

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

Town Commission Meeting Room
4501 Ocean Drive
Tuesday, November 28, 2006
7:00 P.M.

1. CALL TO ORDER, MAYOR OLIVER PARKER

The meeting was called to order by Mayor Parker at 7:08 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 advised that the Town Clerk had indicated that the audio for the television had been corrected.

4. PRESENTATIONS

A. Economic Development Task Force (*David Nixon*)

David Nixon, chairman of the Economic Development Task Force, provided a history of the process for creating a Community Redevelopment Agency which included the adoption of a resolution and a public hearing. He asked the Commission advise when they were ready to continue with the process and the presentation would be made by Siemon Larson. He hoped that the Commission might be able to focus on this matter in January so that it could be brought before the Broward County Commission.

Ms. Clerk advised that there had been some questions concerning the public hearing and the type of advertisement that would be necessary, if any. She indicated that Mr. Siemon had not yet provided the information and she was unsure as to whether an advance notice of the public hearing was required. Mayor Parker asked Mr. Nixon to work the Town Clerk to obtain the required information, stating that this item could be placed on the agenda once the advertisement requirements were complied with.

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- B. Lauderdale-By-The-Sea Performing Arts Center regarding Stargazing and discussion and/or action relating thereto (*Vincent Ragusa, President*)

Vincent Ragusa, representing the Lauderdale-By-The-Sea Performing Arts Center, stated that the fifth annual Stargazing concert was scheduled for March 11th, to be held in conjunction with the arts and crafts show. He indicated that he only wanted the Commission's approval to move forward as funds would be necessary to reserve the band for the event, permits to obtain, and chairs and miscellaneous expenses that needed to be dealt with.

Mr. Ragusa stated that the video tape made of "Bench in the Sun" had been edited and would be delivered at the inaugural play being held at Jarvis Hall. He invited the Commission to attend and provided information concerning the event. Mr. Ragusa stated that as approved by the Commission, the tape would be made available for showing on the government access channel.

Mr. Ragusa thanked the Town Hall staff, stating that they had assisted him at every turn.

Mayor Parker asked that the application for the special event to hold the Stargazing concert be provided to the Town.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, granting Vincent Ragusa permission to do whatever was necessary and providing him with the money to do it.

Attorney Cherof stated that the motion could be made at this time, but indicated that more specifics had to be provided.

Commissioner McIntee amended his motion to allow for the appropriation of \$12,000. Commissioner Silverstone amended his second.

Ms. Medina asked for clarification if the funds could be expended prior to approving the special event application. Mayor Parker replied negatively, stating that the funds were being appropriated at this time.

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

Mayor Parker stated that the Commission had agreed to amend the agenda during the agenda conference to include a report from the Walk Around Committee. He asked if there were any objections to having the agenda amended. There were no objections.

Mayor Parker stated that the Commission had also agreed to move Item 15F for discussion prior to Reports. He asked if there were any objections to amending the agenda. There were no objections.

Mayor Pro Tem Clark made a motion, seconded by Vice Mayor Yanni, to eliminate the agenda conference and have the Commission meetings begin at 6:00 p.m. In a roll call vote, all voted in favor. The motion carried 5-0.

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
(continued from November 14, 2006)

Mayor Parker asked if the Town had received the certified election results. Ms. Medina replied affirmatively.

Mayor Parker made a motion, seconded by Mayor Pro Tem Clark, authorizing the Town Attorney to submit the Charter amendment to the Secretary of State.

Commissioner Silverstone asked if the Charter amendment was being changed. Mayor Parker stated that the Charter amendment, as approved, was being submitted to the Secretary of State.

Commissioner McIntee asked if the question on the ballot, together with the complete proposition would be submitted. Attorney Cherof replied affirmatively. Commissioner McIntee asked if there were any "look forward" wording in the documentation. Attorney Cherof stated that the letter did not contain anything regarding the second paragraph noted in this section.

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

At the meeting of November 14, 2006, 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 instructing the Town Manager and Town Clerk to so interpret and act upon the Charter amendment. Discussions on the motion were tabled to this meeting.

Mayor Parker called for discussion on the motion.

Commissioner McIntee stated that he saw this motion as proposal to defeat 75 percent of the voters' desire. He indicated everyone knew the term limits were intended to be retroactive, including the Mayor. Commissioner McIntee stated that the Commission

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would be “tearing at the fabric of the Constitution” if it agreed to change the intent of the referendum. He felt that this action was taking away the votes of those people for personal gain and personal reasons. Commissioner McIntee stated people would fight to have their votes counted and predicted that residents would stop this government again.

Commissioner Silverstone stated that residents were already upset and this action would entice them to be angrier. He questioned if it were legal for the Commission interpret what the people voted for. Attorney Cherof stated that the Commission had the authority to interpret any provision of the Charter by ordinance. Commissioner Silverstone questioned when the interpretation would be submitted to the people. Attorney Cherof stated that the interpretation would not be submitted to the people, but to a court of law.

Mayor Parker stated that he had thought that the referendum was retroactive until he saw the debates and further reviewed the proposed amendment. He stated that the referendum specifically states that term limits would be counted as of 2008. Mayor Parker stated that there was a presumption in Florida against retroactive applications of ordinances and statutes and indicated that the Town Attorney had opined that the term limits were not retroactive.

Mayor Pro Tem Clark asked Attorney Cherof to repeat his opinion on this matter. Attorney Cherof stated that under Florida law, laws were not retroactive unless they expressly state that they were retroactive. He stated that in his opinion, the contract did not do that; in fact, the document stated under Section 6.1 indicated that the transition would begin with the regular elections on the second Tuesday in March, 2008.

Commissioner McIntee stated that Mayor Parker and Attorney Cherof had essentially said “the heck with 75 percent of the voters”. He indicated that everyone knew this was going to court if it was presented in the manner Mayor Parker was suggesting. Commissioner McIntee stated that when this issue went to court, Mayor Parker would not have to pay for his costs while the residents were left to pay for defending their vote. He felt that since this was case, the minority in this case should have to pay for all costs. Commissioner stated that every action had a reaction and this “reaction is going to be really, really aggressive, and it was going to cost people their positions”.

Commissioner Silverstone asked Ross Schumeister to provide an opinion in this matter. Mayor Parker did not believe this was proper.

Commissioner McIntee asked if this could be done, with Attorney Cherof advising that it was a decision to be made by the Commission.

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Commissioner McIntee made a motion, seconded by Commissioner Silverstone, allowing Ross Schumeister to come up. In a roll call vote, the motion carried 3-2, with Mayor Parker and Vice Mayor Yanni dissenting.

Ross Schumeister stated that the Commission was trying to make an issue of retroactivity when, in reality, it was not retroactive it took affect during the March 2008 election. He explained, however, that at that time, the requirements would be reviewed to determine if a candidate indeed qualified to run. Commissioner Silverstone stated he agreed with Mr. Schumeister's opinion of the referendum.

Vice Mayor Yanni stated that no one was denying that term limits were adopted and did not believe that anyone on the dais had an objection to term limits. He felt that unfortunately the majority of the people had not been aware that the term limits were intended to be retroactive. Vice Mayor Yanni stated that everyone was talking about taking rights from people, but that was exactly what this referendum accomplished. He indicated that the only reason this petition had been created was to remove the Mayor, yet he felt that the people who had initiated the petition were not listening to the remaining residents in Town. With it being the same group of people who constantly interrupted the ability of this body to conduct the Town's business in an orderly fashion. Vice Mayor Yanni stated that there were two Commissioners who were catering to the Citizens Initiative Committee, stating that was what their problem was, what their job was, and felt that they were being told what to do.

