

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

REGULAR MEETING

MINUTES

Town Commission Meeting Room

4501 Ocean Drive

Tuesday, November 14, 2006

7:00 P.M.

1. CALL TO ORDER, MAYOR OLIVER PARKER

The meeting was called to order by Mayor Parker at 7:10 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.

Commissioner McIntee stated that a large gathering was expected today and, as such, Battalion Chief Padden had ordered all Volunteers to give up their seats to residents. He indicated that he expected Broward Sheriff's Office personnel to do the same so that the Town's residents could participate in their government.

3. INVOCATION, TOWN CHAPLAIN

Father Handrahan delivered the invocation.

Attorney Cherof stated that in order to ensure safety, it was requested that the accesses not be blocked in any manner. He indicated that a television had been erected outside on the portico so that members of the public could view the proceedings. Attorney Cherof advised that any member of the public who signed up for public comments or wished to speak on a public hearing, would be called and allowed to enter to participate in the proceedings.

At the Mayor's request, Attorney Cherof read ordinances 2000-450 which explained the rules of decorum for Commission meeting. He explained that this meeting was a business meeting that was conducted in that manner to conclude the business of the people.

Commissioner McIntee asked that individuals outside be provided with an opportunity to sign in for public comments. Ms. Medina advised that she had taken the sign in sheet outside and provided the public with the opportunity to do so.

Mayor Parker asked if there were any objections to limiting public comments to two minutes per person in order to allow everyone the opportunity to speak, with the Commission being able to move forward with Town business. Commissioner McIntee asked if it was possible to interrupt public comments at any time so that the Commission could consider another item on the agenda. Attorney Cherof replied affirmatively, explaining that the Commission could consider a motion to that affect at any time.

4. PRESENTATIONS

There were no presentations.

5. REPORTS

- A. Report by Town Attorney and Town Clerk regarding the General Election of November 7, 2006, and discussion and/or action relating thereto

Ms. Medina stated that the Official results had not yet been provided as the military was provided with additional time in which to have their ballots received. She provided the results as follows:

Question 1, regarding height limits

1,217 in favor
1,451 opposed

Question 2, regarding height limits

759 in favor
1,888 opposed

Question 3, regarding term limits

1,946 in favor
685 opposed

Question 4, regarding home occupational licenses

1,869 in favor
741 opposed

Mayor Parker asked if the ordinance being ratified pertaining to home occupational licenses was now in affect. Attorney Cherof replied affirmatively and indicated that residents could now apply for their occupational licenses.

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Mayor Parker referenced Question 3, with regards to term limits, and asked if a resolution would be required for submittal to the State. Attorney Cherof replied affirmatively, stating that he would prepare the resolution upon obtaining the certified results from the Supervisor of the Election.

Mayor Parker asked if the term limits as they appeared on the ballot considered retroactive. Attorney Cherof stated that there was no language in the Charter provision that indicates that the term limits would be retroactive. He indicated that the documentation showed that the amendment took effect with the election of March 2008. Mayor Parker asked if an ordinance expressing the consensus of the Commission that the Charter amendment was not retroactive and directing the Town Clerk and Town Manager to so interpret it would be beneficial. Attorney Cherof stated that it would be beneficial to the Town Clerk to understand the interpretation and application of the Charter amendment upon opening of the next qualification.

Commissioner McIntee asked if the Town should request an interpretation from the State as to whether the amendment for the term limits was retroactive. Attorney Cherof stated that the interpretation and application of Charter language was reserved for the Commission as it was one of its powers under Home Rule.

Mayor Parker made a motion, seconded by Vice Mayor Yanni, directing the Town Attorney to prepare an ordinance for first reading at the next meeting, interpreting the Charter amendment to be forward-looking and not retroactive, and instruction the Town Manager and Town Clerk to so interpret and act upon the Charter amendment.

Commissioner Silverstone made a motion, seconded by Commissioner McIntee, to amend the motion by making the Charter amendment retroactive.

After a brief discussion, Mayor Pro Tem Clark made a motion, seconded by Commissioner McIntee, to table this item to November 28, 2006. In a roll call vote, all voted in favor. The motion carried 5-0.

Mayor Parker stated that there were approximately 2,700 votes during this past election, wherein only 1,830 individuals had voted in March. He indicated that there was almost, if not more than 50 percent increase in turn out in November than in March.

Mayor Parker made a motion, seconded by Vice Mayor Yanni, directing the Town Attorney to prepare an ordinance to change the municipal elections from March to November and to extend the terms until November 2008.

