

TOWN COUNCIL MINUTES OF SPECIAL MEETING HELD ON MARCH 22, 1994

I. CALL TO ORDER AND ROLL CALL: Meeting called to order by President Wiener at 10 AM on March 22, 1994 in the Town Hall Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Wiener, President Pro Tem Weinberg, Councilwoman Smith and Royal and Councilman Shaw. Also attending were Mr. Doney, Mr. Randolph, Mrs. Peters, Mr. Elwell, Mr. Dusey and the Chairman and members of the Beach Cleaning Advisory Committee: Mr. McAllister, Mrs. Schrafft, Mr. Goldsmith, Miss Lambert, Mr. Moffett, Mrs. Bertles, Mrs. Rosenberg and Mrs. Taca.

Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. Pledge of Allegiance was led by President Pro Tem Weinberg.

Invocation

III. APPROVAL OF AGENDA: Agenda was approved with addition of two items under Any Other Matters, (1) Report on the Water Franchise; and (2) Audit for Comcast as Coopers and Lybrand have advised they will not be able to do the audit. Motion was made by Mrs. Smith to approve the agenda with the additions and seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Approval of Agenda

IV. CONSIDERATION OF BEACH CLEANING ADVISORY COMMITTEE FINAL REPORT DATED FEBRUARY 28, 1994:

CHAIRMAN OF THE BEACH CLEANING ADVISORY COMMITTEE BRUCE MCALLISTER addressed the Council noting the Town's staff was a great help to the Committee.

Beach Cleaning Advisory Comm.

He gave a brief overview of what the Committee did and hit the high spots of the Beach Cleaning Advisory Committee's Report. He commented the sessions were conducted in harmony and they are all behind the report, although there were those who thought more strongly on some issues than on others.

He reported they walked the beaches and tried to put together a physical description of what they saw. He knew beaches do change from time to time and from season to season, and this description may be good for only one day only, but it is a roughly accurate description of the continuing conditions on the beaches.

He advised they had discussions on some issues where there were minor differences, and he wished to emphasize the Committee was unanimous on certain conclusions:

Certain stretches of the beach from time to time are a perennial eyesore; and this condition should not be permitted to continue and some action by the Town Council is required to correct this condition. He believed that that feeling is shared by an overwhelming majority of the residents of the Town.

He advised they considered first the possibility of organization and supporting a purely voluntary program to handle this problem. He stated by a large majority, it was the feeling of the Committee that a purely voluntary program would not succeed. He recalled there were members of the Committee who were activists and who had extensive knowledge of the volunteer efforts in the past but basically, the majority of the people on the Committee felt it would be a mistake to rely on a volunteer program and even if they started with a voluntary program, the likelihood would be that it would not succeed and the Town would be faced with another failure in this area.

He reported they then asked themselves what sort of program should they recommend and at first it was thought the Town should state its policy, in clear and unmistakable terms and the clearest way to do this was to institute an ordinance and Mr. Randolph was asked to draft an Ordinance along certain lines that were discussed at a couple of their meetings.

He stated their next focus was on the Town's cleaning Program that would be recommended, and they worked quite closely with Mr. Dusey on this, along with Mr. Idressi, who operates a beach cleaning service, and many of them talked to others involved in cleaning up beaches. He reported a sample program was drawn up by Mr. Dusey and by a large majority vote, that is recommended to the Town Council.

He recalled estimates were furnished which Mr. Dusey initiated in conjunction with the Committee, and it is his personal opinion that the estimates furnished by Mr. Dusey are quite accurate for the levels of cleaning.

Mr. McAllister stated it was his opinion that the cost of the program could be reduced quite substantially with a lower level of effort, combined with some flexibility in that effort.

He hoped that the Committee had furnished to the Council a foundation for the hard choices which the Town Council has to make.

Mrs. Wiener thanked Mr. McAllister and called on the Committee members for their comments.

Judy Schrafft, Vice-Chair of the Committee, addressed the Council, indicating they did have a cohesive Committee which generally agreed, she and Miss Lambert turned out to be the two dissenting voices of the committee, in that they feel the problem is not so all pervasive that it cannot be handled. She has spent a lot of time on the north end beaches and in the last few weeks, possibly because of the west wind, climatic conditions were nothing. She thought that to organize a regular effort on the part of the Town to spend time doing something that is not necessary would really be a waste. She thought the Town could be involved in a volunteer effort, from the point of view, that the Town could supply the necessary receptacles for people to throw away their trash and recyclables. She thought there should be bags available for those who do not clean their beaches, and this wouldn't mean those people who own their beaches as volunteers could appoint someone such as a gardener or a handyman, a teenager, to do this for them. She thought there were other ways to approach this without the Town being involved to a great monetary extent. She suggested they try a voluntary effort before the Town gets into this quite heavily. She knows this has happened in the past as there has been participation on a volunteer basis by various conservation groups. She

recalled school children have come and cleaned the beaches and felt the same type of program could be instituted with Town residents on a regular basis.

Mrs. Schrafft did not think that seaweed was a problem and she knows that medical waste does happen and Miss Lambert is heavily involved in that, but she doesn't believe there is a lot of it, although it does happen. She stated her feeling was they should embark on a voluntary effort with the help of the Civic Association who has offered to help and augmented by the Town in the form of receptacles, bags, and weekly or regularly scheduled pick-up of whatever is found and bagged.

Rita Taca, representing the Citizens' Association South of Sloan's Curve on the Committee, addressed the Council and they are willing to work in tandem with whatever the Council decides to do. She reported at the south end, they have no problems as they have been cleaning their beaches three times a week with good results and also tremendous expense. She has polled some of the condominium presidents and the thought was that the south end would be happy to have the Town take over the beach cleaning.

Mimi Lambert, a member of the Committee, addressed the Council indicating she was against machine cleaning of the beaches because of medical waste being mixed with the seaweed. She would like to see a volunteer clean up to save the Town money. She was against removing the seaweed as it is an important part of the ecology of the beaches and contains food for crabs and birds.

Gerry Goldsmith, a member of the Committee, addressed the Council noting there was a difference of opinion on the Committee, but the majority definitely felt an organized Town-supervised effort was needed to keep the beaches clean and this would take some form of mechanical help. He advised it is a 12 month problem as it can be cleaned up one day and then the next, it would not even look like it was cleaned. He asked them to consider this as a year round program as it is a continual problem for all of them.

Anne Cutler, Dunbar Road, addressed the Council as a resident pointing out she lives on the Ocean and her beach has now become the public beach and has been used as such for a number of years. She thought it would be wonderful if the beach cleaning could be done by the Town. She commented she had a beach which is very visible all along that stretch of road and accessible, so people do use it and it is a disgrace, and she would appreciate any help that is possible.

Bill Hutcheons of the Pine Job Environment Education Center addressed the Council stating he has been involved with volunteer efforts to clean the beaches in the north end. He knows there is a deadly tide of man-made garbage, and this is a threat to wildlife and to humans. He advised however there is other flotsam which washes up which is important to wildlife and helps the beaches. He reported sandy beaches are one of the harshest environments on earth as they are bombarded by intense solar radiation, pounded by tides and waves, and the plants and animals which live there have adapted to these conditions, however, both plants and animals rely on the tidal surge of organic nutrients in the form of seaweed and the sea food which comes in with the seaweed, such as shrimp, crabs and small fish and this supplies an intricate food web which exists along the beaches. He believed mechanical beach cleaning would be harmful as the machine cannot differentiate between the harmful man-made trash items and nature's life giving organic debris.