Commissioner McIntee made a point of personal privilege, stating that no one made him "march to their drummer".

Vice Mayor Yanni stated that term limits, in and of themselves, removed people's rights. He felt that term limits were not needed as the residents could vote out a Commissioner they felt were not properly representing them.

Attorney Cherof stated that Commissioner McIntee had indicated that the Town would be paying for the court action. He indicated that in his opinion, this is not what occurred as each party to pay for their actions within a court of law.

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

Mayor Parker asked the Town Attorney to prepare the appropriate ordinance in this matter. He questioned how many days were required for the advertisement needed for the second hearing. Ms. Medina replied that the advertisement had to be posted ten days prior to the public hearing.

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At the meeting of November 14, 2006, 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. Discussions on the motion were tabled to this meeting.

Commissioner McIntee referenced the Charter and indicated that the Charter specified that the Town's elections would be held on the second Tuesday of March of each even numbered year. He indicated that it would not be possible for the Commission to change the elections without putting it to the voters. Attorney Cherof disagreed, explaining that the Attorney General had opined that moving the elections from March to November, whether it was moved forward or backwards six months, it could be done by ordinance. He offered to provide a copy of that opinion to the Commission for its review.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to table this item to the second meeting in January 2007. In a roll call vote, all voted in favor. The motion carried 5-0.

B. Report on special meeting held on November 10, 2006 (*continued from November 14, 2006*)

At the meeting of November 14, 2006, 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, to now read that special meetings may be called by the Mayor, the Manager, or three Commissioners. Discussions on the motion were tabled to this meeting.

Commissioner McIntee stated that this was blatant injustice. He felt that the Mayor Parker was trying to buy time to see how the Bert J. Harris Act claims turned out to see if it would be to his advantage. Commissioner McIntee did not believe that he would be the minority on the dais for much longer, but could not believe that this action would eliminate the checks and balances. He stated that the Commission was suppressing his freedom of speech, as well as that of the residents.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to grant himself another three minutes. In a roll call vote, the motion carried 4-1, with Mayor Parker dissenting.

Commissioner McIntee stated that he did not think this Commission could get along, but thought it could work to make the process easier. He stated that the Town had lost a tremendous commissioner, Marc Furth, because he had been overwhelmed. Commissioner McIntee indicated that he would not be overwhelmed.

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Commissioner Silverstone stated that this motion embarrassed him, stating that if two Commissioners wanted to meet, a notice was posted and the meeting was held. He indicated that this could occur even if a quorum could not be had and, as such, this action did not really make a difference.

Vice Mayor Yanni asked what was the reasoning for the motion. Mayor Parker stated that he felt that this regulation was being used as a tactical device by the minority to call meetings in the hope that not all Commissioners could attend and they could achieve the majority. He felt that special meetings should only be held only to deal with emergencies.

Commissioner McIntee referenced the special meeting on Christmas Eve last year. Mayor Parker stated that the only reason he had called for that meeting was because two other Commissioners were requesting a meeting for a few days later when he would be unable to attend. Commissioner McIntee stated that this action was only attacking the minority, feeling that Mayor Parker was using his power to attack the minority.

In a roll call vote, the motion failed 0-5, with the entire Commission dissenting.

C. Budget Report for the period ending October 31, 2006

Commissioner Silverstone asked if there were anything contained in the report that was unusual or the Commission needed to be aware of. Manager Baldwin replied negatively, assuring the Commission that if any problems had arisen, he would have notified them immediately.

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

D. Report on status of Oriana project (*Mayor Pro Tem Chuck Clark*)

Manager Baldwin advised that he had concluded his portion of the investigation and submitted all documentation to the Town Attorney.

Attorney Cherof stated that the Manager and staff had done a very good job in gathering information. He explained that after his receipt of the information, he had commenced reviewing and double-checking some of the information, including obtaining written statements from persons involved with the approval process of the site plan.

Attorney Cherof stated that he had received information from the attorneys for the

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applicant for a site plan amendment which was working its way to the Commission for review. He indicated that this item was the subject matter of the last Planning and Zoning Board meeting and had been tabled for one month.

Attorney Cherof described several interpretations being considered by various members of the public, but felt that there had been nothing in the documentation to date to suggest that it was not an error by the architect initiated after comments were made by Broward County with respect to health safety issues with the stairwells on the property.

Attorney Cherof stated that he believed the Town should repeat its warning to the developer that they would proceed with constructions at their own risk. He indicated that until such time as the site plan amendment was presented for review by the Commission, he would advise the Commission as to their appropriate course of action.

Attorney Cherof stated that there was consideration of red-tagging the develop, but felt that this was a high risk option as monetary claims could be made. He indicated that if the site plan amendment could be moved through the Planning and Zoning review quickly, he would recommend that that occur. Mr. Keller provided an update as to the application and what reviews were yet to be made. He advised that additional changes had been noted and information had been requested from the developer.

Commissioner Silverstone asked if a variance was required. Attorney Cherof replied negatively, stating that site plan amendment would request the changes made or being proposed. Mr. Keller stated that the changes could be considered minor deviations, but that staff wanted to ensure that all changes were noted.

Commissioner McIntee asked who had been the Fire Marshal who reviewed the plans and made the supposed requests for changes. Attorney Cherof stated that he had been provided with a name, but indicated that he did not have the information with him. Commissioner McIntee asked who was "Louis", with Mr. Keller stating that he did not have a last name but was aware of a Louis who worked with the architect.

Mayor Parker made a motion, seconded by Mayor Pro Tem Clark, directing the Town Attorney to strongly remind the State Attorney's Office of the importance of this case to the Town and ask that the review be expedited.

Vice Mayor Yanni expressed concern with what had occurred with members of the Planning and Zoning Board, indicating that some of its members were known to speak adamantly against development, specifically this one. He also expressed concern that the applicant might not obtain a fair chance with the review. Attorney Cherof stated that the Planning and Zoning Board was an advisory committee to the Commission, who would hold a quasi judicial hearing a make a decision on the findings. He felt that if the Commission did not go through the Planning and Zoning process, it could open the Town to challenge.

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

Mayor Parker made a motion, seconded by Vice Mayor Yanni, instructing the Town Attorney to renew the warning letter that they were proceeding at their own risk with respect to open issuance of certificates of occupancy. In a roll call vote, all voted in favor. The motion carried 5-0.

Commissioner McIntee felt that this was such a serious case that it warranted the Town hiring an outside engineer to review all the plans and provide a recommendation with regards to this project.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to hire an independent engineer to review the plans for this project and provide the Commission with recommendations.

Attorney Cherof stated that he was going to request the Commission to consider an additional motion, allowing the hiring of an outside attorney to assist Town staff in the presentation of the project. He explained that it would be impossible for him to advise the Commission and assist staff with their presentation. Attorney Cherof stated that this would allow the Commission to be satisfied that the Town was also meeting its burden of proof.

Commissioner McIntee amended his motion to have an independent engineer to complete a study and an independent attorney to assist the Town in presenting its case. Commissioner Silverstone amended his second.

