

# **TOWN OF LAUDERDALE-BY-THE-SEA**

## **TOWN COMMISSION**

### **REGULAR MEETING**

#### **Minutes**

Town Commission Meeting Room

**4501 Ocean Drive**

**Tuesday, March 13, 2007**

**7:00 P.M.**

#### **1. CALL TO ORDER, MAYOR OLIVER PARKER**

Mayor Parker called the regularly scheduled meeting to order at 7:00 p.m. Vice-Mayor John Yanni, Commissioner Jerome McIntee and Commissioner Jim Silverstone were present. Mayor Pro Tem Charles Clark attended via telephone conference. Acting Town Manager Esther Colon, Town Attorney James Cherof and Deputy Clerk Andrea Gerlach were also in attendance.

#### **2. PLEDGE OF ALLEGIANCE TO THE FLAG**

#### **3. INVOCATION, TOWN CHAPLAIN**

The Town Chaplain was not in attendance. Mayor Parker announced that the meeting would proceed to presentations. Commissioner McIntee motioned to overrule the Chair and have the Reverend Hunsaker offer the Invocation. The motion was seconded by Commissioner Silverstone and carried unanimously.

#### **4. PRESENTATIONS**

##### **A. Proclamation – Amateur Radio Week (*June 18 through 24, 2007*)**

On behalf of the Town Commission, Mayor Parker proclaimed June 18 through June 24, 2007 Amateur Radio Week in the Town of Lauderdale-By-the-Sea.

##### **B. Deputy of the Month, Broward Sheriff's Office, District 13 (*Chief Scott Gooding*)**

Chief Scott A. Gooding introduced Deputy Jason Friedrich as the February 2007 Employee of the Month saying he is the only motorcycle deputy in Lauderdale-By-The-Sea and has been tasked with accident reduction and our Selective Traffic Enforcement Program (STEP). Chief Gooding highlighted many of Deputy Friedrich's accomplishments and commended him for performing an outstanding job for the district.

The Commission offered their congratulations to Deputy Friedrich.

#### **5. REPORTS**

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A. Municipal Services Department Monthly Report

There were no questions concerning the report submitted by Municipal Services Director Bill Mason. Vice Mayor Yanni motioned to approve the report as submitted. The motion was seconded by Commissioner McIntee and carried unanimously.

B. Report concerning letter received from Bryant Miller Olive regarding fire assessment (*Town Attorney James Cherof*)

Town Attorney Cherof began by advising the Commission that he did not believe the letter that was written and submitted to the Commission was exempt from public record law or that it falls within the narrow exception to production which would make it confidential. Mr. Cherof continued to say it should be treated as a non-confidential document that is a public record allowing the issues contained in its contents to be discussed freely.

Commissioner Silverstone questioned if in the future this letter would be a public document.

Mayor Parker stated that is the Town Attorney's ruling and if any Commissioner wished to discuss it further it could be added to the agenda of the next Commission meeting.

Commissioner McIntee asked why he could not discuss the issue now.

Mayor Parker answered that it is only a report.

Commissioner McIntee insisted that he would like to read the letter concerning the fire assessment, to the people tonight and asked Mr. Cherof if that would be a reasonable request.

Mr. Cherof responded that he was only asked to determine whether or not the letter was something that should be maintained as confidential. How and when it is read is a matter for the Commission to decide.

Commissioner McIntee stated he would give a copy of his letter to the Acting Town Manager that would be made available in Town Hall. Commissioner McIntee encouraged all residents to pick up a copy of the letter saying it affects every resident in Town.

C. Report on the installation of call phones at beach access points and installation of signs informing public on rip currents (*Municipal Services Director William Mason*)

Mayor Parker stated he thought this issue had already been addressed and does not know why it coming back to the Commission.

Acting Town Manager Esther Colon replied that it had not. The Commission had requested the administration look into possible locations and now administration is requesting approval of locations for the call boxes.

Mayor Parker said he remembered Municipal Services Director Bill Mason advising his research revealed the call boxes would not withstand the ocean climate. Mr. Mason had said the Commission might not want to invest in a system that was not reliable and may not work, increasing the Town's liability.

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Ms. Colon reiterated she was looking for direction.

Commissioner McIntee said that he recalled a discussion pertaining to additional possibilities and other companies Mr. Mason might want to pursue. Commissioner McIntee recalled the discussion coming before the Commission one more time, but motioned to table this matter indefinitely.

Town Attorney Cherof interjected that this was really a motion to remove the item from the agenda.

Commissioner McIntee motioned to remove the item from the agenda.

Mayor Parker asked John Olinzock, Director of Municipal Services if he was going to report on locations or a reliable system suitable for our ocean location.

Mr. Olinzock replied that all the issues previously discussed were still of concern and he had done research to indicate that not many other communities had gone down this road.

Vice Mayor seconded the motion to remove the item from the agenda. The motion carried unanimously.

D. Permit Analysis/Building Department Studies (*Development Services Director Jim Bell*)

Development Services Director Jim Bell stated the Commission had directed staff to research building fees of other surrounding municipalities. The municipalities specifically mentioned by the Commission were Lighthouse Point, Oakland Park and Wilton Manors. Staff took the liberty of choosing a fourth municipality, Coral Springs. Additionally, the Commission asked for analysis on window replacement valued at \$10,000 and a roof replacement of \$20,000. Referring to the Commission back-up documentation, Mr. Bell compared fees of surrounding communities and reported that our Town's fees are still the highest for the replacement of ten (10) windows. Mr. Bell continued to say that most municipal jurisdictions have an up-front minimum based permit fee, eliminating a lot of the other fees charged by Lauderdale-By-The-Sea.

Commissioner McIntee stated that according to Mr. Bell's report, the fees charged by the Town are outrageous and something needs to be done.

Vice-Mayor Yanni advised the Town is hiring outside sources and asked Mr. Bell if he had solutions to solve the problem.

Mr. Bell said one option would be to turn the building department over to another jurisdiction. Mr. Bell cautioned that building files are now housed at Broward County Building Services and the transition to another jurisdiction would be costly and labor intensive.

Mayor Parker asked Mr. Bell about fees charged by Fort Lauderdale and Pompano Beach.

Mr. Bell replied that Pompano Beach is more in line with our charges.

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Commissioner McIntee directed the Town Clerk to place this item on the agenda for the regularly scheduled Commission meeting of April 24. Mr. Bell is to report on cost effective measures.

Commissioner Silverstone commented that Lighthouse Point is charging less and is curious how they are able to accomplish this. Commissioner Silverstone asked that this be researched and be included on the agenda as well.

Mr. Bell said Town Planner Walter Keller had just advised him that Lighthouse Point does not do their own building fees and contracts with the City of Deerfield Beach.

Commissioners McIntee and Silverstone agreed that it should be for feasible for the Town to be able to do what Lighthouse Point is doing.

Vice-Mayor Yanni said he wanted to know how much revenue the County receives opposed to how much revenue the Town receives.

Mayor Parker said that if the Town is going to turn the building department over to another municipality, it seemed logical to have one close by. Mayor Parker said he would like to find out if there would be any interest in Oakland Park taking over.

E. Report by Broward Sheriff's Office Department of Fire-Rescue and  
Emergency Services

Fire Chief Richard (Rusty) Sievers was introduced to the Commission as the new Fire Chief in Lauderdale-By-The-Sea. Chief Sievers said he has been servicing Broward County in many fire related capacities for the past twenty-eight (28) years. Chief Sievers announced that former Lauderdale-By-The-Sea Chief John Frailey has been promoted to Assistant Chief and stationed in Weston. Chief Sievers said he is looking forward to working in the Town of Lauderdale-By-The-Sea and being its fire facillator.

Commissioner Silverstone advised that Chief Sievers is a familiar face and he has worked with him in the past on the contract as a volunteer. Commissioner Silverstone went on to say that he is interested in getting complete reports from the Fire Department and EMS such as he does from Police Chief Scott Gooding.

Chief Sievers responded that, obviously, he has only been in Town since last week. He has looked at the format used by Chief Gooding and he intends to use that same one.

Commissioner Silverstone asked Chief Sievers when he plans to submit his reports and if he could make them retroactive from January. Commissioner Silverstone said he wants complete accountability from the fire department.

Chief Sievers he will implement the reports immediately. Chief Sievers said he thought the reports were up to date, but would get with Chief Frailey.

Commissioner McIntee stated that Sheriff Jenne has assured the Town that any time Engine 32 leaves our jurisdiction; another truck would be in Town immediately.

Chief Sievers stated that when Engine 32 leaves, Quint 37 is available.

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Commissioner McIntee asked how many miles away was Quint 37.

Chief Sievers responded approximately fifteen (15) to seventeen (17) miles.

Commissioner McIntee asked about the arrival time in normal traffic.

Chief Sievers responded he did not have an exact answer, but assured Commissioner McIntee that public safety was the number one priority and they are coming to our area.

