

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON MARCH 27, 1996**

I. **CALL TO ORDER AND ROLL CALL:** The Special Town Council Meeting of the Town of Palm Beach was called to order at 3:45 p.m. on Wednesday, March 27, 1996, by President Lesly Smith. The following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Smith, President Pro-Tem Jack McDonald, Councilmen Leslie Shaw, Sam McLendon, and Allen Wyett. Attending for all or part of the meeting were: Town Manager Robert Doney, Town Attorney John C. Randolph, Public Works Director Al Dusey, Town Engineer Jim Bowser, and Town Clerk Mary Pollitt.

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

III. **APPROVAL OF AGENDA:** Mr. Shaw made a motion to approve the agenda. The motion was seconded by Mr. McLendon, and on roll call was unanimously carried.

IV. FURTHER CONSIDERATION OF PROPOSED WATER FRANCHISE AGREEMENT WITH CITY OF WEST PALM BEACH AND RELATED ISSUES:

Mr. Doney reported that the Mayor and Town Council received a copy of Mr. Dusey's memorandum dated 3/26/96 regarding the C-51 Canal Irrigation Water System that included a copy of the Hutcheon Engineer report with the proposed scope of work. The back up material also included an additional copy of Mr. McLendon's memorandum dated 3/22/96 as he was unable to attend the 3/25/96 Town Council Meeting.

Mr. Wyett suggested that Mr. Dusey give his report before the Town Council heard from the consultants.

Mr. Dusey reported that staff met with South Florida Water Management District to discuss a grant application the Town was pursuing with South Florida Water Management District (SFWMD). Mr. Dusey noted that the geology of the Town is somewhat varied, and the Aquifer Storage Recovery Study was going to concentrate on several wells to determine the performance of the aquifer. Mr. Dusey said the Town would need more than that information to pursue the grant. Staff had requested Hutcheon Engineers to review the whole study and to make suggestions and identify the steps necessary to provide an overview of the next three to five years. Mr. Dusey said it became apparent during the study that more than just the ASR Well Study needed to be done in the immediate future. As part of the application to SFWMD for shared funding, Mr. Dusey recommended the Town include an item called a Lithologic Sampling that calls for additional borings around the Island to determine what the actual substratum would be at various locations.

Mr. Wyett said that SFWMD was not overly responsive to the Town's offer to spend money to make potable water available all year for everybody, and that was disappointing. Also, Mr. Wyett advised that SFWMD did not offer the Town the ability to take water from the canal when there was a drought. Regarding the hydrogeo research and study that was needed, staff had expressed some reservations with the numbers suggested in the report over \$209,000, and the number was now \$500,000. Mr. Wyett expressed his concerns with these numbers and stated that his confidence was shaken.

Mr. Dusey stated he could not defend the numbers; however, the engineers could. Mr. Dusey said that first the Town needed to look at the cost of combining the two elements - the ASR Well Study and the Lithologic Sampling. Mr. Dusey continued that the ASR Well Study will document the performance of the aquifer at that one particular location. Staff suspected that, based on the investigations done so far, the aquifer would perform fairly well. Mr. Dusey maintained that if the Town goes through that analysis, spending a year or so, the Town would know a lot more than it does now and, perhaps, enough to say this was good or bad and whether to proceed. Mr. Dusey explained this was why the combination of studies was necessary.

John Potts, Hutcheon Engineers, pointed out that the document that the Town Council had was intended as an outline of this program and not a detailed analysis. It had been intended to be an overview that listed what it would take in estimated time and dollars to arrive at the end product of an usable aquifer storage and retrieval system or a dual water system. The second issue was that the feasibility reports had been completed. The feasibility of the system had been, from a technical viewpoint, identified. There were other issues not addressed by engineers, such as financing alternatives and utility formation. Mr. Potts stated that at this point the Town was looking at preliminary design phases followed by final design and construction. Mr. Potts stated that he was not proposing that this be studied, and he would obviously be learning things as this program advanced and those things would be included in subsequent phases. Mr. Potts pointed out that this was not a study, but was the implementation of a dual water system.