Mayor Pro Tem Clark asked if all the facts should not be determined in the investigation first. He did not disagree that this was a good idea, but felt that the investigation needed to be completed. Attorney Cherof stated that this project would be brought before the Commission in January and felt that it was important to get these individuals up to speed with the history and process.

After a brief discussion, it was determined that the professional needed might need to be more than an engineer. Discussion on costs followed, with there being a consensus that the approximate costs could reach \$10,000 to \$15,000 for an expert and \$3,500 to \$5,000 for an independent attorney.

Commissioner Silverstone asked if the Town could have the developer pay for these expenses. Attorney Cherof stated that he was unsure and would need to evaluate this prior to rendering an opinion.

Attorney Cherof stated that he would provide the names of several attorneys that practiced this type of law so the Commission could consider their qualifications and

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choose a consultant. He stated that he would do the same for an engineer with expertise in this field.

Commissioner McIntee amended his motion to include a maximum of \$25,000 for an engineer and a maximum of \$10,000 for an attorney. Commissioner Silverstone amended the second.

Vice Mayor Yanni asked where the funds would come from. Manager Baldwin stated that the funds could be taken from contingency.

Commissioners McIntee and Silverstone consented that the funds would be taken from contingency funds.

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

- E. Report by Broward Sheriff's Office on the progress of negotiations with the Volunteer Fire Department and discussion and/or action thereon (*Mayor Oliver Parker*)

Edward Dion, representing the Broward Sheriff's Office, was present. Mr. Dion stated that after the meeting of November 14th, he had had a telephone conversation with Mr. Steven Newburgh, the attorney for the Volunteers, trying to schedule a meeting to negotiate a resolution of their differences. He indicated that Mr. Newburgh had advised that he would need to speak with Chief Padden in order to determine if he had the authority to schedule such a meeting. Mr. Dion stated that he had provided a schedule of availability to Mr. Newburgh in an effort to facilitate the meeting, stating that the Broward Sheriff's Office was dealing with the shooting death of one of its deputies and the memorial services that followed. He explained that Chief Joseph Lello was on vacation during the week of Thanksgiving Day and, therefore, unavailable. Mr. Dion stated that he had offered to meet with the Volunteers beginning this week, with Mr. Newburgh indicating that he would have a response by end of day. However, he stated that one week later, he received a letter via electronic mail, not suggesting a meeting but instead issuing an ultimatum.

Mr. Dion stated that Mr. Newburgh had requested a response by end of business yesterday or litigation would commence. He explained that he had once again responded by suggesting it would be better for the parties to negotiate and offering to be available at the convenience of the Volunteers. Mr. Dion stated that he had not received any communications since then.

Mayor Parker asked if any negotiations had occurred during the two week period. Mr. Dion replied negatively. Mayor Parker asked if the Broward Sheriff's Office had offered

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to negotiate. Mr. Dion replied affirmatively.

Mayor Pro Tem Clark asked if any communications had been received by the Broward Sheriff's Office regarding negotiations. Mr. Dion confirmed that the only communication received was to issue an ultimatum. Mayor Pro Tem Clark stated that at the last meeting, the Commission was assured that negotiations would take place and it did not occur. Mr. Dion confirmed and stated that upon the request of the Commission, the Broward Sheriff's Office had indicated that it would consider reopening the fire station within 48 hours and advised that this had indeed taken place.

Mayor Pro Tem Clark stated that he had really hoped that the Town would not reach this point, knowing that he had asked the Broward Sheriff's Office to do something he knew they probably did not want to do with regards to negotiations. He emphasized that both parties had agreed to the negotiations, and felt that the Sheriff's Office had agreed to the negotiations as a courtesy to the Town. Mayor Pro Tem Clark stated that he was really disappointed negotiations had not been pursued and it appeared that there was an impasse. He stated that the business of the Town had been placed on the back burner and this issue had gone on for too long.

Mayor Pro Tem Clark made a motion, seconded by Vice Mayor Yanni, that the Commission grant consent to the Sheriff for permission for his having terminated the contract with the Volunteers.

Commissioner Silverstone questioned if Mayor Pro Tem Clark could make such a motion as he had already voted on this matter. Mayor Parker stated that there was no prevailing side as the vote had been a 2-2 tie. Attorney Cherof stated that this issue could come back but the motion could not be made by Mayor Pro Tem Clark. He explained that the prevailing side had been a vote for "no" as the motion had failed, but indicating that Mayor Parker could make the motion as he had not been in attendance and had not voted on the matter. Commissioner Silverstone questioned the Mayor's ability to make the motion. Attorney Cherof stated that this was a substantive legal matter that needed to be brought to a conclusion and, since the Mayor was not present to vote or to make or second a motion, so the Mayor could bring up the issue.

Commissioner Silverstone asked Mr. Dion if he were asking for consent. Mr. Dion replied that the Sheriff's Office had already requested the consent by virtue of a letter to Manager Baldwin dated November 7, 2006.

Commissioner McIntee asked if this consent was approved, was the Sheriff's Office going to close the fire department and lock it up. Mr. Dion stated that the Sheriff's Office would continue to proceed in the same manner it had, which was to continue providing fire services to the Town. Commissioner McIntee asked if the Volunteers would be locked out of the fire station. Mr. Dion replied that he did not see any reason to do that unless the Volunteers did anything that was contrary to the termination of the

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contract.

Commissioner McIntee stated that if the consent was granted then the Sheriff's relationship with the Volunteer Fire Department would cease to exist. He indicated that it was the Sheriff's indication that the Sheriff's Office it owned or ran that building because it was theirs. Mr. Dion explained that pursuant to the contract with the Town, the Broward Sheriff's Office had occupancy of that building. He indicated that there were no objections to making arrangements to have the Volunteers remove any of their personal property. Mr. Dion stated that the contract between the Broward Sheriff's Office and the Volunteers provided that the Volunteers will provide to Sheriff's Office with all equipment purchased with public funds. He explained that there was no reason for the Volunteers to remain in the building as they could not use the equipment or respond to fires. Commissioner McIntee questioned if the Sheriff's Office would return the equipment to the Town as there was no one to man it. Mr. Dion explained that there was no reason to as it not only possessed, but owned the equipment until its contract with the Town was terminated.

Commissioner McIntee asked Mayor Pro Tem Clark if he was accepting this action to terminate the Volunteer Fire Department. Mayor Pro Tem Clark replied affirmatively, stating that this issued need to be brought to a closure.

Commissioner McIntee asked for permission to leave the dais to speak with someone in the audience before speaking further on this matter. Mayor Parker stated that each Commissioner was free to leave the dais at any time.

Commissioner Silverstone made a motion, seconded by Commissioner McIntee, to yield until Commissioner McIntee returns. In a roll call vote, all voted in favor. The motion carried 5-0.

The Mayor called a recess at 8:47 p.m. The meeting reconvened at 8:58 p.m.

Commissioner McIntee asked what was the projection to remove the Volunteers from the fire station. Mr. Dion stated that he had no actual timeframe in mind, stating that the Volunteers would have to work with Chief John Frailey for those details. He had no objections to working with the Volunteers.

