

TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
REGULAR MEETING
MINUTES

Town Commission Meeting Room
4501 Ocean Drive
Tuesday, June 13, 2006
7:00 P.M.

1. CALL TO ORDER, MAYOR OLIVER PARKER

The meeting was called to order by Mayor Parker at 7:00 p.m. Present were Mayor Parker, Vice Mayor Yanni, Mayor Pro Tem Clark, Commissioner McIntee and Commissioner Silverstone. Also present were Town Manager Robert Baldwin, Attorney James Cherof, and Town Clerk Medina.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

3. INVOCATION, TOWN CHAPLAIN

Father Handrahan delivered the invocation.

Mayor Parker stated that the Commission had agreed during the agenda conference to schedule a workshop for Saturday, June 17, 2006, from 9:00 a.m. to 9:30 a.m. to discuss how the Commission could generally move the Town agenda forward.

Commissioner Silverstone made a motion, seconded by Commissioner McIntee, scheduling a workshop for June 17, 2006, from 9:00 a.m. to 9:30 a.m. In a roll call vote, all voted in favor. The motion carried 5-0.

Mayor Parker stated that the Commission had also agreed to holding a second workshop on Saturday, June 17, 2006, commencing immediately after the first workshop, to review the Town's proposed Unified Land Development Code.

Commissioner Silverstone made a motion, seconded by Mayor Pro Tem Clark, scheduling a workshop for June 17, 2006, commencing at 9:30 a.m. In a roll call vote, all voted in favor. The motion carried 5-0.

4. PRESENTATIONS

A. Proclamation – Hyaat Aldahwi

Mayor Parker presented Ms. Hyaat Aldahwi with a proclamation in honor of her accomplishments in ice skating.

The Commission congratulated Ms. Aldahwi and wished her well on all future endeavors.

5. REPORTS

- A. Report from Florida Department of Transportation regarding the conditions of street lights on State Road A1A

Bill Wang provided an update regarding the repairs being scheduled for the street lights on State Road A1A. He explained that there was an agreement for maintenance of the street lights between the Town and Florida Department of Transportation (DOT). Mr. Wang stated that based on the agreement, the Town was responsible for making any repairs necessary from an act of God; however, DOT realized that Hurricane Wilma had caused significant damages and DOT had agreed to repair the street lights. He explained that the repairs of street lights were not considered an emergency and, therefore, the normal process for federally funded repair process. Mr. Wang explained the bid process and described the environmental clearances needed to proceed without endangering the sea turtles. Some discussion followed.

Commissioner McIntee asked how many lights were involved in this matter. Mr. Wang was unsure, stating that they viewed the repairs on a State-wide level. He indicated, however, that State Road A1A was being looked at in its entirety as one corridor.

Commissioner McIntee asked who paid for the electricity to those lights. Mr. Wang replied that the Town was responsible for the electricity and maintenance for the street lights. Commissioner McIntee expressed concern that the Town was paying for lights that were not in working condition. Mr. Wang suggested that the Town discuss this matter with Florida Power and Light.

Mayor Pro Tem Clark expressed frustration that the Town was only now learning that there were some delays due to sea turtle season. He indicated that this had been going on for months and months, while the Town only now being provided with an update in this matter.

Mayor Parker asked if the Town could repair the street lights without penalty. Mr. Wang replied affirmatively, indicating that the Town was essentially responsible for the repairs. Manager Baldwin explained that the Town had never signed off on this project and, as such, it was the Town's position that DOT was responsible for fixing the lights. Mayor Parker stated that there was approximately a third of a mile in front of the Sea Ranch Condominiums that had no lights. He questioned if the Town would also have to comply with the sea turtle regulations. Mr. Wang replied affirmatively. Manager Baldwin agreed and explained that the Town would need to bring all lights along the ocean side to compliance with the sea turtle regulations.

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William Mason, Director of Municipal Services, explained the regulations in place to protect the sea turtles and how these regulations would be affecting the Town.

Mayor Parker asked when the Town could expect the repairs to be completed. Mr. Wang explained that it would be no less than four to five months before work would begin. He reiterated that the Town could choose to expend its own moneys to complete the repairs, but reminded the Commission that mitigation would need to be had for the sea turtle issue.

Commissioner Silverstone made a motion, seconded by Commissioner McIntee, to have the Town move forward with the repairs.

Mayor Parker asked how much it would cost the Town to make these necessary repairs. Mr. Mason provided an estimate of approximately \$3,000 per light pole, stating that there were 17 poles that needed to be fixed. Commissioner Silverstone asked if the Town would be reimbursed if it made the repairs. Mr. Mason replied negatively.

Vice Mayor Yanni asked if the Town could request reimbursement from the Federal Emergency Management Agency. Mr. Wang was not aware of the technicalities, stating that the Town would have to meet all FEMA requirements prior to submitting for reimbursement.

Mayor Pro Tem Clark expressed concern that the lights had not yet been fixed, yet South Florida was again in a new hurricane season. Some discussion followed, with Mr. Mason agreeing to contact Florida Power and Light to obtain a refund on those lights that were no working.

B. Report concerning background information on citations to unlicensed contractors (*Acting Development Services Director Bradford Townsend*)

Bradford Townsend provided a brief history of the circumstances under which a citation had been issued to an unlicensed contractor, Ronald Kozlowski. He explained that Mr. Kozlowski had been provided with an opportunity to obtain the necessary documentation from Broward County to no avail.

Commissioner Silverstone stated that the individual who received the citation had been making minor repairs for residents in Town for a long time. He did not feel that Mr. Kozlowski needed to obtain an occupational license and believed that the citation should be dismissed. Vice Mayor Yanni agreed, stating that Mr. Kozlowski was essentially a handyman who provided services. He felt that if a permit was not necessary for the work to be completed, then a license should not be required. Vice Mayor Yanni indicated that enforcement of this nature would mean that neighborhood children would also need a license before they could cut someone's lawn.

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Commissioner McIntee stated that he had researched the laws and found that Mr. Kozlowski did not need a contractor's license nor a competency license to perform the roof work he was in the process of doing when the citation was needed. He felt that the Town was using coercion to ensure that this individual obtained a license he did not need. Commissioner McIntee asked if the Commission had the authority to dismiss the citation. Attorney Cherof replied negatively.

