**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MONDAY, MARCH 22, 1999, PURSUANT TO SECTION 286.011(8), FLORIDA STATUTES**

## I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting was called to order at 9:10 a.m. in the Town Council chambers by President Lesly Smith. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilmen Sam McLendon and Leslie Shaw (Councilman Shaw arrived late). Councilman Jack McDonald was absent. Others attending the meeting were Town Manager Robert Doney, Town Attorney John Randolph, Public Works Director Al Dusey, and Town Clerk Mary Pollitt.

## II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt, and President Smith led the pledge of allegiance.

## III. APPROVAL OF AGENDA

President Pro-Tem Wyett made a motion to approve the agenda. The agenda was seconded by Mr. McLendon and carried unanimously.

## IV. COUNCIL PRESIDENT SMITH ANNOUNCED:

**A. PURSUANT TO SECTION 286.011(8), FLORIDA STATUTES, THE TOWN COUNCIL IS ADJOURNING AND COMMENCING A CLOSED DOOR ATTORNEY CLIENT SESSION FOR THE PURPOSE OF DISCUSSING SETTLEMENT NEGOTIATIONS AND/OR STRATEGY RELATING TO LITIGATION EXPENSES IN THE CASES OF TOWN OF PALM BEACH VS. CITY OF WEST PALM BEACH, CASE NO. CL-97-7726 AJ, AND TOWN OF PALM BEACH VS. CITY OF WEST PALM BEACH, CASE NO. CL-98-10711 AJ**

**B. THE ESTIMATED LENGTH OF THE SESSION IS APPROXIMATELY ONE HALF HOUR TO ONE AND ONE-HALF HOURS**

**C. THOSE PERSONS ATTENDING THE SESSION ARE: MAYOR PAUL R. ILYINSKY, PRESIDENT LESLY S. SMITH, PRESIDENT PRO-TEN ALLEN S. WYETT, COUNCILMAN SAMUEL C. MCLENDON, COUNCILMAN LESLIE A SHAW, TOWN MANAGER ROBERT J. DONEY, TOWN ATTORNEY JOHN C. RANDOLPH, AND COURT REPORTER FROM LEY & MARSAA COURT REPORTERS, INC.**

**D. ATTENDEES RETIRE TO CONFERENCE ROOM AT 9:15 A.M.**

## V. RECONVENE COUNCIL MEETING

President Smith announced the closed door session was terminated and reconvened the regular Town Council meeting at 11:10 a.m. in the Town Council chambers.

**A. DISCUSSION AND CONSIDERATION OF CITY OF WEST PALM BEACH'S PROPOSAL FOR WATER USE AGREEMENT**

President Smith said the Town Council would be considering the terms and conditions presented to the Town Council at the March 19th Town Council meeting by West Palm Beach Mayor Nancy Graham.

President Smith suggested reviewing the list of terms and discussing each one.

NO SURCHARGE - $2.22 CURRENT RATE:

WEST PALM BEACH PAYS FOR THOSE SPECIFIC NON-RECURRING IMPROVEMENTS IN TOWN AMOUNTING TO $15M TO $18M

TOWN TO OWN ALL ASSETS IN TOWN (INCLUDING CROSSINGS) AT THE END OF THE 30 YEAR PERIOD

WEST PALM BEACH WILL PAY FOR ANNUAL TOWN R&R AT 6% FOR 5 YEARS AND 5% FOR THE NEXT 25 YEARS OF ANNUAL TOWN REVENUES

WEST PALM BEACH WILL INSTALL CAPITAL IMPROVEMENTS UNDER MUTUAL AGREEMENT

Pat Brown, Attorney for West Palm Beach, addressed the Town Council and said the City's proposal was that there would be an annual capital improvement program, but first there would be the big capital improvement program then there would be an annual R & R program. These would be done by mutual agreement. The first set of improvements of the $15 to $18 million is part of an existing program which he thought the Town and the City were close to agreement on.

Mr. Brown said he thought the phrase, "directed by the Town" referred to the Town's ordinances regarding seasonal work which the City of West Palm Beach has agreed to abide by. Mr. Brown said he thought the two parties did not disagree on what the projects are, but it was more of a scheduling item at this point. Mr. Brown said the City did not agree with the language "directed by the Town" and thought it would be "by mutual agreement".

