MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD MARCH 19, 1999

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order 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 Jack McDonald, Sam McLendon, and Leslie Shaw. Also attending were: Town Manager Robert Doney, Attorney John Randolph, Assistant Town Manager Peter Elwell, Public Works Director Al Dusey, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. President Smith led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

President Pro-Tem Wyett made a motion to approve the agenda. The motion was seconded by Councilman McLendon and the motion carried 5-0.

IV. REQUEST BY BELLSOUTH TO PLACE AERIAL CABLES ALONG NORTH LAKE WAY BETWEEN MERRAIN ROAD AND MONTEREY ROAD TO CORRECT REPORTED EMERGENCY SITUATION, PER LETTER DATED MARCH 8, 1999, FROM MR. PAUL DAVIS

(Continued from March 9 and 10, 1999, Town Council Meetings)

Town Engineer Jim Bowser stated that BellSouth requested that an underground facility be placed overhead, and in accordance with Town policy, the Town has the option to pay the differential to maintain the underground line. Mr. Bowser said that BellSouth reviewed the cost estimate and the buried option is approximately $96,800 and the aerial line would cost approximately $21,250 or a difference of $75,550. He said that his previous estimate did not take into consideration the rock conditions that were present in that area of Town.

Mr. Bowser said the cost estimate for directional boring, which he considered to be the best alternative, would be $143,550; therefore, the BellSouth estimate to go underground would be the most cost effective option.

Sid Poe, Regional Manager for BellSouth, addressed the Town Council and said that Mr. Bowser did an excellent job of outlining the cost figures. He offered to have Mike Johns, Project Manager, answer any technical questions.

Mr. Poe apologized for not being able to attend previous meetings but stated BellSouth was in a very serious situation where they needed to move forward with the placement of the cable.

Mr. Shaw questioned how accurate the estimate costs were?

Mr. Bowser responded he thought BellSouth's estimates were firm.

Mr. Poe affirmed that the estimate would be the cost of the job.

Mr. Shaw said he understood the cable length would be 2,175 and the cost would be $75,550.

Mr. Johns replied that was correct.

Mr. Shaw made a motion to approve the $75,550 cost to go underground with the amount to come from the General Fund Contingency. The motion was seconded by Mr. Wyett and carried 5-0.

Mr. Wyett said he was dismayed that the Town was moving from underground lines to a less desirable aerial situation. He asked the Town to review the rules and regulations relative to future purposes.

Mr. Wyett questioned if the motion was to approve the aerial or underground cable installation?

Mrs. Smith clarified the motion was to approve the aerial installation.

Mr. Shaw said the motion was to approve the underground installation and the $75,550 was the expense incurred by the Town.

Mr. Wyett said he wanted to withdraw his second for the motion, because he misunderstood it. He said he wanted the underground installation but did not think the Town should pay for it.

Mr. McLendon said he would second Mr. Shaw's motion.

Upon the second roll call, the motion carried 4-1 with Mr. Wyett casting a negative vote.

Mr. Bowser said he was not sure when BellSouth planned to proceed with the project.

Mr. Johns said BellSouth usually had a moratorium until May, and the engineering had not been started or completed.

Mrs. Smith said she understood the original proposal made by BellSouth indicated an emergency situation.

Mr. Johns replied only the need has been identified; however, the cable has failed and the emergency forces have temporarily overcome the failure by tie-wrapping a non-standard cable to the failure point, by-passing it, and the fear is the cable will eventually fail.

Mrs. Smith thanked the BellSouth representatives for their appearance at the meeting.

V. CONSIDERATION OF FUTURE WATER SUPPLY ALTERNATIVES

A. CITY OF WEST PALM BEACH

Mrs. Smith noted that the Mayor and Council members had received a copy of the proposal.

Mrs. Smith said, before the details of the water contract were discussed, she wanted to set the context for the meeting. She noted that in a perfect world everyone would find the perfect solutions for all problems at no cost. In the real world, the best solutions come from understanding the needs of both sides and negotiating in good faith.

Mrs. Smith said the negotiations with the City of West Palm Beach have, at times, been heated and mistakes were made on both sides, but that is the way negotiations go. She said she would take responsibility for the mistakes as well as anyone, but she was proud to say that the good faith has always remained, and it is in this spirit that the Mayor and Town Council should welcome what is coming before them at this meeting as the water discussions are continued.

Mayor Nancy Graham acknowledged that on behalf of the City of West Palm Beach, they were happy to be at the meeting

Mayor Graham said her group was at the meeting in an attempt to solve a problem, and it has not been an easy problem to solve. She said there has been a lot of discussion and debate over time, but in at the last joint meeting in January, the Palm Beach Town Council designated President Smith and the City of West Palm Beach authorized herself to negotiate on behalf of the respective bodies. Mayor Graham recounted that many meetings were held in good faith with all of the consultants. She said all of the information was shared resulting in a mediation meeting with Judge Rutter regarding the litigation. Mayor Graham said that the upcoming court action and litigation have served as opportunities to present a settlement proposal.

Mayor Graham said that the alternative that will be presented at the meeting is presented in the context of settlement negotiations, and it is not the intent of the West Palm Beach delegation to have this offer used in litigation if the issue is not resolved, and it is not considered an admission in any way regarding the litigation, but is an attempt to solve a problem.