Commissioner McIntee asked if all the internal affairs investigations would continue. Mr. Dion stated that he could not respond for the Internal Affairs Department, but suspected that they would. Commissioner McIntee asked if he could submit a complaint regarding a potential crime regarding the fire department, would Mr. Dion act on it. Mr. Dion responded negatively, but recommended that any such complaints be submitted to the Inspector General of the Broward Sheriff's Office.

Commissioner McIntee felt that this action had been set up, stating that "the Sheriff

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doesn't know the hornet's nest he's just stirred up". Mr. Dion asked if this statement was a threat. Commissioner McIntee stated that there were no threats in the comment, just absolute fact. He stated that the Sheriff's Office had destroyed the Volunteer Fire Department.

Mayor Parker made a motion, seconded by Mayor Pro Tem Clark, to consent to the Sherriff's termination of the Volunteer Fire Department, making it retroactive or non pro tunk to November 7th, giving the Volunteers until 5:00 p.m. on Friday to vacate the fire hall.

Attorney Cherof stated that the term meant "now for then", in other words, that the Commission was acting now, while stating the actual date it officially occurred.

Commissioner McIntee stated that the Sheriff's Office was being covered from the dais.

Mayor Parker expressed concern that the Volunteers would initiate a lawsuit against the Town stating that the termination was premature. Mayor Pro Tem Clark expressed dislike for the wording.

Mayor Parker amended his motion to consent to the Sheriff's termination of the Volunteer Fire Department, giving the Volunteers until 5:00 p.m. on Friday to vacate the fire hall. Mayor Pro Tem Clark amended his second.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to table this issue indefinitely. In a roll call vote, the motion failed 2-3, with Mayor Parker, Vice Mayor Yanni, and Mayor Pro Tem Clark dissenting.

Commissioner McIntee asked Mr. Dion if he had spoken with Mayor Parker regarding this issue prior to this meeting. Mr. Dion replied affirmatively. Commissioner McIntee asked Mr. Dion if he had spoken to Mayor Parker during the break regarding what actions the Mayor would take. Mr. Dion replied affirmatively. Commissioner McIntee questioned Mr. Dion if they had discussed what the vote was going to be. Mr. Dion replied negatively. Upon Commissioner McIntee's inquiry as to the discussion, Mr. Dion indicated that he would not further discuss the content of his the conversation with Mayor Parker.

Commissioner McIntee stated that the Volunteers had been advised that they would have a meeting last week Monday; however, that meeting did not take place. He questioned Mayor Pro Tem Clark if indeed that had been the arrangement. Mayor Pro Tem Clark stated that his understanding was that a meeting would take place within a two week period, beginning last Monday. Commissioner McIntee stated that the Volunteers had been waiting for a call that was never received.

Commissioner McIntee stated that this was not over and "your little Volunteer Fire

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Department will rise from the ashes” because of the residents. He stated that there would be tough days ahead and expressed how sad he was for his firemen. Commissioner McIntee stated that the Town had just doubled its fire assessment and emphasized that he would not only monitor the funds, but every movement the Broward Sheriff’s Office took.

Commissioner Silverstone stated that he was shocked and this action was unacceptable as long as the Broward Sheriff’s Office remained in the Town. He asked Chief Padden to provide a report regarding the Volunteers’ side of what had transpired and why negotiations had not taken place. Chief Padden stated that he was not privy to all the telephone calls that were shared between the Volunteers attorney and the Sheriff’s Office. He indicated, however, that he had received copies of the electronic mail that had been sent. Chief Padden stated that everyone had been misinformed, stating that the Volunteers had been waiting for over a week with no communication. He indicated that the Volunteers attorney had been trying, at least on three occasions, to contact Mr. Dion to no avail.

Chief Padden expressed disbelief that the Commission could make this decision in favor of the opposing party. He stated that he knew on the day that the Sheriff’s Office placed their labels on the Town’s equipment that this moment would occur. Chief Padden stated that Mr. Dion’s description of what had transpired was not accurate.

Commissioner Silverstone stated that he had become a Commissioner because there was some “wrongdoing” happening in the Town. He stated that the annexation agreement was clear that the north side of Town would maintain the services of the Broward Sheriff’s Office, with the Volunteers staying in the south side. Commissioner Silverstone questioned how this could happen to “us”, stating that it was unconscionable. He stated that the Volunteers had already spent \$30,000 in legal fees and the Volunteers had not been participating in Town events, such as the erection of the Christmas tree.

Mayor Pro Tem Clark asked Mr. Dion if he had copies of his attempted communications with the Volunteers. Mr. Dion stated that he only had two letters, one being the letter from Mr. Newburgh sent last Wednesday, and the second being his letter in response. He read the second paragraph into the record and provided copies of both letters to the Town Clerk for the records.

Commissioner McIntee stated that these letters meant nothing, that we were talking about the Sheriff’s Office and they could have made a better effort. Mayor Pro Tem Clark stated that the Volunteers had not tried to communicate at all to schedule the negotiations. Commissioner McIntee stated that this act had been a complete set-up.

Commissioner McIntee stated that he was having lunch at the Village Grille yesterday and there was a crew from the Broward Sheriff’s Office Engine 28 also having lunch.

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He stated that the crew was in uniform and he had seen that the total for their bill was \$16. He indicated that he had questioned the amount of the bill, with the waitress explaining that the Broward Sheriff's Office received half price when they were in uniform. Commissioner McIntee stated that these were the people who wanted to come into the Town and offer protection, but they had no problem with eating at our restaurants for half price. He indicated that for anyone who thought he was making it up he wanted to report that he had filed a formal complaint with Internal Affairs. Commissioner McIntee stated that he had approached Chief Gooding last month regarding the same issue. Chief Gooding stated that Commissioner McIntee had indeed reported this incident. He explained, however, that when he questioned Commissioner McIntee if the Volunteers received the same courtesy, Commissioner McIntee confirmed that in fact they did.

Commissioner McIntee stated that the Broward Sheriff's Office had also broken into the Volunteers' personal file cabinets.

Commissioner McIntee stated "that the gloves were off now" claiming that the Broward Sheriff's Office had broken all the rules and regulations.

Commissioner Silverstone stated that the last paragraph in Mr. Dion's letter stated that the claim that the Sheriff's Office had to obtain the Town's consent prior to termination of the contract with the Volunteers was incorrect. He questioned if that was the case, why was the Sheriff's Office requesting permission now. Mr. Dion stated that he would not argue the law in this forum, but explained that the contract between the Sheriff's Office and the Volunteers did not indicate that the Sheriff's Office had to obtain approval of the Town prior to terminating the contract. He further explained that the only contract that mentioned obtaining consent, was the Sheriff's Office and the Town. Mr. Dion stated that as a courtesy to the Town and in accordance with the contract between the Town and the Sheriff's Office, was why the Sheriff requested the consent.

Commissioner Silverstone stated that if the Sheriff's Office wanted to negotiate and the Volunteers wanted to negotiate, then it was this Commission that did not want the negotiations. Mr. Dion stated that he had no indication that the Volunteers did want to negotiate. He directed the Commission to Mr. Newburgh's letter, emphasizing that that letter did not mention any desire to negotiate, but rather it issued an ultimatum that the termination was to be rescinded, restore the status quo, or we file a lawsuit. Commissioner Silverstone stated that the intent of the letter was to negotiate, but stated that it explained that the Volunteers still believed it had been a wrongful termination.