President Smith continued with the list:

TERM IS 30 YEARS

OTHER TERMS TO BE SET FORTH IN THE TERM SHEET EXCLUDING THE PAR 3 GOLF COURSE

THE CITY OF WEST PALM BEACH IS THE EXCLUSIVE PROVIDER OF WATER FOR THE TOWN WITHOUT A SURCHARGE FOR 30 YEARS

President Smith questioned if the language should be "no surcharge - ever".

Mr. Brown replied that the Mayor agreed at the presentation on March 19th that in the event that the Town wished to renew the agreement, it would be based on certain criteria. He believed that the criteria would not include a surcharge, but she was just attempting to reserve any other future criteria that might be imposed by regulation or by other governments. Mr. Brown said he thought the Town's and the City's two consultants have agreed on what should go into a rate base and suggested the language be "such other criteria that may be required by regulatory approval".

Mr. Randolph clarified that the Town and the City would have to draft some language the would be acceptable to the two parties.

Mr. Brown said he thought the language could be incorporated into an agreement although they would not know what the rate would be, because it would be based on a financial analysis, but the criteria would be known. Mr. Brown said the City's consultant and Mr. Hartman have agreed on the criteria.

Mr. Wyett asked why the 30 year concept, used prior to the adoption of the surcharge, of using the same water rate for both the City and the Town would not be used for an extension?

Mr. Brown replied that was brought up earlier and Mayor Graham agreed to that rate; however, the Town had mentioned it might be interested in wholesale rates at that time. Mr. Brown said the City would be happy to continue with the retail rate or entertain the wholesale rate with a list of criteria..

Responding to a question from President Smith, Mr. Brown said the two consultants had agreed on a list of relevant criteria and requested that Mr. Dusey verify that statement.

Mr. Dusey said there was agreement on the types of things that go into the calculation of a bulk rate.

Mr. Brown said the numbers are not specifically agreed on, but the elements would be known.

Mr. Wyett asked Mr. Brown if it were correct that the City would meet the County's offer of 4 - five term renewals.

Mr. Brown said he thought Mayor Graham agreed to renew the agreement for that time period with no surcharge.

Mr. Wyett said he did not want to be in the position of negotiating in the future when the contract had expired. He said he would like to see a provision in the contract that five years before the contract ends, negotiations would start.

Mr. Brown said his understanding of what Mayor Graham talked about at the March 19th meeting was if the Town wanted to add a further bullet to this proposal, the City could agree to the Town having the right for 4 - five year extension periods for continuation under the current arrangement (the same terms and conditions) but the Town could also negotiate a different rate, on a wholesale basis, subject to the criteria.

Mr. Randolph said that was all right; however, the Town has an ordinance that states the Town cannot enter into a franchise for an excess of 30 years, and if the Town does, the franchise is void. He advised if the Town enters into this agreement, the ordinance may have to be changed later. He said that for purposes of these negotiations he understood that was an acceptable offer, and he would have to work out the details with the City of West Palm Beach.

Mr. Wyett said he understood that Mayor Graham had agreed that the Town would have the right to operate a reverse osmosis plant on a small scale in the event there was an emergency to make up the difference in needed water capacity if the water was cut back from West Palm Beach.

Mr. Brown said he thought that would be all right.

Mr. Wyett questioned if the City of West Palm Beach would be willing to reimburse the Town for the costs of replacing water pipes during the litigation period.

Mr. Brown replied he thought the Mayor felt that the offer to the Town was very aggressive in terms of price, and for the next three years, the capital improvement plan will be built into the current rate. He said that means the City is already under a very serious crunch, and Mayor Graham said she did not agree to that. Mr. Brown said he did not have the authority to agree to that.

Mr. Brown mentioned that under the second bullet on the proposal - CITY PAYS FOR THOSE SPECIFIC NON-RECURRING IMPROVEMENTS IN TOWN AMOUNTING TO $15M TO $18 MILLION, AND $17 MILLION IN R& R PROJECTS...he would not say that number is $17 million because the number is completely dependent upon the rates.

Mr. Randolph acknowledged that the City had presented an exhibit with those numbers as part of the example used in the exhibit.

