

# TOWN OF SEWALL'S POINT



**PAMELA MAC'KIE WALKER**  
Town Manager

**TO:** Town of Sewall's Point Commission  
**FROM:** Pamela Mac'Kie Walker, Town Manager  
**SUBJECT:** Agenda Item 1  
Financial Reports  
Town Commission Meeting, November 17, 2015

---

Staff recommends acceptance of the attached financial reports.

**Town of Sewall's Point**  
**Financial Report**  
Revenues and Expenses Budget-to-Actual

	Actual October 2015 <i>unaudited</i>	Annual Budget FY 2016 <i>unaudited</i>	% of Budget
<b>Revenues</b>			
Intergovernmental			
334.100 · Police Dept Grant Funds	-	-	
332.000 · Grant Mgmt. Fees FEMA 3%	-	20,000	0.0%
312.400 · Gas Tax	5,000	63,000	7.9%
315.000 · Communications Services Taxes	5,000	63,000	7.9%
335.120 · State Revenue Sharing	5,000	63,000	7.9%
335.150 · Alcoholic Beverage Tax	-	2,000	0.0%
335.180 · Sales Tax	16,000	212,000	7.5%
<b>Total Intergovernmental</b>	<b>31,000</b>	<b>423,000</b>	<b>7.3%</b>
Local Taxes, Fees, Fines			
311.100 · Ad Valorem Taxes	11,850	1,633,000	0.7%
316.000 · Local Business Tax	938	4,000	23.5%
322.000 · Building Permit Fees	14,295	210,000	6.8%
323.100 · Electric Francise	-	129,000	0.0%
325.200 · Road Impact Assessments	1,730	34,000	5.1%
351.300 · Civil Fines	5,100	6,000	85.0%
351.500 · Traffic Fines	1,386	17,000	8.2%
351.501 · Police Education	98	2,000	4.9%
361.100 · Interest	504	5,000	10.1%
366.900 · Miscellaneous Revenue	-	7,000	0.0%
367.000 · Town Licenses & Fees	425	5,000	8.5%
<b>Total Local Taxes, Fees, Fines</b>	<b>36,327</b>	<b>2,052,000</b>	<b>1.8%</b>
<b>Total Revenues</b>	<b>67,327</b>	<b>2,475,000</b>	<b>2.7%</b>
<b>Expenses</b>			
<b>Human Resources</b>			
Public Safety	41,782	827,845	5.0%
Town Manager	7,258	121,200	6.0%
Town Assistant	2,733	45,600	6.0%
Town Clerk	4,272	63,375	6.7%
Building Dept.	7,217	80,100	9.0%
Maintenance Dept.	2,423	40,700	6.0%
519.230 · Insurance Benefits	31,633	179,000	17.7%
519.24 · Worker's Comp - Other	5,820	25,000	23.3%
<b>Total Human Resources</b>	<b>103,138</b>	<b>1,382,820</b>	<b>7.5%</b>
Operating Expenses			
519.40 · Travel	1,063	3,000	35.4%
519.41 · Communication Network	4,504	34,600	13.0%
519.43a - Electricity	595	29,000	2.1%
519.43b - Water	604	24,000	2.5%
519.45 · General and Liability Insurance	11,409	44,000	25.9%
519.48 · Town Events	-	10,000	0.0%
511.49 - Contingency	-	1,000	0.0%
519.49D - Disaster Aid	-	1,000	0.0%
519.49F - Bank Fees	65	3,000	2.2%
519.51 · Office Supplies & Services	897	31,000	2.9%
519.52 · Fuel, Oil, Operating Supplies	1,305	29,000	4.5%
519.54 · Dues, Ed., Tuition Reimb	530	8,000	6.6%
521.52 · PD Enforcement Supplies	54	17,700	0.3%
<b>Total Operating Expenses</b>	<b>21,027</b>	<b>235,300</b>	<b>8.9%</b>

**Town of Sewall's Point**  
**Financial Report**  
Revenues and Expenses Budget-to-Actual

	<b>Actual</b>	<b>Annual Budget</b>	<b>% of</b>
	<b>October 2015</b>	<b>FY 2016</b>	<b>Budget</b>
	<i>unaudited</i>	<i>unaudited</i>	
<b>Outside Services</b>			
<b>Maintenance Services</b>			
519.46a · Landscaping Maintenance	125	60,000	0.2%
519.46M · Buildings & Facilities Maint.	-	11,000	0.0%
519.46O · Office Cleaning Service	620	8,000	7.8%
519.46P · Parks Maintenance	88	13,000	0.7%
519.46S · Streets & StormSewers	825	23,000	3.6%
521.162 · PD Equip. Maintenance	1,411	7,100	19.9%
521.46V · PD Vehicles Maintenance	32	15,000	0.2%
524.46V · BD Vehicle	-	1,500	0.0%
539.46V · PW Vehicle	-	1,500	0.0%
539.34 · Temporary Staffing	-	6,000	0.0%
<b>Total Maintenance Services</b>	<b>3,101</b>	<b>146,100</b>	<b>2.1%</b>
513.32 - Financial & Audit Services	-	43,000	0.0%
519.31 · Grant Management Support	-	10,000	0.0%
<b>Total 513.32 · Financial Services</b>	<b>-</b>	<b>53,000</b>	
514.31 · Legal Services	(507)	59,000	<b>(0.9%)</b>
521.31 - PD Professional Services	1,122	9,000	12.5%
522.34 - Contracted Fire Rescue Services	88,930	370,000	24.0%
541.31 - Engineering Services	-	38,000	0.0%
<b>Total Professional Services</b>	<b>89,545</b>	<b>529,000</b>	<b>16.9%</b>
<b>Total Outside Services</b>	<b>92,646</b>	<b>675,100</b>	<b>13.7%</b>
<b>Total Recurring Expenses</b>	<b>216,811</b>	<b>2,293,220</b>	<b>9.5%</b>
<b>NR · Capital &amp; Nonrecurring Expenses</b>			
<b>541.64 · Furniture &amp; Equipment</b>			
519.64 · TH Office Equipment	-	2,500	0.0%
521.64 · PD New Equipment	-	7,000	0.0%
<b>Total 541.64 · Furniture &amp; Equipment</b>	<b>-</b>	<b>9,500</b>	<b>0.0%</b>
<b>541.630 · Capital Improvements</b>			
541.632 · Parks & Landscaping	-	30,000	0.0%
541.635 · Town Hall	300	10,000	3.0%
541.63R · Road & Bridge Improvements	-	90,000	0.0%
<b>541.675 · Stormwater Improvements</b>			
541.67G · Grant-matched Projects	-	37,500	0.0%
541.67N · Non-Grant Projects	-	35,000	0.0%
<b>Total 541.675 · Stormwater Improvements</b>	<b>-</b>	<b>72,500</b>	<b>0.0%</b>
<b>Total 541.630 · Capital Improvements</b>	<b>300</b>	<b>202,500</b>	<b>0.1%</b>
<b>Total NR · Capital &amp; Nonrecurring Expenses</b>	<b>300</b>	<b>212,000</b>	<b>0.1%</b>
<b>Net Operating Income</b>	<b>(149,784)</b>	<b>(30,220)</b>	
<b>Transfer from Reserves</b>	<b>-</b>	<b>30,220</b>	
<b>Revenues over (under) Expenditures</b>	<b>(149,784)</b>	<b>-</b>	