Mayor Graham said the City considered all the information and the other offers that have been presented to the Town, and what will be presented at this meeting is a "deal offer" but it cannot be categorized as a "wholesale" or a "retail" offer. The proposal has been modified since President Smith and the negotiation teams have met. The proposal is that the City of West Palm Beach will charge the Town the current rate, $2.22 per month, which is the same rate that other West Palm Beach customers are paying. There would be no surcharge at all. The Town requested that the City pay $15 million for all of the improvements, and the City would agree to pay the entire capital improvement cost of the replacement and repair of the pipes. The Town will own the assets at the end of the debt service period which will be approximately 30 years. The franchise period and the debt service period will relate to each other, because the assets are part of a bond obligation, and the City will not be able to give them up before the bond time.

In addition to the $15 million, the City increased the R & R, considering the national average, from 4% to 6% for the first five years. After five years, it goes to 5% for the remainder of the 30 year term. Mayor Graham said the R & R amount over the 30 year period totals approximately $17 million. She said that, by law, the $17 million has to be spent on R & R only.

Mayor Graham stated the City will install all of the capital improvements needed under a mutual agreement with the Town with regard to the timing and sequence of those improvements. She said the City is prepared to give the Town the same capacity entitlement that the County was prepared to give the Town with regard to a specific amount of mgd that is available in capacity. The difference is that the County's proposal stated a minimum quantity that the Town had to take or pay for.

Mayor Graham said, in addition, the Town can sell the excess capacity. She suggested the excess capacity could be used to deal with the rate structure as mentioned by one of the Council members as a concern. She said it could only be imposed on the Palm Beach residents by the Town as the City could not do that, because they have to sell water at the same rate.

Mayor Graham mentioned that she had two of her consultants, Rob Orry and Art Cousky, present to answer any specific number questions the Council had.

Mayor Graham said she thought the City and the Town have been very frank about what has gone wrong over the years in their meetings, but the City has attempted to hear every concern the Town expressed, and the City has attempted to give the Town everything they wanted. She said the proposed agreement cannot be classified as a retail or wholesale agreement but rather a water use agreement that addressed all of the situations that were heard.

Mayor Graham said the City was quite anxious to formalize a term sheet that would take about 30 days to wrap up; however, a term sheet, acting on the Town's consensus, could be presented to the City Council for their approval on Monday night (March 22nd) so that the Town would feel comfortable in going ahead that the City had committed to a final agreement of those terms. She said she was pleased that all of the parties had worked very hard to resolve the problems and the challenges that were presented.

President Smith said before the Council had a discussion regarding the water agreement she wanted to express her personal gratitude to Mayor Graham for the good working relationship that she fostered between the City and the Town. She said the Town is honored that during Mayor Graham's last week in office, she has devoted so much time and effort to solving the eight year old water problem. On behalf of the staff and herself, President Smith wished Mayor Graham well and said she was welcome in Palm Beach any time.

Mayor Ilyinsky said he would like to endorse President Smith's remarks.

Responding to Mr. McLendon's question concerning the sheet dated March 19th, President Smith replied those numbers were obsolete because it was prepared from the bullets on a sheet that was a week old, and the numbers have been changing almost daily. President Smith said the spoken word is the most current and nothing is in writing yet.

Mr. McLendon questioned the amount of $2.50 and asked what that represented?

Mayor Graham responded the amount mentioned was $2.22, the current rate.

Mr. Shaw asked about the paper entitled "Alternative City Retail Proposal" that came with a letter on March 16th. He asked if he looked at that proposal, would he be correct if he made two changes, bullet item number 2, and item number 4, where it states the R&R rate is 4%?

Mayor Graham replied that was somewhat correct but in addition the City would give the Town capacity entitlement. Also, the term "Retail" is not quite correct.

Mr. Wyett asked if the City and Town were able to arrive at a mutual agreement, what would be the timing related to the surcharge?

Mayor Graham responded it would be immediately when the agreement is signed, probably thirty days.

Mr. Wyett asked how much confidence could the Town Council have that the City Commission will ratify at the Monday night meeting whatever the Town accepts at this meeting?

Mayor Graham replied if she were not confident that would happen Monday night, she would not be standing in front of the Council presenting that proposal.

Mr. Wyett asked if the $15 million included the cost of replacing, repairing, or improving the lines that go across the lake?

Mayor Graham said those would be the responsibility of the City, and they will fix all of it. She said she was not sure that the $15 million would cover all of that, and the number is probably between $15 million and $18 million–whatever the number it takes to fix it will be the number the City uses.

Mr. Wyett asked over what number of years Mayor Graham thought the repairs would be done?

Mayor Graham responded it will take approximately five years, and that was the reason more R & R money was left up front to accommodate those repairs.

Mr. Wyett asked if the City will reimburse the Town for the monies spent last season for new pipes that were put in when the City chose not to?

Mayor Graham said that has not been discussed, and she did not know what that number was. She said the City made a good faith offer to solve all of the problems.

She said that was one of the unfortunate occurrences of the litigation; however, the litigation was responsible for the position the City and the Town are in today.

Mr. Wyett asked how future increases would be measured based on cost? He said that costs that were not related to Palm Beach, such as expansion of the water system or pipe system, repairs, should not be factored into the rate.

Mayor Graham recalled her conversation with Mr. Wyett was based on a specific concept, comparing the wholesale positions that were out there. She said the City has taken a hybrid and charge a rate that is substantially less than that and will do most of the other things that were involved in that at no additional cost. When those things were discussed, it was for a different context for a proposal, and that has been changed to become a hybrid.