Mr. Brown said the average over the next three years, based on current information, is more like 2.6%. When these rates are compared to the County's rates, the Town should remember that the City has more than 20 square miles of surface water that feeds into the M canal and eventually to the plant. He said the City's entire water supply is based on surface water, and there are no wells involved; although the City has a well back-up system. This has only been used for a testing period and was put in due to an extreme drought condition in the early 90's. He noted that the City is not dependent on wells, and he questioned the future dependency on wells.

Mr. Brown said that the City has had rate increases over the years, but part of that has resulted in improvements to the water plant. He noted that a $25 million re-use project is being implemented currently in the water catchment area that will further expand the capacity of the surface water program.

Mr. Brown continued that an $8 million Renaissance program has started which will take the storm water from a very large downtown area, clean it, and put it into the Lake which also furthers the capacity for the surface water. Some of these monies are going toward enhancing and securing future planning for the source of water which will involve grants from other government sources. He assured the Town that the future is very secure as far as a supply of water is concerned.

Mr. Randolph said he wanted to clarify the issue of $15 to $18 million projects being financed by bond issues. He said at the last meeting, the City indicated that the $15 to $18 million will be paid for through present rates, and there will not be a bond floated where the Town's residents will be paying 37% of that bond issue.

Mr. Brown reported that Mayor Graham said this will be built into the current rate increase, and there will be no impact during the next three years from that bond issue. There will not be a special rate increase for that bond issue; however, the City cannot tell what will happen in the future–after three years.

Mr. Randolph reiterated that the current water rates would take care of the $15 to $18 million. He noted that the $2.22 rate shown on the proposal is only an example and the language that would be in the contract would be that the rate paid by the Town customers will be the same rate as paid by the City customers.

Mr. Brown explained the figure, \$2.22, was put in the proposal because the Town's consultant had made a point of the \$2.22. He said the actual numbers are different and could be \$2.23 or \$2.26.

Mr. Randolph replied that language would be included to state that no change in the proportionality of the rates unless forced to by operation of government.

Mr. Brown replied the City had agreed to that clarification language.

Mr. McLendon said he would hope that non-water related expenses would not be included when rates were adjusted. Mr. McLendon asked if there were a way to minimize the major capital expenditures that would be part of the major westward expansion project? He said that would be a large part of capital needs and had no relationship to the Town's rates.

Mr. Brown responded that the piping along Okeechobee Blvd. was put in during the last five years with the developers' agreements. This is not part of the bond issue and is already completed.

Mr. Brown said the City was recently the subject of an audit that included non-water related expenses, and the City is striving to categorize carefully those things which are used for the production of water. He said they do have a utility revenue system and there are some costs such as the Loxahatchee Nature facility that are connected to the system. He emphasized that the items that are not connected with the system are being scrutinized and are being moved out of that category.

Mr. Brown said the Loxahatchee Nature area is a 501(C3) project and will be supported by a fixed annual contribution to it. He said he would clarify that matter.

Responding to a question from Mr. McLendon concerning the amount of water revenue in the City's General Fund, Mr. Brown said he could provide that information.

Mrs. Smith said the Loxahatchee Preserve is already a 501 (C3) and they are currently running an endowment fund drive. They will be totally independent and not part of the budget.

Mr. Wyett questioned the condition of the system in West Palm Beach as well as Palm Beach's system and the amount of money and bond issues that it will take to fund both projects.

Mr. Brown responded the storm water issue is addressed by West Palm Beach's master plan and will be included in a list of capital projects that will require a bond issue. He said that has no impact on the water rates and is based on a separate fund, equivalent residential units, and a formula that impacts only the City of West Palm Beach property owners. Any future bond issues to keep the system up will obviously have to go to the rate base.

Mr. Wyett said the estimate of the rate base is possibly on the conservative side because the cost of improving the water system is unknown.

Mr. Brown said the City has not forecast beyond five years, although the proposed \$33 million bond issue will benefit the Town in that some of the pipes to the feeder system will be updated as well as the plant.

Mr. Wyett said he understood where Mr. Brown was coming from, and as long as the total cost of the City and the Town's repairs does not exceed \$47 million that will be a fair deal, because the Town pays 38%.