**Town of Sewall's Point**  
**Financial Statement**  
Balance Sheet Prev. YTD Comparison

	<i>unaudited</i>	<i>unaudited</i>		
	Oct 31 15	Oct 31 14	\$ Change	% Change
<b>ASSETS</b>				
Current Assets				
Total Cash Accounts	201,933	141,000	60,933	43.2%
Total Investment Accounts	2,224,982	2,217,560	7,421	0.3%
Total Cash & Investments	2,426,914	2,358,560	68,354	2.9%
Total Other Current Assets	45,697	95,102	(49,405)	-52.0%
Total Current Assets	45,697	95,102	(49,405)	-52.0%
Capital Assets				
161.91/92 Land and Improvements	681,019	681,019	-	0.0%
161.94 · Roads & Walkways	1,624,183	1,624,183	-	0.0%
162.91 · BUILDING - TOWN HALL	411,010	411,010	-	0.0%
164.91 · STREET LIGHTS	140,590	140,590	-	0.0%
164.92 · LANDSCAPING	44,930	44,930	-	0.0%
165.000 · Construction In Progress	11,907	11,907	-	0.0%
166.91 · POLICE CARS & EQUIPMENT	370,554	370,554	-	0.0%
166.912 · TRUCK - BUILDING DEPT	40,727	40,727	-	0.0%
166.92/93 · Equipment, Furniture & Fixtures	86,074	86,074	-	0.0%
Less Dep. & Invest.in Capital Assets	(3,410,994)	(3,410,994)	-	0.0%
Total Capital Assets	-	-	-	0.0%
<b>TOTAL ASSETS</b>	<b>2,472,611</b>	<b>2,453,662</b>	<b>18,949</b>	<b>0.8%</b>
<b>LIABILITIES &amp; EQUITY</b>				
Total Accounts Payable & Accrued Expenses				
207.000 · Technology/Processing Fee	39,628	(116)	39,744	34380.4%
208.001 · State Fees Payable	621	-	621	100.0%
209.000 · Martin Cty Impact Fees Payable	2,962	865	2,098	242.6%
217.00 · Payroll Liabilities	-	-	-	0.0%
217.00 · Payroll Liabilities	(165)	(284)	119	41.8%
Total Current Liabilities	43,046	465	42,581	9161.4%
Total Long Term Liabilities	-	-	-	0.0%
Total Liabilities	43,046	465	42,581	9161.4%
Equity				
Designated for Special Projects				
247.030 · Reserve for Prepaid Insurance	3,969	5,367	(1,398)	-26.0%
247.05 · Reserve - Infrastructure	-	62,500	(62,500)	-100.0%
247.06 · Reserve - Vehicle Replacement	-	1,885	-	-
247.32 · Disaster Reserve	1,000,000	-	-	-
247.33 · Operating Reserve	500,000	-	-	-
247.32 · Hurricane Reserve	-	1,500,000	(1,500,000)	-100.0%
Total Designated for Special Projects	1,503,969	1,569,751	(65,782)	-4.2%
Unrestricted and Retained Earnings	1,075,380	1,045,014	30,366	2.9%
YTD Revenues/Transfer from Reserves	(149,784)	(161,568)	11,784	7.3%
Total Equity	2,429,565	2,453,197	(23,632)	-1.0%
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>2,472,611</b>	<b>2,453,662</b>	<b>18,949</b>	<b>0.8%</b>

# TOWN OF SEWALL'S POINT



**PAMELA MAC'KIE WALKER**  
Town Manager

**TO:** Town of Sewall's Point Commission  
**FROM:** Pamela Mac'Kie Walker, Town Manager  
**SUBJECT:** Agenda Item 2  
Meeting Minutes  
Town Commission Meeting, November 17, 2015

---

Staff recommends approval of the attached meeting minutes.



**TOWN OF SEWALL'S POINT**  
**TOWN COMMISSION MINUTES OF REGULAR MEETING**  
**OCTOBER 27, 2015**

[Verbatim details available at [www.sewallspoint.org](http://www.sewallspoint.org) by clicking the “audio” link for the meeting]

The Town Commission of the Town of Sewall’s Point met on Tuesday, October 27, 2015 at 7:00 p.m. at Town Hall.