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

Mayor Parker stated that he kept hearing that the Volunteers personal file cabinets had been broken into and questioned if that was true. Chief Gooding stated that in light of

the fact that there had been a claim that this was an internal affair allegation, he could not speak on this matter. He explained that until the internal affairs investigation was complete, he could not discuss this issue and suggested that no one speak on this matter. Mayor Parker asked that the Commission be provided with a report once the investigation was complete.

Manager Baldwin stated that it was his understanding that the Broward Sheriff's Office was leasing the building from the Town and was, therefore, in control of that building. He stated that the motion provided a timeframe in which the Volunteers had to vacate the building and questioned if the Commission had that authority. Mayor Parker stated that since everyone was so interested to know what he and Mr. Dion had discussed, he disclosed that he had asked Mr. Dion had any objections to giving the Volunteers until Friday to vacate. Mr. Dion had indicated that he would not have any objections. Manager Baldwin asked if it would be the Town's responsibility to ensure that the building was vacated. Mayor Parker replied negatively, stating that it would be the Sheriff's Office responsibility to ensure the building was vacated.

Commissioner McIntee asked Mayor Parker if he was essentially making a motion for the Sheriff's Office. Mayor Parker replied negatively, explaining that he only wanted to ensure that the Volunteers had sufficient time to properly vacate the building. Commissioner McIntee stated "you didn't do us any favors, Mayor".

F. Walk Around Committee

Barbara Cole stated that the Committee had taken care of a few items with staff's assistance that did not require Commission approval. She indicated that the trash cans located at the portals had been moved to the side to beautify the area, sea oats were in the process of being moved around and replaced with impatiens around the signs at the beach accesses, several requests had been referred to the proper staff, with one citizen in the south end of Town beginning the process of working with the Committee.

Ms. Cole referenced a sign program for the resort area and suggested that the creative part of the project to staff and the Master Plan Steering Committee to obtain input from citizens along with possible ideas from the students of the Art Institute in Fort Lauderdale and architectural students at the University of Miami. She described the proposed locations and expressed the Committee's belief that these signs would be a great benefit to the business district.

6. APPROVAL OF MINUTES

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- A. November 14, 2006, Agenda Conference
- B. November 18, 2006, Special Meeting

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to approve the minutes of November 14, 2006 and November 18, 2006. In a roll call vote, the motion carried 3-2, with Commissioner McIntee and Commissioner Silverstone dissenting.

Attorney Cherof reminded the Commission that an attorney-client executive session with the Commission scheduled for two very important cases, and there was a court reporter in attendance for that purpose. Commissioner McIntee stated that public comments had to be heard first. Attorney Cherof explained that he was not looking to recess the meeting at this time, but felt it was important for the public to be reminded that those were two issues that would be discussed tonight by the Commission in case they would wish to discuss on them and that the Commission would be in recess for approximately 45 minutes once they reached those items.

7. PUBLIC COMMENTS

Barbara Cole, 221 Washington Avenue, expressed her belief that the rifts in the community was an effect of the different visions for the Town's future. She was opposed to how the Town was currently run and questioned the motives and actions of some. Ms. Cole stated that individuals who were so involved with their own issues did not open their eyes and ears to new solutions or compromise.

Lawrence Wick, 4900 North Ocean Boulevard, stated that he had wanted to address Marie White's Christmas By The Sea and kid's charities. He indicated that now that there was no Volunteer Fire Department, was the Town willing to include these events on its insurance. Mr. Wick provided details on both events and the locations of the gift collecting boxes for Toys for Tots.

Stuart Dodd, 232 Imperial Lane, stated that he was the Chairman of the Mayor Parker Recall Committee and spoke regarding this petition.

Penny Dodd, 232 Imperial Lane, also provided information concerning the recall efforts.

Dan Butler referenced the pedestrian way for beach access for the handicap that was suppose to be constructed along the Sea Watch Restaurant and asked that residents be provided a status report. Attorney Cherof suggested that Mr. Butler speak to Mr. Mason.

Chief Joseph Padden, 159 Southeast 3 Avenue, Pompano Beach, stated that stated that he had been a member of the Volunteer Fire Department since June 1991. He

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questioned why Chief Chuck Lanza was still here, indicating that he had been dismissed and there was no reason for him to be here. Chief Padden stated that the Commission had made a decision that would affect 65 people and that the Commission had not considered what fire services would cost now, what would happen to the funds that were donated to "us" for a new fire house, what would be the disposition of the Volunteer Fire Department Pension, and what was suppose to happen to the emergency vehicle that was bought and paid for by the members of the Volunteers. He stated that he felt this had been a set-up as well.

Mike Rolfs, 264 Allenwood Drive, stated that he had requested a copy of the opinion Vice Mayor Yanni had obtained, but had not yet received it. Either way, he did not feel it would make a difference as his review of recent opinions, he believed that a conflict did exist.

Gail Schwartz stated that honesty, integrity, and ethics had been completely missing from this dais lately. She spoke against the Mayor and indicated that anyone on the dais who voted against the Volunteers, if they had any political aspirations, could consider those aspirations dead.

Tom Carr, 254 Miramar Avenue, believed that more than one Commissioner would be losing his seat.

Bob Terrien, 5100 North Ocean Boulevard, provided information regarding Christmas By The Sea, which included a parade, bands, bagpipers, entertainment, carolers, pictures with Santa Claus, and hayrides. He invited everyone to attend.

John MacMillan stated that he had been told that Sheriff Ken Jenne would be at the parade. He felt that Sheriff Jenne should have been in attendance.

Pat Pereira, 4648 Bougainvilla Avenue, expressed her belief that the actions of tonight had been a set-up and believed that the Commissioners would lose their seats.

Cristi Furth, 4525 El Mar Drive, spoke on the referendum for term limits, stating that the intent of the language was "crystal clear". She questioned Mayor Parker's requests to have the referendum interpreted and a change in the elections from March to November. Ms. Furth stated that the Town's actions would only cause the Citizens Initiative Committee to once again sue the Town.

Frank Herrmann, 4244 Seagrape Drive, referenced the elections and felt that although he had been a registered voter since 1956, he did not feel that his vote had counted. He stated that he used his vote to compliment or condemn the actions of his representatives. Mr. Herrmann stated that he would be a very vocal activist against any issues the Commission took up contrary to the wishes of the majority of the voters in this Town.

Maureen McIntee, 1612 Southeast 21 Avenue, referenced past minutes and read sections into the record. She stated that residents should be reminded that the Sea Colony lawsuit had not been a Bert J. Harris claim, but an error on the Town's part with a site plan.

Larry McGuinness, 5100 North Ocean Boulevard, stated that the street lights in front of his building had been out for quite some time. He asked that the Commission require that these lights be fixed prior to approving the contract with Florida Power and Light.

John Thompson, 671 Lakeside Circle, Pompano Beach, stated that he had been increasingly disappointed. He felt that there were a few people with authority thinking they could drive that authority to the limits. Mr. Thompson provided a history of the several petitions drafted by the Citizens Initiative Committee, blaming Mayor Parker, Attorney Cherof, and Town Clerk Medina for improperly stating that there were errors. He advised that he knew their opinions were incorrect, because he had written the petitions and was certain of the intent and that there were no errors.

