

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON 3/25/96

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting of the Town of Palm Beach was called to order at 2:05 p.m. by President Lesly Smith. Town Clerk Mary Pollitt called the roll, and the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Smith, President Pro-Tem Jack McDonald, Councilmen Leslie Shaw and Allen Wyett. Councilman Sam McLendon was absent. Also attending for all or part of the meeting were: Town Manager Robert Doney, Town Attorney John Randolph, Public Works Director Al Dusey, Zoning Administrator Paul Castro, Assistant to the Town Manager David Jakubiak, and Town Clerk Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation, and President Smith led the Pledge of Allegiance to the Flag.

III. APPROVAL OF AGENDA

Mr. McDonald made a motion to approve the agenda, seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

IV. CONSIDERATION OF CABLE FRANCHISE RENEWAL WITH COMCAST CABLEVISION OF WEST PALM BEACH, INC.

Town Attorney Randolph stated he prepared a letter to Mr. Doney dated March 25, 1996, regarding this matter. Attorney Randolph stated he has had conversations with Attorney Nathan, the in-house counsel for Comcast Cable, regarding the Town's agreement. Attorney Randolph believed that based on these discussions, the Town is very close to resolving the agreement; however, there were still two or three areas that needed to be clarified. Attorney Randolph stated, while he has redrafted the agreement, he did not present it to Council today to afford Attorney Nathan the opportunity to review the redraft.

In the letter provided by Attorney Randolph, Mr. Nathan indicated the first area of concern related to the grant of authority, Section I of the agreement. The basic issue was the Telecommunications Act, according to Comcast Cable, that does not allow for a franchise for telecommunications services. The way the agreement is now drafted, it left some confusion to that matter and; therefore the Town suggested that the issue be addressed within the franchise agreement, but the two should not be put together. The five percent franchise fee applied to the provision of cable services within the Town and any tax or fee that the Town is allowed by law to assess against telecommunications services would be done to the extent allowed by law. Attorney Randolph stated that Mr. Nathan seemed content in that manner and once the franchise agreement is completed, the Town would follow up with an ordinance relating to telecommunications services that would specify the fees adopted in relation to telecommunication services.

The next item related to Section III of the agreement which addressed the collection and payment of franchise fees and gross revenues. Mr. Randolph suggested that this section be modified to take into consideration the bifurcation of the two issues (the issue of franchise fees for cable and the issue of taxes or fees relating to telecommunications).

Within this Section, the Town expressed its concern regarding affiliates of the company and companies of which the cable company owned more than 10% interest. Comcast said that this Section left a lot to be desired from the cable company's standpoint as they thought it provided an opportunity for the Town to collect revenues on fees that are not clear in the agreement. Comcast is willing to pay fees on all revenues the Town is entitled to collect by law, but they are concerned if the Town attempts to collect fees against companies in which they may have an interest that do not necessarily relate to revenues within the Town of Palm Beach.

Attorney Randolph stated they discussed this issue at length, and he believed that the Town could redraft that provision of the agreement to satisfy Comcast concerns.

Mr. Randolph said the next issue was Section IV of the agreement relating to the term. Comcast desired a longer term than three years; however, Attorney Randolph thought that three years was a reasonable term. Attorney Randolph believed that if Comcast had an agreement that was satisfactory, they would agree with a three year term.

Mr. Randolph reported that Mr. Nathan of Comcast had a concern with Section V regarding the requirement for \$10,000,000 in coverage for general liability insurance. Attorney Randolph stated that he thought this issue had been settled

with Comcast; however, this is an item he is still discussing with them. Comcast indicated that they do not have that type of coverage in some of the larger cities and did not see the need for it in the Town of Palm Beach. Attorney Randolph said this was not a major issue and could be resolved.

Mr. Randolph continued that Mr. Nathan had a concern with terms such as "working control" and "additional conditions" which the Town could impose upon a transfer by Comcast. Attorney Randolph agreed that the ability of the Town to impose additional conditions beyond those that are incorporated either within an ordinance of the Town or the agreement was probably vague and was something that needed to be modified.