Commissioner McIntee requested that Chief Siever's report to the Commission include a monthly mileage report for Engine 12 and Squirt 12. Commissioner McIntee also asked for a report on the fire that occurred in Sea Ranch Lakes Plaza. Commissioner McIntee asked about the reserve program.

Chief Sievers responded that the reserve program has started with forty-nine (49) reserve members. Out of the forty-nine (49), twenty-four (24) of the members have addresses here in Town. There are five (5) applications in the process of review. The program is going very well.

Commissioner McIntee requested a personnel list and wanted assurance that criminal background checks had been done on applicants.

Commissioner Silverstone commented that Lauderdale-By-The-Sea lettering has been removed from fire apparatus and believes that violates the contract.

Chief Sievers advised he would look into the matter.

Mayor Parker welcomed Chief Sievers to Lauderdale-By-The-Sea.

Vice-Mayor Yanni asked why the Lauderdale-By-The-Sea Volunteer Fire Department never submitted the same reports they are asking from the County.

Commissioners McIntee and Silverstone responded that reports had been submitted and there is a paper trail of all mileage, etc.

Mayor Parker asked why Engine 32 would leave town.

Chief Sievers responded that Engine 32 is a regional piece of equipment and if there was a technical rescue incident anywhere in Broward County, the engine would respond.

Mayor Parker questioned if that was akin to mutual aid.

Chief Sievers responded yes.

A discussion ensued regarding mutual aid and Chief Sievers offered to clear up any questions concerning mutual aid. Chief Sievers explained that no volunteer fire department could have a mutual aid in Broward County that is not reciprocal on a twenty-four (24) hour, seven (7) day a week basis.

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Commissioner McIntee took issue with Chief Siever's explanation of mutual aid, saying it was absolutely untrue. He cited occasions when mutual aid has occurred.

Chief Sievers agreed, but said those instances have never been in writing. Chief Sievers reiterated that mutual and automatic aid is designed to assemble enough people when units are tied up on incidents and it has to be reciprocal. Broward County requires that each company be staffed with three (3) personnel at all times and a rescue must be sent with two (2) paramedics.

Commissioner McIntee stated that Broward County has never asked for mutual aid from the Lauderdale-By-The-Sea Volunteer Fire Department.

Mayor Parker asked if that might not be a commentary on what Broward County actually thought of the volunteers.

Commissioner McIntee responded that Broward County thought highly enough of the volunteers to send them to other areas during several of the last hurricanes.

Chief Sievers informed the Commission that the volunteer fire department was not included in the matrix for dispatch regarding mutual aid because of the reciprocal and not being able to guarantee there would be three (3) firefighters and two (2) paramedics. For this reason the volunteer fire department does not fall into the mutual aid category.

Mayor Parker said it seems that Commissioners McIntee and Silverstone are trying to hold the Sheriff's Office to a higher standard than they were willing to hold themselves.

Commissioner Silverstone took exception to Mayor Parker's comment and said it was absolutely false.

F. Report on Economic Development Task Force (*Acting Assistant Town Manager Esther Colon*)

Acting Town Manager Esther Colon advised the Commission that Mr. David Nixon was going to speak on her behalf.

Mr. Nixon reported to the Commission that he is Chairman of Economic Development Task Force. Mr. Nixon gave a brief overview of the process that was nearly derailed last week due to oversights by the Town Clerk's Office. Mr. Nixon continued to say that the Town Clerk failed to send out proper notice of the CRA Resolution dealing with planning and assessing to other taxing authorities in Broward County as she was supposed to have done. The notices were to have been done in January and just last Wednesday Mr. Nixon found out it had not been done and could offer no explanation. It is a well-known and simple process. Because this was not done, it makes everything the Commission has done thus far, null and void as far as the resolution is concerned on the planning and assessing.

Commissioner Silverstone wanted to know if this failure would set the entire process back to the beginning.

Mr. Nixon answered not to the beginning. The first and second reading of the resolution will have to be repeated.

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Commissioner Silverstone said that he had heard that the Acting Assistant Town Manager and Mr. Nixon had diligently worked on this so that it would not have to start back at the beginning.

Mr. Nixon said that was absolutely correct.

Commissioner McIntee asked Mr. Nixon if there was any doubt in his mind that the Town administration knew and had the proper direction on what they were supposed to do.

Mr. Nixon answered there was no question in his mind. They were given the right information, at the right time. He reiterated he did not know how this happened, but it set everything back at least a month and one half.

Vice-Mayor Yanni said he was not defending anyone, but thought it unfair to accuse and condemn someone who was not present to defend herself. He wanted to hear the Town Clerk's side of the story.

Mayor Parker pointed out that according to the Town Charter, Section 3.6, the Commission is not supposed to interfere with the Town administration. The Commission neither hires nor fires the Town Clerk. It is the Town Manager's job to decide what went wrong and what actions to take. However, the Commission is permitted to discuss concerns in private with the Town Manager.

Commissioner Silverstone said he was puzzled about Mayor Parker's statements. No one had said anything about any actions toward the Town Clerk.

Mr. Nixon concluded by saying that Acting Town Manager Colon told him she would do whatever was necessary to get this back on track. Ms. Colon made certain the notices were sent out to the proper taxing authorities and the advertisement was sent to the newspaper, allowing for the first reading tonight.

At this time, Mr. Nixon requested the Commission consider moving the first reading of the resolution to an earlier time in the meeting.

Mayor Parker saying, if there was no objection, he would amend the agenda to move the first reading of Item 11A to immediately following this report.

Hearing no objection, it was so ordered.

**6. APPROVAL OF MINUTES**

A. September 14, 2006, Regular Meeting (*tabled from February 27, 2007*)

Mayor Parker said it was his understanding the Town had hired someone to do verbatim minutes.

Acting Town Manager Colon responded we did not request verbatim minutes, but action minutes are being prepared by Prototype.

Mayor Parker asked for any additions, deletions or corrections to the minutes of the regular meeting of September 14, 2006.

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Mayor Pro Tem Clark motioned to approve the regular meeting minutes of September 14, 2006 as written. Vice Mayor Yanni seconded the motion. The motion carried with Vice-Mayor Yanni, Mayor Pro Tem Clark and Mayor Parker voting yes and Commissioner McIntee and Commissioner Silverstone voting no.

B. September 28, 2006, Regular Meeting (*tabled from February 27, 2007*)

Mayor Parker asked for any additions, deletions or corrections to the minutes of the regular meeting of September 28, 2006.

Mayor Pro Tem Clark motioned to approve the minutes of the regular meeting of September 28, 2006 as written. Vice Mayor Yanni seconded the motion. The motion carried with Vice-Mayor Yanni, Mayor Pro Tem Clark and Mayor Parker voting yes and Commissioner McIntee and Commissioner Silverstone voting no.

**7. PUBLIC COMMENTS** (*random selection of individuals; limited to half hour*)

There was brief discussion about where public comments should appear on the agenda.

Mayor Parker pointed out that the Commission agreed that public comments would follow the second reading of ordinances.

Acting Assistant Town Manager Colon said she researched minutes and polled the Commission regarding the placement of public comments on the agenda. Ms. Colon advised the public comments are to be heard before the second reading of ordinances.

George Hunsaker of 4629 Poinciana Street commented on being labeled a minority that wanted to take over the Town because he had spoken in favor of a March election rather than a November election. He went on the record saying he did not appreciate that characterization. He also commented on how difficult it is to get anything done in Lauderdale-By-The-Sea that requires a permit, adding the building inspectors are rather aggressive.

Gail Schwartz of 4629 Poinciana Street congratulated the new Fire Chief and hoped he would be a great liaison with volunteer fire department. Mrs. Schwartz expressed concern regarding the CRA and hopes all will go well. She also believes we have too many regulations for a small town and too many overlay districts and offered her views for the pavilion at the end of Commercial Boulevard.

Larry McGinnis of 5100 North Ocean Boulevard thanked the Commission for researching the licensing fees. Mr. McGinnis commented on two (2) buildings at the foot of Washingtonia that are a potential problem for flying debris and a danger to the community.

Frank Hermann of 4244 Seagrape Drive commented on the Broward Sheriff's Office saying he wanted the Town to have its own police and fire departments.

Barbara Cole of 221 Washingtonia and 5000 North Ocean Boulevard commented that in Town Manager Baldwin's absence his position has been handled smoothly.

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Stuart Dodd of 252 Imperial Lane commented on the indiscretions and failures of the Town Clerk and added it is time for change. Mr. Dodd continued to say that the Town should stand firm against the Oriana Project and let them conform or tear it down. Mr. Dodd believes the Town should move forward on the Sea Turtle lighting issue and avoid negative press.