Mr. Brown said he thought the figure was approximately \$50 million.

Mr. Dusey said he attempted to analyze the material that came in on Friday, March19th, and his comments were to assist the Town Council with a decision regarding the water issue. He said his comments may seem negative, but they are not intended to be. He was attempting to provide a level playing field to allow the Council to judge each of the alternatives on their own merits.

Mr. Dusey said the City offer is a retail offer. There was talk about a rate structure that would charge Palm Beach residents for water service for the first thirty years, and he said he had trouble visualizing some legal way to do that, because the Town is not providing any of the services. Mr. Dusey said the City could not take \$15 - \$18 million dollars out of the system without making up the revenue somewhere, and to say that the Town's capital improvements are covered by existing revenues and thinking that it will not impact on future revenues is not realistic.

Mr. Dusey said if the items listed in the bond issue as priorities are deferred, they will have to come back sometime, because if they were that important, they cannot be ignored. He said there will be rate increases due to the improvements in the Town and that has to be added to the base rate. The residents will pay for this in the base rate. When the City talked about R & R, they talked about an average increase of 3.5% per year, and when they talked to Gerry Hartman about doing proforma, they talked about a total of 50% increase in the thirty years. He said the rates will go up, but that does not mean it is a bad offer. He believed the rates will increase fairly rapidly, because there are great needs in the system, both in the Town and in West Palm Beach.

Mr. Dusey said the Town should be prepared to come up with money for the R&R fund during the thirty year term for future improvements to the Town's system. The percentage of revenues set aside for the R&R fund will not be sufficient to maintain the system. According to the proposal, if additional capital improvements are to be made, the Town will pay for those, and the Town should be prepared to pay sometime in the future if those are needed.

Mr. Dusey said the ownership of capacity in the West Palm Beach system was a starting offer and means a lot to the Town if that capacity is marketable to the Town or to someone else. Palm Beach County is marketable because there is a commodity rate tied to it that allows the Town to sell both water and capacity during the thirty year period. Similarly, the West Palm Beach system only has value if the Town can sell the capacity with a commodity charge. He recommended that if the Town Council were inclined to approve the West Palm Beach proposal, rather than come up with the kinds of things that go into a bulk rate calculation, the rate should be fixed to something that is less subject to interpretation. He suggested thAT it could be fixed to the County bulk rate in 30 years with a kicker on it i.e. 20% or some other figure that would be negotiable or the lowest bulk rate the City of West Palm Beach would be offering. He said at the end of the term of the agreement, the Town will own the pipes and without a method of determining an equitable bulk rate, that may not work well for the Town. Mr. Dusey said there is a lot of interpretation that could be applied in 30 years as to how that rate would be determined, and the Town should not have to pay as much for water if they own the pipes than if they did not own the pipes.

Mr. Dusey said the West Palm Beach proposal will be less disruptive for the Town. From the staff perspective, there will be a lot less to do than if the Town Council accepted the County's offer.

Mr. Wyett said that sometime around the 20th year, many of the pipes in the Town that are all right now will age out and need replacement. He said one of the things that the Town needs in the contract is the right to pass through some of the costs–if the Town elects to pass those costs through to the water rate rather than putting it into the General Fund rates.

Mr. Dusey said the advantage of a capital improvement program where the costs are passed through to the rates is that all of the rate payers share in the cost just as the Town will be sharing in the City of West Palm Beach's costs in the next 30 years.

Mr. Wyett said the Town should have the right to pass through the costs if a future Town Council would want to do that. He said it should be in the contract, and it is a no cost feature for West Palm Beach.

Mr. McLendon said he would differ on that issue with Mr. Wyett because the City is responsible for proper maintenance of the system until the end of the 30 years.

Mr. Wyett said the contract stated otherwise: after the City spends $15 to $18 million and after the R&R 6.5 formula, if the Town wants things done above and beyond that, the Town will pay for it.

Mr. Randolph said he thought the reason to set the R&R aside was to assure the Town that the R&R would be there so the Town could force the City to do it. He said he wanted to be sure he understood that. He said that did not mean that if above and beyond the R&R, the City decides (not a direction from the Town) that additional capital improvements need to be made in order to bring the system up to standards, that the City would not make the improvements.