**CALL TO ORDER**

Mayor Luger called the meeting to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

Mayor Luger led the Pledge of Allegiance.

**ROLL CALL**

Mayor Paul Luger, Vice-Mayor Dan Morris, Commissioner Vincent N. Barile, Commissioner James W. Campo, Commissioner Jacqui Thurlow-Lippisch, Town Manager Pamela M. Walker, Town Attorney Glen Torcivia and Town Clerk Lakisha Burch were present.

**ADDITIONS, DELETIONS OR CHANGES TO THE AGENDA**

Town Manager Walker asked that the Defense of Public Officers’ Policy be added to the agenda as item number 7.

**Motion was made by Commissioner Campo, seconded by Vice Mayor Morris; to approve the amended agenda adding Defense of Public Officers’ Policy as item number 7; it was voted as follows: Ayes: Mayor Luger, Vice Mayor Morris, Commissioners Barile, Campo and Thurlow-Lippisch. Motion carried unanimously.**

**CONSENT AGENDA**

- 1. Financial Reports**
- 2. Meeting Minutes**

Commissioner Campo asked that the Financial Reports be removed from the Consent Agenda and discussed.

Vice Mayor Morris asked that the Minutes also be removed from the Consent Agenda for discussion.

**Motion made by Commissioner Campo, seconded by Vice Mayor Morris; to remove the Financial Reports and Minutes from the Consent Agenda for discussion as item number 2; it was voted as follows: Ayes: Mayor Luger, Vice Mayor Morris, Commissioners Barile, Campo and Thurlow-Lippisch. Motion carried unanimously.**

Mayor Luger called for discussion of Financial Reports and Minutes.

Commissioner Campo commended the Mayor and Town Manager for reducing the budgeted transfer from reserves from \$400,000 to less than \$40,000 and stated that this is quite an accomplishment.

Mayor Luger also thanked the Chief of Police for keeping a tight rein on her department's expenses.

Vice Mayor Morris stated that the Commission appreciates the work of all the staff.

Vice Mayor Morris pointed out that he is still waiting for the Royal Poinciana tree to be replaced in the park. Town Manager Walker responded that the order for the tree and it should be delivered within the next month.

**Motion was made by Commissioner Campo, seconded by Vice Mayor Morris; to approve the Consent Agenda; it was voted as follows: Ayes: Mayor Luger, Vice Mayor Morris, Commissioners Barile, Campo and Thurlow-Lippisch. Motion passed unanimously.**

### **PROCLAMATIONS**

#### **3. Swearing in of Officer Andrea Swan**

Police Chief Ciechanowski conducted the swearing in of Officer Andrea Swan.

#### **4. Proclamation for Hunger Action Month**

Mayor Luger read the proclamation for Hunger Action Month and presented it to David Vaina and Wendy Berardi. David Vaina addressed the Commission and gave an overview of Treasure Coast Food Bank and Hunger Action Month.

### **COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS**

There were public comments made by Ann Bergalis, Douette Pryce and Lily Pryce.

### **PUBLIC HEARING**

#### **5. First Reading of Ordinance no. 407 FPL Franchise Agreement**

Town Attorney Torcivia read Ordinance No. 407 by title.

Town Manager Walker presented the item.

**Motion was made by Commissioner Campo, seconded by Commissioner Thurlow-Lippisch, to approve Ordinance No. 407 FPL Franchise Agreement on First Reading; therefore it was read into the record by title by Town Attorney Torcivia; therefore it was voted as follows: Ayes: Mayor Luger, Vice Mayor Morris, Commissioners Barile, Campo and Thurlow-Lippisch. Motion passed unanimously.**

### **DISCUSSION**

## **6. November and December meeting schedule**

Town Manager Walker presented the item.

**Motion was made by Commissioner Thurlow-Lippisch, seconded by Vice Mayor Morris, to approve that the workshops and regular meeting in November and December be combined and held on the following dates at 5:30 p.m., November 17<sup>th</sup> and December 15<sup>th</sup>; it was voted as follows; Ayes: Mayor Luger, Vice Mayor Morris, Commissioners Barile, Campo and Thurlow-Lippisch. Motion passed unanimously.**

## **7. Defense of Public Officers' Policy**

Town Attorney Torcivia presented the item.

There was discussion among the Commission, Town Attorney and Town Manager.

**The Commission reached a consensus for the Town Attorney to make an additional revision to the Defense of Public Officers' Policy and place it for adoption on a future consent agenda.**

## **COMMISSIONERS OR STAFF COMMENTS**

Town Manager Walker mentioned to the Commission that at the November 17<sup>th</sup> meeting, they will need to vote on which Commissioner will represent the Town of Sewall's Point on various boards. She also gave an update regarding the Fire Rescue Consolidation and stated that Mayor Luger and Commissioners Campo and Thurlow-Lippisch would be having individual meetings with the Fire Rescue Consolidation Consultant.

Vice Mayor Morris asked Commissioner Barile whether he aware of a rumored change in the membership composition of the Martin County Metropolitan Planning Organization. Commissioner Barile responded that he was not aware of any proposed change.

Commission Thurlow-Lippisch expressed her concerns regarding Fire Rescue Consolidation.

Commissioner Barile addressed the comments that were brought forward to the Commission during Public Comment by resident Douette Pryce.

## **ADJOURN**

There being no further business to come before the Commission, the meeting was adjourned at 8:30 p.m.