David Beyer, 21200 Point Place, Aventura, stated that Commissioner McIntee had tried to demand a building for the Volunteers from his family. He indicated that he had the proof and demanded a meeting to expose Commissioner McIntee.

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

There were no ordinances for second reading to be considered.

9. COMMISSIONER COMMENTS

Mayor Pro Tem Clark stated that he would yield his time so the Commission could get on with Town business.

Commissioner McIntee asked Mr. Keller if he had obtained the copies of the environmental permits he had requested concerning the Oriana development. He stated that he had made one telephone call and received copies of the permits. Mr. Keller explained the process that had been followed to obtain the permit and the difficulties that had been encountered. He indicated that the actual permitted was an extremely thick document and that Commissioner Silverstone had only obtained a portion of the document.

Commissioner Silverstone stated that the reason he had voted for term limits was because it gave people the motivation to get involved.

Commissioner Silverstone offered an apology to the Broward Sheriff's Office, stating that he had misspoken at the last meeting when he indicated that the Sheriff's Office did

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not participate in random drug testing.

Commissioner McIntee asked Mr. Mason to respond to the questions concerning the handicap pathway that had been requested. Mr. Mason stated that the easement for that area was actually recorded for the south side of the Sea Watch Restaurant and, in reality, there was not an access in that area. He indicated that the Town had to negotiate the easement with the owners of Sea Watch Restaurant in order to proceed with this project.

Commissioner Silverstone offered his resignation on the Optimist Club, stating he did not wish to work with Mayor Parker. He expressed his belief that what was occurring in the Town was a disgrace.

Commissioner McIntee stated that he would actively work to obtain signatures for Mayor Parker's recall. He stated that the Mayor had destroyed the Town.

Commissioner McIntee stated that there were 65 people who lived out of the fire station, stored their personal equipment, owned a fire engine and all sorts of other stuff that did not belong to the Sheriff's Office that "was just stolen from the Town". He asked Mayor Pro Tem Clark if he had any objections to the Volunteers be allowed to store all their personal items until something happened in the future. Mayor Pro Tem Clark had no objections.

Commissioner McIntee stated that the Town was in trouble because people "up here and they are abusing their authority and their power". He could not understand why the Sheriff's Office was so strong, but felt that they had control of the Town. Commissioner McIntee spoke against the Mayor stating that he had made a whole lot of people unhappy.

Vice Mayor Yanni stated that he couldn't help but think that if the Volunteers negotiated as hard as they fought the Broward Sheriff's Office, the Town would never have had to make the decisions it made today.

Vice Mayor Yanni asked if the Town could insure the events for Santa By The Sea. Attorney Cherof replied that it could be done if the Town offered sponsorship.

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to have the Town accept sponsorship of Marie White's Santa By The Sea event. In a roll call vote, all voted in favor. The motion carried 5-0.

Vice Mayor Yanni stated that he was always getting accused of a conflict of interest and explained that although he worked for the Broward Sheriff's Office, the fact remained that his salary did not come from the Fire Department. He stated that when the Volunteer Fire Department was gone, Commissioner McIntee and Commissioner

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Silverstone did not get paid.

Vice Mayor Gianni stated that he had mentioned to someone the other day that Mayor Parker, Mayor Pro Tem Clark and he would get blamed if the Bert J. Harris claims proceeded. He could not believe that already today they had been blamed for these claims. Vice Mayor Gianni reminded the public that they had not had anything to do with the petition referendum.

Vice Mayor Gianni referenced the referendum on term limits and stated that even during campaigning both Commissioner McIntee and Commissioner Silverstone had indicated that term limits would start fresh on the 2008 elections.

Mayor Parker expressed his belief that no one had voted to eliminate the Volunteer Fire Department, but to eliminate the current leadership. He stated that he had voted to ensure that the department was reformed, citing cases of sexual harassment, absconded funds, and using firefighters to provide services to their own membership while the Town paid for it.

Commissioner McIntee asked if the allegations of sexual harassment had been reported. Chief Gooding stated that then Fire Chief Ian MacLean had made the allegations of sexual harassment against Commissioner McIntee and he had advised him that as Fire Chief the allegations had to be investigated immediately. Chief Gooding stated that both Chief MacLean and Battalion Chief Don King had provided reports and investigated this matter. He indicated that upon obtaining recommendations, the Broward Sheriff's Office had advised that discipline was in order. Chief Gooding was unaware of the outcome of this matter.

Mayor Parker stated that the Broward Sheriff's Office was contractually obligated to provide the Town with a volunteer fire department and believed that the only way to move forward with this was to allow the Sheriff's Office to be in control. He stated that the Sheriff's Office was already working to develop a reserve department to work within the Town.

Commissioner McIntee stated that Mayor Parker should just resign his position.

Mayor Parker stated that the reason given for the recall on his position was that he had improperly voted for a special assessment for fire services that had allegedly been diverted to emergency medical services. He advised that this allegation was a complete fabrication, stating that the Town's budget was over \$2,125,000, and the funds collected from the special assessment was under \$2.1 million. Mayor Parker advised that all the funds collected from the fire assessment was used towards fire services and emphasized that the Town had a separate line item for emergency medical services in an amount exceeding \$900,000. He stated that the grounds noted in the petition as reasons for the recall were not correct.

Mayor Parker felt that there was a small group of people in Town that were only trying to keep the Town from accomplishing any business. He asked residents to find out what was truly going on in Town.

10. ATTORNEY-CLIENT EXECUTIVE SESSION WITH TOWN COMMISSION

Attorney Cherof announced that in accordance with the procedures set forth in Florida Statutes Section 286.011, the Town Commission and the Town Manager will meet privately with the Town Attorney to discuss the following pending litigation:

Sea Colony vs. Town of Lauderdale-By-The-Sea, Florida,
Case Number 05-14142 (09).

and

Coastal Arms vs. Town of Lauderdale-By-The-Sea, Florida
Case Number 06-11563 (21).

It is estimated that the Shade Session will last approximately 45 minutes. Present in this Executive Session will be Mayor Oliver Parker, Vice Manager John Yanni, Mayor Pro Tem Chuck Clark, Commissioner Jerry McIntee Commissioner, Commissioner James Silverstone, Town Manager Robert Baldwin, Town Attorney James Cherof and a certified Court Reporter.

Attorney Cherof stated that there were members of the public who were in attendance to conduct business and asked that the Commission decide at this time whether they would be returning from the Shade session only to adjourn or recess.

Mayor Pro Tem Clark made a motion, seconded by Mayor Parker, to recess the regular meeting to 6:00 p.m. tomorrow.

Lengthy discussion ensued.

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

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to allow the Volunteers to continue using the storage area they currently use, indefinitely, for the storage of their supplies. In a roll call vote, all voted in favor. The motion carried 5-0.

In a roll call vote regarding the recess of the meeting, all voted in favor. The motion carried 5-0.

The Shade Session was concluded at 11:45 p.m., whereupon the meeting was

recessed. The meeting reconvened on November 29, 2006, at 6:00 p.m.

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 (*tabled from November 14, 2006*)

Lynn Shatas, representing Florida Power and Light, was present. Commissioner McIntee expressed concern that the street light at El Mar Drive and Commercial Boulevard had not yet been fixed.

Vice Mayor Yanni made a motion, seconded by Commissioner McIntee, to approve the ordinance on first reading.