Mayor Pro Tem Clark made a motion, seconded by Commissioner Silverstone, to table this item to November 28, 2006. In a roll call vote, the motion carried 4-1, with Vice Mayor Yanni dissenting.

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Mayor Parker asked that information regarding the home occupational licenses be included in the *Town Topics* and the government channel.

B. Report on special meeting scheduled to be held on November 10, 2006

Ms. Medina advised that a special meeting was held on November 10, 2006, wherein a motion was made by Commissioner Silverstone, seconded by Commissioner McIntee, to terminate the contract of Broward Sheriff's Office for breach of contract with the Town and to put the Volunteer Fire Department back in services. She advised that the discussion on the motion had been tabled to this meeting, where it would be discussed as Item 10A.

Commissioner McIntee referenced the meeting of November 10th, and questioned how the motion was tabled when discussion was yet to be had. Attorney Cherof stated that the record was clear from the minutes of the meeting, wherein a motion was made to table the item was made and seconded, with no objections being noted, no procedural points nor points of order raised, and a vote was taken. He indicated that the motion had carried by a vote of 3-2. Commissioner McIntee stated that he had not voted on tabling the item. Attorney Cherof advised that Commissioners McIntee and Silverstone had voted on the motion for tabling, but withheld their voting on the motion to adjourn. He indicated that based upon the circumstances of the meeting, he believed the Mayor had the authority to declare the meeting closed when Commissioners McIntee and Silverstone refused to vote. Commissioner McIntee felt that Mayor Parker had not actually adjourned the meeting.

Vice Mayor Yanni stated that after the meeting was adjourned, Commissioner McIntee had demanded that everyone stay so that discussions could be held and a resolution obtained. He asked if that was a violation of the Sunshine Law considering that it was an item to be voted on at this meeting. Attorney Cherof stated that he would not render an opinion as to whether a sitting member of the Commission violated a State Statute. He stated that if any Commissioner or a member of the public felt that a member of the Commission violated a State Statute, the appropriate recourse would be to the State Attorney's Office. Lengthy discussion followed.

Mayor Parker stated that the Town had an ordinance that a special meeting may be called by the Mayor, the Manager, or two Commissioners. He felt that this ordinance was open for abuse.

Mayor Parker made a motion, seconded by Mayor Pro Tem Clark, directing the Town Attorney to amend the ordinance for first reading at the next meeting, that the ordinance now read that special meetings may be called by the Mayor, the Manager, or three Commissioners.

Mayor Pro Tem Clark made a motion, seconded by Mayor Parker, to table this item to November 28, 2006, under reports. In a roll call vote, the motion carried 4-1, with Vice Mayor Yanni dissenting.

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Vice Mayor Yanni stated that the Commission could not continue to table all its business items.

C. Budget Report for the period ending September 30, 2006

Mayor Pro Tem Clark made a motion, seconded by Commissioner McIntee, to approve the budget report for the period ending September 30, 2006. In a roll call vote, all voted in favor. The motion carried 5-0.

D. Report on Sea Ranch Lakes Glitch Bill to correct error perceived in municipal boundaries

Attorney Cherof explained that Sea Ranch Lakes was working on a glitch bill to provide for a legal description for the municipal boundaries to the front of the Sea Ranch Lakes Club correcting what they perceived to be an error. He indicated that once the legal description was provided, the Town could review it to determine if an agreement could be obtained. Attorney Cherof stated that no action was necessary at this time, but advised that he would inform the Commission upon receipt of the legal description.

Mayor Parker stated that the Commission had agreed during its Agenda Conference to place the resolutions under the Consent Agenda, and moving the Consent Agenda as Item E of Reports.

Mayor Parker stated that Resolution No. 2006-25 had to be amended and, therefore, had to be considered separately. There were no objections.

E. Consent Agenda/Resolutions

SPECIAL EVENT PERMIT: Marie White's Christmas By The Sea/Marie White and Larry Wick, December 16, 2006; from 11:00 a.m. to 3:30 p.m.

PROPOSAL: to provide for Christmas decorations

Resolution No. 2006-26: A resolution of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, amending the 2005/2006 fiscal year budget; appropriating said amounts to specific designated accounts in accordance with the attached Exhibit "A" to the specific designated funds; authorizing expenditure of those amounts in accordance with the budget as amended; providing for conflicts; providing for severability; and an effective date

Resolution No. 2006-27: A resolution of the Town of Lauderdale-By-The-Sea, Florida, designating insurance carriers for various categories of insurance coverage for the Town and Town Officers, employees, and agents; directing the Town Administration to process applications for insurance coverage; and providing for an effective date

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to approve the Consent Agenda/Resolutions. In a roll call vote, all voted in favor. The motion carried 5-0.