**APPROVED:**

---

**Mayor Paul Luger, Presiding Officer**

**ATTEST:**

---

**Lakisha Q. Burch, Town Clerk**

# TOWN OF SEWALL'S POINT



**PAMELA MAC'KIE WALKER**  
Town Manager

**TO:** Town of Sewall's Point Commission

**FROM:** Pamela Mac'Kie Walker, Town Manager

**SUBJECT:** Agenda Item 3  
Election of Mayor  
Town Commission Meeting, November 17, 2015

---

Sewall's Point Charter, Article II, Section 3 provides that the Town Commission shall elect annually one of its members to the office of Mayor, whose duties shall be to:

- Preside at all meetings of the Town Commission;
- Act as head of the Town government for all ceremonial purposes and recognized by the Governor for purposes of military law;
- Signing deeds, negotiable notes and bonds, evidences of indebtedness or other instruments in writing to which the Town shall be a party when authorized to do so by the Town Commission, except that the Commission may delegate the power to the Town Manager.

# TOWN OF SEWALL'S POINT



**PAMELA MAC'KIE WALKER**  
Town Manager

**TO:** Town of Sewall's Point Commission

**FROM:** Pamela Mac'Kie Walker, Town Manager

**SUBJECT:** Agenda Item 4  
Election of Vice Mayor  
Town Commission Meeting, November 17, 2015

---

Sewall's Point Charter, Article II, Section 3 provides that the Town Commission also shall elect annually one of its members to the office of Vice-Mayor whose duty shall be to assume the duties of the Mayor during his absence or disability.

# A Proclamation

## Recognizing

### Treasure Coast Youth in Government

**Whereas,** in 1936, the founder of Youth in Government cited the principle that “In order to lead, you must first learn to serve;” and

**Whereas,** that principle was taught by word and example by Mrs. Stella Boland, a Sewall’s Point resident who founded the Treasure Coast chapter of Youth in Government; and

**Whereas,** the Youth in Government Assembly began at South Fork High School under Mrs. Boland’s leadership, and has now expanded to include Martin County High School, offering student delegates the opportunity to participate in a full-scale model of government as members of the Legislative Branch, Judicial Branch, the press corps and more; and

**Whereas,** through the lessons of the Youth in Government program, many young people in the Sewall’s Point area have risen to positions of leadership, from service to the United States Congress and the Florida Legislature, to hosting radio talk show debates, as members of the Bar, and in many other diverse positions of leadership and community service; and

**Whereas,** the Treasure Coast Youth in Government challenges adult leaders by their assertion that **“our partisan divide exists only between the engaged and the apathetic,”** providing by their actions real examples of engaged leadership;

**Now, therefore, be it proclaimed** by the Town of Sewall’s Point, that the Town Commission commends the participants in the Youth in Government program, and thanks them for the confidence they inspire in the future of our community, the state and the world.

**Made and ordered this 17<sup>th</sup> day of November, 2015, by the Town Commission of the Town of Sewall’s Point, Florida.**

---

**Paul Luger**  
Mayor

# Proclamation Recognizing Lego Robotics Team

**\*6 SPICY\*<sup>9\*</sup>**

**(Sewall's Point "I See Why")**

**Whereas,** the Lego Robotics Team is a program that introduces young people to science and technology in a fun atmosphere; and

**Whereas,** the Lego Robotics Team "SPICY" is made up of residents of the Town of Sewall's Point, and their team name "SPICY" is an acronym representing the phrase "Sewall's Point I See Why (I-C-Y);" and

**Whereas,** the members of Team SPICY are Luke Askeland, Gaby Dunn, Gigi Dunn, Anton Fender, Brayden Fender, Mathew Nehme, Simon Preissman, Amelia Wyler, and Vienna Wyler, who recently toured the St. Lucie Solid Waste Facility that handles recycling from Sewall's Point and learned of an impediment to recycling that Team SPICY seeks to remedy; and

**Whereas,** the problem results from people putting garden hoses into recycling bins, which get caught in and can damage the machines that do the recycling, thereby greatly slowing down the process and limiting the amount of waste that can be recycled; and

**Whereas,** the SPICY Team is undertaking an education campaign to solve this problem;

**Now, therefore, be it proclaimed** by the Town of Sewall's Point, that all citizens are urged to heed the advice being given by Team SPICY to place garden hoses in the regular trash and not in the recycling bins so that recycling of appropriate waste can go forward as expeditiously and effectively as possible; and

**Further, that the Town Commission** commends the work of Team SPICY, congratulates them on their activism, and wishes them every success in identifying creative solutions to challenging problems through the use of Lego Robotics.

**Made and Ordered** this 17<sup>th</sup> Day of November, 2015.

---

Paul Luger, Mayor

# TOWN OF SEWALL'S POINT



**PAMELA MAC'KIE WALKER**  
Town Manager

**TO:** Town of Sewall's Point Commission  
**FROM:** Pamela Mac'Kie Walker, Town Manager  
**SUBJECT:** Agenda Item 7  
FPL Franchise Ordinance  
Town Commission Meeting, November 17, 2015

---

**Background:** As discussed at the October 27, 2015 Meeting, the Town's proposed new Franchise Agreement with FPL, as codified in Ordinance 407 (attached) provides a non-exclusive right to install and maintain electric facilities within the Town's rights-of-way and prohibits the Town's establishment of a municipal electric utility to compete with FPL in exchange for FPL's collection and remittance of franchise fees to the Town each month in at the rate of six percent (6%) of the revenues collected from the sale of electricity by FPL to its customers within the Town.

The estimated revenues for the Town from a new franchise agreement with FPL are \$177,855 per year at current consumption levels.