Lawrence (Peanuts) Wick of 4900 North Ocean Boulevard asked if the police department could possibly watch for the windsurfers as they come very close to the shore. Mr. Wick commented that the Oriana has been hanging over our heads for the past year and suggested a formula if the Commission decides the Oriana should be fined.

Lisa Mitchell of 4238 Seagrape Drive commented on the ordinance that will be discussed later this evening concerning sexual offenders and asked if the sex offenders could be shown on the government access channel. She is concerned about them living in her area so close to children. She commented that the Commission seems to be getting on more harmoniously and Commissioners McIntee and Silverstone are tools to be used and are Commissioners of the people.

Commissioner McIntee asked the Clerk to include an item on the agenda of April 24, 2007 addressing sexual offenders and advertising them on the government access channel.

Mayor Parker requested Town Attorney submit a report at this meeting.

**8. ORDINANCES (2nd Reading) “Public Hearings”**

- A. **ORDINANCE NO. 2007-04:** An ordinance of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, amending Section 19-25, “Time Restricted Parking” to create subsection (g), providing that parking fees shall be waived for weekday parking as defined herein for portions of Commercial Boulevard and Bougainvilla Drive; providing for conflicts, severability, codification and an effective date.

Town Attorney Cherof read Ordinance 2007-04 by title only.

Mayor Parker opened the public hearing.

George Hunsaker 4629 Poinciana Street asked if the meters on Poinciana Street by the SunTrust parking lot are covered by this ordinance.

Barbara Cole of 221 Washingtonia Avenue and 5000 North Ocean Boulevard said she believes this is a great start and would like to see this expanded in the future.

John Thompson of 671 Lakeside Circle, Pompano Beach said he was very encouraged by the extent to which the Commission has listened to the concerns of people and is sorry it took so long.

Mayor Parker closed the public hearing.

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Mayor Parker explained that this ordinance waives the parking fees on Commercial Boulevard from Bougainvillea Drive to the bridge and on Bougainvillea Drive, two hundred (200) feet north and two hundred (200) feet south of Commercial Boulevard.

Mayor Pro Tem Clark said he has addressed this issue with Town Attorney Cherof and believes there is an oversight saying that the 200 meters north on Poinciana Street should be treated the same way as Bougainvillea Drive.

Town Attorney Cherof said he had already worked out language in regards to Mayor Pro Tem Clark's suggestion.

Mayor Parker asked Mr. Cherof if that change would affect the title.

Mr. Cherof responded it is up to the Commission to decide if it is a substantive change or not. Mr. Cherof believes the title fairly and adequately identifies the area where the parking changes are being made. Mr. Cherof does not believe this is a substantive change.

Mr. Cherof read the way the new sub-section G would read saying all metered parking fees along the north and south side of Commercial Boulevard, west of Bougainvillea Drive and on the two hundred (200) foot portion of Bougainvillea Drive and Poinciana Drive, north of Commercial Boulevard and two hundred (200) foot portion of Bougainvillea Drive, south of Commercial Boulevard shall be waived from 7:00 a.m. on each Monday until 5:00 p.m. on the following Friday.

Mayor Pro Tem Clark motioned to adopt Ordinance 2007-04 on second reading. Mayor Parker seconded the motion.

Mayor Pro Tem Clark motioned to amend Ordinance 2007-04 as outlined by the Town Attorney. Mayor Parker seconded the motion to amend.

Commissioner Silverstone motioned to amend Ordinance 2007-004 to read until 6:00 a.m. on the following Saturday, providing that all day Saturday and Sunday the parking would not be enforced.

Mayor Pro Tem Clark said he would be willing to accept Commissioner Silverstone's amendment and seconded his motion.

There was no further discussion and Mayor Parker asked the Clerk to call the roll on Commissioner Silverstone's amendment to Mayor Pro Tem Clark's original amendment.

The motion to amend carried unanimously.

Mayor Parker asked the Clerk to call the roll on Mayor Pro Tem Clark's amendment as amended.

Mayor Pro Tem Clark's motion carried unanimously.

Mayor Parker asked the Clerk to call the roll on Ordinance 2007-04 as amended.

The motion on Ordinance 2007-04 carried unanimously.

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Vice-Mayor Yanni expressed concern that there would be nothing to prevent the Blue Moon Fish Company from taking parking spaces for valet parking.

Mayor Parker instructed the Acting Assistant Town Manager to notify the Blue Moon Fish Company and tell them not to abuse the privilege.

- B. **ORDINANCE NO. 2007-05:** An ordinance of the Town of Lauderdale-By-The-Sea, Florida, amending Chapter 14 of the Town of Lauderdale-by-The-Sea Code of Ordinances by adding a new Article III entitled "Residency Restrictions of Sexual Offender and Sexual Predator; providing for penalties; prohibiting the renting of real property to certain sexual offenders and sexual predators; penalties"; providing for definitions of "Sexual Offender" and "Sexual Predator" that are consistent with Section 943.0435, Florida Statutes, and Section 775.21, Florida Statutes; providing for law enforcement guidelines; providing a timeframe in which a sexual offender or sexual predator must vacate a premises after being notified of a violation; providing for conflict, codification, severability and providing an effective date.

Town Attorney Cherof read Ordinance 2007-05 by title only.

At Mayor Parker's request, Mr. Cherof explained that Ordinance 2007-05 follows the provision of Florida Statute that makes Lauderdale-By-The-Sea not sexual predator free, but rather restricts them to moving after the adoption of this ordinance. There are restrictions on occupancy of property and the renting of property in Town. Mr. Cherof noted that in addition to the ordinance on second reading there are changes that have been suggested by the Sheriff's Office. Mr. Cherof said on page three (3) of eight (8) under definitions it indicates residing for a period of fourteen (14) or more days. The Sheriff's Office recommended a period of five (5) or more consecutive days and Mr. Cherof concurred

Mayor Parker asked if this ordinance would affect people already living in Town.

Mr. Cherof answered no it will not, but leases will not be renewed. This closes the door for new residents that fit within these prohibited definitions.

Chief Gooding advised the Commission that the Broward Sheriff's Office Sexual Predator Task Force recommended these changes. Chief Gooding said the most important issue is to enact this ordinance as soon as possible. Chief Gooding continued to say that other municipalities have adopted similar ordinances and it is driving these people to cities where there are no ordinances.

Mayor Parker asked Town Attorney Cherof if there was any additional recommended language to make this ordinance crystal clear.

Town Attorney Cherof recommended no additional language and said it has been written to be consistent with State Statute. This has been reviewed by the Sheriff's Office and believes the Town is on safe legal ground by enforcing it.

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Mayor Parker opened the public hearing.

Gail Swartz of 4629 Poinciana Street commented this is an excellent ordinance and urged the Commission to adopt it.

Stuart Dodd of 232 Imperial Lane inquired whether or not this ordinance would restrict the purchase of new property.

Mayor Parker closed the public hearing.

Commissioner Silverstone motioned to adopt Ordinance 2007-05 on second reading. Vice-Mayor Yanni seconded the motion.

Mayor Parker again asked the Town Attorney to state the amendments to Ordinance 2007-05, specifically on page three (3) of seven (7) of Section 14.8.1, Sub-sections A and B.

Mr. Cherof reiterated that Sub-section A would read a permanent residence means a place where the person abides, lodges or resides for five (5) or more consecutive days or is otherwise defined by Section 775.21 of the Florida Statutes as may be amended from time to time. In Sub-section B, the fourteen (14) is stricken and a period of five (5) or more days is inserted. Additionally, at the end of Sub-section B, after the word residence or as otherwise defined in section 775.21 of the Florida Statutes as may be amended from time to time.

Vice-Mayor commented that there is a typographical error that may or may not be of importance. Vice-Mayor Yanni continued to say that on page three (3) of seven (7) in Sub-section B, the word **this** is inserted twice.

Mayor Parker indicated that as part of the amendment, the additional word would be removed from the text.

Commissioner Silverstone motioned to adopt Ordinance 2007-05 with the amendment as outlined by Town Attorney Cherof and Vice-Mayor Yanni. Vice-Mayor Yanni seconded the motion.

Mayor Parker asked Chief Gooding if knew how many owners and how many renters there currently are.

Chief Gooding said he believes there is just one (1) owner, but he would verify.

Town Attorney Cherof assured the Commission that they were in the process of adopting an excellent ordinance that other municipalities have adopted before. The administration and enforcement would be dealt with as time comes. He added the Sheriff's Office does an excellent job of monitoring these people and it was at Chief Gooding's urgency the adoption of this ordinance be expedited.

Commissioner Silverstone inquired of Town Attorney Cherof if there was already a state law existing that prohibits a sexual predator from living in the proximity of a park.

Town Attorney Cherof replied he was not familiar with that state law.

Chief Gooding said he would research the matter and report back.

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Vice-Mayor Yanni asked Chief Gooding if these names were posted on Sheriff's website.

Chief Gooding answered that was correct.