Resolution No. 2006-25: A resolution of the Town of Lauderdale-By-The-Sea, Florida, canceling the regularly scheduled Commission meeting scheduled for December 26, 2006; providing for an effective date

Vice mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, amending Resolution No. 2006-25, to note that the December 26, 2006 meeting would be rescheduled to December 19, 2006.

Commissioner McIntee stated that there could be people that would already have holiday plans and felt that the Commission should not be locked into a particular date. Mayor Pro Tem Clark stated that the meeting date could be changed; however, this ensured notice that a second meeting would be held in December.

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

Mayor Pro Tem Clark made a motion, seconded by Commissioner McIntee, approving Resolution No. 2006-25. In a roll call vote, all voted in favor. The motion carried 5-0.

6. APPROVAL OF MINUTES

A. October 10, 2006, Regular Meeting (*tabled from October 24, 2006*)

Commissioner Silverstone made a motion, seconded by Commissioner McIntee, approving the minutes as amended to correct a typographical error. In a roll call vote, all voted in favor. The motion carried 5-0.

7. PUBLIC COMMENTS

Barbara Cole

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

9. COMMISSIONER COMMENTS

10. SPECIAL BUSINESS

- A. Discussion and/or action regarding fire services and public safety. Available options include, but are not limited to, the following:
1. Going with Broward Sheriff's Office alone*
 2. Going with Volunteer Fire Department alone**
 3. Maintaining the status quo
 4. Scheduling more workshops

*subsequent to this item being placed on the agenda, the Town Manager received notification from Sheriff Ken Jenne, that the Sheriff's agreement with the Volunteer Fire Department was being terminated immediately and requesting the Town's consent thereto. The Sheriff's request is being treated as a collateral issue to Option #1. (See attached letters)

**at the Special meeting of November 10, 2006, a motion was made by Commissioner Silverstone, seconded by Commissioner McIntee, to terminate the contract of Broward Sheriff's Office for breach of contract with the Town and to put the Volunteer Fire Department back in service. The discussion on this motion was tabled to this meeting.

Commissioner McIntee stated that he wished to offer a sign of peace that may begin to mend this tremendous problem. He expressed his understanding that perhaps Chief Lello could not agree with all of it, but decided that he would start with the first offer. Commissioner McIntee requested that the keys to the fire station be returned to the Volunteers, stating that in good faith, the trucks would not be removed and Volunteers would not respond to emergency calls. He felt that if this was not agreed to, there would be great ramifications with the entire County realizing that "Galiath, Broward Fire Department, has stepped on 'David' and David's fighting back".

Commissioner McIntee stated that the members of his department would maintain the station and assured Chief Lello that no one would respond or use the equipment for training purposes. He felt that this was the way bargaining could begin and the problem could begin to be resolved. Commissioner McIntee stated that communication was key and there had to be a way to work this out. He felt that returning the keys would show that BSO was being reasonable.

Commissioner McIntee stated that the Volunteers could live with this arrangement while the battles were decided. He felt that the longer the Volunteers were made to wait, the more "young guys" he would lose. Commissioner McIntee stated that in the long run, if BSO did not make this concession, its personnel would be "booed or their thumbs would go down."

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Chief Lello stated that the fire station was the Town's property and not that of the Volunteers. He offered to have BSO and the Volunteer leadership meet within the next two weeks to see what kind of agreement could be obtained and this issue resolved. Commissioner McIntee stated that this was reasonable. He indicated that he too would resign in January when the Volunteers elected new officers, approximately 40 days. Commissioner McIntee felt that turning the department to new leaders could not be done overnight. Chief Lello stated that he had no arguments with that, but again reiterated the need to negotiate within the next two weeks. Commissioner McIntee stated that Chief Lello had his commitment to negotiate.

Commissioner Silverstone asked if the Volunteers would receive the keys now. Chief Lello replied that he could not return these keys at this moment, indicating that he would advise the Volunteers upon receiving direction. Commissioner McIntee stated that Chief Lello should not take the heat as it was understandable that he would need to obtain permission from Sheriff Ken Jenne. He asked how long it would take to make the determination. Chief Lello stated that he had to discuss this matter with the leadership of the Volunteers, emphasizing the need to have assurances of safety. Commissioner McIntee offered two days for discussion, stating that it was reasonable and fair, without being outrageous. He stated that if the keys were returned "we will sit down with you in the middle of Broward headquarters". Chief Lello stated that he would, at the very least, have an answer for the Volunteers within 48 hours.