Mr. Wyett expressed concern about some things that could happen in the future such as enlargement of the basic water capacity area in West Palm Beach.

Mayor Graham replied that the Town and the City will have to be partners, and the distinct difference why this will work is the fact that the City is giving the Town capacity in the system and that part that is not used can be sold.

Mr. Doney said he thought it would be helpful to consider Mr. Dusey's and Mr. Randolph's concerns in the draft agreement, and to make sure that everything is clarified so there will be no misunderstandings.

Mayor Graham said she thought that all of the points that were mentioned by the Town at the Tuesday meeting were addressed. She said the only issues the City had problems with were the R&R and the debt service and those were resolved.

Mr. Randolph recalled there were general discussions regarding the term sheet where several terms were not defined; however, the City's staff and attorneys indicated the definitions would be the same as they were in the previous draft agreement. He said he recalled one discussion where the Town stated a concern regarding the Town not being able to provide non-potable water with the City's agreement being exclusive. He thought the conclusion to that conversation was that the City would have no objection to golf courses in the Town using non-potable water but the City did not want the Town to go into the business of supplying non-potable water to the Town's customers.

Mayor Graham said if a business agreement is entered into and during the 30 year term of that agreement, an alternative water supply is introduced during that time that can be used or sold to someone else, it changes the business deal that was negotiated by both sides. She recalled there was a discussion during which she said she would be willing to entertain consideration of a backup reverse osmosis system that would only be used in the event of a drought as long as it was restricted in the agreement and not be used to supplement the water supply. Mayor Graham said she did not think that would be a problem to work out if the Town wanted that as some kind of backup situation.

Mr. Shaw said one of the concerns he had that has not been addressed yet was the issue of the rate charged based on the presumption of loss of 17 1/2% throughout the system. He said that at the point the loss is down to an industry standard, which he believed to be approximately 8%, the amount produced against capacity will be less. Mr. Shaw asked if that issue had been addressed?

Mayor Graham said that issue came up primarily during a discussion of the wholesale rate figure and that has been changed since the wholesale figure is not being used but a hybrid figure. She said the proposed agreement keeps the water rate the same as customers are currently paying, and there are no additional charges whatsoever.

Mr. McLendon asked if the $2.22 figure is the average, current rate with the new rate increases in place?

Mayor Graham replied that was correct.

Mr. McLendon said the City's responsibility for the $15 million expenditure will go quite far rehab the distribution system. Mr. McLendon said he did not quite understand the hybrid figure.

Mayor Graham replied that what she was trying to suggest that this should not be labeled, because if it is labeled, then one remembers a column of figures as opposed to the issues. She reiterated that the hybrid number was a way of taking the Town's concerns and finding a way to creatively address them

Mr. McLendon said he understood the customers would be billed individually at the then prevailing rate.

Mayor Graham responded that nothing changes for the customers that is currently in place–the rate does not change except there will be no surcharge and the system is fixed. The only thing that changes is that the Town will own everything at the end of thirty years and in the interim, the Town immediately begins to own capacity entitlement. The Town becomes a partner with the City of West Palm Beach and has an ownership investment in the pipes that the City pays for.

Mr. McLendon asked if the Town could pre-buy the system?

Mayor Graham replied that if the City is paying bonds to fix the system, then the City has to have the system as part of the asset of the bonds. If the City is going to put the money out, the bonds cannot be financed if the City does not own the system.

Mayor Graham said it is up to the Town after thirty years to decide what the Town wants to do at that time–to renegotiate, etc., because the Town will own the system. She added that the City has tried to remove all of the variables for the next thirty years.

Mr. McLendon asked if 12 million gallons per day was the correct number the Town would own?

Mayor Graham said whatever amount the County is prepared to give the Town for capacity entitlement, the City is prepared to do the same thing.

Mrs. Smith recalled that the Town did request wording in the agreement that the City would continue to supply the Town with water at the end of the franchise agreement or give the Town options to go elsewhere. She added that wording was also to be part of the agreement regarding the seasonal timetable for construction projects for the piping system.

Mr. Shaw questioned if the Town had the right to set its own rate beyond the $2.00 under this proposal. He said the greatest benefit to the Town's residents could be the elimination of the inverse rate.

Mayor Graham replied that the rate blocks and the rate structure will remain the same; however, the Town may want to do something different after the water reaches the Town. She said the City commits that they will not change the rate structure, the inverse structure, or the rate blocks for thirty years so that it will not be different than what it is. The $2.22 rate will not change

Mr. Shaw questioned if the Town wanted to create an inverse rate that is based first on square footage of lots and then based on consumption so that an equity is created between smaller properties and larger properties. He said that under the current system, the second (larger) home is paying an inverse rate because a single family home uses an inappropriate quantity of water for a single family home without regard to the land. He asked if that will still be the case?

Mayor Graham said that so long as the base rate, the first payment, is $2.22, the Town can do what they want to do beyond that. She said that the City's rate structure contains the rate blocks that are currently in place. Those will stay the same for thirty years as agreed by the two staffs. The water users will pay that rate based on the number of gallons of water they use. If the Town wants to set up a structure that is beyond that, they can.

Mr. Shaw said the answer was the Town would still be hit with the same inverse rates and the Town has no way of adjusting for consumption although water conservation could be done on water consumption per acre

Mayor Graham responded that it is nearly impossible for the City when they are trying to deal with individual lot sizes to run a large system and manage costs. She said the City has to be able to predict the rates and the bonds to dedicate the revenue streams, and they have to have a certain base. She added the Town's staff wanted some protection and that was that would not change in thirty years.