Attorney Randolph stated that Comcast still had a problem with the most favored community clause, particularly in light of the short nature of the term of the agreement. Ultimately, a determination should be made by Council regarding the issue. Attorney Randolph did not recommend that any attempt be made to resolve this issue today and stated he would like to return to the Council with the agreement in a form that he thought would be satisfactory to both Comcast and the Council, resolving this issue at that particular time.

Mr. Randolph said Comcast had no problem going underground if other utilities go underground, but did not think that it was fair to require them to do so if other utilities were not required.

Since the Council's last meeting, Attorney Randolph stated he learned that the Customer Service Standards Ordinance is a big concern to Comcast. The details of that are not incorporated within this agreement; however, Attorney Randolph stated he wanted to raise this as an issue with the Council because Mr. Nathan stated it was an issue with Comcast Cable. Attorney Randolph indicated to Mr. Nathan that the Town Council was ready to consider that ordinance for first reading at their next meeting so Comcast should be prepared to address their concerns either before or at that meeting.

Mr. Randolph said that Mr. Nathan stated that the notice and cure provision of ten days was too short and preferred thirty days. Mr. Nathan indicated that he would work with Attorney Randolph for a notice and cure provision between ten and thirty days.

Attorney Randolph stated that he would like to be able to work with Mr. Nathan, with the assistance of Mr. Jakubiak and Mr. Guttman, and return to the Council with an agreement that he thought would be satisfactory to all parties within the next two or three weeks. Attorney Randolph stated that Mr. Nathan did not look at the meetings the Town has been having and the negotiations as really formal negotiations as defined under the Act., and the parties were in the phase of informal negotiations. Mr. Randolph said that Mr. Nathan did not think the relationship was adversarial, which is the relationship the Town would be in if the two parties met informally, and there was a rejection on the part of one party of the terms of the franchise agreement. At that point, both parties would begin formal negotiations.

Attorney Randolph stated staff has been giving the Council a "drop dead date" of April 20, 1996, based upon the positions that Comcast might have taken were they informal negotiations because the franchise contained some time elements under the Act which would have meant the Town had to act by a certain date. Attorney Randolph said that he was under the impression in speaking with Mr. Nathan that because Comcast considers these as informal negotiations, the April 20, 1996, date is not the final date for resolving this agreement. Attorney Randolph believed that the Town should continue to try to work toward that date in an attempt to resolve this agreement in a timely manner.

Mr. McDonald asked that Attorney Randolph point out the items in his letter that he would need Council action on to make a decision at this meeting, excluding the items that he thought could be resolved directly with Mr. Nathan?

Attorney Randolph said the Council did not have to make any decisions today, but the purpose of this meeting was to report to the Council. Initially, Attorney Randolph said he had hoped to have a completed agreement; however, the issues previously referenced need to be resolved. Attorney Randolph stated he did not need a decision from the Council at this meeting, but needed the direction to continue to negotiate with Comcast in the manner indicated.

Mrs. Smith stated that it appeared that Attorney Randolph has been very successful in his discussions with Mr. Nathan and asked if he felt that there were any real sticking points in the agreement that he would like the Council to discuss today?

Attorney Randolph responded that the Council did not need to discuss any issues at this meeting.

Mr. McDonald stated that, as he remembered the most favored city status, it was along the lines that if another community negotiated a better rate or other conditions, the cable company would agree to give the Town the better rate or condition. Mr. McDonald stated that the issue of having to bury cables unless other utility companies buried cables was analogous to him.

Attorney Randolph stated he could not speak for Comcast, but perhaps a most favored community clause might make more sense to Comcast if they were entering into a twenty or thirty year agreement. If they entered into an agreement with another city to put cable underground, it would make sense for the Town of Palm Beach if Comcast could amortize their investment over a twenty or thirty year period. Comcast considered a three year agreement too short and stated they cannot do something for one city and commit to the Town to do the same when the Town does not give Comcast the opportunity to amortize their investment.

