

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

REGULAR MEETING

MINUTES

Town Commission Meeting Room

4501 Ocean Drive

Tuesday, February 28, 2006

7:00 P.M.

1. CALL TO ORDER, MAYOR OLIVER PARKER

The meeting was called to order by Mayor Parker at 7:13 p.m. Present were Mayor Parker, Vice Mayor Kennedy, Mayor Pro Tem Clark, Commissioner Wessels, and Commissioner Yanni. Also present were Town Manager Robert Baldwin, Town 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.

4. PRESENTATIONS

A. Plaque issued by Areawide Council on Aging

Edith Lederberg, Area Agency of Aging, presented the Ten Year Full Fair Share Advocacy Award in recognition of dedication to progress, accomplishment of goals, and commitment toward the betterment of life for humanity.

Vice Mayor Kennedy made a motion, seconded by Commissioner Yanni, to accept the Ten Year Full Fair Share Advocacy Award as presented. In a roll call vote, all voted in favor. The motion carried 5-0.

SHADE SESSION

Attorney Cherof announced that in accordance with the procedures set forth in Florida Statutes Section 286.011, the Town Commission and the Town Manager would 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).

Town Commission Regular Meeting Minutes
February 28, 2006

Attorney Cherof announced the Commission would recess into a closed door session as permitted in Florida Statutes 286.011 to discuss the litigation between the Town of Lauderdale-By-The-Sea and Sea Colony, Inc. He added this case was pending in Broward County Circuit Court as Case No. 05-14142(09). Attorney Cherof said the Mayor and Commission, the City Manager and the Town Attorney, would attend the closed door session and, immediately following completion, resume the regular Commission meeting.

Vice Mayor Kennedy made a motion to recess for the Shade Session. There were no objections.

The Commission recessed at 7:20 p.m. and reconvened at 7:49 p.m.

Attorney Cherof asked for direction from the Commission regarding authority to take an appeal of the Sea Colony vs. the Town of Lauderdale-By-The-Sea, Florida.

Commissioner Yanni made a motion, seconded by Mayor Pro Tem Clark, directing the Town Attorney to take an appeal. In a roll call vote, all voted in favor. The motion carried 5-0.

Mayor Parker directed Attorney Cherof to file the appeal by Wednesday, March 1, 2006.

5. REPORTS

A. Budget Report for Period Ending January 31, 2006

Vice Mayor Kennedy made a motion, seconded by Commissioner Yanni, to approve the budget report for the period ending January 31, 2006. In a roll call vote, all voted in favor. The motion carried 5-0.

B. Master Plan Steering Committee – Report on beach dunes by Town Engineer Kevin Hart *(continued from February 14, 2006)* **(staff requesting tabling to April 11, 2006)**

Mayor Parker announced that the Master Plan Steering Committee requested their report be tabled to April 11, 2006. There were no objections.

C. Report on the general condition of grounds for the property located at Villas By The Sea, located on the north and south sides of El Prado, between State Road A1A and El Mar Drive *(Craig Unger of Minto Communities, Inc.) (continued from February 14, 2006)*

Craig Unger, Minto Communities, commented on the notification from Town staff that they were not maintaining the property to the standards that the Town required. Mr. Unger said a new policy was developed to address that issue and Minto Communities' staff would be visiting the area three times a week. Mr. Unger added that the screening

Town Commission Regular Meeting Minutes
February 28, 2006

was difficult to obtain, but planned completion of the screening over the next three weeks.

At the request of the Commission, Mr. Unger agreed to put up "No Parking Signs" in the construction area, instead of using cones. Mr. Unger also clarified that Minto Communities had every intention to build 3-over-1 with a total of 117 units, as was reviewed and approved by the Commission. Mr. Unger expected construction to start approximately June or July 2006, with starting sale prices from the high \$500,000's to the low \$600,000. He added that the largest unit on the water would cost upwards of \$3,000,000.

- D. Report on general repairs made within the Town municipal boundaries
(Municipal Services Director William Mason) (continued from February 14, 2006)

Municipal Services Director William Mason reported that the bocci court was being maintained on a weekly basis again and there were 35 palm trees available for planting at the north end of El Mar Drive. Mr. Mason said that the Department of Transportation plans to have all "named" street signs replaced, and all street lights up and running by July. He said the dangerous telephone poles damaged during the hurricanes have been fixed, and the leaning poles are scheduled to be replaced or realigned by BellSouth within two to three months.

Mr. Mason indicated that sewer connections would be available within 45 to 60 days to residents of Terra Mar Island. He advised that Gold Eagle would be replacing the weather worn newspaper racks.