Mr. Brown said the problem was the City was not able to spend the City's rate payers system wide to improve pipes that the City does not own and have future bonded indebtedness. He noted that language that was stricken out of the second bullet was an attempt to address that issue. Mr. Brown gave the example of pipes that should be repaired at the end of 20 years and if the Town wanted to pass that expense on to the residents for pipes that the Town would own in 10 years, the City would not have a problem with that; however, if the Town wanted the repairs system wide then the City would have to extend the franchise agreement so it terminates at the end of the bond issue, because the City cannot be obligated for payments for someone else's pipes. The City is not allowed to do that.

Mr. McLendon pointed out that the Town technically would not own the pipes at that point but would shortly.

Mr. Brown responded that would have to be amortized.

Mr. Dusey said if the Council had an inclination to approve a retail agreement with the City, he would suggest that after the 30 year term, the City be required to provide bulk service at least for five years at whatever rate is set in the agreement.

Mr. Brown replied the City's position is they would continue with the Town as a retail customer for five year periods for the Town to option into that. However, if the Town wants a wholesale rate, that rate cannot be fixed today for 30 years from now. He said that no rate payer would consider that to be responsible, and he did not think the City's rate consultant would let the City do it.

Mrs. Smith said the City could come up with a formula.

Mr. Brown responded the City could list criteria and devise a formula. He said if the Town wants that to be a negotiated item, he believed that could be done as long as it is subject to the regulatory revisions.

Al Flamm addressed the Council and asked for clarification regarding "owning 12 million gallons per day of capacity at the end of 30 years" really means. He said there are two possible interpretations, and he heard only one of them at this meeting. He said he was under the impression that the Town, at the end of 30 years, owned the capacity. The other interpretation is that the Town has, at the end of 30 years, the right to buy that capacity at some yet to be negotiated bulk rate. He said Mr. Dusey addressed the bulk rate and the question is does the Town end up owning the 12 million gallons of capacity, and, if so, the bulk rate is the inappropriate rate to be discussing because the City of West Palm Beach water system is a profit center and the difference between their cost and bulk rate is profit. If the Town owns it, the Town should be receiving the product at cost and not at a bulk rate which is a wholesale number that includes profit.

Mr. Brown replied the City is prepared to say the Town has a capacity entitlement to the City's water plant to meet the Town's needs during the term of the franchise, and if that is 6 million gallons per day or whatever amount the day's peak is, that is what the Town will get. Mr. Brown said the plant can produce 47 million gallons per day, and currently they are running at 30 million gallons per day. The City has the capacity to serve the Town, and the Town is more than 1/3 of the consumption. Mr. Brown explained the City is not selling capacity to the Town that can be sold in 30 years--that is not what this contract is about, and it is still a retail contract. However, if the Town wants to continue the contract, the City will do that on a retail basis with the same capacity entitlement and if the Town wants to go wholesale, the City will agree to a formula.

Mr. Flamm said his question was based on a quoted statement from Mayor Graham, that she wanted to make this as close to the County's proposal as possible. Mr. Flamm said his impression was that the Town would end up owning 50% of the capacity expansion in the County and what was described are two very different things.

Mr. Brown replied he had stated the City's interpretation of the County's agreement, and this was what was agreed on last Friday, and he did not think that any other interpretation is reasonably inferred from the County agreement.

Mr. Flamm asked if some clarification were forthcoming would the City consider matching the County's offer?

Mr. Brown replied the City would not, and they were not going to get into a bidding war at this point. He said the City has put together a very aggressive proposal on the table and will live by it. Mr. Brown said this can be presented to the City Council tonight (March 22nd).

Mr. Flamm asked if the City accepted the fact that the contract may not be the same as the County's ownership provision.

Mr. Brown addressed President Smith and said a specialist, Mr. Kosky, was present at the March 19th meeting and read the agreement. Mr. Kosky did not interpret that issue as property ownership but capacity entitlement for the term of the agreement.

President Smith said that was the interpretation on Friday and the Town did accept that.

Mr. Flamm questioned the issue of capital improvements that were made strictly for expansion and if the City had any imminent plans and was it possible that there will be expansions during the life of the contract?