Attorney Cherof explained that the Town Commission could amend the ordinance to describe when a license would be necessary.

Mayor Parker questioned the type of work that would require a building permit. Mr. Townsend explained that the Broward County Code described those building trades that required occupational licenses. Mayor Parker asked if the Town could override the County requirements. Attorney Cherof explained that the Town had some local authority to prosecute these types of cases as Code violations which were at a different level of those prosecuted under the State Statute. He indicated that if the Commission identified where it wanted to draw the line on this issue, he would prepare an ordinance that would be enforceable locally without being in conflict with the County's Code.

Manager Badlwin explained that there were some professional contractors that should have occupational licenses as it was their trade. He explained that there was a difference between a handyman and a professional painter, just as there were differences between a person running a garage sale and a retailer. Some discussion followed. Mayor Parker stated that he understood the need for occupational licenses to commercial businesses, especially to allow residents the ability to confirm that the company was competent to do the work. He indicated, however, that he did not believe that cosmetic type work which did not require a permit needed to be licensed.

Mayor Parker asked if the Commission had the authority to direct the Town Administration not to prosecute this matter. Attorney Cherof stated that the Town Administration had the authority not to prosecute a violation once cited; however, he urged that the Commission not to interfere with this administrative process.

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, directing the Town Administration to dismiss the citation and not prosecute.

Mayor Pro Tem Clark stated that the town Attorney should prepared an ordinance determining what type of work a handyman could perform without the need for licenses so that the Commission was not placed in this situation again.

Vice Mayor Yanni explained that the understood that this law was initiated to protect the general public from people who ran scams and were very costly to residents who required to have the work redone. He did not believe, however, that the Town had this type of problem.

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In a roll call vote, all voted in favor. The motion carried 5-0.

C. Report on the progress of the sidewalk installation on North Sea Grape Drive (*Commissioner Jerry McIntee*)

Commissioner McIntee asked for an update regarding the Seagrape Drive project. Town Planner Walter Keller stated that he was behind in preparing the construction documents for this project. He suspected that the documentation would be ready within the month. Some discussion followed concerning the cost of this project, with Mr. Keller stating that based on the increase in prices, the project might exceed \$500,000 to complete. He explained that the project included upgraded lighting, drainage, curb and gutters, landscaping, resurfacing, and the sidewalk.

Commissioner McIntee asked what side of the street were improvements to be made. Mr. Keller replied that the improvements were planned for the west side of the road.

D. Report for discussion and/or action of the Commission regarding the claims filed against the Town under the Bert J. Harris Act (*Town Attorney James Cherof*)

Attorney Cherof explained that the Town was in receipt of four separate notices filed pursuant to the Bert J. Harris Private Property Protection Act (the Act). He explained that the claims asserted monetary damages from the referendum enacted with regards to height restrictions. Attorney Cherof stated that the claims were for approximately \$21 million. He indicated that as required by this Act, he had notified the Florida Department of Legal Affairs and the neighboring properties were mailed notices of the claims.

Mayor Parker asked how many people had been notified. Ms. Medina replied that 1,100 notices had been mailed.

Attorney Cherof explained the process, stating that the Town would need to respond to the claims by November 18, 2006. He briefly described the options available to the Town at this point, which included the filing of a declaratory judgment action to determine if the adoption of the Charter amendment, created by a citizens initiative, constituted an action of the governmental agency as defined by the Act.

Attorney Cherof explained that a response had not yet been received from the Attorney General and indicated that the claimants' attorney had objected to the Town's request for an opinion from a local court. He explained that it was possible that based on that objection, an opinion might not be rendered.

Mayor Parker made a motion, seconded by Vice Mayor Yanni, directing the Town Attorney to bring a declaratory action to 1) find out if the Bert J. Harris Act applies to this specific Charter amendment and, 2) request that the courts stay the 180 day

negotiation period until the resolution of that issue.

Commissioner McIntee asked what were the drawbacks to moving forward with this action. Attorney Cherof explained that the Town would bear the cost for asking the court to declare what the Town's rights were under the claim letters. He indicated that there was a possibility of litigation as the Town had to assume that the claimants would object to the request.

Commissioner Silverstone asked what the Town could expect the expenses to be. Attorney Cherof explained that a lot of the cost depended on the amount of resistance put forth by the claimants. He indicated that the cost could range from approximately \$7,500 to \$15,000.

Commissioner Silverstone indicated that it was possible that the courts could side with the Town. Attorney Cherof agreed, but indicated that with the amounts of the claims, it should be assumed that if the Town won the judgment an appeal would be filed. He explained that the cost could then increase by approximately \$10,000 to \$15,000. Attorney Cherof explained the legal process and the types of opinions that might need to be addressed.

Commissioner McIntee asked if the Town prevailed with the declaratory judgment, could the Town request reimbursement for its legal fees. Attorney Cherof replied negatively.

In a roll call vote, all voted in favor. The motion carried 5-0.

6. APPROVAL OF MINUTES

There were no minutes to be considered by the Commission.

7. PUBLIC COMMENTS

Mark Brown, 1440 South Ocean Boulevard, referenced the report by the Department of Transportation, stating that not once were the public safety issues addressed. He believed that the regulations needed to be reviewed to ensure that safety issues were a priority.

Mr. Brown referenced the Bert J. Harris claims and indicated that the letter sent to neighboring residents was very confusing. He indicated that this type of notification should have been sent to all residents and, believed that the letter should have been more explicit in explaining the Town's position. Mr. Brown felt that it was obvious that the claimants would not back off in this matter and asked what were the Town's contingencies, such as how the claims would be paid, if the Town lost in court.

Maryann Corley, 232 Algiers Avenue, referenced the naming of portals, stating that

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there were many residents that were being overlooked.

Ms. Corley stated that proceeding with the Seagrape Drive project was the right thing to do, expressing her belief that it was a public safety issue. She asked that the Town ensure that the property was completed in a timely fashion to ensure that residents were inconvenienced as little as possible.