Mr. Potts stated he would like to address the issue of the loss of confidence because of the dollars. The figure of \$209,000 that was included in the appendix of the feasibility study was for a portion of what now was included in the present document. That was, from the vantage point of a hydro geologist, the next step to take. Mr. Potts stated this was just one of the steps. When the staff requested to look at all of the steps that would be necessary through implementation, those costs were included in the present document. For instance, the item identified as ASR Testing and Lithologic Testing now included a resistivity profile of the Island, which was more money. The process involved more than what was seen in the original report. Mr. Potts stated there was no slight of hand involved, but the answer previously seen by the Town Council was a next step proposal.

In response to Mr. Wyett, Mr. Potts stated that the SFWMD would allow the use of the water from the canal, however, it was the timing of the use of the water that was in question. The ASR system had a storage capacity at this point and until the testing was completed, staff could only approximate the amount. Work on both of those issues needed to move ahead with the goal of maximizing the amount of storage, determining the maximum amount of storage and how long the system could withstand no input. On further discussion and further presentation of facts, Mr. Potts surmised that SFWMD's position would change.

The fact that this system would so well match the goals and objectives of SFWMD area wide water management was a reason to believe that they would negotiate or compromise, and deal on a reasonable basis with the issue of how much down time this system would be forced to suffer. If they were unreasonable, it would kill the system, but that would also deny a project that was very much in line with their goals and objectives.

Mr. Wyett stated that he understood that part of the SFWMD Everglades Reconstitution Plan included putting another dam structure on the C-51 some distance west of the Turnpike which would drastically effect the amount of water that would come into the C-51. That would mean that not only would the water be worse, but there would be less of it, resulting in additional drought days. Mr. Wyett declared that he was amazed it was not mentioned during the meeting. Mr. Wyett stated that SFWMD did generalize in stating that there might be less water in the future.

Mr. Potts stated that SFWMD admitted they were making plumbing changes, but it was also a goal of their staff to further regulate fresh water discharges to Lake Worth in an attempt to restore the environment that it was accustomed to years ago. There were a lot of competing uses for the fresh water existing in southeast Florida. The 6,000,000 gallons a day that the Town was requesting was virtually immeasurable in the amount of water that was available. Mr. Potts stated that it was not that the water was not available, but was a matter of priorities. The only way to get an answer would be to put an application in to SFWMD and at that point the Town would obtain a firm answer.

Mr. Wyett pointed out that Mr. Potts had indicated that SFWMD had to continue to supply water into Lake Worth or they would upset the balance in the Lake; he questioned whether there were any other possibilities of putting water into the Lake to maintain the balance?

Mr. Potts replied that he knew of no other possibilities of supplying the water to the Lake, however, a portion of the water that was lost in the aquifer would come into Lake Worth because the Town was building a bubble of fresh water on top of the salt water and raising it to a point that it would lap out on both sides. In that respect, Mr. Potts felt that this project was in conformity to one of the goals of SFWMD.

Mr. Potts stated that whether the Everglades won over the water in Lake Worth was something that would not be decided by staff. Discussion ensued that SFWMD had goals without solutions on how to reach them. Mr. Potts stated that he had the optimism because of the very positive benefits of this program, and the insignificant impact that it would have on the area wide water resources on an absolute basis--it had good potential competing with any other use, particularly if the project was ready to go.

Mr. McLendon asked if the State Water Management Department had any ideas on how they would like to see the individual districts handle these issues?

Mr. Potts responded that there was a State Water Policy and that the water management districts report to the same individuals in Tallahassee as DEP. Mr. Potts stated the State Water Policy was dealing with a series of goals: to conserve water, restore levels and flows to previous conditions and explore alternative water sources and the use of waste water.

Mrs. Smith asked should the C-51 use be denied to the Town of Palm Beach, what the next step would be?

Mr. Potts stated that if there was no C-51 water or any other water from the mainland then the Town would not have a system. Mrs. Smith asked if the people in Tallahassee that devised the Water Plan were political appointees? Mr. Potts replied they were appointed. Mrs. Smith commented that every time there was a new appointee the policy and direction could change and that the Town of Palm Beach was lost in the Everglades Restoration Project. Mrs. Smith stated that she believed that the use of the C-51 Canal would not happen for the Town.

Mr. Potts stated there was one other alternative--treated waste water. The difficulty with that use was the cost associated with getting it to the Island if only the Town of Palm Beach was using that system. There were already uses of the C-51 Canal. The current water source for the City of West Palm Beach came from the C-51 Canal as well as a lot of other water sources. The obligation of the Water Management District was to manage the water resources for the good of the public and the environment and both uses did get a right of that water.