Mayor Parker asked if the names could be posted on the government access channel.

Chief Gooding said the website link is the best way. It is good to orientate residents to familiarize themselves with the ones near where they work.

Mayor Parker asked the Clerk to call the roll on the amendment of Ordinance 2007-05.

The motion carried unanimously.

Mayor Parker asked the Clerk to call the roll on Ordinance 2007-05 as amended.

The motion carried unanimously.

**9. ORDINANCES** (*1st Reading*)

**10. CONSENT AGENDA**

- A. SPECIAL EVENT PERMIT: Dinner/Blue Moon Company; March 31, 2007; from 5:00 p.m. to 10:00 p.m.
- B. CONTRACTS: for storm related emergency services with: Grubbs, Emergency Services; Post, Buckley, Schuh & Jernigan, Inc.; Tele-Vac South, Inc.; and Man-Con, Inc.
- C. AWARD OF BID: for the North Beach Neighborhood Improvements Phase II, Bel Air Section to Man-Con, Inc.
- D. CONTRACT: for engineering services for the North Beach Neighborhood Improvements Phase II, Bel Air Section, with Craven Thompson & Associates, Inc.
- E. AWARD OF BID: for the Seagrape Drive Sidewalk Improvements Project to Tenex Enterprises, Inc.
- F. CONTRACT: for planning services for the Seagrape Drive Sidewalk Improvements with Walter H. Keller, Inc.
- G. CONTRACT: selection of professional services to prepare Fiscal Year 2007-2008 Fire Assessment Report
- H. LEASE AGREEMENT: with Minto Communities, LLC, for proposed park at the northeast corner of El Prado and El Mar Drives

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Commissioner Silverstone requested that items C through H be removed from the Consent Agenda.

Commissioner McIntee questioned Item B, asking what exactly the purpose is.

Acting Assistant Town Manager Colon responded these services are used in the event of hurricane. If we have contract services, it usually means we get first response.

Vice-Mayor Yanni motioned to approve items A and B on the Consent Agenda. The motion was seconded by Commissioner McIntee and carried unanimously.

Vice-Mayor Yanni motioned to approve item C to award the bid for the North Beach Neighborhood Improvements Phase II, Bel Air Section to Man-Con, Inc. Mayor Parker seconded the motion.

Commissioner Silverstone said he was upset with figures as they came in and asked Acting Assistant Town Manager Colon if there were going to be procedural changes in the way the Town receives bids to prevent this from happening in the future.

Acting Assistant Town Manager Colon replied that construction costs cannot be controlled and projects cannot be delayed for four (4) or five (5) years because obviously costs increase.

Commissioner Silverstone asked if the Town has any procedures in place to be notified immediately of a large increase of a given budget.

Acting Assistant Town Manager Colon said she believed on the agenda request form it clearly indicates what funding mechanism is there. When this request was first put on, it was not noted.

Commissioner McIntee wanted to know why no one informed the sitting Commission the project was a million dollars over budget.

Town Engineer Kevin Hart responded that this was oversight on his part. He prepared a memorandum to Municipal Services Director Bill Mason and Town Manager Bob Baldwin indicating the bids were reviewed and a recommendation was made on the award of the bid. This procedure has been followed for every project Mr. Hart has been involved with for the Town. In the past, the processing of that recommendation onto the agenda and to the Commission has been handled through the Town Manager's Office. Mr. Hart advised he made bad assumptions that the allocations of the funds had been worked out internally. Mr. Hart said in this particular case, the Commission should have been made aware and he accepts full responsibility.

Commissioner McIntee asked Mr. Hart why this project was not booked at 2.2 million.

Mr. Hart responded that when the sewer project was started there was conscious decision to do it in three (3) separate phases; Terra Mar, Bel Air and Palm Club.

Commissioner McIntee asked Mr. Hart if advised costs would escalate.

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Mr. Hart answered not to the degree they have escalated. Mr. Hart said he does not know of any municipality or public works department that could have ever foreseen the rising costs over the past two (2) or three (3) years.

Commissioner McIntee asked why there was no contract when the project jumped to 4.6 million dollars.

Mr. Hart responded that at the time it was provided as a budget estimate and then the construction drawings were prepared to let it out for bid at the end of last year. Between the times the new budget was prepared last year and the time the bids came in there was another twenty percent (20%) increase in costs that were not anticipated.

Mayor Parker asked the Clerk to call the roll.

The motion carried unanimously.

Commissioner Silverstone motioned to approve Item D to contract for engineering services for the North Beach Neighborhood Improvements Phase II, Bel Air Section, with Craven Thompson & Associates, Inc. Mayor Parker seconded the motion.

Mayor Parker asked Acting Assistant Town Manager Colon who would supervise this project if Craven Thompson does not do it.

Acting Assistant Town Manager Colon reminded the Commission they had already approved the contract on February 13, 2007 and it is only being brought back for funding purposes.

Mayor Parker asked Town Attorney Cherof if by not approving this funding would the contract be void.

Town Attorney Cherof advised that the contract was approved contingent on funding.

Acting Assistant Town Manager Colon said that another engineering firm would need to found, delaying the project.

Mayor Parker asked Acting Assistant Town Manager Colon for her recommendation.

Ms. Colon recommended this contract be awarded to Craven Thompson & Associates, Inc., but not award them any further. Ms. Colon did not recommend changing engineer firms midstream.

Commissioner McIntee said he would never approve another contract for Craven Thompson & Associates, Inc. This manner of business is happening continually and is totally unacceptable, but he will follow Ms Colon's recommendation. Commissioner McIntee added he will aggressively vote for another engineering firm when it comes before the Commission in the future.

Mayor Parker mentioned a property on Terra Mar Drive that has been used as a staging area for the sewer project. Mayor Parker asked if anything has ever been done about this because the value of the property is ruined.

Mr. Hart said they are currently working with Pompano Beach to relocate some of that equipment.

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Mayor Parker asked for a progress report at the regularly scheduled Commission meeting of April 24, 2007.

Commissioner McIntee asked for an explanation of why the equipment is there.

Mr. Hart responded the equipment is operating a pump station that is pumping sewage for the entire neighborhood.

Mayor Pro Temp Clark added that he and Mr. Hart have addressed this issue before and quite frankly that lady was lied to. She was told that she would be able to put a driveway on her property and because of the equipment there is absolutely no way a driveway could be installed. Mayor Pro Tem Clark said he has asked for this situation to be abated and there is still dilly-dallying around. He is disgusted by the situation and he would have to testify on her behalf if she chooses to go to court with this.

Commissioner McIntee suggested telling Pompano that the Town is going to hire a private contractor to move the equipment and we bill them for the services.

Mayor Pro Tem Clark said he does not think we can proceed that aggressively, but we should examine what are really options are. Mayor Pro Tem Clark asked for a report at the next regularly scheduled meeting of April 10, 2007.

It was decided by Commission consensus to have Mr. Hart aggressively look at what the options are and report back at the next Commission meeting of April 10, 2007.

Mayor Parker asked the Clerk to call the roll on Item D to contract for engineering services for the North Beach Neighborhood Improvements Phase II, Bel Air Section, with Craven Thompson & Associates, Inc. The motion carried with Vice-Mayor Yanni, Mayor Pro Tem Clark and Mayor Parker voting yes and Commissioner McIntee and Commissioner Silverstone voting no.

Mayor Parker motioned to approve Item E to award a bid for the Seagrape Drive Sidewalk Improvements Project to Tenex Enterprises, Inc. Vice-Mayor Yanni seconded the motion. Commissioner Silverstone inquired of Acting Assistant Town Manager Colon if this meets with her approval.

Acting Assisting Town Manager Colon reported that this bid had been awarded on February 13, 2007 and was being brought back for approval because the project is over budget and will completed over two (2) fiscal years. Ms Colon said that Town Planner Walter Keller would address any questions concerning this project.

Town Planner Walter Keller advised there was tentative budget established for this project when the Commission first approved the design work. Mr. Keller said he advised the Commission there was no way the project could be done for the amount of money that was budgeted. The job was budgeted in three (3) methods to allow for options. Mr. Keller stated that he believes the contract price is a reasonable price based on the amount of work to be done.

Commissioner Silverstone asked if this project would mirror the other side of Seagrape Drive.

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Mr. Keller responded that it is a little bit different on the east side of the road, but the west side of the road is the same. The road will be resurfaced; drainage and streetlights will be installed.

Mr. Commissioner Silverstone asked if the street needed to be resurfaced.

Mr. Keller said that paving and curbing are being added and if the road were not resurfaced it would look pretty lousy.

Commissioner Silverstone asked if there were any future plans to resurface other streets in Lauderdale-By-the-Sea.

Mr. Keller said that streets are resurfaced periodically, but did not recommend waiting to resurface Seagrape Drive because it would look terrible.

Commissioner McIntee asked Acting Assistant Town Manager Colon how much over budget the Town is for this project.