Mr. Shaw stated that his understanding of the most favored community clause went one step further in that it was not just a rate, but an agreement issue. If the clause is in the agreement and another city had a twenty year agreement to bury its

cable, it would allow the Town to use that as a stepping stone to say the Town wants its cable buried and under those terms would also give Comcast a twenty year agreement. This would avoid negotiating an agreement that another city had already negotiated.

Attorney Randolph said that Comcast might consider looking at the agreement if that situation arose. Mr. Shaw said the most favored community clause gave the Town the opportunity to not have to reinvent the wheel because another city has an agreement that has been accepted and if the Town liked the terms of the agreement, the Town would take the same agreement as the other city had.

Attorney Randolph said, by mutual agreement, the Town could come back at any time within the three year agreement and negotiate sections of the agreement.

Mr. Shaw asked what the loss factor was of having the clause? Mr. Randolph replied that an agreement negotiated with another community has many unknowns, and many issues could be different. Mr. Randolph questioned why the Town would take another city's agreement when the parties could sit down and renegotiate?

Mr. Wyett stated that the reason for the short term agreement was because of the technical advances coming in the next few years. Mr. Wyett pointed out that the Town would be starting this contract and would have the same negotiations in 24 to 30 months. Mr. Wyett stated that in the foreseeable ensuing three years, Comcast would not rewire the Town of Palm Beach to put in fiber optics; however, that is something the Town may want 24 months from today because of some things fiber optics may offer.

Mr. McDonald said that from a practical standpoint, a one year or a three year term did not matter as Comcast was not going to give the Town a most favored community clause. Mr. Randolph stated that while this was something that has been discussed, the problem is that, under the Act, the Town immediately starts to renegotiate every year.

Mrs. Smith stated that perhaps the Town should negotiate every year if the most favored community clause was not included. Mr. Wyett stated that if the Town renewed the agreement yearly, and there were no changes, all the Council would have to do would be to ratify and renew.

Mr. Wyett stated, regarding the general liability insurance, that while it is true that the Town of Palm Beach is a lot smaller than some other cities, it is a high value, high revenue town, and the \$10,000,000 requirement should be retained. Mr. Randolph stated that the request for \$10,000,000 coverage came from the Town's Risk Manager and was taken from another agreement with a gas company. Attorney Randolph stated that limit made sense with the gas company, but since that agreement the Town has attempted to be consistent with other agreements. Mr. Randolph stated that he did not think the \$10,000,000 requirement would be a stumbling block.

Mr. Wyett stated he discussed with Mr. Jakubiak a piggyback service some people have that brings in communications of the stock market, and asked if the Town was receiving a franchise fee for that service? Mr. Jakubiak responded that it may become necessary for the Town to adopt a telecommunications ordinance in addition to this agreement. Mr. Wyett said that a wireless service was not different from a Miami channel being picked up and sent through the cable wires. Mr. Jakubiak stated that this franchise agreement was just for cable and the Town would need a telecommunications ordinance for other possible revenues from wireless, etc.

Mr. McDonald asked Ms. Diane Christie of Comcast Bable why Lake Worth's Town Council meetings were televised? Ms. Christie responded that the City of Lake Worth requested the coverage and pays someone to tape the meetings who provides Comcast with a tape that is aired on Channel 44 which is very similar to the Town of Palm Beach Chamber meetings. Ms. Christie said that in the case of the Chamber meetings, Comcast tapes the meetings for them.

Dr. Ralph Kanders, 2100 South Ocean Boulevard, addressed the Council and stated that he agreed with the representatives who thought that wireless television was going to affect all the cable operators. Dr. Kanders said that Bell South may come into the Town with a better deal that would be more competitive in the future. Dr. Kanders stated he had Comcast come into his house to hook up a couple of outlets and received a statement that included a remote control for one of the boxes that he never requested nor had in his possession. Dr. Kanders stated that it took six weeks before he received a corrected statement. Once the corrected statement was received, he mailed the payment to Tampa; however, his service was turned off for failure to pay. Dr. Kanders stated that Comcast had a monopoly in the Town of Palm Beach and had no respect for customer service.