Commissioner Yanni talked about the condition of the sea wall on Pine Avenue, and requested Sea Ranch Lakes be contacted to make necessary repairs. Mr. Mason said the contractor was delayed due to the unavailability of materials, but was currently working on the east end of the wall. Manager Baldwin had no objection to contacting the Village of Sea Ranch Lakes to have the contractor work on the Pine Avenue wall first. There was further discussion regarding the staking out of a right-of-way at a cost of approximately \$500 for the survey.

Commissioner Yanni made a motion, seconded by Vice Mayor Kennedy, to direct Town Engineer Kevin Hart to stake the property for a right-of-way.

Commissioner Wessels motioned an amendment, seconded by Commissioner Yanni, to include a landscaping package and sprinklers upon completion of the wall.

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

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

6. APPROVAL OF MINUTES

A. February 14, 2006, Agenda Conference

Vice Mayor Kennedy made a motion, seconded by Commissioner Yanni, to approve the minutes of the February 14, 2006 Agenda Conference. In a roll call vote, all voted in favor. The motion carried 5-0.

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

- A. **Ordinance No. 2006-02:** An ordinance of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, amending Chapter 24 of the Code of Ordinances to provide a comprehensive revision to the Town's Land Development Regulations; providing for the renumbering and recodification of the Land Development Regulations as Chapter 30 of the Code of Ordinances; amending or adding provisions regarding final site plans, architectural standards for the RD-10, RM-25, RM-25A, and RM-50 zoning districts, procedures and requirements for rezoning including application process and requirements, vested rights determinations, quasi-judicial proceedings, general provisions including legislative intent, purpose, rules of interpretation effective staff decisions, enforcement, violations and penalties and computation of time, definitions, non-conforming uses and structures, including provisions for extensions, alteration, enlargement and reconstruction, zoning map, interpretation of district boundaries, purpose and intent of zoning districts, regulations for the RM-25A zoning district, planned unit development regulations, off-street parking requirements in the B-1A zoning district, off-street parking requirements in the B-1 zoning district, boats, boat lifts and boat houses, boat davits, height of fences, walls and hedges, swimming pool and deck setback requirements, accessory buildings and structures, off-street parking and loading requirements, telecommunication towers and antennas, window awnings and entrance canopies, signs and landscaping; providing for severability; providing for codification; providing for conflicts; and providing for an effective date.

Attorney Cherof read Ordinance 2006-02 by title only.

Mayor Parker opened the public hearing.

Jerome McIntee, 1612 SE 26th Avenue, talked about the need for more workshops to fully understand Ordinance 2006-02 and suggested postponing the approval of the Ordinance to obtain more input.

James Silverstone, 205 Washingtonia Avenue, asked if Ordinance 2006-02 changed the Comprehensive Plan. Attorney Cherof replied it did not and explained that an

Town Commission Regular Meeting Minutes
February 28, 2006

Ordinance amending the Comprehensive plan would go through a different set of procedures.

John Thompson, 671 Lakeside Drive, Pompano Beach, was concerned over the complicated Ordinance. Mr. Thompson did not believe the Town should provide property owners with the ability to show vested rights without having them sue. Attorney Cherof explained that the determination of vested rights was not an automatic; it required an applicant to come forward and establish, in a hearing type setting, that they in fact did have vested rights. He said the purpose was to avoid the opportunity to have people litigate the Town by giving them a forum to have their disputes resolved without going to court.

Michael Crook, Sea Colony, 1400 South Ocean Beach Boulevard, commented on the anticipated change in setbacks from 20 feet to 30 feet and requested the change not be made as the change would have a negative affect on his site plan. He suggested the changes be made on a site by site basis.

Diane McSweeney, 4629 Poinciana Street, commented that Ordinance 2006-02 did not benefit the Town, it only benefited developers.

Stuart Dodd, 232 Imperial Lane, believed that the Commission did not fully comprehend the implications of the Ordinance. He also expressed his concern regarding the setbacks on the waterways.

Lang Ryder, 239 Codrington Drive, also expressed his concerns with the setbacks on the waterways. Mr. Ryder felt that the Ordinance benefited only developers and encroached on his vested rights. There was further discussion regarding dockage and setbacks.

With no one else wishing to speak, Mayor Parker closed the public hearing.

The Commission discussed Mr. Ryder's concerns and read line 32, of page 29, of Ordinance 2006-02. Commissioner Yanni preferred to leave it alone, while Mayor Parker preferred to amend it to ten feet. There was further discussion regarding complicated issues within the Ordinance. The Commission agreed to set a workshop after the March 14th, 2006 election to discuss the Ordinance in detail.