Mayor Pro Tem Clark asked Ms. Shatas if this contract was going to impact the underground utilities. Ms. Shatas replied negatively.

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

12. CONSENT AGENDA

- A. INTERLOCAL AGREEMENT: with the Municipal Underground Utility Consortium to promote under grounding of utility facilities and related implementation activities
- B. AGREEMENT: with Craven Thompson for underground utility location services
- C. MEMORANDUM OF UNDERSTANDING: with Waste Management Inc of Florida regarding special accommodations for collection service monthly rates for duplex residences
- D. Motion authorizing Town Manager to apply for EMS Certificate of Public Convenience and Necessity (*Town Manager Robert Baldwin*)

Commissioner Silverstone questioned whether the Town could audit these contracts. Mr. Baldwin stated that staff generally oversaw all contracts. Mr. Cherof said that there were no provisions within the contract for an actual audit. Commissioner Silverstone stated that the proper language should be added to future contracts.

With a full consensus of the Commission, Items B and C were pulled from the agenda

for further discussion on a future agenda.

Mayor Pro Tem Clark made a motion to adopt Items A and D, seconded by Vice Mayor Yanni. In a roll call vote, all voted in favor. The motion carried 5-0.

13. RESOLUTION

Mayor Parker announced that there were no resolutions for consideration.

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*)

Craig Unger, representing Minto's Properties, provided a brief description regarding the proposed short term lease and the improvements being offered.

Commissioner McIntee made a motion, seconded by Vice Mayor Yanni, to approve the proposal. In a roll call vote, all voted in favor. The motion carried 5-0.

It was agreed that Item 15A, regarding the possibility of requiring properties that remain vacant for more than one year to landscape and remove construction fencing, would be discussed at this time.

Mayor Parker explained his recommendation, stating that perhaps the Commission would consider allowing six months for new projects and three months for old projects. There were no objections.

Mayor Pro Tem Clark made a motion, seconded by Commissioner McIntee, directing the Town Attorney to prepare an ordinance for first reading at the next meeting. In a roll call, all voted in favor. The motion carried 5-0.

- 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*)

John MacMillan withdrew his request and, therefore, this item was removed from the agenda.

- 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) (At the meeting of November 14, 2006, the Commission requested this item be tabled to January 9, 2007)

1. Discussion and/or action regarding an assessment for solid waste collection by the Town for residential customers (*Municipal Services Director William Mason*) (*tabled from October 24, 2006*) (*staff requesting to report on this item together with "C" above on January 9, 2007*)

Mayor Pro Tem Clark made a motion, seconded by Commissioner McIntee, to table these issues to January 9, 2007. In a roll call vote, all voted in favor. The motion carried 5-0.

It was the consensus of the Commission that a report be provided at the January meeting so the Commission could determine whether it should proceed with this matter.

- 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*)

Commissioner McIntee made a motion, seconded by Vice Mayor Yanni, to have the grand marshal selected by the majority of the Commission.

Mayor Parker stated that historically, the Mayor chose the grand marshal for the Fourth of July parade.

Vice Mayor Yanni asked how Commissioner McIntee wished this issue to be addressed. Commissioner McIntee stated that the Commission should appoint a committee who would make recommendations to the Commission for consideration.

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

- E. Discussion and/or action concerning beach safety issues (*Mayor Oliver Parker*) (*tabled from October 24, 2006*)

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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

Mayor Parker asked that this item be tabled to January 9, 2007, asking that the Town Administration provide a cost estimate for the Commission's review. There were no objections.

- 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*)

Manager Baldwin stated that his office had collected information regarding the protocols used by other municipalities for the Commission's review.

Some discussion followed concerning the lack of an established protocol, with Vice Mayor Yanni indicating that the Commission should continue to consider requests as they were received. Mayor Parker had no objections to having applications submitted for consideration.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to table this item to the first meeting in February. In a roll call vote, all voted in favor. The motion carried 5-0.

- G. Discussion and/or action concerning the naming of El Prado after Bill and Eva Karley (*Commissioner Jim Silverstone*) (*tabled from October 24, 2006*)

Commissioner Silverstone made a motion, seconded by Mayor Pro Tem Clark, to table this item to January 9, 2007. In a roll call vote, all voted in favor. The motion carried 5-0.

- 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*)

Mayor Parker suggested that signs be erected within residential areas to depicting "residential traffic only".

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, directing Municipal Services to provide nine signs, for a six month test period. In a roll

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

- 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*)

Mayor Parker made a motion, seconded by Mayor Pro Tem Clark, to table the item indefinitely. In a roll call vote, the motion carried 3-2, with Commissioner McIntee and Commissioner Silverstone dissenting.

- J. Discussion and/or action regarding the Town obtaining Letters of Interest for engineering services from other providers (*Municipal Services Director William Mason*) (*tabled from October 24, 2006*)

Mr. Mason advised that the review committee would be meeting within the week in order to rank the letters of interest submitted in this matter.

Mayor Parker asked to table this item to January 9, 2007. There were no objections and the Mayor so ordered.

- 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*)

Gus Carbonell, representing the applicant, was present.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to approve the extension request.

Mr. Keller explained that this application had already been extended and was approved with conditions according to the Clerk. Mr. Cabonell agreed, stating that there had been an architect in attendance at the previous meeting and he had also been told that the request was approved.

Vice Mayor Yanni wanted to know if these properties were occupied, stating that he had received several complaints regarding the upkeep of the duplexes. Mr. Carbonell said he would make sure that the properties were brought into compliance.

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to table this item until the next meeting, with direction to the applicant to clean up the property. In a roll

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

- L. Discussion and/or action regarding referral of the Oriana Development to the State Attorney (*Mayor Oliver Parker*)

Mayor Parker advised that in accordance with the discussions at the agenda conference, this item was being removed from the agenda.

- M. Discussion and/or action regarding criminal investigation "Oriana" project (*Commissioner Jerry McIntee*)

Mayor Parker advised that in accordance with the discussions at the agenda conference, this item was being removed from the agenda.

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

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to table this item to the second meeting in January, with direction to Mr. Cherof to give a report at the next meeting. In a roll call vote, all voted in favor. The motion carried 5-0.

It was agreed that the Commission would discuss Item 15M at this time. Commissioner McIntee stated that after considering this issue further, he felt that the regular meeting should begin at 7:00 p.m. He advised, however, that he had no objections to the discontinuation of the agenda conference. There were no objections.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to change the meeting time for future regular meetings from 6:00 p.m. to 7:00 p.m. In a roll call vote, all voted in favor. The motion carried 5-0.

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*)

This item was discussed earlier in the meeting.

- 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)

Commissioner McIntee made a motion, seconded by Mayor Parker, to table this item to the second meeting in February. In a roll call vote, the motion carried 4-1, with Commissioner Silverstone dissenting.

C. Discussion and/or action regarding the removal of the overlay district
(Commissioner Jim Silverstone) (continued from October 24, 2006)

Commissioner Silverstone made a motion to freeze the overlay district.

Commissioner Silverstone expressed his belief that the overlay districts should not be in effect until after the Community Redevelopment Agency was set and could review this issue. He felt that there were conflicts in the way the overlay district was applied. Attorney Cherof explained that making changes to the overlay districts changed the land use and, therefore, it had to go through the same process as that which was followed for the home occupational licenses. He indicated that the Commission could request a moratorium on all future construction. Commissioner McIntee asked if any part of the ordinance could be changed. He indicated that the overlay district states that there should be at least 25 percent green, believing it should be specific as to what was considered green space.