Mrs. Smith stated that many times these problems happen because of a lack of communication between the customer and the company. Mrs. Smith said that Ms. Christie was in attendance if Dr. Kanders would like to speak to her about his problem.

Dr. Kanders continued that when service was down he could not reach the cable company because their lines were overcrowded. Dr. Kanders said that the Town should have an answering machine so that problems could be reported directly to the Town. Mr. Jakubiak stated that related to the Customer Service Standards Ordinance that is scheduled for the first reading at the April Town Council meeting. The Ordinance would allow the Town to assess penalties if Comcast violated specific standards, and one of the standards would be their inability to answer the telephone.

Dr. Kanders said the Town should sign a short term agreement with Comcast, because no one knows what technology would be available in the next few years.

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 25, 1996

Mr. Gene Levy, 650 Island Drive, addressed the Council and stated the late payment fee is too high and wanted to know if that would be addressed in the franchise agreement? Attorney Randolph replied that this was not part of the agreement. Mr. Levy stated that he has had trouble with a digital radio and questioned the problems with this service. Mr. Levy was told that the problems were due to the rewiring; however, the rewiring was completed, and he still has problems with some of the channels cutting off. Mr. Levy stated he would like a ballot given to each customer at least once a year to vote on which cable channels they would like to see selected.

Ajit Asrani, 443 Seaview Avenue, and owner of the Plaza Inn on Brazilian, objected to the rate charged to the Plaza Inn and was in favor of a short term agreement.

Patricia Goodale, 330 Cocanut Row, addressed the Council stating that when the power goes off, customers have the same problem getting through to the electric company, and said that whenever any kind of service goes off, it is difficult to get through on the telephone lines. Ms. Goodale stated that every other time she called Comcast, she had no problem getting through and stated they are very agreeable. She also said their programming was very good, and she was satisfied with their service.

Mr. Wyett stated that on page three of Attorney Randolph's letter where it discussed the notice and cure of ten to thirty days, ten days would be more appropriate, except in the event of a major storm when it would not be possible to cover the entire Town within ten days. Mr. Wyett also stated that regarding the underground cable requirements, this requirement should not be tied to other utility companies as the Town would not require any one utility company to go underground without the others doing it at the same time, because the Town would not allow the streets to be reopened. Mr. Wyett did not want to have one utility dependent on another utility in this agreement.

Mr. Doney stated that Mr. Jakubiak had several related issues that he wanted to bring to the Council's attention today in an effort to receive further direction. Mr. Doney said that one issue was zoning in progress which the Council acted on at the March 12, 1996, meeting, and clarification was needed regarding the correspondence with CityTel.

Before going into that issue, Mr. Jakubiak said he wanted to clarify something stated by Mr. Asrani regarding Comcast's bulk rates. The telecommunications act deregulates rates as of 1999, and the Council would not be involved with rate regulation at that point. However, with bulk accounts, the bulk rate differs per the number of years a condominium elects to sign a contract. That would be permissible as long as those bulk rates are consistent from condominium to condominium, or apartment to apartment. Mr. Jakubiak stated that a special agreement could not be drafted for one condominium.

Ms. Christie of Comcast added that based on the telecommunications act the FCC stated that bulk rates would have to be consistent and that is why negotiations are no longer available. Bulk rate customers with the same number of units and signing the same term of agreement have the same rates. A discussion ensued regarding requirements for bulk rates and service requirements.

Mr. Guttman addressed the Council and stated that a condominium has the ability to disconnect if a unit owner went out of town for a certain period of time; however, a hotel does not have that ability. Ms. Christie explained the differences between condominium bulk rates and hotel bulk rates.