Commissioner Yanni made a motion, seconded by Commissioner Wessels, to table Ordinance 2006-02 to April 25, 2006.

Vice Mayor Kennedy believed Ordinance 2006-02 was intended to address housekeeping and, as it turned out, other complicated issues arose that needed further review. He agreed that workshops were needed to fully comprehend the depth of the Ordinance and not rush into its approval.

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

Town Commission Regular Meeting Minutes
February 28, 2006

- B. **Ordinance No. 2006-01:** An ordinance of the Town of Lauderdale-By-The-Sea, Florida, amending the Code of Ordinances, Chapter 24, the Land Development Code, Article V, Zoning; amending subsection M to re-designate the District as "The Hospitality Zoning Overlay District"; providing a definition of a "Tourist Accommodation"; authorizing condominium hotels; providing boundaries, transition areas, eligibility criteria, requirements, overlay district modifications, increasing density for tourist accommodations; allowing for mixed use; and approval process; providing for codification, conflict, severability, and an effective date.

Attorney Cherof read Ordinance 2006-01 by title only.

Mayor Parker opened the public hearing.

Diane Boutin, Windjammer Resort, supported the Hospitality District Zoning Overlay and encourage its adoption. Ms. Boutin believed it would aid the business district.

Christy Furth, 4525 El Mar Drive, expressed her inability to fully understand Ordinance 2006-01. Ms. Furth believed a workshop, with public participation, would be beneficial. Ms. Furth questioned the term "mixed use" and inquired of the benefits towards her business.

Town Planner Walter Keller explained that the mixed use concept only applied to Ordinance 2006-01 and the lots that directly front the east side of A1A. He stated it would not extend to El Mar Drive. The mixed use would allow business, office, retail from selected uses, residential, and tourism uses on the west end of the block, provided they had a minimum of four lots. Mr. Keller said the mixed use can only occur on the west half of Block 15, and not extend on the lots in front of El Mar Drive.

Mr. Keller said Ordinance 2006-01 was developed to encourage more tourism use in that area and possibly allow for mixed uses only on the lots that front A1A. He explained further that Ordinance 2006-01 took the existing Beach Overlay District and changed the name of the Ordinance to Hospitality District, defining tourism accommodation so that a condominium/hotel type unit could be considered and kitchens could be allowed in hotel units.

John McMillan, 3208 12th Street, Pompano Beach, asked whether 60 units per acre had been approved previously. Mayor Parker said units are determined by net acre, and only 60 hotel units were approved for the one block as previously explained by Mr. Keller.

Planner Keller further explained that the allowable density of condo/hotels doubles the allowable number of residential units. He explained that where there were 25 allowable residential units, there were 50 allowable hotel units.

Town Commission Regular Meeting Minutes
February 28, 2006

Jerome McIntee, 1612 SE 26th Avenue, did not agree with the information as presented regarding density.

Michael Arker, 5100 N. Ocean Boulevard, expressed his disfavor with the behavior of the citizens of the same Town, and threatened to sue individuals if he were denied the opportunity to build a condominium on his property. Mr. Arker suggested if the people did not know the facts, they should ask professionals rather than those who did not know the true facts. He pointed out that the Ordinance only pertained to Block 15, and although it's been said repeatedly, people still did not know that fact. He compared the fact finding scenario to going to a doctor, suggesting that when in doubt, obtain a second opinion.

John Thompson, 671 Lakeside Circle, Pompano Beach, expressed his concern with an increase in density.

With no one else wishing to speak, Mayor Parker closed the public hearing.

Mayor Pro Tem Clark made a motion, seconded by Vice Mayor Kennedy, to adopt Ordinance 2006-01 with two amendments.

Mayor Parker read proposed amendments as explained in Planner Keller's February 21, 2006 memorandum and hereto attached as part of these minutes. The Commission voted on each amendment as follows:

- First proposed amendment: the addition of information on minimum unit size (page 3 lines 30-37):

Vice Mayor Kennedy made a motion, seconded by Mayor Pro Tem Clark, to approve Ordinance 2006-01 as amended.

Commissioner Yanni motioned an amendment to the amendment, to increase the square footage:

Hotel/Motel Room to 400 square feet
Hotel or Motel Room with a kitchen to 700 square feet
Condominium Hotel Room to 400 square feet
Efficiency or Studio Dwelling to 700 square feet
One Bedroom Dwelling Unit to 900 square feet
Two or More Bedroom Dwelling Units to 1,300 square feet

The motion to amend, the motion to amend, failed for lack of a second.