**Recommendation:** Staff recommends that Ordinance 407 be adopted.

**ORDINANCE NO. 407**

**AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF SEWALL'S POINT, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Commission of the Town of Sewall's Point, Florida recognizes that the Town of Sewall's Point and its citizens need and desire the continued benefits of electric service; and

**WHEREAS**, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the Town of Sewall's Point does not desire to undertake to provide such services; and

**WHEREAS**, Florida Power & Light Company (FPL) is a public utility which has the demonstrated ability to supply such services; and

**WHEREAS**, there is currently in effect a franchise agreement between the Town of Sewall's Point and FPL, the terms of which are set forth in Town of Sewall's Point Ordinance No. 161, passed and adopted January 8, 1986, and FPL's written acceptance thereof dated January 28, 1986, granting to FPL, its successors and assigns, a thirty (30) year electric franchise ("Current Franchise Agreement"); and

**WHEREAS**, FPL and the Town of Sewall's Point desire to enter into a new agreement (New Franchise Agreement) providing for the payment of fees to the Town of Sewall's Point in exchange for the nonexclusive right and privilege of supplying electricity and other services within the (Town of Sewall's Point free of competition from the Town of Sewall's Point, pursuant to certain terms and conditions, and

**WHEREAS**, the Town Commission of the Town of Sewall's Point deems it to be in the best interest of the Town of Sewall's Point and its citizens to enter into the New Franchise Agreement prior to expiration of the Current Franchise Agreement;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA:**

Section 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Town of Sewall's Point, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in

accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

Section 3. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement

on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 4. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal 6.0 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 6.0 percent of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited, as in the existing franchise Ordinance No. 161, to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street

and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 6. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however,

that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

Section 7. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the

Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

Section 8. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such

forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 10. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 11. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's

office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. 161.

Section 12. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

Section 13. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 14. Ordinance No. 161, passed and adopted January 8, 1986 and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section 15. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption

of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

TOWN OF SEWALL'S POINT, FLORIDA

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Town Clerk of the Town of Sewall's Point, Florida

(SEAL)

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Town Attorney, Town of Sewall's Point, Florida

# TOWN OF SEWALL'S POINT



**PAMELA MAC'KIE WALKER**  
Town Manager

**TO:** Town of Sewall's Point Commission  
**FROM:** Pamela Mac'Kie Walker, Town Manager  
**SUBJECT:** Agenda Item 8  
Regatta Agreement for Bridge Closure  
Town Commission Meeting, November 17, 2015

---

**Background:** In preparation for the permitting associated with the 2016 Sailfish Regatta, the event organizers are seeking a statement of support for the Stuart Causeway closure required by the event. This is the fifth (5<sup>th</sup>) year of the event; staff reports no issues with its operation.

A letter of no objection to the bridge closure is requested in support of the permit applications being submitted for the Event. A brief description of the permits required was provided by the Promoter:

- a. **Florida Department of Transportation (FDOT)**– Upon providing resolutions of support from Martin County, Martin County Sheriff's Office, and the **Town of Sewall's Point**, the permit application is submitted to Martin County Engineering and processed by FDOT's Ft. Pierce office. Following review, the FDOT will issue the permit to Martin County. The Sherriff's department creates the traffic management plan each year and the submittal to the County's Traffic Engineer includes the detour layout, warning signage and appropriate barricades and safety measures.
- b. **United States Coast Guard (USCG)** – The USCG is the federal umbrella agency who addresses navigational issues and also consults with US Fish & Wildlife and other agencies regarding potential environmental impacts of the event. A meeting has been requested to discuss the timeline of the permit to avoid delays experienced in 2015. There is no action required by either the Town of Sewall's Point or Martin County in conjunction with this permit application.
- c. **Martin County Parks & Recreation** – The process for this permit involves meeting with Parks and Recreation Department staff and providing various responses as part of their permit process to secure the boat launch and associated area near the race site and pits area. A fee is paid for the rental of the park and provide letters of approval from Martin County Sherriff's Office and Fire Rescue, as well as the resolution of no objection from the **Town of Sewall's Point**.
- d. **Martin County Airport Authority** – A user agreement is signed and approved by the County Commission, typically as a consent agenda item, for use of the county airport as parking for the weekend. Since this is the 5th year of the Regatta at this site under the current Regatta leadership, the Promoter plans again to use the airport for parking and have made arrangements for buses to transport spectators to and from the regatta.

In addition to these permit requirements, staff has prepared a Special Event Agreement (attached) that conditions the Town's letter of no objection to the bridge closure on the following requirements:

- a. Event Promoter to provide mailed notice of the bridge closure to every resident;
- b. No parking is permitted on Town Property or Town Rights-of-Way;
- c. Any additional security or traffic management required by the Chief of Police will be paid for by Promoter up to \$1,900;
- d. Any additional Event clean-up required will be paid for by the Promoter up to \$1,000;
- e. The Event Promoter will meet with the Chief of Police one week before the event to coordinate final Event plans; and
- f. The Town will be indemnified and named as additional insured in adequate liability insurance policies.

**Recommendation:** Staff recommends that the Commission adopt the Resolution No. 821 supporting the bridge closure request and authorizing the Town Manager to enter into the attached Special Event Agreement with Stuart Sailfish Regatta, Inc.

**RESOLUTION NO. 821**

**A RESOLUTION OF THE SEWALL'S POINT TOWN COMMISSION  
SUPPORTING THE CLOSURE OF THE STUART CAUSEWAY  
DURING THE STUART SAILFISH REGATTA**

**WHEREAS**, the Town Commission of the Town of Sewall's Point supports the promotion of tourism in Martin County; and

**WHEREAS**, the Stuart Sailfish Regatta hydroplane boat race, which will promote tourism centered around the Indian River Lagoon waterways, has requested closure of the Stuart Causeway during the event for a spectator viewing area; and

**WHEREAS**, the Stuart Sailfish Regatta will provide excellent recreational and spectator opportunities for the Town of Sewall's Point and Martin County visitors and residents as well as generate a positive economic impact on area businesses and the community;

**NOW THEREFORE** be it resolved by the Town Commission of the Town of Sewall's Point that the Town Manager is directed to execute the Special Event Agreement with Stuart Sailfish Regatta, Inc. attached hereto as Exhibit A; and

**FURTHER**, that based on said Agreement, the Town of Sewall's Point advises the Florida Department of Transportation that the Town supports the closure of the Stuart Causeway for the Stuart Sailfish Regatta from 7:00 p.m. on \_\_\_\_\_, 2016, through 9:00 p.m. on \_\_\_\_\_, 2016, and request that FDOT allow closure requested to facilitate the event.