Mr. Wyett stated that his main reservation related to the ability to store 60, 70 or 80 days' supply that the district would require the Town to have stored in the ASR system. Mr. Wyett stated he had a problem in believing that the Town could put that much water in the ground and get a big percentage of it back, as a large percentage of it would be lost to the ocean or the bay; particularly if the Town followed the most recent recommendations of not piping the whole Town but making it feasible for private wells to go in. Mr. Wyett remarked that he did not think the private well system would work or that the Town had the ability to get water all over the Island.

Mr. Potts responded that this could be accomplished, as looked at from the theoretical viewpoint because the ASR testing had not yet occurred, but he pointed out that was the way Palm Beach used to be before development occurred. It was a freshwater resource and farmers, etc. used that as their source of water. There was nothing wrong in theory with the concept, it was the implementation that had some refinement to be done, hence the need for the ASR testing.

Mr. Wyett stated that he realized there would be some risks, however, the Town was trying to minimize those risks. The Town would have problems in a political sense in how many people would connect to this system voluntarily or would the Town make connection mandatory. Mr. Wyett pointed out that if people did not connect or the Town did not sell a lot of non-potable water the financing of this project would become a nightmare.

Mr. Potts stated that one positive point of the aquifer distribution system was that by distributing it through the aquifer it was very similar to many other services that the Town provided, such as the sewer system. Mr. Potts stated the big question to him was how much would it reduce the potable water when projects were made or how much demand there would be for potable water 5 years after implementation? Mr. Potts stated there would be economic incentive to hook up to the system and there could be legislative incentives.

Mr. McLendon commented that the biggest users that were being hit adversely would have the greatest interest hooking up to the system, however, owners of small lots would not make the commitment. Mr. McLendon stated that the system would rely on the large consumers, including the Town and recreational facilities. Mr. McLendon communicated that the Town would see a reduction in water consumption and that the Town could legally create the funding stream to support the system. As far as a secondary source, Mr. McLendon advised that if the Town did not have the distribution system it could not find another source, and if the ultimate goal of the State and the District was to come up with a controllable water system, the best way to monitor it would be through a dual system. Mr. McLendon noted that the Town would be meeting the future needs that would be mandated by the State and it would also allow the Town to segregate the water use to meet the requirements of the Comprehensive Plan. At the same time it would lead into the reality that people would be looking toward wells.

Mr. Wyett stated he would like to return to the basics of this situation, and that the Town Council was here to discuss whether they want to proceed to look at the ASR situation. The Council needed to determine the real cost and discuss timing. Mr. Wyett pointed out that there would be no reimbursement funds until October, 1996, with any monies spent before that being non-reimbursable. More importantly, the State of Florida and SFWMD knew as little about where they would end up as the Town did. The Federal government was complicating the issue by demanding water for the Everglades. Mr. Wyett stated that based on 300 days of which the Town would be saving water by using this system, the Town would be saving approximately 1.5 billion gallons of water versus drawing 200,000,000 gallons on drought days. Mr. Wyett noted that the Town needed to present the mechanics and savings of this to SFWMD as part of the application. SFWMD had advised the Town of Palm Beach to reduce water usage. The Town found a way to reduce the use of water by 15% and was half-way to the goal. Ultimately, regardless of who provided the dual system, the only way to really save water was by using water now going out into the ocean or the Everglades. The use of sewage water had not been cost effective.

Mr. Wyett stated he wanted to know the cost of doing the ASR complete study and wanted to analyze the timing. Mr. Wyett concluded that this was something that would not happen as fast as this Town would like, but believed that the authorities in Tallahassee and those in South Florida would come to realize that a savings of 1.5 billion gallons was a lot more conservation than finding the Town water to use in a drought period. Mr. Wyett was also concerned with the amount of water the Town would have to store and stated that if the Town had to store enough water for 100 days of use, the Town would have to store 400,000,000 gallons. Since there was not 100% recovery, the storage would have to go to 600,000,000 - 1,000,000,000 gallons.

Mr. Dusey stated that the calculations done by the engineers reported that there would be anywhere from one and one half billion to a couple of billion gallons of water that would be in the storage bubble. The question that was not answered was what would happen as the amount of fresh water receded and the salt water started to come up. At a certain point the fresh water and salt water would mix, resulting in salt water. The purpose of the ASR was to find that number, and how much water would fit in an area 12 miles long, averaging 900 feet wide and 60 feet deep. The question involved the dynamics of aquifer storage treatment system and how much water could be recovered before it would begin to mix with the salt water.