Acting Assistant Town Manager Colon replied we are committing 1.6 million of the carry forward to complete this project.

Mayor Parker asked if the Commission was voting to approve the entire Seagrape Drive Project and will it look the same as Seagrape Drive South.

Mr. Keller answered yes and the look will be very similar.

Mayor Parker said he understands there are two projects on El Mar Drive where pavers are being used and wanted to know if we have made sure they are using the same pavers as being used on Seagrape Drive.

Mr. Keller said he did not know the answer, but would find out.

Mayor Parker said it is important to have uniformity to the sidewalks.

Mr. Keller responded that the Seagrape Drive sidewalk is somewhat unique in that some sections of the sidewalks have pavers.

Mayor Parker reiterated that it is important to have a uniform standard for pavers.

Mr. Keller said he would research the matter and report back at the next meeting of April 10, 2007.

Commissioner McIntee wanted to know when the project would begin.

Mr. Keller said he did not have a timeframe yet because we are waiting for Florida Power & Light to relocate some utility lines, but estimated four (4) five (5) months.

Commissioner McIntee asked how long it would take to complete the project,

Mr. Keller said approximately nine (9) to ten (10) months.

Mayor Parker asked the clerk to call.

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The motion carried unanimously.

The Commission moved to item F on the Consent Agenda and Mayor Parker asked Mr. Keller if he would be providing the planning and supervision.

Mr. Keller replied that when his contract for the Seagrape Drive Project was approved back in October 2005 he did not put in enough money for the construction observation and this is to make sure there is enough money to cover what needs to be done. Mr. Keller added that he has not yet expended any of the money.

Vice-Mayor Yanni motioned to approve Item F and award the contract to Mr. Keller. Mayor Parker seconded the motion.

Commissioner Silverstone asked Acting Assistant Town Manager Colon if it was too late to use a new firm to oversee this project.

Acting Assistant Town Manager Colon relied Mr. Keller has already started the prep and plan work. Ms. Colon continued to say that Mr. Keller has already been paid for some of this work, but it would be up to the Commission to decide.

Mr. Keller interjected that he did not think the other firm could do the work as cheaply as he could and would. Mr. Keller said that he is the engineer on record for the project. You normally have the engineer on record do the observation and the certification. It generally works better that way and is more cost effective. Mr. Keller advised the Commission could get another engineer to do the work, but they would not necessarily know the plans and all the background information.

Commissioner McIntee wanted to know what other charges there would be other than the \$25,000 for observation.

Mr. Keller reiterated the original contract he had with the Town, signed back in October 2005 was for \$56,000 to do the design and supervision of final certification. He did not put enough money in the construction observation. Mr. Keller said this is a million dollar job and you can not do it for \$4,000. The only money the Town has expended is for the design work.

Commissioner McIntee asked Mr. Keller if he had received \$56,000 so far.

Mr. Keller answered no and he has received approximately \$47,000 for the design work.

Commissioner McIntee said the Commission voted to get three (3) bids for anything over \$15,000 and he does not know how that got bypassed. Commissioner McIntee said he thinks this is an awful lot of money and he does not support this.

Mayor Parker pointed out the Town has tried projects on the cheap with supervision and we found that it did not work. Mayor Parker asked Mr. Keller if he would supervise this project diligently.

Mr. Keller stated that his original October 2005 budget for supervision was for \$6,000. \$2,000 was budgeted for landscaping and \$4,000 for himself. He said he could not do a nine (9) month

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construction job for that amount of money and added you cannot get anybody for that amount of money. Mr. Keller does not think that eight percent (8%) on a million dollar job is unreasonable.

Commissioner Silverstone believes the bidding process should be more competitive.

Mr. Keller advised the Commission that consulting engineering is covered by the Competitive Negotiation Act and said he was sure that the Town Attorney would tell the Commission that you do not do competitive bidding on engineering work. That is illegal and not consistent with state law.

Mayor Parker asked Town Attorney Cherof if what Mr. Keller was saying was true.

Town Attorney Cherof said he is correct. Mr. Cherof continued to say that for projects over a certain threshold, you rank them and negotiate with them. You do not have them submit competing hourly rates to you. It's just not the way it's done.

Commissioner McIntee asked if they could submit bids as opposed to hourly rates.

Town Attorney Cherof replied the procedure is to submit qualifications and their proposals. Consideration of cost is not part of that ranking process. They are ranked according to ability. If you can not successfully negotiate a project cost with the number one (1) ranked consulting firm, you move onto number two (2).

Mayor Parker said in other words you do not get three (3) bids.

Town Attorney Cherof answered no sir you do not get three (3) bids. That is not the process.

Mayor Parker asked the Clerk to call the roll to award the contract to Mr. Keller.

The motion carried with Vice-Mayor Yanni, Mayor Pro Tem Clark and Mayor Parker voting yes and Commissioner McIntee and Commissioner Silverstone voting no.

Mayor Parker addressed Consent Agenda Item G and asked Acting Assistant Town Manager Colon for a recommendation.

Acting Assistant Town Manager Colon stated she had no recommendation.

Commissioner Silverstone motioned to approve Burton & Associates to prepare Fiscal Year 2007-2008 Fire Assessment Report. Commissioner McIntee seconded the motion.

Mayor Parker asked Commissioner Silverstone why he liked Burton & Associates.

Commissioner Silverstone replied they would be giving an outside analysis of the entire methodology and how we come up with numbers for fire assessments.

Mayor Parker inquired about the price differential.

Acting Assistant Town Manager Colon answered GSG is \$26,500 and Burton is \$36,500. Ms. Colon said that Burton & Associates actually wants \$39,842 to include out of pocket. Ms. Colon added that Burton & Associates is willing to do the job \$34,606 as they reduced their price.

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Commissioner Silverstone asked Acting Assistant Town Manager Colon how much was paid to Bryant Miller Olive for the letter regarding legal assessment.

Acting Assistant Town Manager Colon replied it is over \$40,000.

Commissioner Silverstone said we paid \$40,000 for an opinion and believed it was well worth the money to get a final analysis for less.

Mayor Parker asked Town Attorney Cherof he had an opinion regarding what the Commission should do.

Town Attorney Cherof responded he did not.

Mayor Parker asked Acting Assistant Town Manager Colon what the Town would be getting for the extra \$8,000.

Acting Assistant Town Manager Colon answered we would be getting a complete study as initially done by MGT then again done by GSG. The Commission would be getting a fresh look, complete study and possibly new rates and methodology.

Mayor Parker asked if the Commission would be interviewed.

Acting Assistant Town Manager Colon said no. They will do fact-finding, review the call data and gather information from the Broward County Property Appraiser. They will give a presentation to Commission in order to find out what methodology to use and how the Commission would like to proceed. There would be no need to contact the Commission for the initial fact-finding.

Commissioner McIntee is concerned that our methodology may be lacking and it should be changed. He also believes that property should be assessed proportionately. Commissioner McIntee is also concerned that the same company that charged us \$17,500 last year now wants to charge us \$26,000. This is the company that whose track record has cost three (3) municipalities over nine million dollars in lawsuits. All three (3) municipalities have lost their lawsuits and are now paying back nine million dollars to the residents. Commissioner McIntee said using Burton & Associates is a very limited investment to protect the residents of Town from millions in lawsuits.

Mayor Parker said he has read the same material and has come to radically different conclusions. Mayor Parker asked Town Attorney Cherof to explain his understanding of the documents received from Bryant Miller Olive.

Town Attorney Cherof said the scope of their assignment, as he understands it, was to look at the current methodology and render a second opinion as to whether or not it was defensible as a matter of law. They concluded that it was a defensible methodology and the assessment was therefore defensible. They went a step further and offered suggestion on alternative methods of approaching the issue. Mr. Cherof said is important to note that they did concur that the current assessment is a defensible assessment. Mr. Cherof said he believes what the attorneys were trying to do by telling the Commission to treat the document as confidential was to rely upon a provision of state law that says this communication was prepared by special council and reflects

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mental impressions, conclusions, litigation strategy and legal theories developed and prepared in anticipation of imminent civil litigation or adversarial administrative hearings. They are quoting from the statute that allows you to keep a document out of the public view if that is the case. Mr. Cherof said his opinion was that he has not been able to conclude that there was imminent civil litigation or adversarial administrative hearings pending. Mr. Cherof thinks there is a lot of people, including members of the Commission that question the validity of the fire assessment. But that falls way short of the salutatory term imminent litigation and therefore he did not think it qualified as an exempt document. Mr. Cherof said he had heard allusions from members of the Commission tonight about civil litigation or threats of litigation. He cautioned the Commission about reconsidering whether or not to make the document public if through any information they have obtained from the community they believe that civil litigation is imminent.

Mayor Parker expressed concern that some matters are being mischaracterized and in essence people are being encouraged to sue the Town.