Mr. McDonald asked if there would be any benefit if the Town financed the repairs to the system, and if the Town wanted to add additional monies, there would be no restrictions on it.

Mayor Graham said the staffs used a report that basically stated what needed to be done to fix the system, and the City said they would fix the system based on that report. Beyond that, there are R&R costs, and the 6% and the 5% accumulate to 17% over the thirty years. Mayor Graham said she did not know what else would be put into the system or where there would be any other expenditure unless the Town wanted to put in gold plating.

Mr. McDonald asked Mr. McLendon where he thought additional monies would be needed?

Mr. McLendon replied there is a present need, estimated between $15 and $18 million, and as time passes, there will be other parts of the system that will deteriorate. He said he was not sure that the Town would be legally able to do repairs if they did not own the system.

Mayor Graham replied that would come from the R&R fund, and it does accumulate. She said the City had some of the repair problems because an R&R account was not established either in the City or in the Town.

President Smith recalled that during the negotiations, the staffs mentioned the amount needed as $15 to $18 million to put the system in perfect condition with the R&R becoming the dedicated money to maintain it after it was fixed.

Mayor Graham suggested a provision be added to the agreement that if something extraordinary occurs that is not anticipated the parties could sit down and deal with that. She noted there was a distinct difference between a capital improvement versus an R&R.

Mr. Dusey said at the end of thirty years the Town will own the system and some capacity in the system, but there is no provision for continuity of service or how that is going to be charged. He said presumably if the Town owns the pipes, the cost of maintaining and operating that distribution system would come from the rate and the capital costs associated with the plant would also come from the rate. He asked if it would not be advisable to negotiate how that would happen now rather than thirty years from now?

Mayor Graham responded she did not know how anyone could anticipate what those costs or all of the variables would be in thirty years.

Mr. Dusey said he was obviously not talking about numbers, but the rate has components, and he did not think those components would change in thirty years. He said he was talking about agreement on the components that go into the rate.

Mayor Graham said she thought the consultants agreed there were components that went into a formula, but there may be additional components in thirty years such as ones relating to regulatory issues that are unknown at this time. She suggested that the words "at least" the components from this agreement could be included to give the Town some comfort level.

Mr. Dusey said he was recommending that something be negotiated so that at the end of thirty years, the Town will not have to do that. He added that currently the Town's capacity in the City's water plant does not do a thing for the Town as presently formulated. It is just there. It has no value.

Mayor Graham replied that if the capacity does not do anything for the Town under the City's agreement, she did not know what it would do for the Town under the proposed County agreement, because the City had made the same offer in terms of capacity.

Mr. Dusey said the Town had a negotiated rate with the County for bulk service and it is continuity for thirty years after the thirty years.

Mayor Graham said an automatic renewal provision could be added to the agreement.

Mr. Dusey said the difference was the bulk rate that was negotiated with the County, and according to their rates, the Town has a retail rate with the City that the Town would like to turn into a bulk rate at some point in time.

Mayor Graham responded that she has tried not to focus on a bulk or retail rate, and the City has created something that does not fall into those categories. It is still cheaper than the wholesale rates the Town has negotiated.

Mr. Dusey said his staff estimated the $15 - $18 million will replace approximately 36% of the system which means about 64% of the system will remain in different stages of aging. He said the question regarding future capital improvements is a valid one, because he suspected the R&R will not cover the improvements over that time. Mr. Dusey clarified that the interest earned on the R&R fund would accumulate.

Mr. Dusey said that, based on some rough calculations for the year 2002, the Town had three proposals that were essentially the same.

Mayor Graham responded she did not think they were the same, and the City had the clear sense from talking to the Town's representatives individually that money was not the sole factor. Other issues included ownership, flexibility, equity, and not paying additional debt service, etc.

Mr. Hartman said a pro forma dated March 15, 1999, that starts at $6,530,000 per year in 1999 and increasing to $17,711,000 in the year 2028 appears to have a 1.35% compounded rate increase each year in the pro forma. He said the $17 million accumulated in the R&R fund appears to be calculated directly from that table or to be based on those rates. He asked Mayor Graham if that were correct?

Mayor Graham replied that it could only be presented as a projection based on current circumstances, and this was based on the City's current ordinance. She explained that was the money that would be collected and segregated under their current ordinance.

Mr. Hartman noted that the City's current ordinance stops after four years, and the compounded rate increases continue for another twenty-six years thereafter. He said it appears the City's offer is driven from gross revenues.

Mayor Graham responded that the R&R is driven by whatever they are, is the percentage the Town gets.

Mr. Hartman said that, in essence, for the $17 million to be valid, the overall cost to the Town customer would have to go up approximately 271% every thirty years.

Mayor Graham said the $17 million number was an attempt to give the Town an example, and the amount projected twenty years from now may be substantially more than that, depending upon what the revenues are.

Mr. Hartman said the point that he was making was that it was driven from the total revenue numbers to the extent that the total revenue number is less–the R&R money would be less, and if the total revenue number is more–the R&R money would be more.

Mayor Graham replied it was not likely that the water revenues would go down.

Mr. Hartman asked Mayor Graham if the $15 million would be paid from a city-wide bond issue by all of the customers in the system?

Mayor Graham responded that the money would come from a city-wide bond issue. The rates stay the same.

Mr. Hartman asked if any future regulatory changes and facility costs would be shared by all of the customers in the system in the future?