Mr. Jakubiak stated that another item relating to the franchise in Section VII dealt with public government access. Mr. Jakubiak stated this is identified in the cable act which requires cable companies to provide an opportunity for governments to air educational programs. Some cities have an exclusive channel that provides their governmental programming. One issue brought to the Town's attention on February 16, 1996, was from the Florida Legislature concerning the Florida Channel. This was addressed to the Mayor and Council and asked if they would like to see this channel, which would be the broadcast of the legislative sessions. Mr. Jakubiak stated that staff has discussed this with the County and Comcast, and he would like Comcast to explain why the Florida Channel will not be broadcast at this time.

Mr. Jakubiak said that, to avoid misunderstandings in the agreement, staff would need Council direction on what the intent would be for future government access if it was something the Council would like to have broadcasted. Mr. Jakubiak asked how Comcast would address the issue?

Ms. Christie stated that currently Comcast uses Channel 44 to air any type of government/municipal programming. The other government channel 35 is being negotiated with Palm Beach County who chose to have a government channel that covered the entire county. Ms. Christie stated that the other side to that is the County pays for the operation of that channel, including staffing, equipment, etc., and Comcast granted the use of the channel. When the Florida Channel becomes available, the time frame was very short. Ms. Christie said she contacted the Florida Cable Television Association because the Association was attempting to determine which cable companies had channel capacity to broadcast it, and also to determine which municipalities had government channels that were not being utilized all the time.

Because the timing was so short, Ms. Christie said the County had already scheduled their programming. Ms. Christie stated Comcast did not have channel space and did not want to preempt what was already being shown on a local level. Ms. Christie stated it takes a KU band satellite to pick up this programming, which would cost \$5,000-\$7,000 to bring the program in. Ms. Christie stated that Comcast would be reviewing this issue in case the offer is made next year, and they had the opportunity to bring this service.

Mr. Jakubiak stated he had one final item to bring to Council for their information. Mr. Jakubiak reported staff

forwarded a landmark decision in a memo from himself and Mr. Doney to the Mayor and Town Council regarding a city successfully denying a cable franchise based on the community's needs and interests. Two of the issues were the term of the franchise (the company wanted 20 years and the community wanted 5 years) and gross revenues. Mr. Jakubiak stated that he did not mean this to be adversarial; however, it was important information to bring forth to the Council as they make their decision with this franchise.

Mr. Jakubiak stated the CityTel issue was one that dealt with towers and antenna facility placement for wireless service. The town has sent an authorization letter to CityTel with the property locations in the Town of Palm Beach.

Mr. Jakubiak stated that staff did not have an idea where towers or antennas could be placed at this time and is seeking CityTel's help in first identifying what potential the town had for towers and site locations. CityTel's purpose is to co-locate and that is what they are asking through the Town's zoning ordinance. Mr. Jakubiak stated that if the town had six different providers, it would try to prevent tower and antenna sites from popping up across the street from one another. Mr. Jakubiak stated that staff needed clarification from Council on whether the intent of zoning in progress was just for the restriction of towers or did it have to do with towers and antennas. Mr. Jakubiak recommended the Council include antennas.

Mr. Jakubiak reported that in October, 1995, a private property owner requested a permit for 6 antenna locations on the roof of a private property. If the Town went with co-location, antennas could also be put on towers.

Mr. Paul Castro, Zoning Administrator, stated that the Code was quite specific in terms of what would be allowed for antennas in the Town of Palm Beach. Basically the code does not limit the number of antennas, but allows antennas up to 40% of the maximum height allowed in the zoning district in which the antenna would be placed.

Mr. Castro stated it was his understanding at the last Council meeting that the intent of the zoning in progress was to basically put a zoning in progress item on for only communications towers. This was in relation to towers that would be ominous, not aesthetically pleasing, and would also have a negative impact on residential properties within the Town of Palm Beach as well as aesthetically pleasing commercial properties. In terms of limiting antennas, staff has not had a problem with site location antennas at this time, and Mr. Castro thought an antenna would be something between five and seven feet.