Commissioner McIntee asked Town Attorney Cherof if the firm that prepared our fire assessment last year was the same firm that prepared the fire assessment for Tamarac, North Lauderdale and North Miami Beach. Additionally, was the information they submitted to the municipalities incorrect when they went to court.

Town Attorney Cherof replied that they did the methodology for North Lauderdale and Pembroke Pines, but he was uncertain about North Miami Beach. Mr. Cherof continued to say there is an interesting history to all the litigation, but portions of the assessment were determined to be not consistent with Florida law after determination by the Supreme Court.

Commissioner McIntee asked Mr. Cherof if his law firm had represented the municipalities and if they had lost.

Mr. Cherof answered his firm absolutely represented the municipalities. Mr. Cherof told Commissioner McIntee that he knew it was important for him to make his point, but the way he was doing it was so misleading. Mr. Cherof continued to say that if you read those cases, you will find it turned upon an issue regarding not methodology, which is what MSC did, it had to do with whether or not dollars could be used from an assessment for emergency services as opposed to fire services. Mr. Cherof advised not to take things out of context, because it is very misleading to do so.

Mayor Parker asked the Clerk to call the roll on the motion to contract with Burton & Associates.

The motion carried unanimously.

Mayor Parker addressed Item H to enter into a lease agreement with Minto Communities, LLC. Mayor Parker said that Minto Communities, LLC was offering the use of their property as a temporary park and asked Commissioner Silverstone why he wanted this removed from the consent agenda.

Commissioner McIntee questioned Town Attorney Cherof if all the agreements had been clarified and finalized.

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Town Attorney Cherof said yes and Minto Communities made a couple of suggested changes in the license agreement. It is actually a license agreement and not a lease. Those provisions are incorporated into the document that is before the Commission for approval.

Mayor Parker motioned to approve the license agreement. The motion was seconded by Commissioner McIntee and carried unanimously.

## 11. RESOLUTION

- A. A resolution of necessity of the Town Commission of the Town of Lauderdale-By-The-Sea, Florida, promulgated pursuant to Section 163.355, Florida Statutes, in order to begin the formal process of creating a Community Redevelopment Agency to function within the Town of Lauderdale-By-The-Sea; approving a slum and blight study; defining the redevelopment area; determining that the redevelopment area suffers from one or more indicators of blight; determining that the redevelopment area is appropriate and critically necessary in the interest of the public health, safety, morals, and welfare of the residents of the Town; making certain other required findings and determinations; and providing effective date therefore (*Public Hearing to be held on March 27, 2007*)

Town Attorney Cherof read Resolution 2007-04 by title only for first reading.

Mayor Parker called for a motion adopting Resolution 2007-04 on first reading.

Vice-Mayor Yanni motioned to adopt Resolution 2007-04 on first reading. Commissioner Silverstone seconded the motion.

Commissioner Silverstone inquired if there were any changes on Resolution 2007-04.

Acting Assistant Town Manager Colon responded only the date.  
There was no further discussion and the motion carried unanimously.

Mayor Parker advised the second reading and public hearing would be on March 27, 2007.

## 12. OLD BUSINESS

Mayor Parker recessed the meeting at 9:40 p.m.

Mayor Parker reconvened the meeting at 9:45 p.m.

- A. Discussion and/or action regarding the possibility of establishing a Town Ethics Committee (*Acting Assistant Town Manager Esther Colon for Town Manager Robert Baldwin*) (*tabled from February 27, 2007*)

Commissioner McIntee stated he had asked the Town Manager to investigate ethic committees from other municipalities.

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Acting Assistant Town Manager Colon stated the information was included in the Commissioner's back-up documentation and said that most cities have no policies in place. Usually any issues regarding ethics are forwarded to the Florida Commission on Ethics. The Commission would need to establish guidelines and policies and choose a committee and staff will work with them.

Commissioner McIntee motioned to table this matter until the regularly scheduled Commissioner meeting July 10, 2007. There was no objection to table this item.

- B. Discussion and/or action regarding the possibility of the Town providing trash collection (*tabled from February 27, 2007*)
  - 1. Discussion and/or action regarding the possibility of providing for an assessment for solid waste collection for residential customers

Vice-Mayor Yanni motioned to remove this item from the agenda. The motion was seconded by Mayor Pro Tem Clark and carried unanimously.

- C. Appointment of member to the Walk Around Committee (*Vice Mayor John Yanni*) (*tabled from February 27, 2007*)

Vice-Mayor Yanni motioned to table this item to the regularly scheduled Commission meeting of March 27, 2007. There was no objection to table.

- D. Update regarding the Broward Sheriff's Office returning all Lauderdale-By-The-Sea fire equipment within Town limits as our taxpayers bought this equipment with their tax dollars (*Commissioner Jerry McIntee*) (*tabled from February 27, 2007*)

Commissioner McIntee asked Town Attorney Cherof if he had gotten a determination of the status of the Scot Air Packs.

Town Attorney Cherof said he had looked at the documents provided by Commissioner Silverstone. There does not appear to be a property interest in that equipment by the Town. That equipment was obtained through a grant process and even though the Town participated in the grant process obtained by the volunteer organization the Town really has no interest.

Commissioner McIntee asked Town Attorney Cherof if in his opinion the property belonged to the volunteers.

Town Attorney Cherof replied that is not what he is saying, but simply the Town has no interest in it.

Commissioner McIntee asked who would have an interest in the property.

Town Attorney Cherof answered that he was not prepared to give an opinion to the volunteer organization as to what they own or do not own.

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Commissioner McIntee said the Town paid ten percent (10%) toward the grant and would not that make the Town an interested party.

Town Attorney Cherof responded no sir. Making the payments in and of itself does not give you ownership of the property.

Commissioner McIntee told Chief Sievers that he has seen a list of requests the Broward Sheriff's Office is asking the Town to do for them. Commissioner McIntee asked that when the Town is already paying millions of dollars to the Sheriff's Office, why we should be painting walls or installing cabinets.

Chief Sievers responded that the Broward Sheriff's Office has two trailer facilities that they maintain. Station 12 is owned by the Town and is not a Broward Sheriff's Office asset. The Broward Sheriff's Office has made many modifications to Station 12 in order to make it livable for their personnel.

A discussion ensued and Mayor Parker sated that he failed to see the relevance of this discussion as it pertains to the agenda item.

Commissioner Silverstone asked where Engine 12 was at present.

Chief Sievers replied that Engine 12 was at the motor pool for repairs.

Commissioner McIntee requested discussion and/or action concerning the maintenance of town buildings used by the Broward Sheriff's Office be added to agenda to next regularly scheduled Commission meeting of March 27, 2007.

- E. Update concerning the members chosen for a committee to consider the grand marshal selection for the 2007 Fourth of July Celebrations (*Mayor Pro Tem Chuck Clark (tabled from February 27, 2007)*)

Mayor Pro Temp Clark advised the sub-committee has appointed members consisting of Bob Terrien, Lorene Parker, Ron Piersante, Dave Gadsby and himself. The Committee has determined a recommendation for the grand Marshall and that recommendation is Congressman Ron Klein.

Mayor Pro Tem Clark motioned to accept Congressman Ron Klein as the grand Marshall for the 2007 Fourth of July Celebrations. Mayor Parker seconded the motion.

Commissioner McIntee stated he thinks Congressman Klein is an excellent choice. Commissioner McIntee questioned the appeals for donations for the Fourth of July Celebration and asked if the Town had done that last year.

Mayor Pro Tem Clark said not to the degree it was done this year.

Commissioner McIntee asked the cost of the event coordinator.

Mayor Pro Tem answered we are using the same event coordinator as last year and the cost will be somewhere between \$2,000 and \$5,000. The cost will depend on how much time is devoted to the event.

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Mayor Parker asked who would be running the Fourth of July Parade this year.

Mayor Pro Tem answered they have not gotten into that yet.

Commissioner Silverstone offered the services of the Volunteer Fire Department in anyway they might be needed.

Having no further discussion, Mayor Parker asked the Clerk to call the roll.

The motion passed unanimously.

- F. Discussion and/or action regarding a request for extension on the site plan for Bougainvillea Townhouse, located at 4417 Bougainvillea Drive (*tabled from February 27, 2007*)

Town Planner Keller said when this originally came before the Commission a few meetings ago it was a request for one (1) property. In reality there were four (4) separate properties that were done as part of this overall effort. They are basically four (4) lots that are having townhouses put on them. The applicant is requesting the extension of all four (4) properties. He is currently working on obtaining permits from Broward County and that is the basis for his delay.

Mayor Parker asked how much extension time is being requested.

Town Planner Keller responded the applicant is requesting a six-month extension.

Commissioner McIntee motioned to give the applicant a six-month extension. The motion was seconded by Commissioner Silverstone and carried unanimously.

Commissioner McIntee requested that the Commission hear Item J at this time. There was no objection.