Mayor Graham replied affirmatively.

President Smith asked to hear from Palm Beach County.

PALM BEACH COUNTY

Mr. Dusey introduced Gary D. Dernlan, Director of the Palm Beach County Water Utilities Department, and Jean Kramer, Assistant County Administrator.

Mr. Dernlan stated Palm Beach County was not in competition with the City of West Palm Beach or the private sector to supply water to Palm Beach. He said the County was at the meeting simply because the Town's staff had requested the County provide some alternatives.

Mr. Dernlan presented a slide presentation noting that the County is the second largest utility in South Florida, second only to Miami-Dade, with four water treatment plants with a combined capacity of 70 MGD. Mr. Dernlan said the County currently serves mostly the unincorporated areas, south of 45th Street to the Broward County line.

Mr. Dernlan said the County has grown mostly through mergers and started approximately 30 years ago. He noted that the County provides retail water and wastewater service for the cities of Greenacres, Haverhill, and Golfview. They provide wholesale water to Palm Springs and the City of Atlantis which owns its own pipes and system.

Mr. Dernlan said if the Town enters into an agreement with the County, tremendous economies of scale can be achieved thereby saving money for Palm Beach and County residents and achieving greater financial stability with a larger system. He noted that since 1989, a 54% increase in productivity in the system has been achieved, and that has resulted in the County holding the line on rate increases.

Mr. Dernlan pointed out that during the past fifteen year period, Palm Beach County rates have risen cumulatively 20% or an average of 1.2% per year while the consumer price index has gone up 50% during the same time period. He noted that one of the County's strongest selling points is the stability of rates.

Mr. Dernlan said the average customer pays $22.45 per month for combined water and wastewater service. He said he realized the usage in Palm Beach is much higher. He noted that the County's bond rating is AA- and only four utilities in the State of Florida have a stand alone municipal bond rating of AA-. He added that the County has a very low level of debt for a utility.

Regarding the terms of a bulk sales agreement, Mr. Dernlan said the County offered the Town a thirty to fifty year agreement with options to extend for additional five year periods up to fifty years. The Town would pay the County, up front, a capacity fee of $28.5 million which would entitle the Town to capacity within the Palm Beach County system that the Town would own in perpetuity. This includes brand new membrane capacity and the highest quality water that can be technically produced in this era.. He said the numbers work out to approximately seventy to seventy-five cents per thousand gallons and, adding a commodity fee of seventy-five cents, the number is $1.45 per thousand gallons which cannot be totally compared to the $2.22 figure projected by the City of West Palm Beach, because the City has offered to front some money. He added that the seventy-seven cents difference will amortize $25 to $27 million worth of bonds.

Mr. Dernlan said the numbers between the County and the City are very, very close.

He said future County rate increases would be limited to County-wide averages. Mr. Dernlan added that the County would never have a surcharge. Mr. Dernlan said he thought the County's offer maximized the value to the Town, minimized the rates paid by the Town's customers, improved the level of service, delivered a better quality of water, and the Town will be able to set its own rates. Additionally, the Town will own the system, control the improvements, and the County will guarantee a lot of stability in the agreement.

Responding to a question from Mr. McLendon regarding the cost of reading meters and customer service, Mr. Dusey responded the base service would cost $125,000 plus an agreement to maintain the system at cost plus a slight markup.

Mr. Dernlan added there was also $50,000 for testing water quality assurance component that would be held fixed for five years, and all of the prices would be fixed for the term with no increases.

Mr. Wyett said he calculated there would be more than adequate money left over from the total County charges to fund the bond issue that the Town would need for a distribution system.

Responding to questions from Mr. Shaw, Mr. Dernlan recapped the numbers in the County's proposal: $0.75 per 1,000 for O & M; add $28.5 million, amortized over 30 years (5% interest), comes out to $0.70 per 1,000 which totals $1.45; the $0.77 difference between $1.45 and $2.22 (the City's offer) will fund approximately $27 million in bonds. The $4 million for the line and the value of the existing system would come from the $27 million and the balance would be for capital improvements.

Mr. Hartman mentioned there was a time period before everything can be constructed, and it should be looked at, pro forma, in the year 2002. He said the numbers were held constant to that date and it needs to be compared to the inflationary costs that are within the present ordinance.

After hearing comments from Mr. Hartman regarding the rate structure, Mr. Dernlan mentioned there would be a huge rate reduction during the thirtieth year.

Responding to a question from Mr. Shaw, Mr. Hartman said the inverse rate, in the present rate structure, with the average base charge for the average consumer, is the $2.22 without a surcharge.

Mr. Shaw questioned what would it be if there were no inverse rate?

Mr. Hartman responded that it would more than double–it would be over 100%.

Mr. Shaw said the County is basically offering the Town a bulk rate and what the Town charges or if it creates a rate sheet becomes the Town's prerogative. Mr. Shaw said what concerned him was the differential between the fact the West Palm rate is an average rate, based on consumption highs and lows, whereas the County is offering the low rate, and as Mr. Wyett pointed out the Town does not have the right to create a flat rate. He said he thought there was an obligation, if not legally, morally, that there be a tiering in the rate to deal with excessive use. He questioned if there was a correlation between what South Florida Water Management and other regulatory agencies do under conservation, that could be linked to acreage rather than to single family, one meter?

Mr. Dernlan responded that the Town Council would have the total prerogative to set rates as they wished.

Mr. Shaw said the Town Council may have the right to set the rate, but he was not sure that they had the right to the inverse factor.