Kevin Padden, 159 Southeast 3 Avenue, Pompano Beach, provided information regarding an explorer program established by the Volunteer Fire Department. He indicated that the program did not require applicants to live in Town, but they did need to live very close.

Barbara Cole, 5000 North Ocean Boulevard, questioned the possibility of extending the existing gas lines throughout the Town. She felt that this would be a great benefit to the Town and its residents.

Tom Carr, 254 Miramar Avenue, addressed Mayor Parker's suggestion to lower taxes by three percent and asked if the proposed reduction would be from Broward County's portion of the taxes, or only the Town's. He suggested that the cost of solid waste collection be included in the tax bill which would further lower the tax rate paid each year.

Mr. Carr spoke in favor of the Volunteer Fire Department.

Bob Terrien, 5100 North Ocean Boulevard, stated that he had read an article in the *Pompano Pelican* regarding multiple cities uniting to study the cost of burying utilities underground. He felt that the Town should consider becoming a member of the consortium who will determine the options available and the cost involved with proceeding with this project. Mr. Terrien stated that it was his belief that the cost per municipality was approximately \$5,000. He felt that this consortium could prove to be a benefit to the Town.

John Thompson, 671 Lakeside Circle, Pompano Beach, felt that the millage had to be reduced.

Mr. Thompson spoke in favor of burying the utility lines and believed that the costs could be lowered if the Town worked with Florida Power and Light.

Mr. Thompson expressed his belief that the claims had not been filed properly and that the Bert J. Harris Act was not applicable. He did not believe the Town had to worry about the claims that had been filed.

8. ORDINANCES (2nd Reading) "Public Hearings"

- A. **ORDINANCE NO. 2006-06:** An ordinance of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, amending the Code of Ordinances, Chapter 17, "Streets, Sidewalks and other Public Places", Article III, "Official Map of Town", to add a new subsection 17-48, "Property Identification Signs"; providing for conflicts, providing for severability, providing for codification; and providing for an effective date.

Attorney Cherof read the ordinance by title only.

Mayor Parker opened the public hearing. As no one spoke, Mayor Parker closed the public hearing.

Vice Mayor Yanni made a motion, seconded by Commissioner Silverstone, to approve ordinance 2006-06 on second reading. In a roll call vote, all voted in favor. The motion carried 5-0.

Attorney Cherof suggested that the Town provide notice to all property owners of the August 1st deadline for compliance. There were no objections and the Mayor so ordered.

- B. **ORDINANCE NO. 2006-07:** An ordinance of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, amending Chapter 20, entitled "Utilities", Article IV, entitled "Stormwater Management Utility" by deleting Section 20-41, entitled "Billing," Section 20-43, entitled "Appeals", and Section 20-45, entitled "Delinquent Charges", amending Section 20-44, entitled "Cost Avoidance Credits and Adjustment of Fees" to add a new Subsection (J) concerning timing for requests, and adding Sections 20-50 through 20-65 to authorize the levy, collection and enforcement of the Town's Stormwater Management Utility Fee pursuant to Sections 197.3632 and 197.3635, Florida Statutes; providing for definitions; providing for notice and hearing requirements for Stormwater Management Utility Fees; providing for procedures for the collection of the Stormwater Management Utility Fee; providing for enforcement, conflict, severability, codification, and an effective date

Attorney Cherof read the ordinance by title only.

Mayor Parker opened the public hearing.

John Thompson, 671 Lakeside Circle, Pompano Beach, spoke in opposition to the ordinance, believing that the ordinance provided for an inequitable and possibly illegal assessment. He provided his opinions regarding the legality of the ordinance. Mayor Parker closed the public hearing.

Mayor Pro Tem Clark made a motion, seconded by Vice Mayor Yanni, to approve ordinance 2006-07.

Manager Baldwin explained the history of collection for the utility fee and indicated that it would be more cost effective for the Town to collect the fees through the property tax bill. He explained that the manner in which the fees were calculated would not be changed only the method of collection.

Commissioner Silverstone asked if Mr. Thompson were right and there were property owners who were being charged but not receiving a benefit. Attorney Cherof explained that the calculation of the fees was established by a study that considered all the properties involved. He felt that the utility fee was in compliance with the State Statute requirements for the methodology of establishing a fee. Attorney Cherof stated that the Town's procedure was modeled after another municipality's fees which had successfully defended their stormwater fees in court.

In a roll call vote, the motion carried 3-2, with Commissioner McIntee and Commissioner Silverstone dissenting.

9. COMMISSIONER COMMENTS

Vice Mayor Yanni asked for an update regarding the new parking lot. Mr. Mason explained that the bids were being obtained and believed that the Town could proceed with the project relatively quickly.

Commissioner McIntee stated that part of his responsibilities as a Commissioner was to talk to developers and get a feel for the types of projects they wanted to bring into the Town. He indicated that he had met with several developers already. Commissioner McIntee stated that he had met in his car with a particular developer who had very aggressively trying to influence the Citizens Initiative Committee to withdraw their referendum on the Holiday Inn project. He indicated that he was provided with plans for the proposed project and that the developer had described the proposed improvements and how they would benefit the Town.

Commissioner McIntee stated that as the developer was leaving the car, the developer had stated, "Oh, I hope I didn't drop any money out of my pocket". He said that when he looked down at the seat, there was a "squared off \$100 bill". Commissioner McIntee felt that he had been hustled for a hundred bucks. He stated that he had been to the Federal Bureau of Investigations and reported the incident, indicating that he could not further discuss what was occurring. Commissioner McIntee stated that he had reported this incident to the newspapers as well.

Commissioner McIntee stated that he would never meet another developer privately

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again. He felt that this particular developer had probably been wired to see if he would take the money.

Commissioner McIntee announced that if any developer wanted a zoning change or variance, good reasons best be provided as he would not "do it any more". He indicated that developers knew what the zoning was prior to purchasing property and felt that if they did not like the regulations they should not have purchased the property.

Commissioner Silverstone stated that the residents had voted him into his seat to watch how tax dollars were spent. He felt that Commissioner McIntee's news was shocking and assured residents that he would maintain his integrity.