- G. Discussion and/or action regarding the Florida Conflict Resolution Consortium (*Acting Assistant Town Manager Esther Colon for Town Manager Robert Baldwin*) (*tabled from February 27, 2007*)

Acting Assistant Town Manager Colon advised that on April 17, 2007 the Florida League of Cities would sponsor a training session. Ms. Colon has applications available for Commissioners wishing to attend. The cost of the session is \$45.00. Ms. Colon will contact members of the Commission for interest in attending.

- H. Discussion and/or action regarding Commission inquiries (*Town Manager Robert Baldwin*) (*tabled from February 27, 2007*)

On behalf of Town Manager Robert Baldwin, Acting Assistant Town Manager Colon advised the Commission she would appreciate knowing any problems the Commission is having with the administration. She would prefer being notified directly rather than Commissioners going through department heads. Ms. Colon believes there will be quicker resolution.

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- I. Discussion and/or action regarding a reconsideration of motion that passed on the Oriana site plan amendment application (*Town Attorney James Cherof*) (*tabled from February 27, 2007*)

It was agreed by Commission consensus to consider Items I and L jointly at this time.

Town Attorney Cherof advised that the agenda item simply forwards to the Commission for consideration a written request from the applicant's attorney, dated February 21, 2007. The Commission is being asked to reconsider motion passed at the previous Commission meeting to reconsider the approval of the site plan amendments in parts and denial in other parts.

Mayor Parker said there were three (3) things that were not granted and one of items was abandoned.

Mr. Richard Coker, Attorney for the Oriana, advised that item number eleven (11), the fountain was put back where it was originally approved. Items one (1) and two (2) involved encroachment.

Mr. Coker updated the Commission concerning discussions that have been held since the last meeting. Shortly after the last meeting, Mr. Coker was contacted by council for Oriana to discuss possible grounds for rehearing and possible settlement discussions on how to resolve this issue. Staff had already approved this project and the Commission had denied it in part because the pedestrian environment was not preserved on the original site plan. There was discussion to bury power lines on El Mar Drive and creating landscape plans and pedestrian access plans. The developer pointed out and rightfully so, that the burying of the power lines took the developer eighteen (18) months for approval and required separate easements over and above outside the right of way. If the developer were to try and bury power lines on other properties or the length of El Mar, additional easements would be required. This would make it impossible for the developer to make any promises in regards to burying the FPL power lines. It has been determined there is nothing the developer could really do to provide some overall comprehensive improvement to El Mar Drive other than provide the Town with a fund that the Town could use to make improvements to create a pedestrian environment. Mr. Coker advised the Commission that Attorney for the developer, Ms. Sue Delegal would present the proposal to the Commission at this time.

Commissioner McIntee asked Mr. Coker which side he was working for and why not one bit of his presentation focused on the illegally four (4) sections of the building that were not approved on the plans.

Mr. Coker responded about twelve (12) hours were devoted to hearings discussing that. The Commission discussed it at their last meeting and made a decision, voting three (3) to two (2) to approve in part and deny in part the site plan. Over the past two weeks discussions took place concerning the proposal that is being offered tonight.

Commissioner McIntee asked if at any time taking down the illegal encroachments was discussed with the developer.

Mr. Coker said he never brought that up.

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Mayor Parker reminded the Commission that they were instructed that in deciding what they were going to do with the site plan, the Commission could not consider the issue of whether the encroachments were illegal or not. Additionally, the Commission could not consider the cost of making the building conform to the site plan. The only issue the Commission could consider was whether or not they met the requirements of the overlay district and one of the requirements of the overlay districts is that the development be pedestrian friendly.

Ms. Sue Delegal, Attorney representing the applicant, offered to the Commission a proposal to further enhance the pedestrian friendly environment. Within forty-five (45) days of the issuance of the development order approving the site plan, including all of the twenty-four (24) provisions that were described in Walter Keller's letter to the Town Manager dated February 17, 2007, and the conditions mutually agreed upon between the Town and the developer, the developer will pay to the Town an amount not to exceed \$20,000 to cover the fees of Attorney Richard Coker and Planning Consultant Walter Keller. Additionally, deliver by check or wire transfer the amount of one million dollars to the trust account of the law firm of Goren, Cherof, Doody and Ezrol, PA to be deposited into an interest bearing account which will be held in escrow until dispersed upon the issuance of the Certificate of Occupancy. These funds are to be earmarked and dedicated solely for use by the Town to design, install or construct improvements to enhance the pedestrian environment of El Mar Drive, which lies within the Hospitality Zoning Overlay District.

Commissioner McIntee said the league of cities has incurred extensive costs for defending two (2) people being sued by the developer. Commissioner McIntee inquired if the developer intends to pay for that too.

Ms. Delegal responded that is not part of the proposal and would not be an appropriate matter to discuss in the context of this particular proposal.

Commissioner McIntee asked Town Attorney Cherof if the League of Cities, acting on behalf of members of committees defending this situation and incurring costs, could we request that to be paid if there is a settlement.

Town Attorney Cherof advised to leave that as a stand-alone issue, not links to the approval or disapproval of the site plan amendment application. Mr. Cherof pointed out that under the Town's coverage with the league those individuals are being defended at no cost.

Commissioner McIntee pointed out that these individuals put monies out of their own checkbooks to pay for their initial defense.

Ms. Delegal addressed the bond conditions to essentially secure the improvements. Ms. Delegal focused on conditions nine (9) then (10) and eleven (11) saying the developer agrees to condition number nine (9) to the extent that it is clarified to read; the development order issued by the Town approving the site plan amendment shall include a provision prohibiting any future enclosure of the balconies associated with the additional encroachment into the setback area created by the revision of the stairwells adjacent to El Mar Drive.

Attorney Coker advised the only concern the developer had was the enforcement mechanism for this condition needs be a development order rather than a condominium document.

Ms. Delegal continued to say the developer agrees to ten (10) as written, however they do not agree to condition eleven (11). The million-dollar contribution would subsume any cost that

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might have been associated with that. Additionally, the developer is agreeing to conditions twelve (12) thirteen (13) and fourteen (14). These conditions provide certain additional requirements relating to cost estimates for work to be performed in reconstructing the east half of El Mar Drive adjacent to the Oriana Project and median between Datura Avenue and Commercial Boulevard and posting security for those improvements. Ms. Delegal proposed the money be released to the Town by the Town Attorney upon completion of the project and the issuance of a certificate of occupancy that cannot be appealed or eighteen (18) months from the issuance of the development order, whichever occurs first.

If a challenged certificate of occupancy results in the invalidation of any certificate of occupancy for the project then all of the funds in the escrow account will be returned to the developer.

A discussion ensued on measures to protect the Town in the event of bankruptcy. Attorney Coker said this is really is an academic question because almost all the units are sold.

Mayor Parker asked what would happen to the building in the event the money was returned to the developer.

Attorney Coker said he does not foresee anyone appealing the certificate of occupancy, but if the site plan approval is invalidated, unless there is a further appeal or some other attack, the building would be torn down.

Commissioner McIntee asked Attorney Coker if any citizen could initiate the suit to stop the site plan.

Attorney Coker answered no, it would need to be an affected party with some standing to bring the suit.

Mayor Parker asked Town Attorney Cherof if someone could appeal a certificate of occupancy.

Town Attorney Cherof answered he did not think anyone had standing to do that. However, someone could sue the Town to prohibit issuing a certificate of occupancy.

Commissioner McIntee asked Ms. Delegal if at any time, prior to this meeting, during the last two (2) weeks or three (3) weeks if she or her associates had discussions with any independent Commissioner regarding options and offers.

Ms. Delegal answered that she had not. Ms. Delegal said she had an initial conversation with Mr. Coker prior to going on vacation. Attorney Glenn Goldstein of Greenberg Trauig, PA advised the Commission that he talked with Mr. Coker the majority of the time, but never spoke to any member of the Commission.

Commissioner McIntee asked Attorney Coker if he had talked to any of the Commissioners.

Attorney Coker responded he had called the Mayor.

Commissioner McIntee expressed shock and told Attorney Coker that he worked for entire Commission and he should have called each Commissioner. Commissioner McIntee mentioned that he would be contacting the bar tomorrow.

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Commissioner McIntee motioned to table this matter until the regularly scheduled Commission of March 27, 2007. The motion was seconded by Commissioner Silverstone and carried unanimously.

- J. Discussion and/or action regarding the selection of professional architect for the Commercial Boulevard Beach Pavilion (*Municipal Services Director William Mason*) (*continued from February 27, 2007*)

Shevaun Steward of 258 Miramar Avenue addressed the Commission on behalf of the Master Plan Steering Committee. Ms. Stewart said she understood that this issue was put forward in November and only one (1) RFP was submitted. The committee reviewed the RFP that was submitted and while the firm seems quite qualified, it would be nice to have more choices. It was committee consensus to request this be re-opened for an RFP.