Mr. Wyett stated he did not want to see an application go to SFWMD too early so that they would say no or advise the Town to look in another direction, forcing the Town Council to make other decisions. Mr. Wyett suggested that the Town needed more negotiating to find the proper time to make this application and for the district to realize the total picture.

Mr. Potts stated that the Charter of SFWMD stated they have to be open to hear the Town's offer. From a timing viewpoint, Mr. Potts explained that to make an application to SFWMD for a grant or co-sharing of costs, the application had to be in by April 12. SFWMD had a program that was funded for \$4,000,000 last year and they did not know how much funding there would be this year. Mr. Potts stated that the only thing the Town could be assured of was that the Town would

not get a grant if they did not apply. If there was a desire to get the district to begin to be a partner in this issue and participate, it should be noted that they only take applications once a year.

Mr. McLendon stated that the Council agreed at the last meeting to file the application for 50% grant on the research effort and questioned how that changed in the increase of magnitude of the research project.

Mr. Potts stated that the District had a limit of \$500,000 per applicant. If the District gave out more smaller grants, then the bigger grants fall by the wayside. Last year the District gave \$300,000 to Miami Beach, so Mr. Potts asserted that \$300,000 was not out of the question for the Town to receive.

Jim Anderson, Hydrogeologist, stated that he understood that if the Town requested too much money from the District they could deny the whole application and chose a better looking application that had a better presentation and fit in better with their objectives.

Mrs. Smith questioned who determined what was too much and what the formula was if the Town requested half of the project cost?

Mr. Potts stated the District used a committee of seven members who determined which application was best. Mr. Potts stated that if the Town was interested in pursuing the application, staff would meet with the Grant Applicant Coordinator for Palm Beach County to get a better reading regarding the application. Mr. Potts stated that the Town had a program that would receive good marks in the District's 7-8 categories used for approving grants and on that basis the application would rank well because of their goals and objectives. Mr. Potts pointed out that the application did not have to be in an amount of half of the entire program, pointing out that Palm Beach County asked for a 75/25 split. Mr. Potts hoped that the District's committee would select the application based on which aligned with their goals and objectives and which project was more innovative.

Mr. Shaw stated that a lot of what was holding the Council back was the availability of water and asked if there was a maximum of water that could be stored in the ground.

Mr. Potts replied that the engineers were able to calculate that number.

Mr. Shaw asked if the Town were to charge an aquifer somewhere else would the Town have the right to pull the water out of that aquifer?

Mr. Potts stated the Town would not have the right, because under the laws of the State, anyone can put a pipe into the ground to use the water.

Mr. Shaw asked if the Town developed this system, and there was a shortage of water, was there anything to prevent the Town from finding another source and would that have any benefit?

Mr. Potts responded that was feasible, however, the costs at this time were unknown.

Mr. Potts explained that the other future aspect of this system was that it could accept treated wastewater. The only difference would be that the program did not spend a lot of money acquiring the water because the water treatment facility was located close to the source and the acquisition facilities were nominal. In the future to convert that over to receiving treated wastewater the Town would not have invested a lot of money on what was being thrown away, but invested in getting the water to the Island and distributing it where needed.

Mr. Shaw stated that the issues were separate. Source was important as well as the availability, but if the Town could not get it and store it and get it back to the users, the whole system would fall apart. Mr. Shaw said that without adding the word "desalinization", the Town did not know where it would be 10 years down the line, but would lend itself to the idea that whatever is done the Town would be using a dual distribution system.

Mrs. Smith asked if staff had any recommendations that the Town should be taking at this time?

Mr. Potts stated that he recommended that an application be made to the SFWMD because the opportunity existed. Mr. Potts cautioned that if the Town did make an application and it was granted, the Town would have to spend whatever share they had committed to, as the Town would sign a statement saying the Town would come up with its share and do what the application said the Town would.

Mrs. Smith asked what the grant would say that the Town would do?

Mr. Potts stated the minimum would commit to Task 2 - Treated Wastewater and Task 4 - ASR Testing. Mr. Potts commented that while he did not know if the next items were eligible as far as the grant was concerned, he would recommend the Town begin Task 6 - Utility Organization and Task 7 - Financing Alternatives because staff had gone over this thoroughly on a technical basis as far as feasibility. One component that had not been looked at professionally was Tasks 6 and 7.