Mr. Hartman said that as long as South Florida Water Management looks at it, and it is uniform from the standpoint that it is not capricious or arbitrary, and there is a rational basis for it, and it meets the rate setting tests, the Town has the ability to set the rate structure as long it encourages water conservation.

Mr. Shaw asked if the Town created an inverse rate, who would get the money?

Mr. Dernlan said the lowest rate would actually be lower than what the County is selling it for, and the Town would set its rate where it wanted to. He said the Town was not subject to the regulation of the Public Service Commission as a municipality.

Mr. Dernlan said he had been contacted by a firm that could conduct a study on the infrastructure in the Town of Palm Beach, and the cost would be approximately $28,000 to evaluate the system.

Mr. Dusey commented that negotiations with the County went very well, and he complimented Mr. Dernlan and his staff for their efforts.

Mr. Robert Orry, President of Public Resources Management Group, the rate consultant for the City of West Palm Beach, distributed a rate sheet to the Mayor and Town Council. Mr. Orry said he wanted to draw attention to the alternative West Palm Beach Retail Proposal with Zero Surcharge which showed the rate as $2.26 instead of $2.22. Mr. Orry said the 2002 rate, assuming the higher $2.26 rate–average, compounded, will be $2.58.

Mr. Orry compared the County's offer to the City's offer and said when all of the cost components are added up, the result is $2.96/1,000 retail, assuming 5.5%, 30 year bond financing. He said the City's offer is approximately 0.46 less in the year 2002 which would be the comparison year when all of the improvements are done.

Mr. Orry noted that the County's proposal ties any wholesale rate adjustment to the retail rate adjustment resulting in automatic increases for Palm Beach if the retail rates increase. Mr. Orry added that the City of West Palm Beach has a regional system also with a 47 MGD facility that presently serves the Town and provides good service. The City would also absorb any regulatory risk.

Attorney Patrick Brown from the City of West Palm Beach said the summary passed out at this meeting was an intent to provide the Council with the City's perspective with respect to some of Mr. Hartman's information that was based on some assumptions of values, most of which the City agrees with, but the City wanted to put it into a format that the City thought reflected their view. He said the County's proposal, using the low estimates, was, in his opinion, very, very aggressively low. Mr. Brown said the City's offer is a much better deal.

Willam Guttman, The Civic Association, asked two clarifying questions regarding the City of West Palm Beach's proposal. He said the first one related to the 12 million gallons per day capacity entitlement. He said he understood that during the 30 year term, if the Town did not use the water, they could sell the water and take the profit. He asked what would happen at the end of the 30 year term, if Palm Beach and West Palm Beach could not agree on a bulk rate, and would Palm Beach still be in a position to take its $12 million capacity and sell it to someone else?

Art Cousky, Attorney and Professional Engineer, said the use of 12 MGD is somewhat of an inconsistency, and the attempt by the City was to put before the Town Council similar information. He said the 12 million gallons/day is a peak number, and the average capacity that is going to be dedicated. The reserve will be measured in 6 MGD.

Mr. Cousky said the Town will be getting a guaranteed capacity for the life of the agreement, and there are no residual values at the termination of the agreement.

After a discussion with Mr. Wyett regarding projected needs of the Town in excess of the 12 million residual, Mr. Cousky said he had no objection to taking the Town's projected needs and including them as an addendum or exhibit to the agreement and trying to factor them as well as possible into the agreement for the period of time after the 30 years.

After a discussion regarding Mr. Guttman's question related to the possible sale of capacity at the end of the agreement, Mr. Dernlan clarified the capacity was owned by the Town in perpetuity.

Mr. Guttman asked if it were possible from West Palm Beach's point of view if there was an excess in the accumulated R&R fund, the contract was not renewed, and at that time the Town assumed the ownership of the infrastructure, would the City be willing to transfer the excess to a mirror-image R&R fund in Palm Beach whereby the money could be used for the system?

Mr. Cousky replied that question was answered initially as to what the distribution would be, and he thought there would be no difficulty.

Mrs. Smith said she thought the answer to the question was "yes".

Mayor Graham said the City's proposal, according to the Palm Beach contract, was to mirror their interest, and the City did not read that as being in perpetuity. That is not what the contract says.

Mr. Dernlan said the County's agreement does specifically state that the Town will own this capacity in perpetuity, and it is very clear.

Eric N. Gilbertson, 151 Chilean Ave., addressed the Town Council. Mr. Gilbertson said he was concerned about the options to go farther, but guessed the Town controlled the water and did not think the 30 year agreement was long enough. He asked Mr. McLendon and Mr. Wyett to express their thoughts regarding the proposed agreement.

Mr. McLendon said there had been great strides the last couple of weeks; however, there are more issues the Town Council needs to hear about.

Louis Pryor, 227 Brazilian Ave., addressed the Town Council. Mr. Pryor said, as a point of clarification, the County has said the 12 million gallon per day (MGD) capacity entitlement, if the agreement were with them, is in perpetuity. He said he was not entirely sure that the City of West Palm Beach would match that. He asked if that were true?

Mayor Graham responded it would be, and the extension would be as long as the Town wanted it.

C. PRIVATE DESIGNERS, CONSTRUCTORS, AND OPERATORS OF WATER SYSTEMS

Mr. Dusey said many firms were invited, but the Town believed it could pay for capacity up front and fund cheaper than a private entity can. He said that makes the privatization consideration much more competitive, and it is the least developed of the options. He said the only way to really get there is to seek proposals and bids through a formal process.