Commissioner Silverstone thanked the Town Administration for their hard work, as well as that of the Public Works Department who were diligently working to keep the Town looking good.

Commissioner Silverstone referenced the web page and asked that some changes be made to ensure it was user friendly.

Commissioner Silverstone referenced the Bert J. Harris claims, stating that it was his understanding that the referendum provided an escape clause for lawsuits. He felt that this escape clause provided the Town with the ability to negotiate if the courts deemed that the claimants could building up to 15 stories. Commissioner Silverstone expressed his belief that having the Town lose all that money was highly unlikely.

Commissioner Silverstone thanked the Volunteer Fire Department for their continued support and hard work.

Commissioner Silverstone thanked Mayor Parker for working together with the Optimist Club, stating that the program was very progressive for the development of the youth.

Commissioner Silverstone referenced the use of the gas lines for the Town's generators, expressing concern that if the general line was used, service would be interrupted in the event a line was broken. He indicated that this was one reason the Town had opted to use separate tanks for its generators.

Mayor Pro Tem Clark agreed that the Town was looking better and thanked staff for their diligent work.

Mayor Pro Tem Clark congratulated Ms. Aldahwi in her accomplishment, stating that she was a role model for many kids.

Mayor Pro Tem Clark reminded residents that hurricane season was now underway and encouraged everyone to ensure that their evacuation plans were ready and their

supplies ready in the event of a storm.

Mayor Parker wished everyone a happy Father's Day.

Mayor Parker stated that he had received a complaint regarding the cleaning of the beach on the southern side of Town. He indicated that apparently only the northern sections of Town were cleaned on Saturdays. Mayor Parker asked that this issue be discussed at the next meeting to determine the possibility of obtaining services throughout the Town on Saturdays.

Mayor Parker congratulated Ms. Aldahwi for her accomplishments and wished her well on all future endeavors.

Mayor Parker asked Chief Gooding if the Broward Sheriff's Office had a political corruption unit. Chief Gooding replied that these types of investigations were conducted by the Sheriff's Office, but explained that there was not a unit exclusively assigned to these types of cases. He explained that political corruption complaints could be filed with any jurisdiction. Mayor Parker asked if Commissioner McIntee could file a complaint with the Broward Sheriff's Office and the State Attorney's Office. Chief Gooding explained that if the Federal Bureau of Investigations was already looking into this matter, the Sheriff's Office would probably not begin its own investigation as it would eventually end up with the Bureau.

Mayor Parker thanked staff for their work in cleaning up the Town and encouraged them to continue the diligent efforts.

10. ORDINANCES (1ST Reading)

There were no ordinance for first reading to be considered.

11. CONSENT AGENDA

- A. SPECIAL EVENT PERMIT: **Wedding**/Eldridge, Saturday, August 12, 2006; from 9:00 a.m. to 11:00 a.m.
- B. AGREEMENT: with Walter H. Keller for Planning consultant services
- C. EXTENSION: of the Development Order for LaDouceur/Silver Capital Investment, 4649 Bougainvillea Drive, for a period of six months
- D. CONTRACT: with Grade Marine Construction, Inc. for tugboat and barge usage for the Fourth of July Celebrations (*in an amount not to exceed*

\$23,786.75)

- E. CONTRACT: with Firepower Displays Unlimited, Inc. for fireworks display for the Fourth of July Celebrations (*in an amount not to exceed \$30,000*)
- F. Creation of a new job classification, Maintenance Worker III, at pay range 114 (*with a pay schedule range of \$31,215 - \$46,823*)

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to approve the Consent Agenda.

Commissioner McIntee stated that the Town had spent \$54,000 for the Fourth of July celebrations and asked everyone to keep that in mind later when funds were requested for an artificial reef.

In a roll call vote, all voted in favor. The motion carried 5-0.

12. RESOLUTION

There were no resolutions for the Commission's consideration.

13. OLD BUSINESS

- A. **"PUBLIC HEARING"** – VARIANCE REQUEST; Lowe/1808 West Terra Mar Drive (*Board of Adjustment recommended approval of the pool and deck variances, but denial of the house variances*) (*staff recommended approval of the pool and deck variances, but denial of the house variances*) (*tabled from May 23, 2006*)

Attorney Cherof swear in all individuals that wished to participate in the quasi judicial hearing and provided a brief explanation of the process. Mayor Parker opened the public hearing

Bradford Townsend, representing the Town, provided a description of the application and the variances being sought by the applicant. He described all the non-compliances currently upon the property.

Gary Brown, representing the applicant, and Robert Lowe, Jr., the applicant, were present. Mr. Brown provided a history of the property and the improvements that existed on the property. He expressed his belief that tearing down the existing wall, as suggested by the planning report, would be a hardship to his client.

Mr. Rowe stated that he had no objections to staff's recommendations regarding the pool and deck and asked for a six month extension in order to obtain all the necessary

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permits. He felt, however, he was being penalized for improvements made prior to his purchasing the property. Mr. Rowe indicated that there were several permits issued to the property that had not originally been located and described the individual permits and which improvements they addressed.

Commissioner McIntee stated that if these issues were not made part of the record at time of purchase, Mr. Rowe's problem was with the company who performed the search on the property. Mayor Parker asked if the title policy contained an exemption from encroachment upon the right-of-way. Mr. Rowe was not sure.

Commissioner McIntee warned that he already knew how he would be voting and felt that the remainder of the presentation was not necessary. Mayor Parker explained that the Town had a legal obligation to hear all the information prior to making a decision. He expressed concern that the Town's position could be prejudiced. Mayor Parker asked Mr. Rowe to continue with his presentation. Mr. Lowe advised that Commissioner McIntee had been to the house last week and indicated that he would vote in opposition to the application. He thanked the Commission for the opportunity to provide the additional information obtained.

Mr. Lowe stated that the copies of the permits illustrated that each of the improvements, as they existed today, had been approved and included the inspector's notes. Mayor Parker asked if there were permits that were issued in violation of the Town's setback regulations, was the Town bound by the issuance of the permits. Attorney Cherof replied negatively.