Betty Metcalf Jenkins, founder of the Coral Reef Society, addressed the Council, and concurs with what has been said by Mrs. Schrafft and by Mr. Hutcheons. She has tried out the idea of volunteering and is primarily interested in the environmental teaching of youth. She told of college students volunteering to clean up the beach and then they had a slide presentation and a short education series on the loggia of Mrs. Cutler's home and she thought that type of thing should be pursued. She proposed instead of machines, to which she is opposed, they try an experimental period of using volunteers for perhaps six months and she would be willing to organize it with other people, and it could be an educational thing for a volunteering team. She felt the seaweed was a part of the ocean as it comes in on the tide and then goes back and if there are things in it, the litter can be removed and the seaweed should be left.

Christine Peretta, Palm Beach County Department of Environmental Resources Management, working as an environmental analyst also is a biologist, addressed the Council noting she is here in the capacity of providing additional information for the Council. She stated she is impressed with the Committee's fact finding mission and it appears to her the Committee wishes to recommend the mechanical beach cleaning and asked if that was correct? Mrs. Wiener responded if she read the report, she would notice there were figures provided for doing it both ways. Ms. Peretta stated she wished to let them know the pros and cons of beach cleaning, and some of the problems they have run into. She advised the good points of beach cleaning is it is a service provided for oceanfront property owners and beach users in general, is the removal of trash, medical waste, etc., and the weed debris. She found that the mechanical cleaning does remove pioneer species which grow on the beach and produce runners and it prohibits the pioneer plant from spreading. She stated buffer zones have been implemented to try and keep the tractors a distance from the plants and during sea turtle season, the State and herself have worked together to implement a program which would keep the beach cleaners off of the nesting areas and this has been done with moderate success.

Ms. Peretta stated they would be happy to provide any additional information that may be needed in order to reach a decision. She noted in the summer time the weed debris does dry up and blows away rather quickly, so if the weed is the issue, they should do mechanical cleaning outside of the turtle season. She thought there should be hand removal and the weed line be allowed to remain.

Mayor Ilyinsky asked Mrs. Schrafft if she believed the Town could influence enough people to have a voluntary effort to clean up the beaches to which Mrs. Schrafft responded she thought at least it should be tried. She thought the people who cared the most about the way the beaches are, should be the ones who should make the greatest effort in solving the problem and it should not be dumped onto some agency to have the beaches cleaned.

Mayor Ilyinsky asked Mrs. Smith how she handles the cleaning of her beach to which Mrs. Smith responded she and several of her neighbors clean the beaches, and sometimes it has to be done on a daily basis. She stated they can walk through the Estate section of this Town and see some of the most vile garbage on their beaches and she is sure they would be very happy to have the Town remove the trash and debris from their beaches. Mrs. Schrafft thought that is why she felt an ordinance might be the way to go. Mrs. Smith believed the Ordinance could be there even with a volunteer effort, and asked if the Civic Association offered to oversee the entire volunteer program to which Mrs. Schrafft responded she did not think so, noting they offered their services in the instigating

of an effort and specifically the Adopt A Beach program. Mrs. Smith thought they were going to do the whole volunteer program to which Mrs. Schrafft responded that was not so. Mrs. Smith felt volunteers are only as good as those who supervise the program and who would be out there in August when it is hot, would not be those people as they will be in the mountains.

Mrs. Schrafft stated she has always stated that the beach from Root Trail to Wells Road is the most visible and has the most traffic in Town and the one most deserving of help and that is Mrs. Cutler's beach. She thought the rest of the beaches in town are used by residents and not by the people who stay in the hotels. She stated this was the only beach she would recommend be cleaned by the Town. She thought the rest of the clean up should be almost on a demand basis, as if there is something noxious that residents cannot move themselves, then the Town should help them out, such as a beached whale.

Beach
Cleaning

Mr. Weinberg believed a volunteer program would be wonderful on a year round basis with over ten thousand tidal surges per year and the Town Council was not opposed to volunteers, and he believed there should be a Town Ordinance which would call for all beaches to be kept clean, and public beaches would be the responsibility of the Town and all private beaches should be the responsibility of those who own them, and Code Enforcement should handle those who ignore the clean beaches requirement.

Baylie Rosenberg of the Committee addressed the Council who did not think today was the time to review everything that has been done by the Committee during the last few months. She believed all of the subjects were discussed at their Committee meetings and they all have the report and those things should not be rehashed. She believed the majority opinion was that a volunteer effort has never been enough and will never be enough and they should encourage it, but something more has to be done by the Town.

Lisa Bertles, a member of the Committee, addressed the Council pointing out she was charged with speaking to a number of the different Beach Associations and she did not find there was much of a volunteer positive movement at all, as the people she spoke to felt the problem has been overwhelming and the tide comes in twice a day and it is not just trash that people have left behind but the trash that is brought in by the tides. She believed the trash left by people could be handled but they can't handle what is replenished on a daily basis. She stated people in the associations are seasonal and some are elderly and they can't clean the beaches and her position is that it needs to be Town organized to do the proper job.

A ten minute break was taken. Mrs. Wiener reconvened the meeting.

Chip Moffett, a representative on the Committee for the Palm Beach Civic Association, clarified that the Civic Association is very much behind the report that was written, and if there was a volunteer effort, they would be glad to go along with it.

Mrs. Wiener thanked the Chairman and the Committee and announced they would now be in Executive Session.

Mrs. Smith thought the report shows what can be done quickly as the Committee was asked to produce a report within 45 days and they did so and she thanked all of them for their time and effort and diligence. Mrs. Wiener agreed noting everyone appointed had an extreme interest and because there was a time limit, this has been the singular committee that has done the most in the least amount of time and most thoroughly.

Mayor Ilyinsky thanked Mrs. Smith as this was her idea.

Mrs. Smith asked the Town Attorney if he felt that a new ordinance would be better or did he feel that what we have on the books would cover it or should it be amended? Mr. Randolph responded he attempted to incorporate a portion of the old ordinance in the draft that was prepared and it needs to be amended along the lines of the draft that he has submitted. He pointed out there is nothing particularly relevant to the timing as suggested, as it was put there as a jumping off place. He believed 48 hours is probably too short a time and as a matter of fact, the Committee indicated that was too short, however, he thought an Ordinance along these lines, whether they go on a voluntary basis or whether the Town is involved, is necessary in order to advise the property owners of their responsibilities in keeping their private properties cleaned.

Mrs. Wiener believed if it was to be very clear, they needed to amend what they have or have a new Ordinance and asked the Council their thoughts on whether this should be handled directly or refer to Ordinances, Rules & Standards.

Mrs. Smith thought it should be handled directly by the Town Council. Mrs. Royal pointed out there are some sections in the new ordinance which cause her concern, such as the time limit which is 48 hours and she felt that was rather harsh.

Mr. Randolph responded everyone agrees that is so, and he would come back with another period of time. He thought part of the intent of this ordinance was to recognize the fact that in order to keep the beaches clean, they could not allow the conditions to exist for too long a period of time prior to the time the Town would clean it up. Mrs. Wiener thought it should be somewhere around fourteen days.

Mr. Weinberg noted it states that it is a violation to "keep or maintain debris" and some will state they are doing neither, but it got here by the tide or by someone else, and he thought they needed better verbiage.