John Kiernan, Ionics, addressed the Town Council, and said he reviewed information received from Mr. Hartman. He said he focused on the effective rate which was listed by Mr. Hartman as $1.68 per 1,000 gallons, and that was taken from an earlier Ionics proposal and converted.

Mr. Kiernan contested the $1.97 per 1,000 gallons figure projected by Mr. Hartman based on a 17.5% loss in the pipes. After discussing this with Mr. Hartman, Mr. Kiernan said he proposed that the Town buy the plant up front with bonded money. The plant would be installed to the Town's specifications, on the Town's site(s) and owned by the Town. Mr. Kiernan said that estimate was $35 million, and that included a 16 MGD plant to cover any three day high-end use, and two sites and two architectural buildings, a buried tank, and a number of very specific issues including the number of wells required and pipes associated with the wells.

Mr. Kiernan explained that he would receive $0.68 at the meter which would be escalated by 17.5% (the leakage in the system), and a bond issue would take care of the debt for the plant. He said there is a fixed, capital repayment charge that escalation, water use, and consumables do not apply to, and that is fixed for the duration of the contract just as a bond would be.

Mr. Kiernan pointed out with privatization, the Town would maintain total control of the system and could stage the capacity of the system as needed.

Responding to Mr. McLendon's question regarding funding from a State Revolving Loan, Mr. Hartman replied an application could be submitted for the treatment plant facilities which should receive fairly high points for being an alternative water supply, especially a membrane treatment system. He said the transmission system generally is not as highly prioritized.

President Smith commented on Mr. McLendon's remark that the proposals presented at this meeting have raised more questions, and she suggested this would be the appropriate time to answer the questions that remain unanswered.

Mr. McLendon responded his comment related to the presentations that were made by Ionics and others. He said he expected Mr. Hartman would supply a new sheet that will provide information for the Council to act on.

President Smith said if no more questions are raised, the Council will think the questions have been addressed.

Mr. Hartman proposed to the Town Council that they may want to consider comparing the different proposals, with the inflation factor, for the year 2002 that may impact each of the alternatives, and potentially a 30 year pro forma analysis may be beneficial in the decision making.

Mr. Kiernan said the privatization process gives the Town flexibility of how it structures a contract. He said the bond issue could be for the entire system or the well system design could be included in that, or, in other words, capitalize many different aspects of the job.

Mr. McLendon asked if Ionics estimate included the supply wells?

Mr. Hartman verified that the estimate included eighteen wells. He added that two options for the brine flow were discussed. One was a deep well injection, permit pending with FDEP, and the second one was for an ocean defusion system as an alternative.

Mr. Shaw, reviewing Mr. Hartman's Summary Cost Comparison sheet, said the numbers looked good until the year 2020 when he was not sure where the Town would be with the reverse osmosis system or the County.

Mr. Wyett asked Mr. Hartman if the Town's reverse osmosis system would be subject to the South Florida Water Management System's restrictions?

Mr. Hartman responded it would depend on where the water supply would come from and the impact to the aquifer, but he suspected the island location could be shown not to impact the resources of the State. He added that a location on N. Quadrille may have induced circumstances that could apply, and the Town would have to have an exemption to show the Town did not impact the resources of the State. He said that reuse systems are not impacted, and other types of systems have been able to receive variances.

Mr. Wyett asked Mr. Kiernan if his company planned to be part of the proposal to operate the system after the Town purchased it?

Mr. Kiernan responded they did, and he thought whoever builds the system should be part of the operation. He said this would be a partnership between the private sector and the public sector.

Mr. Wyett asked Mr. Hartman if it were correct to assume that under the County proposal or in the privatization system, the Town would benefit from the reduction in the water loss, from 17% to 10%, but would not benefit under the City's proposal?

President Smith suggested the City should answer the question.

Mr. Wyett said he would like to ask both parties, and if the City spent $15 to $17 million on the system, who would pick up the benefit from the reduction in leakage in the system?

The City of West Palm Beach responded that Mayor Graham had answered that question, and the answer was that the rate presented to the Town would be the same rate provided to all of the users of the system. There is no surcharge associated with it; no cost for the capital improvement program; and, in addition, there is an R&R.

Mr. McLendon said he wanted to compliment President Smith and the Town staff for their efforts for the last few weeks.

Attorney Randolph questioned the City of West Palm Beach, in the event an agreement can be reached, could they come up with some kind of language which would provide that at the end of thirty years, in the event the Town desired to continue with the City, that the City would obligate itself to continue? He asked if the City could draft a formula that would not be so specific as to state what the rate would be at the end of thirty years but would state that reasonable rates would be charged that would be equivalent to what is charged in the City?

Mayor Graham responded, "Absolutely."

Attorney Randolph said the figure discussed was $15 million for the capital improvements; however, the figure that was exchanged was in the neighborhood of $16.5 million, and discussion took place with a range of $15 - $18 million. Mr. Randolph requested the agreement be drafted to incorporate the figures of $15 - $18 million, and to be sure that a great portion of that not be put into the intercostal crossings so as to delete from the capital improvements.

Mayor Graham responded that $15 million was discussed as an average number, but whatever the number will be, between $15 and $18 million, the City will do it. She said the language will be included in the agreement.

Mr. Randolph said if the Town thought other improvements, beyond the $15 - $18 million and the R&R, were necessary, would there be any way to have language in the agreement that would allow those improvements to be made over and above the aforementioned costs?