Mr. Rowe stated that under the annexation, any existing legal usage would have to be accepted by the Town. Mayor Parker asked if this was considered an existing legal use. Attorney Cherof replied negatively. Mr. Rowe indicated that he was requesting that the Commission use its discretion to show that if the variance had been requested at that time, the variances would have been approved. Mayor Parker noted that the original survey showed that the structure was more than 12 feet away from the property line. Mr. Rowe felt that the original survey showed that the improvements were a part of the original structure. Mayor Parker disagreed.

Commissioner McIntee stated that when he saw the property, he could see that the wall was almost directly along the roadway. He felt it was obvious that the wall was not in compliance. Mr. Rowe stated that due to the structures erected throughout the island, it would appear that this was a perfectly acceptable use of the property.

Mayor Pro Tem Clark stated that the property was purchased in 2003, yet it appeared that the information being provided was from a period of time prior to that. Mr. Rowe stated his point was that none of these issues had been picked up during his purchase of the property because the improvements had been approved and permitted by Broward County. He felt that since there was a good faith effort, the variances should

be approved even if they were not in compliance with the Code.

Vice Mayor Yanni asked how these violations had been observed, further asking if additional work was being contemplated on the property. Mr. Rowe stated that a roof permit had been applied for, with the work being completed without event. He felt that what had occurred was a result of his repairing the stucco at the front of the house when a Code Compliance officer came by to inspect the work being done.

Mr. Rowe stated that he had no objections to removing the wall and cutting the deck, but asked for the Commission's favorable consideration on the remaining variance requests. Lengthy discussion ensued.

David Rowe, representing Fausto and Karlyne Villarroel, was present. He indicated that the Villarroels resided at 3210 Fiesta Way, which was adjacent to the subject property. Mr. Rowe expressed his belief that the variance request did not meet the criteria set forth in the Code. He indicated that his clients had previously testified at the Board of Adjustment meeting that the applicant had done work in 2001, bringing the house closer to their property line. Mr. Rowe indicated that the structure was so close that it could almost be reached over the fence. He indicated that the property also encroached on a utility easement which had been a part of the plat requirement, issued prior to the construction of the original structure. Mr. Rowe stated that both of his clients strongly objected to the variance requests.

Ms. Villarroel stated that the rear additional encroaching the right-of-way was erected without a permit during a holiday weekend. Mr. David Rowe provided information regarding the complaints filed by Ms. Villarroel.

Mr. Villarroel stated that the property had been improved as late as 2001 without permits and did not believe it should be permitted. Ms. Villarroel indicated that she began to complain in 2001, but believed that the actual building had occurred in 1997.

Mr. Rowe stated that based on the complaints, the property had been inspected and, since no action had been taken, he believed that the inspector agreed that there was no violation.

Richard Orr, 1440 South Ocean Boulevard, expressed concern, stating that this variance created a negative impact on the immediate neighbor. He expressed his belief that construction of the addition had been completed in an effort to maneuver around the Code requirements. Mr. Orr stated that the Commission had to consider the intent of how the structure was built, stating that resident had a right to feel that the Commission would uphold the Town's Code.

Mr. Rowe stated that he did not own the property within the time frame of 1997 to 2001 and, therefore, could not address those comments. He indicated that in his belief the

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only work that was done was the placement of stucco. Mr. Rowe stated that this was not a self-inflicted hardship, as the circumstances existed before his purchase of the property. He emphasized that the variance requests were not a result of ignorance of or a willful intention to disregard the Code as a mortgage existed on the property. Mr. Rowe reiterated his belief that none of these issues had been a problem at the time of closing as it was clear that all the work was permitted and approved. He stated again that denial of the variance would create a substantial hardship. Mr. Rowe indicated that there were several circumstances on the island that had similar structures and believed that the variance should be approved as they were consistent with the surrounding development.

Commissioner Silverstone asked if there was a permit for the work allegedly completed within 1997 to 2001. Mr. Rowe felt it had not been an addition, but stucco work that required no permits.

Commissioner McIntee stated that he understood his arm was longer than that of Ms. Villarroel, but indicated that he could reach over the fence and touch the structure. Mr. Rowe explained that the wall was located two feet into his own property.

The Commission agreed that the structures encroached upon the setbacks. The Commission agreed that it was not bound by an improperly issued permit. The Commission agreed that the variance requests would be injurious to the adjacent property owner. The Commission further agreed that a fence should be erected to replace the one that needed to be torn down in order to protect the general public from the pool area.

Mayor Parker made a motion to grant the variance for the pool and the deck on the following conditions: 1) the deck and wall within the right-of-way be removed, and 2) that a new fence or wall, or some sort of barrier, be constructed along the property line to prevent access to the pool.

Commissioner McIntee made a motion to grant the variance for the pool and the deck on the following conditions: 1) the deck and wall within the right-of-way be removed, and 2) that a new fence or wall, or some sort of barrier, be constructed along the property line to prevent access to the pool. Mayor Parker seconded the motion. In a roll call vote, all voted in favor. The motion carried 5-0.

The Commission agreed that six months to comply was reasonable.

Commissioner Silverstone made a motion, seconded by Mayor Pro Tem Clark, denying the variances on the house. In a roll call vote, the motion carried 5-0.

Mayor Parker called a recess at 8:56 p.m. The meeting reconvened at 9:06 p.m.

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- B. **“PUBLIC HEARING”** – VARIANCE REQUEST; Steven and Barbara Cole/221 Washingtonia Avenue (*Board of Adjustment recommended approval*) (*staff recommended approval*) (*tabled from May 23, 2006*)

Attorney Cherof swear in all individuals that wished to participate in the quasi judicial hearing and provided a brief explanation of the process. Mayor Parker opened the public hearing.

Bradford Townsend, representing the Town, provided a description of the application and the variance being sought by the applicant. He described the non-compliance currently upon the property.

Barbara Cole, the applicant, was present.

Commissioner Silverstone made a motion, seconded by Commissioner McIntee, approving the variance request. In a roll call vote, all voted in favor. The motion carried 5-0.