Mr. Shaw thought on the tide element, they should look into the fact that some of the debris is hazardous material and perhaps they don't want to have that be on the property for fourteen days before it is removed. He had another concern as beaches are defined as on the Atlantic Ocean and he thought they needed to take into consideration also the beaches along Lake Worth.

Mrs. Smith noted in the preliminary report, the Committee mentioned a strip of Lake beach which was on Plantation Road and at the end of Seminole or Atlantic. Mrs. Wiener thought they needed to change the description and add Lake Worth to which the Council agreed.

Mr. Shaw asked if this Ordinance can tie into the existing property maintenance ordinance so this would an extension thereof? Mrs. Smith understood that the Town Attorney felt a separate

Beach Cleaning

Ordinance would be preferable. Mr. Shaw wondered if they should be tied together as if they don't fall under cleaning under the Beach Ordinance, that it automatically would say that they still need to keep it clean. Mayor Ilyinsky felt it was getting convoluted to which Mrs. Wiener agreed. Mr. Randolph will look at an appropriate place where it should be placed. Mrs. Wiener thought that six of them sitting here trying to write up an ordinance is cumbersome and thought they needed a motion that they want an Ordinance, and a report of that Ordinance come to them at the April Town Council meeting and have ORS look at it.

Mr. Weinberg moved that the Town Council agrees there should be an Ordinance governing the cleanliness of the beaches and the Town Attorney prepare same and submit to the Ordinance, Rules & Standards Committee for their consideration and this matter be brought back before the Town Council at the April Town Council meeting. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Mr. Doney thought it was important that the Council consider the Town Attorney's comments on indemnification and liability and other issues. Mrs. Smith wondered if the Council should hear the staff comments as they won't be able to hear those comments and the next time the Council considers this would be the first reading of the Ordinance.

Mrs. Wiener felt that they needed to take it to ORS and then the Council will hear their recommendations and at that time if they have any questions of staff, they can ask them.

Attorney Randolph believed the concerns that Mr. Doney has will not relate to this Ordinance, recalling subjects of indemnification were discussed at the Committee level. Mr. Doney referred to page six of the Beach Report which states they need to take into consideration liability, indemnification and other legal issues, noting the Committee did not have any definitive answer so those issues.

Mrs. Wiener did not believe that related generally to the Ordinance. She knows there are things which need to be taken into account legally, which is why they have an attorney, as obviously they can't do what they are not allowed to do. She thought if no-one had anything more to say at this point, she will call on staff for their input.

Mr. Doney noted a number of issues can be commented on, however, the Town Council needs to look at the report and visit the issues which are important. He thought the first issue would be voluntary versus Town cleaning or contractual, as that is a policy question which has sub-issues which need to be addressed.

Mrs. Wiener noted the first issue is whether its should be on a voluntary basis or whether it should be tax payers money which cleans the beaches.

Mrs. Wiener felt very strongly that volunteerism has been tried and obviously, it is not something that can be worked 365 days a year. She didn't believe there were any large groups of people who are willing to undertake a year round situation on the 14 miles of Town beaches. She believed very strongly that the Town needed to be involved and tax payer money needs to be involved and perhaps at the outset, they should see what volunteers can do on their own. She commented they might not be as ambitious as the Committee has recommended, but she thought they needed to move in a direction on having the Town do some of the work.

Mrs. Wiener referred to mechanical versus the hand picking. She believed the money situation is such that there isn't a great deal of difference, and if it is going to protect the environment, she thought that needed to be considered. She noted it isn't as though it is three times as much money to do it by hand as it is to do it mechanically.

Mrs. Wiener noted another item is whether it will be done by our Public Works Department or whether this should be bid. She thought it might be wise perhaps to see what an outside firm could do rather than increasing the workforce and see how they like it and what it requires and after a period of time, a determination be made whether the Town should do it with their own people or they should go outside to get the work done.

Mrs. Wiener thought there was no question that the majority of the people in this Town do want clean beaches. Mr. Shaw felt that they had to put some taxpayer money to this issue and there should be a start-up program on a trial basis to see how the program works. He understood the majority of the debris comes in the winter months and the volunteer efforts should be worked out to be at that time. He would like to see if the Public Works Department can arrange it, that their work load is a little bit less in the summer months because of the fact a number of residents are not here, and perhaps there could be a combination of an independent contractor picking up some of the beaches and Public Works used in certain areas to see what would be the most cost effective all around. He would like to see this done without hiring additional personnel but rather a reallocation.

Mr. Doney stated he had some thoughts on the staffing and called on Mr. Dusey to address that issue. He knows there are seasonal variations in terms of the reallocation of manpower but there are many activities which relate to the field personnel that they have cut back on during the last few years, particularly in the area of parks and medians as there have been three or four positions eliminated.

Mr. Dusey responded the work efforts are balanced year round as in the summertime grass grows more rapidly and trash is at a maximum and they are hard pressed at times to complete their routes. He knows garbage drops off some but then they move into the trash area and the work load is fairly leveled year round and they don't have excess resources to move into unless a level of service in another area is reduced.

Mrs. Royal wondered if they should change the residential garbage service from five days to four days as with recycling, there isn't as much garbage in the households to be picked up. Mayor Ilyinsky felt they were getting off the track as that is something that would have to be quite thoroughly studied. Mrs. Wiener did not think that in order to give one service to the residents of the Town that they cut back on another service. She asked for a motion that the Town will continue to have garbage collection five days a week and Mrs. Smith so moved. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Royal suggested there could be a reallocation of people as it just may be that five day a week pick up of garbage is no longer necessary. Mrs. Wiener announced they were not going to discuss this any further as the motion was an affirmation that the five day a week pick up will continue.

Mrs. Wiener asked Mr. Dusey for his opinion as to whether or not the Public Works Department be the one to handle the pick up of garbage on the beach or whether this should be put out to bid. Mr. Dusey responded he believed they may want to contract for the service.

Beach Cleaning

Mrs. Wiener wondered if it would entail a great deal of beach cleaning or a minimum amount of beach cleaning, and also whether they should be flexible throughout the year. Mr. Dusey responded the program that was developed at the request of the Beach Cleaning Committee was to clean varying beaches at varying times based on what was perceived as the usage of the beaches. He believed a large number of beaches were recommended to be cleaned three times a week and he estimated the cost based on a higher level of service. He suggested the approach should be to ease into beach cleaning, not knowing what level would be acceptable beach cleaning, as they know that three times a week at the south end leaves a very clean beach. He knows hand cleaning is done at the public beaches and they are pretty well maintained but it is done less frequently than three times a week. He recommended they go to a minimum level of one time per week on all beaches and volunteers or others may supplement that as they see fit, to reach whatever cleanliness level they would like to have.

Mrs. Wiener wondered about the beaches that are kept quite clean, as perhaps once a week may be too much. She was talking about a flexible program and it is found that one of the beaches on the north end which is well taken care of and perhaps they should be cleaned once every two weeks. Mr. Dusey stated he doesn't object to the flexibility as it is a matter of money obviously and he would have to budget for the contingencies. He thought the balancing of the program will occur over time, as there are some beaches which are small and should not be included in the cleaning program.

Mrs. Smith wondered how the specifications would be drawn up for discretionary cleaning with the flexibility they are talking about? Mr. Dusey responded they could bid a base level of service and then add to it, for example, what it would cost to clean 100' or 1000' once a week; and then what it would cost to clean that same beach a second time.

