pro-Tem Kleid, with the amendment that the temporary rights-of-ways that would be used would be the Par 3 Golf Course, the Ambassador Hotel if required, the 3200 Building, and the 3360 Building if required.

President Coleman suggested that the Town Manager be given the authority of flexibility to make the necessary contacts.

Council Member Wyett agreed with adding that suggestion to the motion.

Town Manager Elwell noted that in order to complete this, he would need to sign off on contracts well in excess of \$1 million that would not have been competitively bid, and it was important that the Town Council declare that proceeding was taking place under an emergency, and that he was authorized to sign off on those contracts at his discretion.

After further discussion, **Council Member Wyett amended his motion to include the provisions accepting non-competitive bidding and declaring an emergency, authorizing the Town Manager to act. The motion was seconded by President Pro Tem Kleid.**

In response to President Coleman, regarding immediately dumping sand in areas where there were no turtle nests, Mr. Elwell explained that he would need further information to satisfy himself that the Town could do that without blatantly violating the instructions of the federal government.

Town Attorney Randolph advised that he had not been involved in these conversations, but it seemed to him that it would be prudent for the Town Manager to be able to make a determination as to what the repercussions might be of going forward with the permit, in spite of being advised by the U.S. Fish and Wildlife not to move forward. He noted that those repercussions could be severe.

Mr. Elwell commented that the Town was on notice from the federal agencies that were involved in this process, that they may have made a mistake – they are further reviewing that, and

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 6, 2006

that they do not believe the Town is allowed to proceed and do what the Army Corps permit allowed.

President Coleman noted that this discussion could also be continued at the Town Council meeting scheduled for Monday, April 10, 2006, when more information was available.

Mr. Elwell clarified that if there was the chance to put sand on the beach between now and Monday, that opportunity would be seized and sand would be put on the area to the north. Then the area to the south would be revisited when there was more information on Monday afternoon.

Council Member Wyett expressed concern regarding going against U.S. Fish and Wildlife Services, as they could retaliate in this situation, as well as in future years when there may be another emergency.

President Coleman called for public comment.

Mr. Barry Small, 3200 South Ocean Building, commented that the Town Attorney had advised prudence and consideration of repercussions, which could be severe. He referred to 670 million pounds of trucks and sand – trucks that weighed 70 thousand pounds loaded, and 25 thousand pounds unloaded that would relentlessly pound the narrow driveways that connect to the buildings at 3200, causing catastrophic damage to the foundations. He maintained that the people had not been told the weight of the trucks, and there was a responsibility to protect all of the people, and that if the buildings were condemned, people would still have to pay for them. He stated that there was a fiduciary responsibility to protect the equity of people. He maintained that Lantana would have been happy to give an easement.

Connie Gasque, 167 Root Trail, commented that what was on the beach right now was rock, that had been capped with white sand. It would not withstand a good storm, and would not protect the properties. She distributed pictures of the beach and entered them for the record.

Mr. Elwell commented that in the early part of the job, it was well known that there had been some sand pumped in the first few days of the job that included a larger than permissible amount of rock in it, and it was quite obvious that it was not constructing a proper beach. That had been addressed with the contractor, the permitting agencies had been alerted, and there was a sieving operation that had been initiated as part of completing the project, in order to remove the rock from the small area where rock was pumped in. The vast majority of the job had been pumped from a separate borrow area, with perfectly good sand.

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 6, 2006

Harold Epstein, President 3200, Inc., 3200 South Ocean Blvd., read a letter dated March 10, 2006, received upon request from engineer Donald Chalaire, P.E., Florida Registration No. 33089, which indicated that there were no building structural safety concerns, after review of the construction drawings for the property. There was notation that the trucks would likely damage the pavement areas. Mr. Epstein strongly urged the Town Council to act immediately.

Richard Hunegs, President of Association at 3360 South Ocean Blvd., commented that his was one of two condominium associations that permitted the moving of sand through their properties. He thanked staff and the Town Council for their efforts.

Wendy Victor, speaking as head of the Volunteers in Police Service (VIPS), which handled the hurricane hotline, when there had been hundreds of calls from residents in the south end in the condominiums, who were frightened to death. She urged that the Town Council do everything in its power to help them, as it would be very difficult to prepare for hurricanes without the sand.

President Coleman stated that the Town Council was elected democratically and did it best to make decisions for the safety and welfare of the community. Citizens were not allowed on an ad hoc basis to interfere with the contracts that the Town Council lawfully gave. In this case, the citizen had the right to go to court and had a right to take action with his building. He chose to take action with Town contractors, and he asked the Town Attorney and the Town Council to seek a restraining order, and enjoin this man from interfering with the lawful exercise of governance.

President Pro Tem Kleid agreed, and stated that, to set the record straight, he had two conversations with Mr. Small weeks ago when it was found that he was trying to tell the truckers not to go because of threatened lawsuits. Mr. Kleid said that he had tried to explain that the damage from hurricanes could be much more severe than any damage that trucks running through the property would do, and that it was the Town Council's obligation to protect the property and citizens of the Town. Mr. Kleid noted that he had mentioned Lantana to the staff, and both the staff and he had called officials in Lantana and found that they were not in a position to do any sand work at this particular time. He stated that in regard to the rock, he had looked very carefully at the pictures presented today, and recognized his own condominium, and that he was quite familiar with the improper stones that had come from the first borrow. Dredging had been stopped in that area, and moved it south of the Lake Worth Pier. All of that sand was run through a sifting machine, which he had watched from his condominium. He stated that he did not believe that those stones existed in the beach that was renourished.

On roll call, the motion carried unanimously.

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 6, 2006

President Coleman passed the gavel to President Pro Tem Kleid, and moved that the Town Council take all appropriate legal action to enjoin citizens, on an ad hoc basis, from superceding the authority of the Town Council. He suggested a restraining order enjoining Mr. Small and anyone else who tried to interfere with the protection of the lives and property in the community. The motion was seconded by Council Member Wyett.

Town Attorney Randolph advised that he was prepared to go forward in that respect

On roll call, the motion carried unanimously.

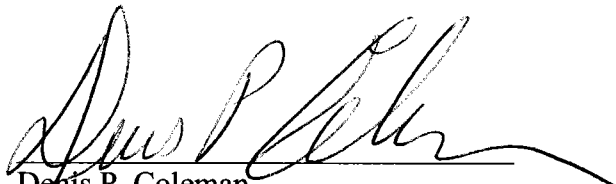
Town Manager Elwell noted that the first order of business for the scheduled Town Council meeting on Monday, April 10, 2006, would be the update on the dune restoration project.

V. ANY OTHER MATTERS

There were none.

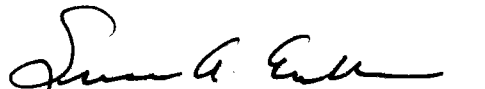
VI. ADJOURNMENT

There being no further business, the meeting of April 6, 2006, was adjourned at 3:30 p.m.



Denis P. Coleman
Town Council President

ATTEST:



Susan A. Eichhorn

Town Clerk

N:\MINUTES\TownCouncil\2006\20060406 STC dune restoration.wpd