- C. Discussion and/or action regarding the traffic circle proposal for South Seagrape Drive (*continued from May 23, 2006*)

Vice Mayor Yanni made a motion, seconded by Commissioner McIntee, tabling this item to the next meeting. In a roll call vote, all voted in favor. The motion carried 5-0.

- D. Discussion and/or action regarding Fish Habitat Pilot Program (*Marc Furth*) (*continued from May 23, 2006*)

Marc Furth stated that in order to request the seed money from the Town, a signed contract was necessary. He explained that he did not have a contract at this time and requested that some of the seed money be provided prior to the new fiscal year for permitting and the surveying that was needed to proceed. In response to Mayor Pro Tem Clark, Mr. Furth explained that the seed money needed was approximately \$12,000. He gave his word as a former commissioner that the funds would be spent wisely and the contract fulfilled.

Mayor Pro Tem Clark asked how long it would be before the Commission had a contract it could review. Mr. Furth was unsure, but felt that it should be completed within the next meeting.

Mayor Pro Tem Clark made a motion, seconded by Commissioner Silverstone, to include this project with the Town’s Capital Improvement Program for the upcoming fiscal year. In a roll call vote, all voted in favor. The motion carried 5-0.

Mayor Pro Tem Clark made a motion, seconded by Commissioner Silverstone,

authorizing up to \$15,000 in seed money from this year's budget, provided a satisfactory contract is approved by the Commission.

Ms. Medina asked if the Commission wished to identify where the funds would be taken from. Manager Baldwin advised that he was unsure which account should be used at this time, but indicated that he would advise the Commission at a later date.

In a roll call vote, all voted in favor. The motion carried 5-0.

- E. Discussion and/or action concerning the farming out of building inspections from Broward County to a private company (*Mayor Oliver Parker*) (*tabled from April 11, 2006*) (***staff requesting this item be removed from the agenda until an analysis can be completed***)

Vice Mayor Yanni made a motion, seconded by Commissioner McIntee, removing this item from the agenda until an analysis could be completed. In a roll call vote, all voted in favor. The motion carried 5-0.

14. NEW BUSINESS

- A. **"PUBLIC HEARING"** – SITE PLAN; Commerce Bank/4353 North Ocean Drive (***applicant requesting tabling to July 25, 2006***)

Mayor Parker opened the public hearing and advised that the applicant was requesting a tabling to July 25, 2006.

Mayor Pro Tem Clark made a motion, seconded by Commissioner Silverstone, tabling this item to July 25, 2006. In a roll call vote, all voted in favor. The motion carried 5-0.

- B. **"PUBLIC HEARING"** – VARIANCE REQUEST; Commerce Bank/4353 North Ocean Drive (***applicant requesting tabling to July 25, 2006***)

Mayor Parker opened the public hearing and advised that the applicant was requesting a tabling to July 25, 2006.

Mayor Pro Tem Clark made a motion, seconded by Commissioner Silverstone, tabling this item to July 25, 2006. In a roll call vote, all voted in favor. The motion carried 5-0.

- C. **"PUBLIC HEARING"** – SITE PLAN; White Cap Motel (repair and renovation)/4608 El Mar Drive (*Planning and Zoning Board recommended*)

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approval subject to conditions) (staff recommended approval subject to conditions noted in the planning report)

Attorney Cherof swear in all individuals that wished to participate in the quasi judicial hearing and provided a brief explanation of the process. Mayor Parker opened the public hearing.

Bradford Townsend, representing the Town, provided a description of the application and the variance being sought by the applicant. He described the non-compliance currently upon the property.

Steve Braskella, representing the applicant was present.

John Thompson, 671 Lakeside Circle, Pompano Beach, spoke in favor of the proposal, but questioned the proposed elevation and was unsure if it was legal for the property to be rebuilt.

Mr. Braskella stated that he had read the conditions noted in the planning report and had no objections. He indicated that Mr. Bob White, the applicant, was in agreement to the conditions.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to approve the site plan subject to the conditions listed on the planning report. In a roll call vote, all voted in favor. The motion carried 5-0.

- D. Selection of members for the Master Plan Steering Committee *(new term to run through July 2007) (seven members, as discussed and agreed to by the Commission during the meeting of April 25, 2006)*

Brief discussion was held concerning what procedure would be followed to nominate the members for the Committee. It was agreed that since Vice Mayor Yanni had chosen the last board member to be nominated, Commission McIntee would be the first to make a nomination at this time.

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Commissioner McIntee nominated Marilyn Carr. Commissioner Silverstone seconded the nomination. In a roll call vote, the nomination carried 4-1, with Mayor Parker dissenting.

Commissioner Silverstone nominated Sandra Booth. Mayor Parker seconded the nomination. In a roll call vote, the nomination carried 4-1, with Vice Mayor Yanni dissenting.

Mayor Pro Tem Clark nominated Michael Arker. Mayor Parker seconded the nomination. In a roll call vote, all voted in favor. The nomination carried 5-0.

Mayor Parker nominated Bob Terrien. Mayor Pro Tem Clark seconded the nomination. In a roll call vote, all voted in favor. The nomination carried 5-0.

Vice Mayor Yanni nominated Shevaun Steward-Kuhn. Mayor Parker seconded the nomination. In a roll call vote, all voted in favor. The nomination carried 5-0.

Commissioner McIntee nominated Marc Furth.

Mayor Pro Tem Clark noted that Mr. Furth had not applied to serve on the Committee. Attorney Cherof stated that he did not recall the Commission adopting any rule that prevented them from appointing a board member who had not applied.

Commissioner Silverstone seconded the nomination. In a roll call vote, the nomination carried 3-2, with Mayor Parker and Vice Mayor Yanni dissenting.

Commissioner Silverstone nominated Paul Novak. Mayor Parker seconded the nomination. In a roll call vote, all voted in favor. The nomination carried 5-0.

Mayor Parker stated that Mr. Arker would have to resign as an alternate on the Board of Adjustment as he could not serve on two boards. Vice Mayor Yanni stated that Ms. Steward-Kun also served on the Board of Adjustment and would be required to resign.