DULY ADOPTED at a regular meeting this 17th day of November, 2015.

TOWN OF SEWALL'S POINT, FLORIDA

\_\_\_\_\_  
Paul Luger, Mayor

ATTEST:

\_\_\_\_\_  
Lakisha Q. Burch, Town Clerk  
(TOWN SEAL)

\_\_\_\_\_  
Glen J. Torcivia, Town Attorney  
Florida Bar No. 343374  
Approved as to form and legal sufficiency

**EXHIBIT A TO  
RESOLUTION 821**

**SPECIAL EVENT AGREEMENT**

**This Special Event Agreement (“Agreement”)** is made and entered into as of this 17th day of November, 2015, by and between the TOWN OF SEWALL’S POINT (“Town”), a Florida municipal corporation, with its Town Hall located at One South Sewall’s Point Road, Sewall’s Point, FL, 34996 and STUART SAILFISH REGATTA, INC. (“Promoter”), a Florida Non-Profit Corporation, with a principal place of business at 555 Northeast Ocean Boulevard, Stuart, FL 34996.

**WHEREAS**, Promoter desires to hold the Stuart Sailfish Regatta (“Event”) from \_\_\_\_\_ through \_\_\_\_\_, 2016 in the unincorporated area of Martin County, Florida, and adjacent to the Town, which may impact public property and rights of way of the Town: and

**WHEREAS**, on November 17, 2015, the Town Commission adopted Resolution 821 (“Resolution”) approving the closure of the Stuart causeway for support of the Event in consideration of the terms and conditions set out in this Special Event Agreement; and

**WHEREAS**, Promoter desires to work with Town to ensure the Event is planned in cooperation with the Town, so as to cause minimal disruption to the Town’s residents relating to traffic, parking, noise, waste, security and other matters affecting the health, safety and welfare of Town residents, as provided in this Agreement; and

**WHEREAS**, Promoter represents and warrants to the Town that it has the personnel, resources and experience to provide the services specified herein.

**NOW THEREFORE**, in consideration of the provisions contained in this Agreement, and other good and valuable consideration, the parties agree as follows:

1. **Incorporation of Recitals:** The foregoing recitals are true and correct and by this reference are fully incorporated into this Agreement.
2. **Event Permits:** A copy of permits from the following agencies will be provided to the Town Manager upon issuance:
  - a. **Florida Department of Transportation (FDOT)**
  - b. **United States Coast Guard (USCG)**
  - c. **Martin County Parks & Recreation**
  - d. **Martin County Airport Authority**
3. **Resident Notification:** On or before the \_\_\_\_ day of \_\_\_\_\_, 2016, Promoter agrees to mail to each household located within the Town of Sewall’s Point a postcard or letter, approved by the Town Manager, providing the dates and time of the events and such other information as Promoter deems appropriate, including the times of closure of the Ernest Lyons Bridge. The Town Manager shall review the postcard or letter and respond to the Promoter within five (5) business days of receipt from the Promoter. The Town Manager’s failure to respond to Promoter with his approval or request for modification on or before said date will

be deemed Town Manager's approval of same. Promoter shall mail said postcard or letter to the last known address of record by the Martin County Property Appraiser and Promoter shall provide the Town an affidavit confirming such mailing has taken place.

4. **Coordination of Traffic & Security Plans:** Not later than one (1) week before the Event, Promoter shall meet with the Town Manager and Chief of Police to finalize implementation of Event plans, including without limitation the following:
  - a. **Traffic and Parking:** Promoter will coordinate and communicate with the Chief of Police regarding traffic and parking plans associated with the Event. Promoter agrees and acknowledges that there shall be no Event parking on Town Property or on the rights-of-way of the Town. Promoter shall provide twelve (12) 'No Parking' signs for the Town's use during the Event.
  - b. **Security:** If deemed necessary by the Chief of Police, Promoter shall pay the Town for overtime costs of Town police providing additional security for areas of the Town affected by the Event up to a maximum of \$1,900 to be paid within ten (10) business days of the date on the Town's invoice; and Promoter shall provide private security to the Indialucie subdivision at its two entranceways on North River Road and North Sewall's Point Road from \_\_\_\_\_ to \_\_\_\_\_, 2015 between the hours of 8 a.m. and 5 p.m. each day.
5. **Waste Disposal/Cleanup:** Promoter shall remove all Event-related waste and debris located in the Town within forty-eight (48) hours of the conclusion of the Event. Should Promoter fail to fully fulfill this responsibility, Promoter shall reimburse the Town for any costs incurred in the removal of out-of-the-ordinary waste and debris found on or after said 48 hour period, which the Town, in its reasonable discretion has reason to believe is associated with the Event, up to a maximum of \$1,000.00. Promoter shall make said payment within ten (10) business days of the date on the Town's detailed invoice, to the Town Manager's office.
6. **Insurance and Indemnification:** Promoter shall, at its sole cost and expense, maintain liability, property damage and other insurance it deems necessary to cover the Event with liability limits in amounts sufficient to ensure performance by the Promoter of all of the indemnities granted to the Town under this Agreement. Promoter shall also name the Town as an additional insured on its Event insurance policies, including, but not limited to, its general liability insurance policy for Event. Prior to the Event, the Promoter shall deliver to the Town certificates of insurance which the Promoter is required to purchase and maintain for the Event. The Promoter understands that the insurance and the insurance limits required for the Event shall not be deemed as a limitation on the Promoter's liability under the indemnities granted to the Town under this Agreement. The Promoter agrees to waive any rights of recovery or claims against the Town to the extent the loss at issue is covered by Promoter's insurance for the Event. The Promoter shall cause its insurance carriers to waive their respective rights of subrogation with respect to the same.