Mr. Dusey believed there would have to be field inspections and over time, a levelized program could be reached. Mr. Weinberg asked how they would handle the south end who has had contractual services up to this point? Mr. Dusey responded that is an interesting question, noting there are contractual services three time a week, and probably they would go in once a week and then have the South End pick it up the other two times a week. He didn't know what would happen to the contracts now in effect which offered cleaning three times a week.

Mrs. Wiener thought they should be happy if they were going to pick up one third of the tasks and they could continue to do the other with an outside contractor. She thought it could be worked out, as obviously the Town isn't in a position to have every beach pristine as that is something the Town could not afford to do, unless someone wanted to spend their time on the beach with continuous cleaning.

Mr. Shaw thought this would be an example of a volunteer effort which would work quite well and they could follow that through so other areas of the Town could augment on a volunteer basis, without being organized from a Town point of view.

Mr. Shaw asked Mr. Dusey about the figures he gave when he talked about the three amounts, was he including the portion of the beach that is private and wondered if was including that in the figure to which Mr. Dusey responded affirmatively.

Mr. Shaw thought if the Ordinance as written states that the residents are responsible for maintaining their property, he asked if the Public Works Department has taken into consideration what they were going to do about the cleaning?

Mr. Dusey responded the answer to that is no as at the Committee level, it caused concern as it was inconsistent with the Town doing the cleaning.

Mrs. Royal wanted to know if they wanted a minimum standard for all the beaches in Town and for those beaches which have more traffic, such as Clarke Avenue Beach and the beach at Dunbar Road - would those beaches require a higher standard as those are more impacted by the public. Mrs. Wiener stated they did talk about flexibility so that all the beaches would have a certain level although it would take some work to get some of them up to that level than it would others. Mrs. Royal commented they wouldn't have the same service then for all the beaches to which Mrs. Wiener agreed.

Mr. Randolph commented that if the beach cleaning efforts are intended to clean the private beach as well as public, there is a conflict between the Ordinance as drafted and the Town's efforts. He recalled he stated earlier that the ordinance could exist by itself without a concern for the other, however, if they are talking about going beyond the rack line and clean on the private property, he does have a concern about how the ordinance would operate in conjunction with that. He stated the other concerns as to liability for the Town for going onto the private property and whether waivers are needed from the private property owner. He thought a major consideration they need to address is the extent of the cleaning.

Mr. Shaw believed they should just clean up to the rack line and then allow each of the residents if they would like the Town to clean more, to enter into contractual arrangements with the Town.

Mrs. Wiener stated a decision needed to be made as to whether the Town will clean beyond the rack line or should they stop there. Mr. Shaw felt they should stop at the rack line and offer the option on an individual basis to go above it, on a contractual basis financially with the private property owners.

Mrs. Smith thought they needed to address the turtle nests also as the nests have to be identified if there is going to be any type of cleaning at all and it has been stipulated it would be hand cleaning. Mrs. Wiener stated they are addressing whether or not the cleaning should extend

to the private property and Mr. Shaw's suggestion may be helpful to those people who have private beaches so they are not in violation of the Ordinance. She asked Mr. Randolph if that would solve the problem of the Town not going onto the private property. Mr. Randolph stated they would enter into a contract which would include a hold harmless and a waiver of liability. Mr. Dusey suggested the contract be between the property owner and the contractor and the Town be left out of it, as he could bid it so the service would be available to the property owner, if they choose to use it, but he thought the Town should be left out of it. Mr. Shaw thought they were getting a little ahead of themselves as it may be in the future, the Town may be the one who does the contracting, and he suggested they leave it at agreeing the Town wishes to clean it to a point and either the residents will clean their own property and can pass on that responsibility that who ever is going to clean the beach up to the rack line, may contract with the property owner on a private basis, with full indemnification to the Town, in order to get the job done.

Mr. Shaw moved that the Town proceed on the basis of that the beaches will be cleaned up to the rack line and the individual property owners may contract with the beach cleaning entity, be it the Town in the future, or the present, or it may be a private contractor to have their private property cleaned, notwithstanding that the ordinances that will be passed for maintaining clean beaches will have to be met. Mrs. Wiener felt the issue was being complicated with that motion. Mr. Shaw stated he wanted to make the motion to clean up to the rack line but that it could be extended on a voluntary or contractual basis with the individual owners, so they know their beaches can be cleaned at their discretion and there is no obligation. Mayor Ilyinsky pointed out this would be at their cost to which Mr. Shaw agreed, noting if they didn't want to do that, they could clean the beach themselves.

Mrs. Wiener called for a motion concerning the rack line. Mr. Shaw made a motion that the Town of Palm Beach seek a cleaning system up to the rack line and it be done under the Town's supervision or under a contractor. Mrs. Wiener suggested the motion just include the cleaning up to the rack line. Mr. Shaw made a motion that the Town Council authorize cleaning of all beaches up to the rack line. Seconded by Mrs. Royal. On roll call, the motion carried 3-2 with Mr. Weinberg and Mrs. Smith voting against the motion.

Mrs. Smith announced her negative vote was because she didn't feel the motion accomplishes the purpose of cleaning. Mrs. Wiener pointed out they are trying to do it one step at a time. Mrs. Smith responded the step is too small for her so she voted against it.

Mrs. Wiener announced the next item is the funding. Mrs. Smith asked if they could go back and discuss more specific ways to clean above the rack line before they get to the funding? Mrs. Wiener agreed. Mr. Shaw thought there should be an option for the individual owners to be able to contract with the beach cleaning entity on a pay-as-you-go basis to clean their property. He thought if they didn't wish to do so, they may clean it on their own and if there are environmental hazards, they would have to contact someone to remove that debris, but essentially they are responsible for getting the debris off their beaches. Mrs. Smith pointed out they could do that now. Mr. Shaw agreed, but under the new Ordinance they will be obligated to keep it clean so this solution is being offered for the property owner to follow through. He commented that the idea behind all of this is to get the beaches clean and in order to do that, the Town is taking some steps to see that the beaches are cleaned, with the first step being the adoption of an Ordinance and the second step is offering them ways of keeping their beaches clean.

Mrs. Wiener pointed out they are adopting an Ordinance requiring there be clean beaches and how they do that is really not something that should be in the Ordinance. Mr. Randolph agreed stating his concern is making that a Town action, as people now have the right to contract with anyone they want to keep their private beaches clean, so he does have a concern to make that a Town action, by way of a motion. He thought there was a benefit in giving Mr. Dusey direction in regard to the specs, as it may assist him in obtaining a contractor for that contractor to know he will have an opportunity to contract with the private contractors. Mr. Dusey stated he could do that without any direction.