Commissioner McIntee made a motion to table this item for 48 hours.

Mayor Parker asked if this item could be tabled to the next meeting. Commissioner McIntee replied negatively, stating that "we'll call a special meeting, if necessary". Mayor Parker stated that if the Sheriff returned the keys within 48 hours, he did not believe there was a need for a special meeting. Vice Mayor Yanni agreed.

Commissioner McIntee stated that just because he was agreeing to negotiate did not mean that the Volunteers were stopping their legal action. He stated that "we had invested a great deal of money in them" and the attorneys would not cease, going full speed to obtain a court order.

Some discussion followed concerning the date in which the special meeting could be held.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to table this item to a special meeting for Friday (November 10, 2006) to continue this discussion with public comments.

11. ORDINANCES (1ST Reading)

- A. **Ordinance No. 2006-14:** An ordinance granting to Florida Power and Light Company, its successors and assigns, an electric franchise,

imposing provisions and conditions relating thereto, providing for monthly payments to the Town of Lauderdale-By-The-Sea, Florida, and providing for an effective date

12. CONSENT AGENDA

- A. SPECIAL EVENT PERMIT: **Marie White's Christmas By The Sea**/Marie White and Larry Wick, December 16, 2006; from 11:00 a.m. to 3:30 p.m.
- B. PROPOSAL: to provide for Christmas decorations

13. RESOLUTION

- A. **Resolution No. 2006-25:** A resolution of the Town of Lauderdale-By-The-Sea, Florida, canceling the regularly scheduled Commission meeting scheduled for December 26, 2006; providing for an effective date
- B. **Resolution No. 2006-26:** A resolution of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, amending the 2005/2006 fiscal year budget; appropriating said amounts to specific designated accounts in accordance with the attached Exhibit "A" to the specific designated funds; authorizing expenditure of those amounts in accordance with the budget as amended; providing for conflicts; providing for severability; and an effective date
- C. **Resolution No. 2006-27:** A resolution of the Town of Lauderdale-By-The-Sea, Florida, designating insurance carriers for various categories of insurance coverage for the Town and Town Officers, employees, and agents; directing the Town Administration to process applications for insurance coverage; and providing for an effective date

14. OLD BUSINESS

- A. Discussion and/or action regarding Minto's proposal for development of the northeast corner of El Prado and El Mar Drive (*continued from September 28, 2006*)
- B. Discussion and/or action to allow *By The Sea Times* to place fifteen (15) paper boxes in Town at the present locations (*Commissioner Jerry McIntee*) (*tabled from October 10, 2006*)
- C. Discussion and/or action regarding the possibility of providing for special fees to cover the cost of trash collection for residential areas within the

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Tax Bill (*Town Manager Robert Baldwin*) (*continued from October 24, 2006*)

- D. Discussion and/or action regarding who picks Fourth of July parade marshal and the possibility of opening the selection to Town residents (*Commissioner Jerry McIntee*) (*tabled by Mayor Parker at the meeting of September 28, 2006*) (*tabled from October 24, 2006*)
- E. Discussion and/or action concerning beach safety issues (*Mayor Oliver Parker*) (*tabled from October 24, 2006*)
 - 1. Installation of call phones at all beach access areas
 - 2. Installation of signs regarding rip currents; providing instructions on what to do if a person is caught in a rip current
- F. Discussion and/or action to establish a citizen's committee to establish protocol and procedures for naming public property after citizens (*Town Manager Robert Baldwin*) (*continued from October 24, 2006*)
- G. Discussion and/or action concerning the naming of Washingtonia Beach Park after Bill and Eva Karley (*Commissioner Jim Silverstone*) (*tabled from October 24, 2006*)
- H. Discussion and/or action regarding the designation of certain neighborhoods for residential traffic only – Avalon Avenue at Seagrape Drive and West Tradewinds Avenue (*Mayor Oliver Parker upon the request of Eva Karley*) (*tabled from October 24, 2006*)
- I. Discussion and/or action reviewing the details and seeking Commission policy direction for the Request for Proposal for emergency medical services and automatic aid (*Town Manager Robert Baldwin*) (*tabled from October 24, 2006*)
- J. Discussion and/or action regarding the Town obtaining Letters of Interest for engineering services from other providers (*Town Manager Baldwin*) (*tabled from October 24, 2006*)
- K. Request to extend the site plan development order for Luxury Dwelling Homes, Cabonell, agent/Vinci, Owner; for the properties located at 4644 and 4646 Poinciana Street (*continued from October 24, 2006*)
- L. Discussion and/or action regarding referral of the Oriana Development to the State Attorney (*Mayor Oliver Parker*)
- M. Discussion and/or action regarding criminal investigation "Oriana" project (*Commissioner Jerry McIntee*)