Mr. Castro stated that antennas approved were not more than 6 feet in height, and the Town has received no complaints regarding these antennas. Mr. Castro said that the real issue was whether the Council wanted to have a zoning in progress for these types of antennas until February, 1997.

Mrs. Smith responded that it was her understanding that the Council was talking about communication towers; however, if it was a question of antennas between five and seven feet, the issue would be heard by the Architectural Commission if the antennas could be seen from the road. Mrs. Smith recalled that Council stated that any antenna under five feet would not be covered by the zoning in progress, and this would not be a limitation on property owners.

Attorney Randolph said that Council could, from a zoning standpoint, limit antennas by size if the town were going to study this entire area, and many questions remain to be answered regarding the new telecommunication system. Attorney Randolph cautioned that the Council had to be very cautious in this area, because typically the Town has not regulated antennas, and if the Town attempts regulation during the zoning in progress period with regard to antennas put up for telecommunication purposes as opposed to antennas not regulated in the past, the Town might be accused of discriminating one against the other.

Mrs. Smith said that the antennas approved in the past were not very tall structures; however, she questioned when an antenna became a tower? Attorney Randolph responded that the Town did not allow antennas in excess of seven feet in the past.

Mr. Castro stated that in terms of the ones that were approved in the situations raised earlier, they were short antennas.

Mrs. Smith said that perhaps antennas over seven feet should be considered towers, and the Council should come up with something that would not limit the ability of residents or owners of businesses to place an antenna, as they have in the past, as opposed to what may be considered a tower.

Attorney Randolph suggested that the town could base its action on height and also on the number.

Mr. Shaw said two issues were evident--one was combining an antenna with a pole, which was effectively a tower. Mr. Shaw continued that Council needed to separate whether the antenna is the issue or if the structure that holds the antenna is the issue.

Attorney Randolph stated it is clear as a result of the declaration of the zoning in progress that the Council has already dealt with the pole issue. Whether or not there is an antenna on the pole is irrelevant. Attorney Randolph said that the town does not care what the antenna height is on a pole because the Council has already indicated the Town will not grant any building permits for towers or poles during this period of time. What the Council has not clarified was if it intended, in addition to having a prohibition on towers or poles, to also regulate antennas that may be greater than five feet in height that might be placed on top of a building instead of on top of a pole.

Mr. Jakubiak stated that for clarification, the different technologies require antennas that are either low to the ground or high from the ground. Digital technology is low to the ground, analog and cellular phones are high to the ground. Mr.

Jakubiak stated that the town may see antennas that are going to be filling sites that may be part of a structure.

Mrs. Smith stated that the town has not had a response to Mr. Jakubiak's proposed agreement letter sent to CityTel, so right now the Council needed to decide an issue with antennas. Mrs. Smith asked if a private property owner wanted to put a seven foot antenna by the side of his/her house, would that require a permit from the Town?

Mr. Castro responded that it would require a permit. Mrs. Smith asked if there was a limitation if the neighbor stated they would not like to look at a seven foot structure? Mr. Castro replied that no limitations exist.

Responding to Mrs. Smith, Mr. Castro said there is a limitation on antennas, for example in the R-B zoning district, the maximum height is 22 feet, and the resident would be allowed 40% of that height, which would be approximately 8 feet.

Mr. Shaw stated he did not think Mr. Jakubiak's intent was to limit private homeowners from being able to have antennas or dishes.

Mr. Wyett said that staff was prematurely worrying about something, because antennas would not be built before there were towers. Mr. Shaw disagreed, stating that an antenna, the transmitting mechanism as presently designed, could look like a flag pole bolted to the side of a house. Mr. Wyett responded that in that case, it would be part of a telecommunication system, and should all be part of zoning in progress. Mr. Wyett stated that in this early stage the Council did not know enough about antennas or towers, and suggested the entire issue should be included under zoning in progress.