Mr. Potts was not sure that Tasks 6 and 7 were items that the water management district would help the Town pay. The District was in this for the science of it and to see what the ASR would do on the Island as it had a benefit to them.

Mr. Dusey questioned why Mr. Potts was not recommending Task 5 - Lithologic Sampling?

Mr. Potts explained he was mentioning what tasks to include as a minimum, however, Task 5 was important as it involved not only the lithology of the structure of the Island, but also the resistivity test.

Mr. Potts recommended the Utility Organization (Task 6) because the other element in that was what legislative requirements were involved and whether the Town had the authority to set up the system. Mr. Potts stated he was not necessarily recommending that Tasks 6 and 7 be taken to their full dollar value at this point, but there had been an absence of utility and financing consulting thus far.

Mr. Potts stated with the ASR testing, they would be able to determine how much storage the Town had and how long the Town could go in a drought period. The Lithologic Sampling would allow the engineers to be able to project Island-wide on a much more reliable basis. In response to questions from the Council, Mr. Potts said that borings would be done every mile or so along the Island, requiring a total of 12 - 15 boring sites for the ASR testing.

Mrs. Smith asked if the Town decided not to spend the \$21,000,000 initially and another \$40,000,000 for the pipeline, why the Town should not negotiate the contract with the City of West Palm Beach, accepting the surcharge, and saving millions and millions of dollars?

Mr. Potts stated that from a realistic viewpoint the Town did not know where the water costs were going with the City of West Palm Beach, but that the Town still needed to face the issue of water consumption which was significantly different than the average per capita consumption across southeast Florida, and the need to reconcile that higher consumption with the concern of the management of water resources and the environment.

Mrs. Smith stated that the Town had drastically cut back on water usage. The City of West Palm Beach was crediting the Town with water that was not reaching the Town water meters, therefore, it was known that the pipes were leaking. Mrs. Smith commented that the Council was talking about whether or not the water was available from the C-51 Canal and there had never been a question that the water was not available from the City of West Palm Beach. The City would continue to serve the Town with water. Mrs. Smith noted she appreciated the work done by Hutcheon Engineers, however, pointed out that the Town was paying them a lot of money for these studies. Mrs. Smith expressed her concern with run-away costs, pointing out the Town had utility studies with Olson and spent \$500,000 - \$600,000 and that the Town was not starting off at first base as if never having done anything. Mrs. Smith did not think that any of the past studies were being used as the basis for the listed Tasks and stated that the Town did have a background. Mrs. Smith emphasized that costs were escalating and totally unacceptable for conceptual projects at this time and that she still had not received an answer as to why the Town would not turn back around to the City of West Palm Beach stating they were the cheapest and most plentiful alternative. Mrs. Smith did not believe that Mr. Potts had answered her question.

Mr. Potts stated that if the dual water system was developed, the Town would secure an independent source of irrigation water and would reduce its overall potable water need to one that can be supplied by others than the City of West Palm Beach. At that point the Town would be in a position of not being solely dependent on the City of West Palm Beach for the Town's water source.

Mr. Shaw pointed out that although the Council did not know where water prices would go in the future, they were sure they would go up and the financial viability of this program was not the issue of spending \$40,000,000 or buying water from the City of West Palm Beach. Mr. Shaw said the issue was whether the Town makes an investment and recoups that investment through revenues of the consumption of water. If this \$32,000,000 project was now downsized to a \$21,000,000 project, and if that project would be funded by the residents who would be paying the Town of Palm Beach in lieu of paying West Palm Beach, the project would be economically sound and worthy of pursuit.

When Mrs. Smith expressed her concern that residents may not want to hook up to the system, Mr. Shaw responded that it was discussed that this would not be optional and would be one of the services provided by the Town. There would be a rate structure that would be established that would show how the Town would pay for the project. Mr. Shaw stated that the Town would have to guarantee the source of revenue in order to make the project viable.

Mr. Wyett stated that the project would not be revenue producing for a period of time, and the bond issue would have to be sufficiently higher than the actual cost to pay the debt service. Mr. Wyett also stated that regarding the City of West Palm Beach, he too had thoughts from time to time that staying with the City might be the better way to go, however, he did not want to do that because:

1) the people in Palm Beach are not going to be content with severe water restrictions they would be faced with if the Town continued as it has, and

2) the distribution system has not been properly maintained by the City of West Palm Beach.