Mayor Pro Tem Clark stated that the whole purpose of the overlay districts was to grant incentives that would benefit the Town.

Commissioner Silverstone asked if there was any kind of limits on where the overlay districts could be used. Mr. Keller provided a brief description of how the overlay district affected the Town.

Commissioner Silverstone asked Mr. Keller if there were currently any projects being planned under the overlay districts. Mr. Keller replied affirmatively, stating that there were two projects currently going through the process.

Lengthy discussion followed, with Commissioner McIntee expressing his feeling that a scale model should be provided for any project worth over \$1 million. There was full consensus that the Town Attorney should prepare an ordinance regarding this issue for consideration at the next meeting.

Commissioner McIntee made a motion, seconded by Mayor Parker, that a scale model needed to be provided for any building estimated to cost over \$1 million. In a roll call vote, all voted in favor. The motion carried 5-0.

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*)

Mayor Parker announced that based on the discussion at the agenda conference, this item would be tabled to the next meeting with directions to Chief Gooding to complete an informal survey. There were no objections and the Mayor so ordered.

- 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*)

Sue Delegal, representing the applicant was present, and provided a description of the request.

Commissioner McIntee asked how long it would be before construction was completed. Ms. Delegal stated that completion of construction would depend on demolition, but explained that this could only move forward if the site plan was extended. Commissioner McIntee stated that he did not want to see a sales office at this location for an extended period of time. He felt that nine months was sufficient and asked for a guarantee that it would be removed within that time.

Commissioner Silverstone asked if one of the guest rooms would be used as the sales office. Mr. Peter Debs replied affirmatively and explained that viewing the units would occur by appointment only. He further indicated that "walk-ins" would not be permitted.

Vice Mayor Yanni asked when the temporary office would begin to be used. Ms. Delegal explained that the temporary office would start to be used as soon as the applicant could receive all the necessary approvals. Commissioner McIntee asked if there would be a guarantee of nine months. Mr. Debs replied negatively.

Mayor Pro Tem Clark made a motion, seconded by Mayor Parker, to table to January 9, 2007, with directions to the Town Attorney to prepare an ordinance amending the Land Development Code. In a roll call vote, the motion carried 4-1.

Mayor Pro Tem Clark made a motion, seconded by Vice Mayor Yanni, to approve the request for a temporary sales office at the Villa Caprice development for a period of 11 months upon opening and directing that a letter be sent to advise the applicant of the restriction. In a roll call vote, all voted in favor. The motion carried 5-0.

- F. Discussion and/or action regarding an extension to the site plan

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development order for Whitecap Motel Site/Robert White, Owner; located at 4608 El Mar Drive (*tabled from October 24, 2006*)

Mr. Robert White was not present; however, as the Commission was unsure if he was notified that the meeting was continued to this evening, the Commission decided to consider the requested extension.

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to approve the extension to the site plan development order. In a roll call vote, all voted in favor. The motion carried 5-0.

- 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*)

Enrique Rodriguez, representing the applicant, was present.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to approve the extension to the site plan development order. In a roll call vote, all voted in favor. The motion carried 5-0.

It was agreed that Item 15I would be discussed at this time.

Enrique Rodriguez, representing the applicant, was present.

Commissioner McIntee made a motion, seconded by Vice Mayor Yanni, to approve the extension to the site plan development order. In a roll call vote, all voted in favor. The motion carried 5-0.

- 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*)

Sue Delegal, representing the applicant, was present and explained that with the Coastal Systems Construction and the permitting process with the Department of Environmental Protection, the project could be delayed for some time with the permitting process.

Commissioner McIntee stated that after coming back to the Commission three times, the site plan would need to come back for re-approval. Mr. Peter Debs stated that he understood.

Mayor Pro Tem Clark asked why it would take 18 months to get permits from the

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Department of Environmental Protection. Ms. Delegal provided a description of the process involved, emphasizing that it was lengthy. Lengthy discussion followed, with Mayor Pro Tem Clark stating that he liked the informal rule the Commission had on extension requests. He felt that the Commission had to be reasonably flexible when the need arises.

Mayor Pro Tem Clark made a motion, seconded by Mayor Parker, directing the Town Attorney to prepare an ordinance amending the Land Development Code for property located within the coastal construction control line.

Vice Mayor Yanni agreed with the rule that applicants return for an extension after a six month period. He also felt that properties east of El Mar Drive should receive an additional six months. Mayor Parker stated that this rule was already in the Town's Code, and felt that the Commission could approve additional extensions. Vice Mayor Yanni stated that the west side of El Mar Drive should remain the same.

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

- 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*)

This item was discussed earlier in the meeting.

- 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 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*)

Commissioner McIntee asked if there were any documentation that could be sent to the State. Attorney Cherof replied negatively.

Mayor Parker asked that Items 15J, 15K, and 15L be tabled to the second meeting in January 2007. There were no objections and the Mayor so ordered.

- 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*)

This item was tabled earlier in the meeting.

- 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*)

This item was tabled earlier in the meeting.

- M. Discussion and/or action regarding the consideration to eliminate the agenda conference (*Mayor Pro Tem Chuck Clark*)

This item was discussed earlier in the meeting.

- 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 12, 2006*)

Mayor Parker advised that based on staff's recommendation, this item would be tabled to December 12, 2006. There were no objections and the Mayor so ordered.

- O. Discussion and/or action regarding the adoption of the Evaluation and Appraisal Report based Comprehensive Plan amendments (*Town Planner Walter Keller*)

Mr. Keller provided a report regarding the Comprehensive Plan and the amendments needed. He explained the proposal for the Commission's consideration.

Vice Mayor Yanni made a motion, seconded by Mayor Pro Tem Clark, to approve the proposal. In a roll call vote, all voted in favor. The motion carried 3-2, with Commissioner Silverstone and Commissioner McIntee dissenting.

After a brief discussion regarding the need for a second meeting in December, it was agreed that a meeting was not necessary.

Commissioner McIntee made a motion, seconded by Vice Mayor Yanni, to cancel the meeting scheduled for December 19, 2006. In a roll call vote, all voted in favor. The motion carried 5-0.

Mayor Parker asked if the Commission could agree that there would be no emergency meetings called so that Commissioners could plant their holiday vacations. The Commission gave its full consensus.

16. TOWN MANAGER REPORT

A. Code Compliance Quarterly Report (*tabled from November 14, 2006*)

Mr. Mason provided an overview of the report.

Commissioner Silverstone made a motion, seconded by Vice Mayor Yanni, to approve the report. In a roll call vote, all voted in favor. The motion carried 5-0.

B. Municipal Services Monthly Report (*tabled from November 14, 2006*)

Commissioner McIntee made a motion, seconded by Vice Mayor Yanni, to approve the report. In a roll call vote, all voted in favor. The motion carried 5-0.

Manager Baldwin provided a brief update regarding the hiring of a new Development Services Director.

17. TOWN ATTORNEY REPORT

Attorney Cherof had no reports for the Commission to consider.

18. 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 8:50 p.m.

Oliver Parker, Mayor

ATTEST:

Alina Medina, Town Clerk

Date Accepted: _____