Mrs. Smith stated that the Town had antenna application sand was not talking about something new. Mrs. Smith asked Mr. Wyett if his intention was to ban all antennas in the Town during the zoning in progress? Mr. Wyett stated that was his intention.

Mrs. Smith stated she could not go along with that, and her vote was that zoning in progress covered communication towers proposed in the CityTel application and did not include a resident coming in for an antenna permit of any kind. Mrs. Smith stated that if that was the intent of the Council then that issue should be clarified at this meeting.

Mr. William Guttman, 216 West Indies Drive, addressed the Council, and said the Council could address the antenna/tower issue by limiting it to personal communication services and not to the traditional broadcast antenna.

Mr. Shaw stated that it was his understanding that the zoning in progress was to cover what was considered a traditional tower. Mr. Shaw asked that under the FCC's new policy who had control over whether a residential property or commercial property desires a commercial antenna?

Mr. Castro responded that the town had the authority.

Mr. Shaw stated that as long as the town's existing zoning code stipulated that someone could not put up an antenna for commercial use on private residential property, there was nothing to be gained by including that in the zoning in progress.

Mr. Castro stated that he believed at this time the Legislature has not enacted bills that would give the communication companies the right to pick and choose where they want to go, and the Town's Zoning Ordinance still has authority in the Town of Palm Beach until such time as it is deregulated. While the Legislature is looking at this issue, the Town has zoning authority over telecommunication towers in the town of Palm Beach at the present time.

Mr. McDonald asked if the Council refers to this as personal communications if it would conflict with the new Act? Attorney Randolph replied that it did not; however, his concern was that the FCC has indicated that the Town cannot keep the towers out of a community and if denied, there must be good reason to do so. Mr. Randolph said this was why the Council wanted to look at the zoning ordinance in an effort to see if there was a way to control or regulate the towers. For purposes of this study, staff could look at personal communications antennas in addition to poles, that could be incorporated into the study.

Mr. McDonald recommended that the Zoning Commission take this into consideration. Mrs. Smith stated that in the meantime, the Council needed to make a clarification for the Building Department in reference to antennae permits that would be routinely allowed by the Department while the zoning in progress was going on.

Mr. Doney stated that based on a limited conversation he had with Mr. Castro, the types of antennas that would be used for personal communications devices would be better clarified by CityTel. Mr. Doney said that the last thing the Council wanted to do was preclude itself from further revenue opportunity as this whole issue becomes clarified. Attorney Randolph stated that this should not be tied into revenue opportunities for the Town, but considered from the zoning standpoint.

Mrs. Smith stated that the reason she brought up the question of size was that if it was under a certain size it was automatically permitted.

Mr. Castro said that before the zoning in progress, if someone applied for a permit for an antenna or a small communications tower, it could be for any type of service. Mr. Castro noted that if the application met the zoning criteria for certain height in a permitted zoning district, it would be permitted. Depending on the residential districts, Mr. Castro said the application must be reviewed to determine if the proposed tower would be an accessory to the property and used by the

resident for their own communications.

Mayor Ilyinsky stated that with the advent of all the telecommunication systems, particularly the computer, there is no question that eight out of ten people in Palm Beach are running businesses out of their homes on a computer. Mayor Ilyinsky stated that as the Town approaches the 21st century it must look at these items and come up with a new set of rules.

Mrs. Smith stated that the Council is only dealing with this issue for something that will come up in the next 11 months.

Attorney Randolph said the Council did not have to tie the permits into size, but to use, and that in addition to the towers, the Council could include antennas that are used for other than for the sole benefit of the structure in the zoning in progress.

Mr. Shaw said the question was whether or not the Town could control, through the FCC, the right of an individual to put up a tower that is used not for their sole use, but for other use.