Brief discussion followed with Mayor Parker explaining the reason for the Ordinance was to preserve the resort character of the downtown area by increasing tourism.

In a roll call vote, the motion to amend Ordinance 2006-01 carried 4-1, with Commissioner Yanni dissenting.

- Second proposed amendment: notation on Town Commission approval of condominium hotel projects (page 10 lines 14-16):

Commissioner Yanni made a motion, seconded by Vice Mayor Kennedy, to amend Ordinance 2006-01. In a roll call vote, all voted in favor. The motion carried 5-0.

In a roll call vote, all voted in favor of Ordinance 2006-01 with two amendments. The motion carried 5-0.

Commissioner Wessels said that the Ordinance was to fortify the hotel industry and only affected Block 15. He felt this made sense.

The Commission recessed at 9:50 and reconvened at 9:55 p.m.

8. PUBLIC COMMENTS

Lieutenant Kristen Cortozzo, a firefighter with the Town of Lauderdale-By-The-Sea Volunteer Firefighter Department, addressed the Commission in defense of herself regarding her qualifications as Lieutenant and her abilities and merits as a firefighter.

Reverend Jim Pollack, 4244 East Tradewinds, was concerned with the morale and well being of the volunteer firefighters and talked about the growth of the Volunteer Firefighter Department.

Jerome McIntee, 1612 Southeast 21st Avenue, was saddened that Lieutenant Kristen Cortozzo was dishonored. He said she was brave, sincere and honest, and deserving of the promotion.

John Thompson, 671 Lakeside Circle, Pompano Beach, talked about the development of a fair and reasonable distribution of costs for fire protection.

Rosa Michailuk, 4621 Bougainville Drive, talked about the unfair manner in which fire assessments were applied, comparing assessments on neighboring townhomes to her own property.

James Silverstone, 205 Washingtonia Avenue, questioned the letter to the Attorney General's office regarding the Burt J. Harris Act and its effect on the referendum. Attorney Cherof advised that the Attorney General's office requires all points of views submitted at the same time, and he was presently waiting for Mr. Schulmister's portion.

Christy Furth, 4525 El Mar Drive, agreed with Ms. Michailuk regarding fire assessments. She said she was paying the same amount as a \$3 million home. Ms. Furth suggested

fairness in allowing all community organizations that choose to publicly endorse a candidate, have the use of Jarvis Hall.

Kevin Padden, Volunteer Firefighter, expressed his disappointment that the Volunteer Firefighters were never thanked or shown appreciation for their work during Hurricane Katrina.

Joe Padden, Volunteer Firefighter, believed the negative statements made about the Volunteer Firefighters were unfair.

Bob Terrien, 5100 N. Ocean Boulevard, expressed concern regarding the referendum and believed the people needed to know what the real issue was.

Cindy Geesey, 256 Imperial Lane, said she had attended many Commission meetings and other Board and Committee meetings throughout the years that helped her become educated and helped her to understand the goings-on in the Town. Ms. Geesey did not understand why so much negativity comes out about an elected Commission from people who did not seek the same understanding.

Diane Boutin, 4244 El Mar Drive, congratulated the Public Works Department on its progress throughout the community. She talked about reclassification of the fire assessment and urged support for local businesses.

Stuart Dodd, 232 Imperial Lane, expressed his lack of confidence, trust and integrity toward the Commission, and referred to members of the Broward Fire Department that would hold placards in favor of Commissioner Wessels for election.

9. COMMISSIONER COMMENTS

Commissioner Wessels addressed Mr. Dodd's comments and inquired as to the basis and facts for his information. Mr. Dodd replied that he assumed it would take place, whereby Commissioner Wessels pointed out that he had no desire for outside influence becoming involved in the election and thought it was inappropriate for the Volunteer Fire Department to get involved in the political election as well. Mr. Dodd agreed.

Vice Mayor Kennedy said the Volunteer Firefighters were an excellent organization, but two individuals were using the organization for political gain and, because the organization was brought into the political arena, they became fair game for discussion.

Mayor Pro Tem Clark was pleased with Municipal Services Director Mason's report on the status of the Town's problems. He recognized there was a problem with the fire assessment and supported a better analysis. Mayor Pro Tem Clark believed it was essential to preserve the tourist industry, and promised his best to protect property rights in Town.

Town Commission Regular Meeting Minutes
February 28, 2006

Commissioner Yanni addressed Mr. Dodd's accusations and said he believed that Mr. Dodd should have gotten his facts straight before making public comments. Commissioner Yanni believed the Volunteer Fire Department was supposed to help people and was sorry the Volunteers felt no one thanked them for their help during Hurricane Katrina. He pointed out that he himself lost a building during the hurricane and, although not a single Volunteer Firefighter offered their assistance, he still respected the work they did. Commissioner Yanni felt the fire assessment was unfair and hoped for changes.