It was agreed that the appointments for the Board of Adjustment would be placed on the agenda for consideration at the next meeting. Mayor Pro Tem Clark was to be listed as the first to make a nomination.

E. Discussion and/or action regarding the Capital Improvements Program
(*Town Manager Robert Baldwin*)

Manager Baldwin stated that staff was in the midst of preparing for the upcoming budget and asked for some direction as to the projects the Commission wished to pursue in the coming year. He indicated that there were several aesthetics project the Commission

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might want to consider, such as entryway features, swale improvements, and landscaping.

It was agreed that each Commissioner would individually meet with the Town Manager to review the capital improvements projects. It was further agreed that the Town Manager would then provide a complete report for the Commission's consideration.

F. Discussion and/or action regarding Terra Mar drainage improvements
(*Town Engineer Kevin Hart*)

Town Engineer Kevin Hart stated that he had provided a memorandum updating the Town Administration of the progress at Terra Mar Island. He indicated that he had received approval from two property owners to obtain easements for the necessary outfalls. Mr. Hart stated that there had been several improvements completed with the sewer project in this area, expressing his belief that the improvements had proven to be effective. He indicated that the installation of the outfalls should remedy the remaining drainage problems in the area.

Manager Baldwin asked if a estimated cost was available. Mr. Hart replied negatively, stating that he was still working with the contractor on this matter.

Mayor Parker announced that it was 11:00 p.m. He asked if the Commission wished to extend the meeting.

Commissioner Silverstone made a motion, seconded by Vice Mayor Yanni, to extend the meeting past 11:00 p.m. In a roll call vote, the motion carried 4-1, with Mayor Pro Tem Clark dissenting.

G. Discussion and/or action regarding setting term limits for Commissioners and Mayor utilizing the City of Deerfield Beach's plan (*Mayor Oliver Parker*)

Mayor Parker stated that there appeared to be some demand for term limits and, expressed his belief that voters should be given more than one option from which to choose. He explained the current term limits used by the City of Deerfield Beach, stated that it permitted residents to initiate a petition to include a candidate, who would otherwise be term limited out, on the ballot.

Mayor Parker made a motion, seconded by Vice Mayor Yanni, directing the Town Attorney to prepare an ordinance proposing a Charter amendment to adopt the plan as outlined.

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Vice Mayor Yanni stated that installing term limits removed the people's rights, explaining that if an individual was doing a good job, the term limits would prohibit voters from voting for them. He indicated that the best way to use term limits was the people's vote, indicating that if they wished to change their representation, they would vote for someone else.

Commissioner McIntee stated that the Citizens Initiative Committee did not want commissioners to serve for more than eight years, with the Mayor serving for six years. He stated that once the term limits were up, the commissioner would sit down for two years and then could run again. Commissioner McIntee stated that the majority of the people wanted to get "new blood". He indicated that this was the will of the Citizens Initiative Committee and he was willing to oblige.

Commissioner Silverstone expressed his belief that term limits would encourage people to participate.

Mayor Parker stated that there were many projects undertaken that would take longer than a term limit to bring to fruition. He indicated that cutting the terms too short would also shorten the visions for improvements. Mayor Parker stated that many people who signed the petition had told him they did not believe the petition was for retroactive term limits. He indicated that if ten percent of the voters could add a referendum to a ballot, ten percent of the voters should be permitted to add a candidate to the ballot.

Commissioner McIntee stated that he had obtained at least 95 signatures and that there was not one person who was not aware that the term limits were retroactive. He did not believe that the Mayor's proposal was actual term limits as it would provide the Mayor with an additional 16 years, to the 12 he had already served.

Vice Mayor Yanni expressed concern that the harsh term limits would discourage future commissioners from envisioning projects that would take longer to complete only because they would not be around to see their efforts completed.

In a roll call vote, the motion failed 1-4, with Mayor Parker voting in favor.

Mayor Parker made a motion directing the Town Attorney to prepare an ordinance to place on the ballot so that the terms would not be retroactive. The motion died due to the lack of a second.

- H. Discussion and/or action regarding why the Mayor is not following precedence in making motions and seconding motions made
(*Commissioner Jerry McIntee*)

Commissioner McIntee stated that he had researched Robert's Rules and believed that it was true the Mayor could make or second a motion; however, he indicated that the

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precedence set was that the Mayor very rarely made or seconded motions. Commissioner McIntee asked Attorney Cherof what was the proper procedure to ensure that the precedence from the past was followed. Attorney Cherof stated that with the seating of the new Commission, the Commission adopted rules for conduct and procedures. He felt that the Commission did not have to look further back than when the Commission adopted the rules for operation.

Commissioner McIntee stated that the making of motions by the Mayor had not been discussed during the organizational meeting. Attorney Cherof agreed, but stated that the Commission had adopted the rules set by Robert's Rules which allowed the Mayor to make and second motions.

Commissioner McIntee felt that allowing the Mayor to make and second motions provided him with too much power. He felt that this was an abuse of power, but indicated that he would abide by the Commission's parliamentarian's recommendation in this matter. Vice Mayor Yanni disagreed, stating that just like any Commissioner making a motion, if you did not agree with it you voted in opposition of its passage.

Mayor Parker stated that each of the Commissioners were voted to their seat by the electorate and believed that each Commissioner should have the same rights. He did not understand why Commissioner McIntee would want to silence him in particular, stating that this did not serve the public interest.

Commissioner Silverstone stated that he was under the impression that the Mayor could not make or second motions, believing that the Mayor only served to break a tie vote. He asked if there were any way to change it so the Mayor only served as a tie breaker. Mayor Parker explained that the Charter that the Mayor would have both voice and vote as like any other commissioner. Commissioner Silverstone agreed with Commissioner McIntee that it appeared that the Mayor had more power than the remaining Commission. Mayor Parker stated that the rest of the Commission had the same opportunities to refuse to provide a second or to vote in opposition of a motion.

- I. Discussion and/or action regarding lowering taxes three percent and setting the final millage at 4.55 mills (*Mayor Oliver Parker*)

Mayor Parker stated that the Town's assessed valuation had been increased by approximately 25 percent. He indicated that for those properties that were homesteaded, the most the assessment would increase was three percent. Mayor Parker stated that if the final millage were reduced by three percent, then the Town's residents would not see an increase in their taxes as it pertained to the Town's portion of the taxes.