Mrs. Wiener asked Mrs. Smith what she thought the next step should be as she voted against the motion because she thought they hadn't gone far enough. Mrs. Smith thought they should have the Ordinance that the beaches must be clean and then she thought Mr. Dusey should be able, in his discretion, to put out a bid for above the rack line, including the areas where there is heavy debris on the beach, rather than specify below the rack line in one place and above the rack line in another place, as the rack line vacillates with the tides. She thought Mr. Dusey should be able to have a discretionary package for beach cleaning for the dirty beaches, in general, not above and below the rack line. Mr. Weinberg asked if she wanted the entire beach cleaned? Mrs. Smith responded she doesn't want anyone stepping on the beach grasses, and she would like to see it bid out for hand cleaning, not mechanical cleaning and have Mr. Dusey decide what needs to be cleaned and at what time of the year it needs to be cleaned and what doesn't need to be cleaned. Mrs. Wiener agreed with most of what she was saying except for access to the private beaches as they will run into a myriad of problems. Mrs. Wiener asked Mr. Randolph what they needed to do as far as the private beaches were concerned to make all of this possible. Mr. Randolph responded first of all if they went onto private property, they would be trespassing and they would be liable for any damages which might be caused. He stated those were not only affirmative actions but once it is stated that the Town is going to keep it clean and if they don't, there would be liability for not accomplishing it. He reported in addition to the liability concerns, there are financial concerns of the Town entering onto private property to keep private properties clean. He stated these are his concerns if the Town is going to enter into that process. He believed if they took that extra step of entering into that process and allowing Mr. Dusey to draft the specs in a manner which would allow the contractor to go onto the private properties, he would want to be sure the Town is protected by indicating to the contractor he must obtain for the Town or for himself an agreement from the private property owner which would allow the Town to go onto the private property owner's property. He stated if the Town is going to clean the beaches, there should be a concern if they are spending public funds to clean private properties, and they need to be somehow compensated from the private property owners.

Mrs. Wiener wondered if they could have a charge per square foot. Mrs. Royal commented that would be a user fee. Mr. Randolph stated that could be developed. Mrs. Wiener believed the private property owner should have the option of either using the Town services, or take care of it on their own.

Mayor Ilyinsky suggested a motion be made as to whether or not the private beaches should be cleaned, as personally, he did not want to do that, but on the other hand, if there is an Ordinance

which protects the Town to a certain extent and the landowner is entering into a contract to have his private beach cleaned, he should be making his own deal. He felt if the private beach owners do not care about how dirty their beaches are, let them keep them filthy, but the Town would have an Ordinance which mandates the beaches must be clean. Mrs. Wiener pointed out they have already agreed to having an Ordinance of that type.

Beach Cleaning

Mrs. Smith suggested to implement them, they could have a picture in the local paper of the "dirtiest beach of the week".

Mr. Shaw asked how much of the debris that washes up on the beach will be above the rack line? Mr. McAllister, Chairman of the Committee, responded all of it, noting that is where the problem is. Mrs. Smith stated she sees the beer cans, the glass, etc. on her beach and when the people come to the beach, they sit above the dirt line. Mr. McAllister stated the conditions of the dirty beaches are all virtually above the rack line and below the vegetation line, and those areas are private and it is that area which is an eyesore and needed to be taken care of, and that is in the preamble of the Ordinance. He thought that would allow the Town to take action, within the limits of the law, with respect to that particular area as well as the public parts of the beach.

Mr. McAllister thought there should be a program financed by the Town to clean the beaches up to an acceptable standard, and it may be logically inconsistent, but he thought it made sense and it could work together. Mrs. Wiener believed it could work as it will give the owner the opportunity to approach the person who is cleaning up to the rack line and ask them to clean their beaches, or else he can have the option to clean the beach himself, as with the Ordinance, they are covering the whole thing.

Mr. McAllister stated he would like to see the Town finance program cover the whole thing, and he doubted very much if they would find more than a handful of the property owners who would be objecting. He thought they could be dealt with in some other way. Mrs. Wiener stated they do have some who are not going to be willing. Mr. McAllister thought they should identify themselves. Mrs. Wiener thought those property owners have rights over their property and we don't want to get into a major argument with them. Mr. McAllister suggested they concentrate on the others which he believed would be in the majority.

Mr. Randolph clarified what they are saying is if they go to bid on this, it be done for the private properties and they obtain the legal documents they need from the 95% willing to sign and exclude the others who are not willing to sign. Mr. McAllister commented if they haven't cleaned the private part of the beaches, he didn't believe they have accomplished anything. Mrs. Wiener did not know whether they have or have not, but another part of the consideration is spending public funds on privately owned property and that is her concern.

Mr. McAllister did not believe the way to clean up the beach was with a criminal law, as that is using a hammer to kill a flea. He believed the criminal law is to state the strong policy of the Town and deal with extraordinary accumulations and unusual neglect. He believed a dirty private beach is an offense to the Town as a whole and not just to the person who owns it and that was the feeling of the Beach Cleaning Advisory Committee. Mrs. Smith concurred. Mr. Shaw asked the difference between high tide and the rack line? Mr. McAllister believed the rack line was the customary high tide line, but it all moves.

Mrs. Royal asked if the Town cleaned up the private beaches and it was found the contract specified mechanical cleaning, and the private beach owner was opposed to mechanical cleaning, what would they do? Mrs. Smith responded if the contract was bid for hand cleaning, mechanical cleaning would not be taking place. Mrs. Royal asked if it has been determined there will be just hand cleaning to which Mayor Ilyinsky responded they have not voted on that.

Mrs. Smith moved that the cleaning process for the beaches be hand picking and that would be part of the bidding process put out by Mr. Dusey.

Mr. Shaw asked if this would be to clean all of the private beaches. Mrs. Smith stated she is not talking about money at this point and it could be possible that they would be cleaning only 200' of beach and she would like to see it hand cleaned. She did not recall they have as yet designated that all of the beaches in the Town would be cleaned. Mayor Ilyinsky recalled that the south end of the Town has been using mechanical cleaning and doing it effectively and he was sure the Council didn't want to write into the Ordinance that they could not do that. Mrs. Smith agreed, noting they have not as yet specified what beaches and where in the whole package they would be cleaning, and her motion is to specify the means by which beaches will be cleaned and that is by hand. Mrs. Wiener wondered if she wished to amend her motion to specify that the hand cleaning would be for new beach cleaning? Mrs. Smith did not want to exclude the south end from having their beaches cleaned. She realized if the condominiums in the south end who are presently contracting out their beach cleaning wish to continue with that, she didn't believe the motion was going to restrict them from that.

Mrs. Wiener asked if the motion would change the ways the beaches are cleaned in the south end? Mr. Randolph responded the motion would not change that. He believed the motion was that the bid that goes out from the Town in regard to the cleaning of the beaches would be that the cleaning would be by hand.

Mrs. Wiener called for a second to the motion. Mr. Shaw indicated he would second it if it were for the bid. Mrs. Wiener asked all to understand that when someone makes a motion it is for a particular subject and nothing additional.

President Wiener handed the gavel to President Pro Tem Weinberg to chair the meeting and seconded the motion.

On roll call, the motion carried 4-1 with Mrs. Royal voting against the motion.

Mr. Shaw made a motion that bids also be sought for mechanical cleaning of the beaches. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Luncheon break was taken. President Wiener reconvened the meeting.

Beach Cleaning

Mrs. Wiener recalled there was earlier discussion on private versus public beaches and called on Mr. Randolph for his comments on the subject of cleaning up to the rack line and if they decided to clean beyond, how would they approach it. Mr. Randolph assumed the rack line means everything below the mean high water mark, then he has no concern about the liability of the Town, except to point out that once any kind of service is undertaken by the Town, they do have liabilities accompanying it. He used as an example that right now, if someone steps on a hypodermic needle, the Town doesn't have a problem, but once they exercise an authority, they should keep in mind there will be concerns about liability and that is not to say they don't undertake the responsibility because of that liability. He felt as far as the private versus public issue, if it is decided to undertake as a government action going beyond the area of the public beach, then they would be taking on liability and if they go onto private property and have concerns as to trespassing, unless there is authority from the owner; and also concerns as to liability and the expenditure of public funds on private property. He noted if they do go on the private property, it is his recommendation that they be firm and clear on what is going to be needed from the property owner in order to do that, and perhaps establish a form that would be signed by the property owners, which would indemnify the Town from any damage which might occur as a result of them entering onto the private property.