Mr. Wyett said his aim from the beginning was to negotiate a wholesale rate and that eventually the Town would have to know what the wholesale rate would be for potable water from some source.

Mr. Potts stated that he had always thought that their charge was to see that this system would pay for itself on monies that it saved. Although Mr. Potts could not say that the system would do that because he was not a financial expert, but their goal has been to keep the cost of this project down so that the 4,500,000 gallons of water a day purchased from the City of

West Palm Beach would go to the Town, it would fund the system. Mr. Potts proposed that this project would work and pointed out that it is a replacement of a system that currently had a revenue stream that could flow to the Town to fund the system.

Mr. Shaw stated that if the Town used the approximately \$5,000,000 revenue that was going into the City of West Palm Beach and did not include the planned increases of the City, the revenue would be covered in 20 years.

Mr. Wyett stated that the cost of water from the City of West Palm Beach would double within the next 5-10 years and would be 50% in terms of surcharge. Mr. Wyett noted that someone made the comment that West Palm Beach had all the water that the Town would need, however, the City had already informed the Town that it may not have all the water the Town wants due to the expansion of population and the increase in demand for water. If the Town did not have a potential of using alternate water sources before someone else got them, the Town Council may be derelict in its duties. Therefore, Mr. Wyett encouraged the Council to authorize the application, to apply for the \$500,000.

Mr. Wyett made a motion to authorize the Town to apply to the SFWMD, in time for the April 12, 1996, deadline, for the sum of \$500,000. Mr. Wyett noted that the discussion would have to be open to the Council as to whether the Town would ask for 50% of the cost or something less for reimbursement.

Mr. Potts stated that the Town would have an edge in asking for less than 50%, but without contacting SFWMD staff he could not tell the Council how much of an edge it would be. Mr. Potts, in response to Mr. Wyett, stated he would ask the SFWMD staff if the Town could ask for 50% and the District could offer something less than that amount.

Mr. Wyett remarked the negotiators should ask for 50%, and if that amount was not practical or advisable, then authorize the Town Manager to offer less or call a Special Meeting of the Town Council.

In response to Mrs. Smith, Mr. Potts stated that the Town did not have to pay him for the report that was in front of them today, but would pay for the report for the aquifer storage or the dual water system report. Mr. Potts stated that his firm would bill the Town on an hourly basis for negotiating and time spent on the application. Mr. Potts advised that the application process could be consummated for under \$5000. Mr. Potts agreed that the negotiating would be a part of the \$5000.

Mayor Ilyinsky stated that the members of the Council understand that when an article appears in the newspaper tomorrow stating that the Town spent \$500,000 of taxpayer money and did not point out that it would save \$20,000,000 over 20 years, the Town had better be prepared to answer questions. Mayor Ilyinsky explained that a lot of residents needed to be educated as they did not think the Town had a water shortage. The Mayor said that the residents of the Town of Palm Beach would conserve water, however, hoped that the Council really understood what they were about to do and pointed out that the Council would have to live with this decision for the next 20 years.

Mrs. Smith stated that as far as cutting back on the water consumption, this Council had discussed whether or not to go back to mandatory two day watering or alternate day watering, and these measures had not yet been put into effect. Mrs. Smith added that these measures had not been passed by the Council, and to take the step now would be very precipitous and very expensive.

Mr. Shaw seconded the motion.

Mr. Wyett pointed out that if the Council voted against the motion, the Town would have to wait one year from April 12 to submit an application to SFWMD. Mr. Wyett suggested that the Council should pass measures for alternate day watering, however, the Council would be voting today on whether to spend between \$250,000 and \$300,000 to investigate if the project was feasible and had a basis of negotiating with SFWMD.

On roll call, the motion was carried by a vote of 3 ayes and 2 nays, with Mr. McDonald and Mrs. Smith casting the nay votes.

Mrs. Smith requested Mr. McLendon discuss the other points brought up in his memorandum and asked Town Attorney Randolph how much money a law suit against the City of West Palm Beach would cost the Town. Mr. Randolph stated that the cost would be from \$50,000 to \$100,000.