Commissioner Yanni commented on the article written by Mr. MacMillan in By The Sea Times that misrepresented his vote regarding the number of units per acre. He clarified that he voted against, not in favor of, 60 units per acre.

Mayor Parker pointed out that Mr. Macmillan also accused the Town of engaging in a push poll and believed there should be a retraction. He said Mr. Macmillan also misrepresented Mayor Parker's reason for the December 24, 2006 meeting which was to receive public input on the issue at hand.

Mayor Parker announced the candidates' debate on March 8, 2006, at 7:00 p.m., and announced that there would not be an Agenda Conference on March 28, 2006 if there were a change on the Commission seat.

Mayor Parker talked about the current pending lawsuits from property owners, indicating pending liabilities at \$44 million. He said he had offered the Citizens Initiative Committee and Mr. Thompson to work with them to develop a proper Charter amendment that would not involve Burt J. Harris, but they had rejected his offer.

Vice Mayor Kennedy made a motion, seconded by Commissioner Yanni, to extend the meeting past 11:00 p.m. In a roll call vote, all voted in favor. The motion carried 5-0.

10. CONSENT AGENDA

- A. REQUEST FOR EXTENSION: to the Development Order issued to Michael Arker/Half Ventures of Florida LLC, for the property located at 4240 Bougainvillea Drive (*request for a six month extension*)
- B. AGREEMENT: with Craven Thompson and Associates Inc. for Geotechnical Services for the North Beach Neighborhood Improvements (CT&A Proposal No. 2006-170.088)
- C. AGREEMENT: with Craven Thompson and Associates Inc. for engineering services necessary for the demolition to the Public Works Garage (CT&A Proposal No. 2006-170.089)
- D. REQUEST FOR EXTENSION: of Franchise Agreement with Waste Management for a period of thirty days

Town Commission Regular Meeting Minutes
February 28, 2006

- E. PURCHASE: of meters to be installed at the State Road A1A/Bougainvilla Parking Lot
- F. DESIGN PLANS: by Craven Thompson and Associates, Inc. for the Bougainvilla Drive Parking Lot

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

11. RESOLUTION

There were no Resolutions for consideration.

12. OLD BUSINESS

- A. Report on changes to the Evaluation and Appraisal Report (*Town Planner Walter Keller*) (*tabled from February 14, 2006*) (**staff requesting tabling to March 28, 2006**)
- B. Report on the approximate cost per foot to bury utility lines as part of site plan reviews/approvals (*Town Engineer Kevin Hart*)
- C. Report on beach easements as public beach access in the northern sections of Town (*tabled from February 14, 2006*)
- D. Update on traffic calming remedies (speed humps) for South Seagrape Drive (*Commissioner David Wessels*)

Mayor Pro Tem Clark made a motion, seconded by Commissioner Yanni, to table items 12 A through D, of Old Business, and item 13 A, of New Business, to March 28, 2006. The motion carried 4-1, with Commissioner Wessels dissenting.

13. NEW BUSINESS

- A. Discussion and/or action concerning the Town's Code, Chapter 24, Section 5-148, as it pertains to the height of hedges (*Commissioner David Wessels*)

This item was tabled to March 28, 2006 earlier in the meeting.

14. TOWN MANAGER REPORT

Manager Baldwin was concerned with a possible increase of traffic problems at the intersection of A1A, and the six month timetable it took to obtain a permit from the Department of Transportation.

The Commission discussed their preference to the location of three handicap spaces at A1A, making them closer to the downtown area. Commissioner Wessels requested that one of the handicap spaces be located at Bougainvilla Drive. There were no objections.

15. TOWN ATTORNEY REPORT

- A. Report regarding parking at the south side of Commercial Boulevard and West Tradewinds and other Town owned properties (*continued from February 14, 2006*)

Attorney Cherof gave an update regarding his research on the Silver Shores Sub-division Plat, that contained dedicated parking on the west and east sides of Tradewinds Avenue. He said the dedications were enforceable dedications and that the Commission had the ability to act upon them.

Mayor Parker requested this item be placed on the March 28, 2006 agenda and asked for a backup report to accompany the item.

16. ADJOURNMENT

Commissioner Yanni made a motion to adjourn the meeting. As there were no objections and no other business to discuss, the meeting was adjourned at 11:10 p.m.

Oliver Parker, Mayor

ATTEST:

Alina Medina, Town Clerk

Date Accepted: _____