Mr. Weinberg noted Chapter XII, Article II of the Town's Ordinances state: "By Town Ordinance, maintenance of littered property is a misdemeanor punishable by fine and the Town is authorized to clean up littered properties, if the owner refuses." Mr. Weinberg believed littered property could mean the beaches and he thought they were already covered. Mr. Randolph responded this would not cover a regular beach cleaning program on private property and what the Ordinance contemplates is if a property becomes littered to the extent that it is a nuisance and in violation of the Ordinance, the Town would give notice to the property owner that there is a nuisance and they are in violation of the Code and the Town personnel is coming onto the property to clean it up and they will be billed and lien the property, in the event they do not pay for it. He believed that was different than a regular process, perhaps weekly, of cleaning a private beach. He stated that Ordinance does pertain to oceanside properties and all properties of the Town, but the Ordinance he has drafted expands on that by talking about beach front properties and indicating that not only is it in violation to actual litter, it is a violation that if the litter is allowed to remain on the property for a lengthy period of time.

Mrs. Wiener heard the attorney state that the Ordinance that they now have concerning a property not kept up properly states that after a certain period of time, the Town will go in and take care of it and bill the property owner and the difference between that and the contemplated ordinance is that we are not going to wait for anything to happen but will go forward and do the job to which Mr. Randolph agreed.

Mr. Shaw believed he heard the Town Attorney state that liability does not exist as long as we are not there and he thought that sounded like they don't have to fix the streets. Mr. Randolph responded he tried to underscore that anytime the Town provides a service, such as the Town provides a playground and the Town Council needs to understand that there is going to be some liability involved, but that doesn't mean a recreational facility should not be provided for the residents, but they have to understand they do have some liability for it. He stated if they do not undertake the authority to do something that is not otherwise the responsibility, such as cleaning the public beach, then the Town has no liability problem. Mr. Shaw asked if a survey would have to be made of the beaches in the Town of where the private property would start as how would anyone who is cleaning it be able to know the difference between the rack line and the mean high water line and the private property line as he thought it would have to be defined. Mr. Randolph believed the rack line was defined and the people in the business of cleaning beaches do know where they can go. He thought perhaps technically there may be a problem if they go over it a little bit, but that is not his concern, but going well beyond that line to pick up trash on private property.

Mr. Shaw asked if the mean water line is a line that is higher than the rack line? Mr. Elwell responded technically the State Statutes state the mean high water line is where private property ends and public property begins. He stated it is impossible to go out with the naked eye and identify it, however, there is some engineering technique to determine where it is, but as a rule of thumb which is used by the Police Department for trespassing complaints and what is used by the Beach Cleaners would be the rack line or where wet sand and dry sand begins, and that is where it would be for one particular day.

Mr. Shaw recalled there was some amount mentioned like two and one half feet above high tide, and he wondered if there were some definitions that they needed to understand if the Town is saying they are going to clean the public versus the private. He asked if debris knew the difference and does it need to go up so far if it is carried by a wave so perhaps it should be better defined as to what they are cleaning from the water line upwards and they would have a better understanding of making the statement of cleaning private property. He felt it wouldn't be a matter of cleaning fifty feet, but they have to know what they are agreeing to clean as public versus private and he was having a hard time understanding where that particular line is.

Mrs. Wiener believed it was simple, as it does change daily, and no-one will argue over a foot or two, as nobody knows, so it will be taken as an average. She asked Mr. Randolph to again explain about the liability. Mr. Randolph explained he was talking about public beaches as a whole, indicating he was not talking about Mid-Town Beach, for example as where they clean now in his opinion if they have exercised authority over a public beach, then they have the potential for liability. He stated if they are exercising that same authority for all of the public beaches in the Town, they are expanding upon that.

Mrs. Wiener wondered how many times they had a problem at the public beaches? Mr. Randolph responded very seldom and from a practical standpoint, it is not a problem but he wanted the Council to know that it is something that is there. Mrs. Smith wondered if they could not simply get a release from all of the oceanfront property owners as the Town will be going in to clean the beaches and we ask each property owner for a release. She commented if one looks out on a beach now, there are three rows of seaweed and the highest one will be on the planting and she asked which one is the mark as people using the beaches will move to the cleanest part away from the seaweed and debris. Mr. Randolph reminded there has been no decision made as to whether or not the seaweed will be removed.

Mrs. Smith thought they should ask each individual oceanfront property owner for a release from liability. Mr. Randolph responded if it is decided to clean the private beaches, they must

insist on having a release. Mrs. Wiener felt they were going in circles and thought perhaps it might be wise to send a letter to each beachfront property owner advising them of the fact that we are expecting to do this and we would like their release so there could be one hundred per cent participation.

Mr. Doney recalled letters are sent to all beachfront property owners about sea turtles and the lighting, but if they were to send out a letter such as is being discussed, it would be his recommendation that it be specifically designed so that an attachment prepared by the Town Attorney, which would be an indemnification statement be provided. Mrs. Smith thought it was a good idea to which Mrs. Wiener agreed. Mayor Ilyinsky indicated he has a problem of spending taxpayer's money to clean private beaches, whether or not they are exonerated from liability. Mr. Randolph thought there may be a concern by private beachfront property owners that they are in a way opening their private beaches to the public once they have allowed the Town to come onto their property by virtue of using public funds.

Beach
Cleaning

Mrs. Smith asked the Mayor if he thought the situation should remain as it is now and they clean only the public beaches and ignore the rest of the beaches? Mayor Ilyinsky responded that most of the debris on the private beaches does lie on the private side of the public beaches. Mrs. Smith believed there could be an argument made that a public beach is public when someone is sitting on it and it is a private beach when it needs to be cleaned, and she was not sure there would be a splitting of hairs as to what is public and what is private as far as cleaning the beaches is concerned. She stated this could always be put to a referendum. Mrs. Wiener believed that the Council needed to know whether this will be a problem to the beachfront owners, and that doesn't mean we would expend the public funds, but at least they would have a feeling as to whether or not there is a problem. She is opposed to infringing on someone's private property and this could be an historic tree or landmarking as there comes a point when people are paying taxes, the property belongs to them and not the community at large.

Mr. Weinberg believed what they should do is declare that clean beaches are a necessity for the Town of Palm Beach and all beaches should be cleaned. He stated all public beaches should be cleaned by the Town and all private beaches are the responsibility of the owners of the beachfront properties. He thought if a private owner does not clean his beach, then he is responsible to pay fines if that is what the Town Council decides to do. Mayor Ilyinsky agreed with that statement. Mrs. Wiener felt they had accomplished that much today, as the Ordinance is going to be enacted and the beaches will be cleaned to the rack line. Mr. Randolph agreed this has been done.