Mr. Brown said he did not have a crystal ball, and he just did not know. He said it could be before the franchise is over, the State will pass a statute putting all of the water under the control of the South Florida Water Management District and nobody would have a water production facility. Mr. Brown said the City is not precluded by the agreement from expanding the system. If the system were expanded, obviously there would be capital improvements, and he had no predictions at the moment.

After Mr. Flamm discussed potential examples with Mr. Brown regarding expamsion, Mr. Brown said the City's current policy is to have the developer pay costs related to expansion, and the City is unable to project the future and does not wish to bind themselves not to be able to expand the system if it becomes prudent to do so. Mr. Brown said it could wind up being a saving for the rate base over a period of time if unused production could be used.

Mr. Dusey asked to read Section 11, Assignment of Permanent Bulk, Potable Water Capacity from the proposed Palm Beach County/Town of Palm Beach provision of bulk potable water service.

"Subject to commencement of permanent service, the Town may upon written notice to the County sell, transfer, or assign any portion of said water capacity at any time to another community water system without additional connection capital or capacity fees assessed to the Town or the assignee. In such instance, the community water system shall pay to the County 100% of the then current wholesale potable water commodity fees and 40% of the then current base facility fees as set forth in the UPAB."

He questioned how any attorney could interpret that any differently than the Town could sell this capacity to someone else in the future at any time and said that was beyond his comprehension. He said he did not understand why the City maintained that interpretation–either the Town has the capacity right to sell in the West Palm Beach system after 30 years or the Town does not.

Gary Dernlan, Director of Palm Beach Countywide Utilities Department, addressed the Council, and said he wanted to clarify, as Mr. Dusey stated, that the intent of the County and the intent of staff is to develop language that would allow the Town to own the capacity in perpetuity and that has been done. Mr. Dernlan said if the attorney feels otherwise and would like to modify the language, that would be fine; however, it was very clear that the County's intent from day one, and will continue to be, is that the Town will always own this capacity in perpetuity. He said this was not a change in the County's position.

Mr. Doney mentioned the tight time schedule with the City of West Palm Beach holding a Commission meeting this evening. If the Town Council directs, based upon the offer as modified, that this matter be resolved before this evening, then that is the direction the Council should go. Mr. Doney said the Mayor and Town Council wanted to make sure that all issues were considered in the tight time frame for the ultimate benefit of the consumers.

Mr. Randolph said many papers and modifications have passed back and forth. He said it was his understanding that the purpose of the meeting tonight is so that the City can have a good faith response from the Town as to how it responds to the major items that have been discussed. He cautioned the Town Council against the acceptance, if a motion is made, as being in the form of a contract. He did not think it was the City's intent, if the offer was accepted today, to take the position that the law suits are settled and everything has been resolved. He said he would not feel comfortable entering into that type of situation when the Town does not have a contract in front of them. He said he saw the 'back & forth' sessions as being an attempt to bring the parties together in good faith on the major items, and in the event there is an indication from the Council that there is hope to resolve the matter by way of a contract within the next 30 days, along the lines that have been suggested, that is all there is. It will be a good faith response from the Town and a good faith indication from the City that this is the direction that the City wants its staff to go within the next 30 days to come up with a contract.

Mr. Randolph said there are items on the bullet sheet which are listed under additional terms, A through S. It states the following additional terms have been previously included in the proposed drafts of a franchise negotiated by the parties, but although both sides have come up with wording regarding those things, the parties continued to go back and forth with the wording and those have not necessarily been resolved. He said there will probably be future discussion regarding those issues and hopefully no major disagreements with any of them. Mr. Randolph said he would not want any action that the Town Council might take to be interpreted by the City as an acceptance of a contract and acceptance to terms that are going to force the Town to drop the pending litigation.

Mr. Randolph said he hoped any action at this meeting would be interpreted as a good faith response to any offer that has been made. Mr. Randolph added that he would expect if the Town made that good faith response, other than the staffs meeting to work out contracts, that the Town would not continue to negotiate with the County or anyone else regarding major terms that might be better than offered by the City.

Mr. Brown said he agreed with 95% of Mr. Randolph's remarks, and the City saw this as a process of working together very aggressively over a few weeks to try to bring a conceptual approval forward. Mr. Brown said this is non-binding.