Promoter shall indemnify, hold harmless and defend the Town, its officers, employees, and agents from and against any and all claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, attorneys' fees, and all court and dispute resolution costs (including any appeals), which may arise out of the Event or which may arise directly or indirectly due to the negligence, recklessness, wrongful misconduct, or other fault, in whole or in part, of the Promoter, its officers, agents or employees. Promoter recognizes the broad nature of this indemnification covenant and

expressly acknowledges the receipt of such good and valuable consideration provided by the Town in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. Compliance with any insurance requirements shall not relieve the Promoter of its liability and obligation to defend, hold harmless and indemnify the Town as set forth in this section or elsewhere in this Agreement. Nothing in the Agreement shall be construed or interpreted as consent by the Town to be sued, nor as a waiver of sovereign immunity beyond the waiver or limits provided in sec, 768.28, Fla. Stat.

7. **Relationship of Parties:** Nothing in this Agreement shall create any relationship between the parties hereto other than that of Town and Promoter, and it is acknowledged and agreed that the Town does not in any way or for any purpose become a partner of the Promoter in the conduct of its business, or a joint-venturer or a member of a joint or common enterprise with the Organization.
8. **Disclaimer:** Under no circumstances is the Town responsible for any of the contents, actions, or services associated with the Promoter or its activities and programs.
9. **Waiver:** No delay or omission of the exercise of any right of the Town or any waiver of any breach or violation of the Promoter by the Town under this Agreement shall be construed as a continuing waiver of consent to any subsequent breach or violation.
10. **Entire Agreement:** This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
11. **Modification of Agreement:** Any modification of this Agreement shall be binding only if evidenced in writing signed by the Promoter and approved by the Town.
12. **Assignments; Binding Effect:** This Agreement shall not be assigned by Promoter unless prior written approval is granted by the Town.
13. **Severability:** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Town and Promoter, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
14. **Applicable Law and Forum Selection:** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of any legal action under this Agreement, venue shall be in Martin County, Florida.
15. **Waiver of Right to Jury Trial:** PROMOTER AND TOWN HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY SHOULD ANY ACTION BE FILED.
16. **Time of the Essence:** It is specifically declared that time is of the essence in all provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound hereby, have executed this Agreement as of the date first above written.

**STUART SAILFISH REGATTA, INC.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TOWN OF SEWALL'S POINT**

By: \_\_\_\_\_

Pamela Mac'Kie Walker, Town Manager



**Where CARE FL Stands on Rail Expansion**  
**Lyric Theater Presentation**  
**November 6, 2015**

**Stephen M. Ryan, Esq.**  
**MWE**

**Bob Crandall**  
**CARE FL**

*Attorney Client Communication*  
*Attorney Work Product*

# Who Is In The Fight?



- CARE FL – Launched in 2014. Has raised more than \$1.4 million and has retained key outside professionals
- Martin County – Has allocated \$1.4 million to oppose AAF
- Indian River County – Has allocated \$2.7 million to oppose AAF
- Guardians of Martin County – Has spent more than \$140,000 on advertisements opposing AAF
- Citizens Against the Train – Likeminded, grassroots citizens organization
- Florida Not All Aboard – Citizens group that has gathered more than 50,000 signatures opposing AAF
- Thousands of unaffiliated neighbors and friends who do not want more trains running through our neighborhoods

# Background



- All Aboard Florida (AAF) will dramatically increase rail traffic in our communities
  - Passenger: 0 now – 32 tomorrow
  - Freight: 12 now – 28++ tomorrow
    - Faster and longer
- Since our crossings are at grade, more and longer trains means traffic congestion, first responder delays and safety risks
- More and longer trains also means more noise and vibration, and lower property values

# Safety Issues



- Stopping distance of faster and longer freight trains
- 80-100 mph passenger trains are a new safety threat
  - Pedestrian crosswalks
  - Inadequate “storage areas” for school buses and other vehicles
  - Visual/noise warnings vs. quiet zones
- Positive Train Control (PTC) deferred

# What Will It Cost Our Community To Pay For the Safety Required by this Project?



- Unbelievably, FEC/AAF are seeking to require our counties to pay for the maintenance of all safety equipment and crossings in perpetuity
- Recent county studies indicate these costs annually will exceed the cost of legal fees allocated for this fight

# Maritime Concerns



- Captain Dana Goward—a retired U.S. Coast Guard executive who has more than 40 years of maritime experience—studied the St. Lucie and Loxahatchee rail bridges and concluded that the bridges are an “unreasonable obstruction” to navigation
- The bridges are more than 80 years old and in poor repair, but neither bridge will be replaced due to cost and project timing
- The St. Lucie River Bridge is closely tied to the regional economy and local quality of life
- The Loxahatchee Bridge causes similar problems in the Jupiter/Tequesta area
- The New River bridge causes the same problems in Ft. Lauderdale
- As rail traffic increases these problems will get much worse

# The St. Lucie Rail Bridge Today (Finished Circa 1938)



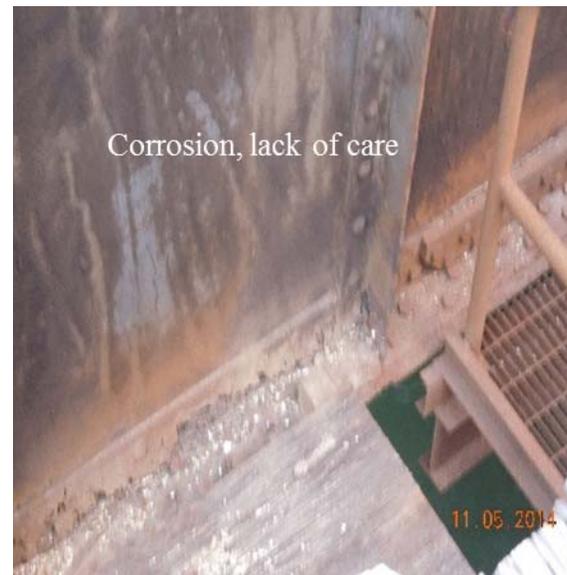
- Currently impassable by boats for a total of 3 hours and 30 minutes per day; with the projected passenger and freight increases, estimated to be impassable 9 hours and 30 minutes per day!