Mr. McLendon stated that in his memorandum he recommended that the Town proceed with the litigation not with respect to the Statute being legal since it was being used in many places, but on the basis of the application of the Statute between West Palm Beach and Palm Beach. Mr. McLendon stated that the Town of Palm Beach had been a part of this water system since the Flagler Water Company started the system in the late 1890's, and to the best of his knowledge, there had not been one nickel of the West Palm Beach general taxpayer funds used to improve the water system. The improvements had been done on revenue bonds backed by the City's guarantee. Mr. McLendon was of the opinion that the Town revenue to the water system should have created the equivalent of equity and was never intended to be surcharged.

Mr. McLendon said that the fact that they started the surcharge before the end of the agreement would have some bearing on the reception that the litigation would receive. Mr. McLendon stated he had talked to a number of outside people over the last couple of months, and while the litigation was not unanimous, there certainly was a consensus that the litigation offered the most promise for relief.

Mr. McLendon stated that he would like the issues for the case presented before the litigation was filed.

Mrs. Smith asked the Town Attorney about the point in Mr. McLendon's memorandum regarding the prior agreement's 1969 expiration date. The ordinance stated the expiration date was 1999 and not 1995. Attorney Randolph stated that he had not reviewed that since he saw the statement, however, this was researched thoroughly before, and he was confident that the expiration date the Town had been working on was correct.

Mr. McLendon stated there was no question that the agreement was dated 1965 for a 30 year term, however, the ordinance he saw said that the old agreement expired in 1969 and there was to be an additional 30 years. Attorney Randolph stated that he would look at this issue once again.

Mr. McDonald asked if Mr. McLendon was asking Attorney Randolph to prepare a memorandum of law prior to proceeding. Mr. Randolph stated that he had supplied the Council with his communications to Pat Brown and the responses in regard to the basis of the law suit. There may be one or two other basis that could be included, and Attorney Randolph suggested that if the Council wanted to move forward he could prepare a draft complaint. However, if the Council desired a memorandum of law it would incorporate basically what he already incorporated into the present documents as well as one or two other theories that may be included in the complaint.

Mr. McDonald stated that he did not recall the Town Attorney taking the approach that Mr. McLendon was recommending regarding the equity in the system. Attorney Randolph stated that issue was not addressed in the memorandums he had supplied.

Mr. McLendon stated the other aspect would be the original intent of the 181 Statute and that he and the Town Attorney agreed that the Statute was originally intended to cover small areas adjacent to municipalities, not one large municipality adjacent to a fairly good sized municipality.

Attorney Randolph clarified that he thought the Statute was intended to deal with unincorporated areas adjacent to municipalities, not to other adjacent municipalities, and that would be the basis of one of the counts of the complaint.

Mr. McLendon stated that there are now many municipalities that sell to others, but on a wholesale basis, not on a retail basis as the Town was experiencing with West Palm Beach.

Mr. McDonald suggested that a draft complaint would answer Mr. McLendon's question.

Mr. Shaw stated that at the last meeting the Council discussed what they should do, and the consensus of the Council was that West Palm Beach was going through and still was finalizing their election results. He did not believe that one Council member was a definitive voice and that avenues of discussion should be reopened in a slightly different direction to find out where the rest of the City Council was sitting. The fact that the Town was being confronted with terms unacceptable to the Town were not necessarily coming from a resolution or a consensus of opinion from the West Palm Beach City Commission. Mr. Shaw stated there will be a run-off election to be held in West Palm Beach with the potential for change, but not withstanding, he would like to see the dialogue opened with the balance of the Council.

Mr. McLendon stated that he has had several communications, informally, and that Commissioners in West Palm Beach look at a 25% surcharge as revenue to their City which was desperately in need of more funds. The only time the Commissioners in West Palm Beach would look at the situation seriously was when they took the Town of Palm Beach seriously. Mr. McLendon said the only way to send a signal to West Palm Beach was to bring a law suit against the City and perhaps the meetings after the law suit was filed would be more compromising.

Mr. McDonald stated that the newspapers in the last week or so indicated the City of West Palm Beach administration seemed to have a penchant for breaching contractual obligations and squandering hundreds of thousands of taxpayer dollars in West Palm Beach to remedy the breach.

In response to Mrs. Smith, Attorney Randolph stated the approximate cost of the memorandum of law could not be estimated until he better understood the theory Mr. McLendon was recommending. Attorney Randolph stated that what Mr. McLendon was suggesting would be the only additional item to be addressed in his memorandum since the other issues had been previously discussed by Council

Mr. McDonald asked if the Town Attorney would also address the issue of maintenance of the system since the Town was alleging that they were losing a lot of water because the system had not been maintained and could be considered a breach of the contract? Attorney Randolph replied that there was no contract and the system was operating because the City of West Palm Beach had an obligation to continue serving the Town with water.