Mr. Brown said the City of West Palm Beach has a changing government and what the administration is looking for is some conceptual approval form their body as well. Mr. Brown said that does not bind the future body; however, he is looking for a conceptual approval of the material terms from the political will of the Town's body to be presented to the political will of the City's body.

Responding to a question from Mr. Wyett regarding the R&R fund, Mr. Brown responded the City has casualty insurance that would cover disasters, however, if something of a less drastic nature occurred, he thought each issue would have to be addressed as it arose.

Mr. Brown went over some of the bullets on the Alternative City Retail Proposal as follows:

- NO SURCHARGE - SAME RATE AS CUSTOMERS INSIDE THE CITY ($2.26 CURRENT

RATE)

- CITY PAYS FOR THOSE SPECIFIC NON-RECURRING IMPROVEMENTS IN TOWN AMOUNTING TO $15 MILLION TO $18 MILLION
- STAYS AS IS (may leave in language concerning debt service)
- STAYS AS IS
- CITY WILL INSTALL CAPITAL IMPROVEMENTS UNDER MUTUAL AGREEMENT.
- TERM IS 30 YEARS AND MAY BE EXTENDED BY FOUR FIVE-YEAR OPTIONS TO EXTEND EXERCISABLE BY THE TOWN ON THE SAME TERMS AND CONDITIONS AS THE 30 YEAR TERM (RETAIL AND NO SURCHARGE) WITH AN OPTION TO GO WHOLESALE BASED UPON A FORMULA
- OTHER TERMS TO BE AS SET FORTH IN THE TERM SHEET PREVIOUSLY PROVIDED EXCLUDING ALL GOLF COURSES INCLUDING THE TOWN-OWNED PAR 3 GOLF COURSE
- STAYS THE SAME
- RESTATEMENT OF ANOTHER BULLET POINT
- ANY FUTURE CAPITAL IMPROVEMENTS THAT THE TOWN DEEMS NECESSARY TO MAKE, THE TOWN CAN MAKE AND THE CITY WILL AGREE TO ADD IT TO THE CUSTOMER RATE BASE IN THE TOWN.

Mr. Shaw said the R & R is not sufficient.

Mr. Brown said the City could not address the issue from current cash flow and the issues cannot be bonded unless the term is extended.

Mr. Shaw noted that one of the City's sheets indicated that an 8% R & R was being used and what the City is guaranteeing to the Town is the proposed 6% and 5%. Since 8% is part of the rate structure, if there was a need to go the 8% level, would the City be willing to do that from the standpoint of what is defined as R & R?

Mr. Brown outlined the system that serves the Town, and the 3% of what is left deals with the Plant. He said the national standard on R & R is 5% and the City is basically dedicating the entire 5% and giving 6% up front for the reason that the pipe at this point might actually need it.

Mr. Shaw clarified that the 5% and 6% that is being projected will be strictly used for pipes on the Palm Beach side and not for the sub-aqueous maintenance.

Mr. Brown replied it will be used for the sub-aqueous but not for anything land side of the sub-aqueous. Mr. Brown said the monies are dedicated to the Town's facilities and the two parties could come up with something to have a reasonable R & R program that also has a 'rainy day' reserve in it. He said

Mr. Shaw said, considering the needs of the system, he thought there would be a very tight cash flow situation.

Mr. Brown said he need to add another bullet to the previous list as suggested by Mr. Wyett:

- THE ABILITY FOR THE TOWN TO BUILD, AT ITS COST, AN EMERGENCY REVERSE OSMOSIS PLANT BUT ONLY FOR EMERGENCY SERVICE (emergency would have to be defined as a SFWM drought condition)

Mr. Shaw said if South Florida Water Management restricts water, that restriction will not permit the Town of Palm Beach to utilize its own water system.

Mr. Brown said the R-O system could be tied in with the City's system but the stipulation would be that it could only be used in emergency conditions.

Mr. Randolph requested Mr. Brown that when he drafted the term sheet to make sure that the $15 - $18 million will come from the present rates so the Town has the comfort of knowing they will not be paying for that again. The term sheet will also have other changes including specific language that states 'THERE WILL BE NO SURCHARGE DURING THE TERM OF THE FRANCHISE'. He questioned how the old agreement dealt with the issue of non-performance, and that needs to be addressed in the new agreement.