Mayor Parker made a motion, seconded by Vice Mayor Yanni, directing the Town Manager to prepare the budget at 4.55 mills.

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Commissioner Silverstone stated that he had been upset to see this on the agenda, believing that the Commission should agree to this as one body. He felt this action would be “jumping the gun”.

Mayor Parker indicated that he was not trying to adopt a millage rate at this time, but rather to have the Manager prepare the budget at 4.55 mills.

Vice Mayor Yanni asked how this action would affect the budget. Manager Baldwin stated that when he presented the budget, he typically presented a request for an increase in the millage. He explained that the Commission had identified so many capital improvements that the increase he recommended would not cover the cost incurred to complete all the projects. Manager Baldwin stated that the reduction in rate would decrease the taxes for the Town’s portion of the taxes, which was approximately 18 percent of their total tax bill. He stated that if it was the Commission’s desire to work with a lower millage, then he would prepare the budget based on the direction provided. Some discussion followed.

Mayor Pro Tem Clark stated that the lowering of taxes always sounded good, but did not feel it was prudent to pursue at this time. He indicated that the Town was looking at possible litigation costs. Mayor Pro Tem Clark stated that the Town Manager should prepare the budget with his recommendations and the Commission could review this matter at a later date.

Commissioner McIntee stated that this action was premature and believed that the Commission could first consider lowering the Town’s debt.

In a roll call vote, the motion failed 1-4, with Mayor Parker voting in favor.

J. Discussion and/or action regarding parking meters located west of State Road A1A, on Commercial Boulevard (*Commissioner Jerry McIntee*)

Commissioner McIntee stated that he had spoken with the business owners in the area, stating that the meters in that area were detrimental to the businesses. He suggested that perhaps the business owners could purchase bags from the Town that would allow them to cover the meters during their regular business hours. Commissioner McIntee stated that if the bag was not removed, parking enforcement could remove the bag and the business owner would be charged \$20 to obtain the bag again.

Commissioner McIntee made a motion, seconded by Mayor Parker, to look into providing bags for the businesses on Commercial Boulevard.

Manager Baldwin stated that just a couple of years ago, the businesses were complaining that the general public was parking in front of their shops and their

customers had no parking spaces. He indicated that the lack of turn-over in the parking in that area was why the Town installed the meters.

Commissioner McIntee stated that the business owners should be permitted to police their own areas, indicating that they could call to report any vehicle that remained in the area for more than two hours.

Mayor Pro Tem Clark believed that the history of the parking in this area could not be forgotten. He emphasized that in reviewing this issue, the Commission had to keep the facts in mind.

In a roll call vote, the motion carried 4-1, with Vice Mayor Yanni dissenting.

- K. Discussion and/or action to ensure that the fire assessment rate is not increased (*Mayor Oliver Parker*)

Mayor Parker stated that he wanted some assurance that the fire assessment rate would not be increased.

Commissioner Silverstone asked how the cost was covered if the contract price increased. Manager Baldwin stated that the ad valorem taxes subsidized the cost of the fire assessment to ensure full coverage. Commissioner Silverstone disagreed with the concept of the fire assessment.

Commissioner McIntee stated that the fire assessment was outrageous, stating that if ad valorem taxes were subsidizing the actual cost, then the program was not working correctly. He felt that the fire assessment should be part of the ad valorem taxes so that residents could deduct the cost of the taxes.

15. TOWN MANAGER REPORT

- A. Municipal Services Department Monthly Report

Mr. Mason provided a brief report regarding the projects and accomplishments worked on during the last month. Commissioner McIntee commended Mr. Mason for the hard work performed by the department.

- B. Landscape Contractors and Maintenance

Mr. Mason provided a brief report regarding the landscaping contractors and the maintenance work being performed.

Vice Mayor Yanni asked if Royal Palms could be planted along the medians on Commercial Boulevard. Mr. Mason stated that planting trees on those medians

required a permit from the Department of Transportation. He indicated that there were specific requirements regarding the diameter of the trees and stated that the Town had previously been turned down. Mr. Keller concurred and explained some of the difficulties in obtaining permission to plant specific trees within the median areas.

Manager Baldwin asked that the Commission share any specific ideas if had for landscaping.

Mr. Mason asked that the Commission consider tabling this item until the next meeting so that he could obtain additional information from the contractors. As there were no objections, the Mayor so ordered.

16. TOWN ATTORNEY REPORT

Attorney Cherof stated that the two referendum questions to be placed on the March ballot had been moved to November by Court order. He indicated that those ordinances still made reference to the March ballot and asked to prepare an ordinance correcting the dates to ensure proper recordkeeping. There were no objections.

Attorney Cherof stated that following up on the presentation made by the Sea Colony, he had held several discussions with the developer's attorney. He indicated that if there were any way to settle this case out of court, this might be the best time to explore possibilities. Attorney Cherof asked that the Commission schedule a special meeting where a closed door session could be held to discuss these issues.

Attorney Cherof stated that the negotiations would be non-binding on the Commission, but felt it would provide a perfect opportunity for the Commission to review its options.

Commissioner McIntee made a motion, seconded by Mayor Pro Tem Clark, to set a special meeting for July 10, 2006, at 6:00 p.m. In a roll call vote, all voted in favor. The motion carried 5-0.

Attorney Cherof stated that the Town Commission would be holding a closed door session to discuss negotiations in the matter of Sea Colony versus the Town. He stated that the closed door session would be attended by the Town Commission, himself, the Town Manager, and a court reporter. Attorney Cherof suspected that the meeting would last approximately two hours.

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to authorize a closed door session. In a roll call vote, all voted in favor. The motion carried 5-0.

17. ADJOURNMENT

Mayor Pro Tem Clark made a motion to adjourn the meeting. As there were no objections or any further business to discuss, Mayor Parker adjourned the meeting at 11:50 p.m.

Oliver Parker, Mayor

ATTEST:

Alina Medina, Town Clerk

Date Accepted: _____