Mr. McLendon stated that should the Town bring suit and find additional reasons to sue, the law suit could be amended. Attorney Randolph stated that it could be amended, however, it would be his recommendation that the Town include every viable count within the original complaint.

Mr. McLendon made a motion to authorize the Town Attorney to prepare a law suit for Council approval by the next Town Council meeting and to incorporate the ideas of other Council members to make the law suit as complete as possible. Mr. McLendon, in response to Mrs. Smith, stated he was not talking about the memorandum of law because it was just a preliminary to organizing a law suit for submission to the court. Mr. McLendon wanted to see the actual case ready to go

by the next regular Town Council meeting.

The motion died for the lack of a second.

Mr. McDonald stated that his understanding of a memorandum of law was that the Town Attorney would take the counts that would be included in a complaint and determine the merit of those counts and would also explain similar cases that had occurred that were of like factual situations. This memorandum of law would then be supplied to the Council so they could get a feel for the merit of the case and the potential outcome of the case, including costs.

Mrs. Smith stated that she would like to see if sufficient case studies existed before the memorandum of law was prepared. Mrs. Smith stated she would not like to see the Town of Palm Beach opened to the liability and court costs of a losing law suit that may cost the residents of Palm Beach hundreds of thousands of dollars. Mrs. Smith stated that she concurred with Mr. McDonald regarding the Town Attorney preparing the memorandum of law.

Attorney Randolph stated that the memorandum would take approximately 15-20 hours to prepare, however, he did not know if new theories of the law would require additional research.

Mr. McDonald stated that one of the purposes of the memorandum was to see if there were any other bases for a suit.

Mayor Ilyinsky questioned whether the Town could get West Palm Beach's attention by suggesting that the residents not pay the 25% surcharge because it was done illegal?. Attorney Randolph stated that would be up to the individual consumer because they would suffer because they did not pay all of their bill. However, Attorney Randolph stated that issue was part of his draft complaint.

In response to Mr. McDonald questioning any advantages to a draft complaint versus a memorandum of law, Attorney Randolph stated that if the Council had a draft complaint to review they would inquire as to the basis behind each of the counts.

Mr. McDonald made a motion that Attorney Randolph be authorized to prepare a memorandum of law by the next regular Town Council meeting. The motion was seconded by Mr. McLendon. On roll call the motion was unanimously carried.

Regarding other issues in his memorandum, Mr. McLendon stated that it was time to take the bull by the horns and be prepared at the next regular Town Council meeting to consider imposing the odd and even irrigation days in the Town.

Mr. Shaw stated that at the ORS meeting no decision was made because ORS wanted to see what direction the Town was taking regarding the water situation, and he would call a meeting of the ORS Committee to discuss odd and even irrigation days.

Mrs. Smith stated that because this issue was discussed at ORS and the Town was discussing imminent action on this issue, it should be placed on the April agenda for the Town Council meeting rather than calling a special ORS meeting.

Mr. Wyett stated that the residents of the community should be aware that the Council was considering every other day or twice a week watering so that they can appear at the meeting and be heard. Mrs. Smith requested that the newspaper print an article to inform the residents to appear at the April Town Council meeting if they wished to voice their opinions.

Mr. Wyett stated that the only possibility that the Town had of meeting the cut back requirement of 30% was to go to every other day or twice a week watering. If the Council did not impose this upon the residents SFWMD had the authority to withhold water from the Town.

Mayor Ilyinsky mentioned that the residents of the Town would respond in a positive fashion.

Mrs. Smith agreed that the residents of the Town would respond, and the Town had experienced a better than 15% compliance to date. Mrs. Smith stated that the meeting would be April 9th and asked that the Town Manager put this issue on as the first item under New Business.

Mr. McDonald stated that if the Town Attorney had the memorandum of law completed by April 9th then it should be listed as an agenda item.

Town Manager Doney stated that both of the items mentioned would be added to the agenda under Old Business.

Mrs. Smith stated the issues could be listed as the first and second items under Old Business.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

~~MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON 3/27/96~~

There being no further business to discuss, the meeting was adjourned at 5:20 p.m.

Mary A. Pollitt
Town Clerk