Mr. Randolph said he understood that the City will cooperate with the Town regarding storm sewer projects which may coordinate conflicts between the water and storm sewer systems. The City will also honor the Town's Rights-of-Way Manual regarding construction during season. Mr. Randolph asked Mr. Brown if there were a way to come up with a formula whereby improvements that needed to be done, over and above the R & R, could be done? He said that was the most detrimental thing he saw in the agreement.

Mr. Brown responded that the City had normal obligations that were already in the agreement to maintain the system, but the questions were 'when' and 'how' repairs would be done? He suggested that care would have to be taken with the R & R projects and try to be careful with it. If other situations came up, the City would have to negotiate with the Town.

Mr. Wyett made the following motion: In good faith and with the hope to resolve and in the best interests of the residents of Palm Beach, he moved to vacate the law suit providing the acceptable contract, based on the conversations and representations made at this meeting can be reached and signed within 30 days. He said by making that limitation, he would want to make sure that this situation is quickly resolved and put the pressure on the Town and the City to get it done. As part of the motion, Mr. Wyett requested the City reimburse the Town for the $300,000, or whatever the actual number is, for the pipes the Town replaced, in as much as the contract acknowledges the pipes become the City's property; that a formula be looked at for any costs that are above and beyond the R&R that would be fair to both sides; that the formulas, after the 30 years, be spelled out whether they are retail or wholesale; if the agreement is not signed within 30 days or any extension period which Attorney Randolph feels reasonable that this Council shall meet immediately and shall move in the direction of County or private bids.

The motion was seconded by Mr. Shaw.

Mr. Brown said he thought 30 days was insufficient with a new Commission coming on board. He suggested a period of 60 days.

Mr. Wyett asked when the surcharge would come off if the Town Council agreed to a 60 day period?

Mr. Brown replied the surcharge would be taken off as soon as the agreement is signed.

Mr. Wyett said, if the Council agreed, he would amend the motion to 60 days.

Mr. Shaw asked Mr. Brown if there was some indication at the time a new rate was passed that the rate would not go into effect for a month for the Town?

Mr. Brown said the City deferred that portion of the surcharge that would be applicable to the increase in rate and that expires May 1st.

Mr. Shaw clarified that the rate increase that was effective March 1st does not apply to the 25%.

Mr. Brown responded that the rate increase applies to the Town but the 25% does not apply to the incremental difference in the rate.

Mrs. Smith asked Mr. Brown if the Town were giving the City 60 days to come up with a contract, but this new increase and the surcharge will kick in on May 1st regardless if there is a contract or not?

Mr. Brown said if the City has 60 days, he will go to the Commission and ask for an extension of that extension.

Mr. Randolph said that, from a practical standpoint regarding the litigation which is scheduled on a 4 week docket beginning May 24th, this will abate that, but he wanted an understanding with the City of West Palm Beach that the Town would not be put in a position at the end of 60 days without having filed appropriate motions and without having continued discovery to have to go to trial. He said if these negotiations break down and there is no contract in 60 days, the Town would not be ready to go to trial. He said he wanted to make sure that was understood by all the parties.

Mr. Brown replied the City would be happy to abate it and suggested going to the court with a motion as soon as the City Commission acts on the proposal for an extension of 90 days.

Mr. Brown suggested President Smith should be present at the City Commission meeting scheduled for the evening of March 22nd. He said he would talk to Mayor Graham to attempt to advance the issue on the agenda.

On roll call, the motion carried 4-0 as Mr. McDonald was not present at the meeting.

**B. DISCUSSION AND CONSIDERATION OF POTENTIAL ALTERNATIVES WITH PALM**

**BEACH COUNTY AND PRIVATE VENDORS**

*(Not considered at this meeting)*

**C. DISCUSSION AND CONSIDERATION OF CITY OF WEST PALM BEACH'S PROPOSAL FOR SETTLEMENT OF ABOVE REFERENCED CASES**

*(Not considered at this meeting)*

## VI. ANY OTHER MATTERS

There were none.

## VII. ADJOURNMENT

The meeting was adjourned at 12:30 p.m.

Mary Pollitt, Town Clerk