Mayor Graham said she thought she said yes to that. She said the issue was the question of liability in the case of an environmental problem, although the City would have to approve any plans, and it may not be a problem.

Mr. Shaw said he was concerned about the R&R fund that would be funded from revenue from a community that is built out with a fairly stable consumption of water. He asked if there was a way for the City to address the issue of a three fold increase in the time frame of the agreement as projected in the draft?

Mayor Graham responded that the Town has been a customer of West Palm Beach for thirty years, and for the most part has not objected to the rates. She said the City is in the lower third of costs of water provider. She added that all rate increases have to be substantiated by consultants studies, and the best way to answer the question is to look at the past history.

Mr. McDonald asked Mayor Graham about the problem of low water pressure in the south part of Palm Beach and could the City resolve that problem?

Mayor Graham replied if an agreement is reached, this problem could start to be resolved right away, and the reason it has not been resolved is the money issue with no agreement with the Town. Mayor Graham added that all new meters will be installed also.

Mrs. Smith recalled that it had been mentioned, and the City of West Palm Beach confirmed that it is being addressed.

Mr. Elwell mentioned that there was language in a previous draft that was acceptable to both parties that related to the minimum acceptable pressure throughout the system

Mayor Graham agreed that there would be no problem adding that to the agreement.

Attorney Randolph said that one of the proposals in the bullet list was that in the event the Town Council were to accept this proposal, the pending litigation would go away. He said that relates to the two cases: one relating to the surcharge and one relating to the valuation of the system. He said he was approaching a point that if the Town Council were to give consideration to settling the law suits, he would need advice regarding the litigation aspect. Mr. Randolph said unless the Town Council were prepared to discuss how the litigation should be resolved, he would suggest an attorney/client session where advice regarding the litigation could be given.

President Smith said an Executive Session could be held Monday morning, March 22nd. After discussion, the Mayor and Town Council agreed the time would be 9:00 a.m.

Attorney Randolph announced the meeting would be held Monday, March 22, 1999, at 9:00 a.m. with an Executive Session in the Town Hall. Mr. Randolph announced that Mayor Ilyinsky, President Smith, President Pro-Tem Wyett, Councilmen McLendon and Shaw would be present in addition to Town Manager Doney, Attorney Randolph, and a court reporter from Lea and Maarsa. Councilman McDonald will not be in attendance.

Mayor Graham mentioned that a trial was set to begin in May and neither party wants to incur additional costs and attorneys' fees to prepare if there will be no trial. She said the mediation was good to allow the two parties to come to this point.

Mr. Randolph clarified that Mr. Doney as Chief Administrator or Executive Officer of the governmental entity had to meet in private with the entity's attorney to discuss pending litigation and could not appoint Mr. Dusey in his place.

Mrs. Smith said the Mayor and Town Council will meet on Monday, and that meeting will be adjourned to go into Executive Session in the back room. Following the Executive Session which will be attended by Mr. Randolph, Mr. Doney, Mr. McLendon, Mr. Shaw, Mayor Ilyinsky, Mr. Wyett, and (Mrs. Smith), they will return to the Council Chambers to continue the Town Council meeting and announce what actions have taken place.

Mr. Randolph suggested that President Smith should announce at this meeting that a special meeting will be called on Monday, immediately following the Attorney/Client session, to discuss the offer from the City of West Palm Beach.

President Smith asked if that meeting would not be a continuation of the meeting that would start at 9:00 a.m. and would be adjourned to go into the Executive Session in the back room and to return to the Town Council Chambers to announce the question of a settlement with the City of West Palm Beach on the litigation?

Mr. Randolph replied that was close and the only thing he was trying to clarify was that the Mayor and Town Council were not necessarily going to announce what happened at the close door meeting, because the action will not be taken at that meeting. Any action that will be taken, will be taken at the public meeting.

President Smith requested that Attorney Randolph fine tune her remarks.

Mr. Randolph said that he would say that immediately following the Attorney/Client session, the Town Council will have a special meeting to discuss in public session the offer that has come from the City of West Palm Beach relating to the settlement of the pending litigation. He said the cases were: The Town of Palm Beach vs. the City of West Palm Beach, Case No. CL 97-7726AJ; and Town of Palm Beach vs. the City of West Palm Beach, Case No. CL 98-10711AJ.

Mr. Wyett asked President Smith when she anticipated to meet to evaluate the three general proposals?

Attorney Randolph responded that could be done at the meeting that is being announced.

Mr. Wyett requested that Mr. Hartman prepare a comparison sheet for the Monday morning meeting.

Mr. Hartman said he would have to make some assumptions without benefit of discussing them with the parties between this meeting and the Monday meeting. He said he could do that, but the preference would be to review the projections with each of the parties.

Curt Kiefer from Stone & Webster addressed the Town Council and said he had made a presentation previously as a potential developer. He said he would like to reinforce some of the statements that Ionics made regarding the numbers that were in the range of $1.50 to $1.68 for a brackish water treatment in the Town of Palm Beach. He said those figures compare favorably with the County, although they were preliminary budgetary figures. Mr. Kiefer said the Town Council had not requested the most competitive proposals from developers, and he wanted to reinforce the idea that his company would be very pleased to put together a proposal for the Town of Palm Beach for a project of this nature.

VI. ANY OTHER MATTERS

There were none.

VII. ADJOURNMENT

The meeting was adjourned at 4:30 p.m.

Mary A. Pollitt, Town Clerk