- N. Discussion and/or action regarding red-tagging "Oriana" project
(Commissioner Jerry McIntee)

15. NEW BUSINESS

- A. Discussion and/or action regarding the possibility of requiring properties that remain vacant for more than one year to landscape and remove construction fencing (*properties to be included are 4444 and 4500 Ocean Drive; 4448, 4436, 4451, and 4512 El Mar Drive; 222, 226, 230, and 231 Shore Court; and 1740 East Terra Mar Drive*) (Mayor Oliver Parker) (*tabled from October 24, 2006*)
- B. Discussion and/or action regarding the possibility of establishing a Town Ethics Committee (Commissioner Jerry McIntee) (*tabled by Mayor Parker at the meeting of September 28, 2006*) (*tabled from October 24, 2006*)
- C. Discussion and/or action regarding the removal of the overlay district (Commissioner Jim Silverstone) (*continued from October 24, 2006*)
- D. Discussion and/or action regarding speed humps on west side of Terra Mar Island (Mayor Pro Tem Chuck Clark) (*tabled from October 24, 2006*)
- E. **PUBLIC HEARING** - SITE PLAN Villa Caprice, located at 4108 and 4110 El Mar Drive (*request for temporary sales office to be located in the Villa Caprice development*) (*tabled from October 24, 2006*)
- F. Discussion and/or action regarding an extension to the site plan development order for Whitecap Motel Site/Robert White, Owner; located at 4608 El Mar Drive (*tabled from October 24, 2006*)
- G. Discussion and/or action regarding an extension to the site plan development order for B&B Garden Court/Rodriguez Design Group; located at 226 and 230 Garden Court and 4149 Seagrape Drive (*tabled from October 24, 2006*)
- H. Discussion and/or action regarding an extension to the site plan development order for Ocean Park (Villa Caprice)/Rex Nichols, Architect; located at 4108 and 4110 El Mar Drive (*tabled from October 24, 2006*)
- I. Discussion and/or action regarding an extension to the site plan development order for B&B Duval/Rodriguez Design Group; located at 4209 and 4215 Seagrape Drive (*tabled from October 24, 2006*)
- J. Discussion and/or action on clarifying and correcting the Charter updates previously submitted to the State to include Section 4 of the height limit

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petition as approved by the voters in March in order to implement the will of the people (*Commissioner Jerry McIntee*) (*tabled from October 24, 2006*)

- K. Discussion and/or action on correcting the injustice of letting developers use beach area and call it green space, beating the 25 percent green space rule on new development (*Commissioner Jerry McIntee*) (*tabled from October 24, 2006*)
- L. Discussion and/or action regarding the possibility of installing new bus stops within the Town's municipal boundaries (*Vice Mayor John Yanni*) (*continued from October 24, 2006*)
- M. Discussion and/or action regarding the consideration to eliminate the agenda conference (*Mayor Pro Tem Chuck Clark*)
- N. **PUBLIC HEARING** - SITE PLAN Mulligan's Grill & Raw Bar, located at 4403 El Mar Drive (*Planning and Zoning Board tabled this hearing to November 15, 2006; staff requesting tabling of this hearing to December 14, 2006*)
- O. Discussion and/or action regarding the adoption of the Evaluation and Appraisal Report based Comprehensive Plan amendments (*Town Planner Walter Keller*)

16. TOWN MANAGER REPORT

- A. Code Compliance Quarterly Report
- B. Municipal Services Monthly Report

17. TOWN ATTORNEY REPORT

- A. Bert J. Harris Jr. Private Property Protect Act
- B. Update regarding the Oriana/Pier Pointe development site

18. ADJOURNMENT

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THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES NECESSARY TO AFFORD INDIVIDUALS AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE TOWN COMMISSION. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 776-0576 FOR ASSISTANCE.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO INSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.