Mrs. Royal felt that the Beach Cleaning Advisory Committee believes that that is not enough and we should go a further step. Mr. Weinberg believed if the beaches are continued to be dirtied, the Council will have to find a solution for it. Mrs. Royal summarized that the public beaches can be cleaned with public funding and the private beaches can be cleaned by virtue of the new Ordinance which will force people to clean them.

Mrs. Smith commented that below the rack line, it will stay dirty as that will be public beach. Mr. Shaw disagreed noting below the rack line is public and it will be cleaned. Mrs. Smith did not agree. Mr. Shaw believed there was a dual definition and they are referring to public parks where there are beaches, versus the public access or the public beach, and he felt they are talking about cleaning up to the private property line, east of the rack line, up to the high water line, whatever it is called. Mr. Elwell responded this would be an expansion of what is currently being done which is cleaning those areas which are Town-owned public beaches. Mr. Shaw stated this would be in addition to the cleaning of the public parks beach area. Mrs. Wiener thought this was quite clear.

Mrs. Smith clarified that the motion that was passed earlier today was that the public beach area would be cleaned on all beaches. Mr. Dusey asked to be heard noting the frequency of the cleaning has not yet been set. Mrs. Wiener thought that unless it is a heavily used beach, cleaning doesn't have to be three times a week, and she thought they needed to come back with figures reflecting that thinking. Mr. Weinberg suggested they clean all the beaches once a week and if that is not satisfactory they revisit the subject again and he so moved.

Mr. Shaw stated he would second if there was an amendment that those areas that are presently being cleaned would continue to be cleaned and they would continue what they now are doing.

On roll call, the motion carried 4-1 with Mrs. Smith voting against the motion.

Mrs. Wiener called on Mr. Dusey who advised he will obtain bids for hand cleaning the beaches which would leave the seaweed and mechanical cleaning which does not leave the seaweed; and the preference would be the hand cleaning; the service would be provided once per week; Town owned properties would continue to be cleaned at the present level of service; the Council wanted to have a varying level of service if it is found some areas needed more frequent cleaning or some needed less cleaning; and the cleaning would be at the rack line for essentially twelve miles of beaches.

Mayor Ilyinsky recalled the Halloween storm a few years ago and if there is something like that happening, or a major hurricane, the cleaning would be done.

Mr. Doney recalled the Halloween storm of 1991, and they did come to the Council a few days later requesting special authorization to make repairs, which can always be done if there is something happening out of the ordinary.

Mrs. Wiener clarified on the south beaches in the Town, they would be picking up the tab for the once a week cleaning, but the condominiums in that area may wish to continue with the other two days of cleaning, as they presently have their beaches cleaned three times a week.

Mr. Dusey advised when he bid the mechanical cleaning, he would probably do it with some definition of various reaches. Mr. Weinberg thought they may only want to have their beaches cleaned once a week. Mrs. Wiener pointed out the Town would be paying for one and whatever else they want to do, they may do so. Mr. Dusey stated he didn't want to enter into their contracts or reimburse them for one third of their cost to have their beaches cleaned three times a week.

Mr. Doney clarified that there is no voluntary aspect for this program to which the Mayor and Council agreed. Mrs. Wiener reminded all that anyone who wishes to volunteer may certainly do so. Mrs. Royal thought this could reduce the overall cost if there were volunteers.

Beach Cleaning

Res. 20-94

Water Franchise Agreement

Mr. Doney clarified that there now be no need to send all beachfront property owners a letter to which the Mayor and Council agreed.

Mr. Shaw questioned the recommendation pertaining to trash receptacles and asked if the trash bins would now be necessary and asked if a private effort wanted to provide these, would it be a problem to the Town? Mrs. Wiener thought it would be a problem as it is very windy on the beach and things could go flying through the area. Mr. Shaw moved that the Town not involve itself in the placement of trash containers on the beach. Seconded by Mr. Weinberg.

Mrs. Smith recalled presently there are several locations within the Town which do have trash receptacles and the litter is picked up and she felt the Council should encourage the placement of trash cans and she sees no reason to not have them or abolish them. Mrs. Wiener did not believe they were abolishing them as the containers that are now there could still remain. Mr. Dusey stated his Department would continue to service the trash containers which are there now, however, if they wished to place more, that could be done, and he felt to be most effective, they needed to be located towards the beachfront, as compared to the uplands. He stated for his purposes, if they are by the street, it is better for his people to service them, however beach goers would probably utilize them if they were closer to the beachfront.

Mrs. Smith saw no reason why additional containers should not be placed.

Mrs. Wiener asked if perhaps two dozen more trash containers can be placed with servicing by the Public Works Department. Mr. Dusey noted the trash receptacles which are there now are mostly privately placed and they are serviced by his department.

Mr. Shaw withdrew his motion. Motion was then made by Mrs. Smith to support and encourage the volunteer trash cans and the Town provide twenty-four additional trash cans and these be made available to the public and they be encouraged to use them. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mayor Ilyinsky suggested the Civic Association may want to pay for these cans and they could be recognized with their name on the side of the can.

Mr. Dusey addressed the Council, noting in his memorandum it was his suggestion that the wire bins be provided and the Mayor and Town Council agreed to the wire bins. He advised he will locate them in twelve locations which can be easily serviced.

Mrs. Smith moved that the funding for the additional trash receptacles come from the Undesignated General Fund. Seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Dusey asked if this should be worked into the next budgeting cycle or did they wish to start with this beach cleaning process right now? Mrs. Wiener felt they are close to the budget season and perhaps it should be put over to the next fiscal year. Mr. Shaw felt they should move forward with it now. Mrs. Wiener noted they must bid for it. Mrs. Royal suggested this should be heard by the Ordinances, Rules & Standards Committee which will meet on March 29, 1994 at 2 PM. Mr. Dusey stated he still needs to know when this will be started as he needs to have this information in order to bid the job. Mrs. Wiener suggested there be two options, one being it should commence on June 1, 1994 and the second option would be it to start on October 1, 1994. Mrs. Smith didn't know why they would say it should commence in October as they have voted for it to be paid for out of the undesignated funds.

Mrs. Smith thought they needed to discuss the cleaning during the turtle nesting season. Mr. Dusey responded he will handle that in the specifications.

V. RESOLUTION NO. 20-94 - LEASE-PURCHASE FINANCING AGREEMENT WITH BARNETT BANK FOR RISOGRAPH PRINTING MACHINE AND FOUR (4) REPLACEMENT PARKING METER SCOOTERS. Mr. Doney recommended they proceed with lease purchasing for the Risograph Printer and the four parking meter scooters. He noted a memorandum dated November 4, 1993 from Major Croft has been sent which proposes a different method of financing through lease purchasing and he concurs with this recommendation.

Attorney Randolph read Resolution No. 20-94 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE TOWN MANAGER TO ENTER INTO A LEASE-PURCHASE AGREEMENT WITH BARNETT BANK OF PALM BEACH COUNTY.

A motion was made by Mrs. Smith to approve Resolution No. 20-94. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

VI. ANY OTHER MATTERS:

A. WATER FRANCHISE AGREEMENT WITH CITY OF WEST PALM BEACH. Attorney Randolph reported he has met with the City Attorney Pat Brown and the staff subsequent to the joint meeting of the Town Council and City of West Palm Beach Commission, on the issues which were discussed at that meeting. He understood that although no agreements were made at that meeting, there was direction given in the way the Council wished these various issues explored. He advised they went to the staff at the City to discuss these matters and one of the first items was the surcharge.