# The Loxahatchee Bridge Today (Finished Circa 1935)



- Currently impassable by boats for a total of 3 hours and 20 minutes per day; with the projected passenger and freight increases, estimated to be impassable for 9 hours per day!



# Coast Guard Engagement



- CARE FL has worked with the Coast Guard with the continued engagement of Captain Goward and continued communications with key officials
  - We caused rulemakings on the three rail bridges to be opened
  - We are still seeking 30 minutes open/30 minutes closed on rail bridges
- Note: The Coast Guard never expressed support for the DEIS/FEIS.

To the contrary, it advised that the required Navigation Discipline Report was inconclusive and would require independent evaluation, and specifically stated that it had not made a determination that the project would meet the reasonable needs of navigation

# Current Status of Legal Actions



- The slides that follow describe the current status of a series of legal actions
- The take-away is that AAF has to win all of them and the community only needs to win one of them

# FEIS Issued



- FRA issued the Final Environmental Impact Statement (FEIS) on August 4
- No Record of Decision (ROD), meaning the agency action is not yet final
  - Limits when the community can seek a legal judgment as to whether the FEIS is legally inadequate, ‘arbitrary and capricious’
- CARE FL—along with Martin and Indian River Counties—submitted FEIS comments in late-September to complete the administrative record

# What's Holding Up the ROD?



- Section 106 of the National Historic Preservation Act (NHPA)
- Consultation underway with respect to mitigation of activity and impact of important archaeological and historical sites:
  - Indian River County: Vero Man Site
  - Martin County: Lyric Theater
- FRA is simply in no hurry for tactical reasons

# FDFC Bond Approval



- On August 5, the day after the FEIS was issued (which was not a coincidence!), the Florida Development Finance Corporation (FDFC) approved the issuance of \$1.75 billion in tax exempt private activity bonds (PABs) for AAF.
- The vote and approval was a foregone conclusion and numerous aspects of the proceedings were of a questionable procedural, substantive, ethical and legal nature. E.g.:
  - Multiple ex parte communications between FDFC Board Members and AAF prior to the vote
  - Prejudgment evidenced by including in its budget, before the August 5 approval, an allocation for \$1.8M payment from AAF
  - Continued voting by improperly installed FDFC Board Members

# FDFC Ex Parte Communications with AAF



- Public records requests revealed that extensive ex parte communications took place between FDFC Board Members/staff and AAF and/or its affiliates
  - Texts between Board Member and AAF regarding meetings for lunch, getting together to review documents, and coordinating FDFC meeting date continued for more than 3 months
  - Meetings between FDFC and AAF revealed to have occurred on March 30, April 26, April 28, May 21, June 29, and July 7, to name a few where documentary proof exists
  - Texts and emails revealed not only coordination on the date of FDFC hearing, but advance notice of such—days of advance notice beyond what the public received

# FDFC Substantive Legal Failures



- During the bond meeting, Chairman Frank White discussed the balancing test the FDFC must meet with respect to winners and losers
- Per the meeting transcript, Mr. White stated that in “thinking about this concept of economic development,” he looked at whether there was an infrastructure project, whether jobs were created, and the “offset of the negative impact.”
- He went on to state “[a]nd so juggling through and weighing these different – going through this process of weighing that, ultimately, the way I come down and see it is that this is a net positive economic development project for the state.”
- Mr. White also stated in an email that the project was viewed “as a net positive economic development project for the state,” that “the negative impact, which disproportionately affects the Treasure Coast, was outweighed by the new jobs and infrastructure investment overall,” and that he “weighed the various tradeoffs as required by our statute to the best of my ability...”
- The FDFC never properly weighed these impacts, and that is legally vulnerable

# County FDFC Lawsuits



- As a result of the questionable nature of the procedural and substantive aspects of the FDFC proceedings, the counties filed three different suits against the FDFC action:
  - Martin County: Petition for Writ of Certiorari against FDFC, filed in Orange County (Orlando)
  - Indian River County: Petition for Writ of Certiorari against FDFC, filed in Leon County (Tallahassee)
  - Martin County: Petition for Writ of Mandamus against FDFC (Section 120 case)
  - You need to support your county elected officials!

# The Federal Lawsuit



- Disappointed that preliminary injunction ruling found that community lacked standing:
  - Injury to the plaintiffs was caused by the building of the railroad, not the issuance of the bonds
- Discovery continues

# In Closing



- Much work continues at all levels, and this fight is not over!
- It is possible to win, but to do so, we need your help today!

# What Will Your Contribution Support?



- Once the ROD is issued, pursuing legal action against the FEIS and its multiple deficiencies
- Potential legal actions against other agencies involved in “permitting” or rulemaking process, such as:
  - U.S. Army Corps of Engineers
  - U.S. Coast Guard
- Legal, political and public relations work to get the facts out

# How You Can Help



- We need to raise the money needed to continue this fight
- We need your help. Please send your contribution to:

CARE FL LLC  
7407 SE Hill Terrace  
Hobe Sound, FL 33455  
Attn: Brent Hanlon