Mr. Guttman stated that the new telecommunications act contained a specific provision on personal communication services and towns could not limit or restrict through zoning laws the use of personal communication services. Mr. Guttman recommended the Council should not make a distinction between towers and antennas, but focus on the communications medium in the zoning context to come up with something that would be fair and reasonable to everyone.

Mrs. Smith suggested that staff bring every antenna application to the Council for approval during the zoning in progress. Mrs. Smith stated that it appeared that the Council has gotten into a telecommunications morass of zoning in progress and perhaps the zoning in progress should never have been done.

Mr. Wyett stated that the Council put in the zoning in progress to protect the Town. Once the Zoning Commission meets, clarifications may be found and Council could possibly take up the issue before zoning season. Mr. Wyett stated there was no reason to take any action, and pointed out that the Council is merely looking at personal communication services and attempting to protect this Town from having an excessive number of towers or antennas. The idea was that the best way to regulate this issue was to authorize one company to build the facilities and have everyone else rent on the towers to keep the towers to a minimum. Mr. Wyett stated that as of yet the Council does not know if any towers will be built in Palm Beach as one in West Palm Beach may be sufficient.

Mrs. Smith stated that the Building Department requested direction to determine if towers and antennas were the same, and that is what the Council is attempting to answer today.

Mr. Doney said that the zoning in progress memorandum that Mr. Castro and Mr. Moore prepared for his signature read that no building permits shall be issued by the Building Department which involved the location, size or height of communication towers in the Town of Palm Beach. Mr. Doney stated that this is where the Town needed to issue an amended zoning in progress memorandum to expand upon antennas and personal communication devices antennas if that were the Council's desire. Mr. Doney said that an article in the Miami Herald reported that Davie, like many municipalities, was considering a deal negotiated by the Florida League of Cities in which an Atlanta company, CityTel, would build and maintain wireless towers for multiple users. That deal would cut down on the total number of towers dotting the landscape and give cities and the League a cut of the revenue.

Mrs. Smith stated that what staff is trying to find out from Council is whether it was the intention to limit antennas as well as towers. Mr. McDonald stated it was his intention, as a member of the Council, to limit antennas as well as towers. Mr. Shaw agreed with Mr. McDonald.

Mrs. Smith said that she took Mr. McDonald's statement as a motion, and that Mr. Shaw's agreement would be a second to the motion. Mr. Shaw stated that he would like to consider that the limitation of antennas be for personal communications or telecommunication purposes rather than for broadcasting. Mr. Shaw said he did not want to tell residents that they could not put up a tv antenna.

Mr. Jakubiak clarified that personal communication services are digital technology, which is new technology. This is why any ordinance that addressed antennas before did not deal with personal communications.

Mr. Shaw stated that what Mrs. Smith is looking for is a practical use of what it means and felt the way to say this was that antennas that were going to be used for cellular telephones as we know them today, and pagers, would be the simplest way to say what personal communication services were.

Mr. Castro stated that he knows that this is new technology; however to this date the Building Department has not had a problem with antennas. Staff's concern has been with communication towers and the possibility of having one or more towers in the Town and the appearance they would have dotting the landscape of the Town of Palm Beach.

Mrs. Smith stated that by the motion and second before the Council now, antennas are now covered by the zoning in progress.

On roll call, the motion unanimously carried.

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

Mrs. Smith stated that Council is in receipt of a memo from Mr. McLendon, Chairman of the Water Committee; however, he was not able to be in attendance today as he had to attend a funeral. Mrs. Smith suggested that a Special Town Council meeting be set for Wednesday afternoon upon Mr. McLendon's return to discuss these matters in depth

Mr. McDonald made a motion to call a Special Town Council for Wednesday, March 27, 1996, at 3:30 p.m. The motion was seconded by Mr. Shaw. On roll call, the motion was unanimously carried.

VI. ANY OTHER MATTERS:

There were none.

VII. ADJOURNMENT:

There being no further business to discuss, the meeting ws adjourned at 3:35 p.m.

Mary A. Pollitt, Town Clerk