He understood from the staff standpoint that the one thing the Council wanted explored was in the event the City were to decide in the future to assess a surcharge that they would give alternatives to the Town for the Town to consider, in lieu of the surcharge. He believed the surcharge was to relate to the improvements in the water system itself and that thought was carried back to the staff of the City of West Palm Beach and he was advised that that was not their understanding as to the intent of their Commission. He stated they were advised in no uncertain terms by the Administrator for the City of West Palm Beach and by their Attorney that the Mayor at least would not contemplate that type of restriction and any alternatives that would be discussed would not be limited to putting the money into the System, but there would be an opportunity for them to use the surcharge monies for the general ad valorem tax base of the City of West Palm Beach.

He reported the staff and himself were further advised that it was the intent of the Mayor of the City of West Palm Beach that this issue would be discussed by the City Commission in the very near future.

He advised the language suggested by the City Staff in regard to the surcharge basically states that anytime the City wishes to impose the surcharge, it will provide the Town notice of its intent and they would give us thirty days of their intent to impose it and during those thirty days, the Town would have an opportunity to discuss it. He noted at the end of the thirty days, if there was no alternatives agreed upon, the City would impose the surcharge.

Mrs. Wiener was not quite sure how they do their bookkeeping and wondered if they comingled their funds, and assumed they would be professional in the way they handled their funds. She thought with all of the improvements needed to be made in the water system and those they were supposed to have made for the Town which have not been made that they would find an appropriate item within their water utility budget to fund from that particular account. She reported they are sitting with the same pipes that were installed forty or fifty years ago and she thought that might be a logical place, if indeed they found it necessary to have the surcharge, and those funds should be allocated to the water system. She believed it was a political matter and it is considered well-founded to do something for the people who vote for you at the expense of somebody else. She thought it sounded very good but it is not a prudent way of doing business.

Water Franchise Agreement (cont'd)

Mr. Weinberg believed it was a firm position of Mayor Graham. Mrs. Smith asked if this was the position of Mayor Graham or the position of the entire City Commission, as she recalled at the meeting, there was some disagreement about that as Mayor Graham stated the surcharge was an idea that she was passing on to the Commissioners as a thought. Mr. Randolph responded the City Administrator told him the Mayor did feel strongly about the surcharge, but he felt the Commissioners' understanding as we left the meeting were along these lines, as opposed to having no surcharge. Mrs. Smith stated it was unacceptable to her.

Mrs. Royal asked if legally the City of West Palm Beach was within its legal rights to impose the surcharge and put it into their General Fund? Mr. Randolph responded he didn't think in the event a surcharge is imposed that there is any impediment on having to use it within the water system from a legal standpoint. He felt in regard to the negotiations he has had with the City of West Palm Staff, he indicated to them if they felt they had the right to impose a surcharge that he would rather see the Agreement silent on that point, as it has been during the last thirty years, so in the event they ever feel they have that right, that there wouldn't be language which would preclude them from exercising that. He would not want to see the Council sign an Agreement which, regardless of the policy feeling in regards to a surcharge which indicates that they have a right under the Law to impose a surcharge, because he is not completely in accord with that.

Mr. Shaw commented that two weeks ago they met with their counterparts in West Palm Beach to discuss a fair and equitable agreement for water to take them further more than a quarter of a century and progress was made, but he didn't feel that a satisfactory conclusion was reached. He felt there were three major issues:

1. The surcharge
2. Non potable water
3. A bond issue.

He is opposed to any rate differential, whether it be called a surcharge, rate block, inverse rate, etc., it all boils down to costing Palm Beach owners more than West Palm Beachers are paying for the same item.

He felt Palm Beach needed to retain the rights of its property owners and for the Town to own and operate a non potable water processing system.

He thought West Palm Beach needed Palm Beach for its financial security and the prior bond issue was sold on the basis that Palm Beach was a customer representing a third of its revenue and he thought the new bond issue would represent the same point, as without Palm Beach, the loss of revenue will cost the West Palm Beach residents more.

He is opposed to the Agreement and he doesn't know how the rest of the Council feel about it, but for him to support the Agreement, West Palm Beach will have to give a little.

He thought they needed to link any surcharge imposed to water conservation programs in Palm Beach and in the event of an emergency, such as a hurricane, the surcharge funds would be available to help West Palm get the system back up and running without having to divert their funds for rebuilding or repairing the main water processing system.

He commented on having a full independence for a non-potable water system in Palm Beach. He would agree to not allow an independent supplier come into the Town and build the plant, but the Town and its residents must have the right to operate one of their own. He suggested looking into the needs of a dual distribution system and would agree that the above funds could be used to install one in Palm Beach, making it a leader in water distribution and conservation.

He thought the give and take of all negotiations could lead to a happy settlement and if West Palm Beach would give a little, without any loss of revenue or any imposition on their residents, they would have his support and they would have Palm Beach to add to their list of customers for their bond issue.

Mrs. Royal made a motion that the Council endorse Mr. Shaw's statement and it should be the sentiment of this Council. Mrs. Wiener commented she thought their sentiments vary and most of what Mr. Shaw has stated are the kinds of things they have discussed but they don't usually make motions to do that.

Mrs. Smith stated she agreed with most of what he had to say but she didn't agree with West Palm Beach giving a little, as they are coming back at the Town with deplorable behavior and she thought it was legal rape and at the rate they are going, they will be losing two baseball teams and a big water customer within a month, and they need to learn to negotiate.

Mrs. Wiener believed that the Mayor in West Palm Beach is very ambitious as to what she would like for her City and she is a bright attorney but not big on negotiations.

Mr. Randolph announced the purpose of this was to give them an interim report on the issue and he asked if the Council wished him to go back to the staff and City Attorney for further negotiations. Mrs. Wiener suggested he do that and try to explain how this Council does feel. Mrs. Smith asked what was the Town attorney's impression as to where they were going?

Mrs. Wiener explained the City of West Palm Beach has a different form of government than the Town does, and this Council can hoot and howl but if the members of the City Commission realize the fallacy of the direction in which Mayor Graham is leading them, they won't vote for it.

Mrs. Smith didn't feel that they ended up with a good feeling on the potable versus non potable water issue. Mr. Randolph responded staff felt that they would not agree to allow competition in regard to the provision of non potable water, but that the City would not have anything to say about private property owners providing their own non potable water, as long as they didn't use the rights-of-way in the Town. He didn't believe there was an issue on this with the staff of the City.

Mrs. Royal did not find that acceptable and didn't think the Town should bind themselves against the use of a future technology as something may come about in the water industry that may make it viable for the Town to use non potable water.

Mrs. Wiener pointed out the major non-potable water users are in a position where they can handle their own water and that's where the big money is and whether or not the source is available, she didn't think this was a major item.

B. AUDIT FOR COMCAST: Mr. Doney advised the Council there is a deadline on having an audit performed on Form 393, which is the FCC and Cablevision matter, but a definitive answer cannot be secured from FCC and the audit needs to be completed on this form so it can be on the agenda for the April 12 Town Council meeting. He reported Coopers and Lybrand who were going to do the audit have now advised they have a conflict of interest and another firm needs to be found to do the audit. He stated they will proceed to find another auditor within the amount authorized, approximately four thousand dollars.

VII. ADJOURNMENT: Meeting was adjourned at 2:53 PM.

Grace T. Peters
Town Clerk

Audit for
Comcast

Adjournment