Commissioner McIntee asked how many choices the committee wants.

Ms. Stewart said it would be nice to have three (3), but if no one else replies there is really no choice. The committee understands there is a timeline of eighteen months and the project must be completed by December.

Commissioner McIntee motioned to re-open the RFP in an attempt to get at least three candidates. Mayor Pro Tem Clark seconded the motion.

Mayor Parker asked Town Planner Walter Keller how long before the pavilion needs to be completed and how long it would take to build it once the plans are approved.

Town Planner Keller responded the project needs to be completed in December 2008 and did not know how long it would take to build. The committee is currently working to get student competitions under way to obtain concepts for the beach pavilion. Mayor Parker asked how long it would take to complete the RFP.

Town Planner Keller said this was originally advertised in November of 2005 and only one (1) submission was made under the public notice for architects. Normally it takes a minimum of sixty (60) days to put a notice out, get responses in, evaluate the responses and report back to the Commission.

Mayor Parker asked if the RFP wording needed to be changed.

Acting Assistant Town Manager Colon answered no.

Town Planner Keller said he would work with Ms. Colon to see if anything could be done to generate more interest. Mr. Keller recommended keeping the RFP open for thirty (30) days.

Acting Assistant Manager Colon said she would contact the newspaper and try to get this advertised and try to keep it open for sixty (30) days.

Commissioner McIntee suggested keeping the RFP open for forty-five (45) days and Mayor Pro Tem Clark concurred.

The motion carried unanimously.

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K. Discussion and/or action regarding covered bus shelters (*Municipal Services Director William Mason*) (*continued from January 23, 2007*)

Acting Director of Municipal Services John Olinzock reported that staff has met with the Broward County Transit Division and they have assisted us in putting together a map locating where we have transit stops. They have even reviewed our stops to see where we stand with ADA compliance.

Mayor Parker asked if when the shelters are built would there be enough room for people to walk on the sidewalks.

Town Planner Walter Keller said he believed the bus shelters are wider than three (3) feet and there may not be enough room.

Acting Assistant Town Manager Colon advised the Commission that Mr. Olinzock included different designs in their back-up documentation

Mr. Olinzock pointed out a spreadsheet indicating where we can and cannot put shelter pads.

Mayor Parker talked about the two hundred (200) foot front strip of State Road A1A centered on Gatehouse Road that belongs to Sea Ranch Lakes. Mayor Parker does not believe the Town should incur the cost of a bus shelter for Sea Ranch Lakes.

Vice-Mayor Yanni motioned to instruct Mr. Olinzock to look into the locations that are available and look into the grant that will help pay for the bus shelters.

Mayor Parker wanted to know if the bus shelters would have advertising on them. Mr. Olinzock said typically communities that have bus shelters with advertising, are provided by someone else.

Mayor Parker asked if the bus shelters would be placed on the sidewalk.

Mr. Olinzock responded the bus shelters would be placed away from the curb with a space in front of it so the bus can pull up to it.

Commissioner McIntee motioned to amend Vice-Mayor Yanni's original motion to include the approval of design one (1) for the bus shelter. Vice-Mayor Yanni seconded the motion.

Mayor Pro Tem Clark said he wanted to know about the grant money.

Acting Assistant Town Manager Colon stated that out of thirty-three shelters, twelve are not ADA compliant. The County is willing to help us pay for the pad, therefore the Town would only be responsible for shelter and its estimated to be \$8500. The Commission is looking at twelve (12) shelters and \$8,500 each. Mr. Olinzock is going to work on getting funds to assist in the building of the pad by the County.

There was no further discussion and Mayor Parker asked the Clerk to call the roll. The motion carried unanimously.

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Due to the eleven o'clock hour, Commissioner McIntee motioned to table the meeting.

Mayor Parker stated there was one item of business to discuss and asked Mr. Vincent Ragusa to come forward. Mayor Parker said that Mr. Ragusa wants permission to erect a stage tomorrow. The Town Manager will not permit the stage to be put up tomorrow without Commission approval.

Commissioner Silverstone motioned to permit Mr. Ragusa to install the stage tomorrow. The motion was seconded by Mayor Parker and carried unanimously.

Mayor Parker recessed the meeting at approximately 11:00 p.m. to be reconvened on Wednesday March 14, 2007 at 7:00 p.m.

Mayor Parker reconvened the regularly scheduled Commission of March 13, 2007 at 7:03 p.m.

Vice-Mayor Yanni, Commissioner Jerome McIntee, Commissioner Jim Silverstone and Pro Tem Mayor Clark were present. Acting Assistant Town Manager Esther Colon, Town Attorney Cherof and Deputy Town Clerk Andrea Gerlach were also present.

Mayor Parker announced the Lauderdale-By-The-Sea Property Owners Association would meet on Monday March 26, 2007 at 7:00 p.m. in Jarvis Hall.

- L. Discussion and/or action regarding the development order for the Pier Pointe/Oriana project (*Town Planner Walter Keller*)

This item was previously discussed with Item I.

- M. Discussion and/or action regarding Jarvis Hall renovation/improvements (*Vice Mayor John Yanni*)

Vice-Mayor Yanni stated that back in April 2006 the Commission moved to have Jarvis Hall remodeled to accommodate a performing arts center. Vice-Mayor Yanni said the plays have been an enormous success and is a positive benefit for the Town. Vice-Mayor Yanni motioned to work with the engineer that originally quoted \$30,000 to enclose the Jarvis Hall portico. The motioned was seconded by Mayor Parker and carried unanimously.

- N. Discussion and/or action regarding Town Commission meeting and minutes preparation

Acting Assistant Town Manager Colon advised this item had originated with Town Manager Robert Baldwin. We now have an outside source preparing the Town minutes and Ms. Colon requested this procedure be allowed to continue until September.

Commissioner McIntee motioned to grant Ms. Colon's request. The motion was seconded by Commissioner Silverstone and carried unanimously.

- O. Discussion and/or action regarding the Town's water system to Fort Lauderdale (*Town Attorney James Cherof and Municipal Services Director William Mason*)

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Town Attorney Cherof clarified the item by saying it should read the action of selling the Town's water system to Fort Lauderdale. This subject has been addressed by the Town Commission before approximately two years ago. The Town approved an agreement with Fort Lauderdale to sell the infrastructure for the water system. Mr. Cherof advised the Commission that currently the Town owns all the infrastructure, the piping and hydrants, but the water that runs through it is purchased from the City of Fort Lauderdale. When the Commission agreed to sell, that never got the approval of the City of Fort Lauderdale. Because of several changes in their administration, it was sent back to their legal staff for review and we have a complete set of new documents that would effectuate the sale. The Town would receive \$350,000 for the infrastructure with a thirty-year (30) franchise agreement with the City of Fort Lauderdale. There is a reverter provision that in the event the City of Fort Lauderdale goes out of the water business that all of the infrastructure, all of the pipes, hydrants, etc. revert back to the Town at no cost.

Mayor Parker asked what rate our residents will be charged.

Town Attorney Cherof said that has not currently been established in the agreement. This is back on the agenda because the previous Commission had approved it. It has reached a point where we believe the City of Fort Lauderdale will approve the transaction. Mr. Cherof asked if the present Commission was still on board with selling the infrastructure to Fort Lauderdale before finalizing the documents.

Commissioner Silverstone asked what was the advantage of doing this.

Town Attorney Cherof replied the City of Fort Lauderdale would take over the ownership to include maintenance, repair and replacement. The Town would then be relieved of the responsibility.

Commissioner Silverstone requested that an exit clause be added to the document if in the event Fort Lauderdale does go out of the water business.

Commissioner McIntee stated that not all of Lauderdale-By-The-Sea's water is provided by the City of Fort Lauderdale.

Town Attorney Cherof assured Commissioner McIntee that the language contains references to charts and surveys.

Commissioner McIntee wondered why Fort Lauderdale would want to take on this headache and said it almost sounds too good to be true. Apparently, Town Manager Baldwin has done research on this already and Commissioner McIntee said he is reluctant to move forward on this without hearing Town Manager Baldwin's input.

Town Attorney Cherof advised the Commission that this item is not on the agenda for approval. It is strictly conceptual in nature. Mr. Cherof inquired if the Town was moving in the right direction by negotiating or not.

Mayor Parker asked what would happen in thirty-years (3) under this agreement.

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Town Attorney Cherof said this is the franchise agreement where we agree to purchase the water from them. That franchise agreement would have to be renegotiated or another source for water obtained.

Mayor Parker said he would be more inclined to agree to this if he could be assured our residents would be charged the same as the Fort Lauderdale residents and wondered what kind of assurance we would get that Fort Lauderdale would maintain the system according to the same standard and quality they maintain their own.

Commissioner Silverstone motioned to table this item until the regularly scheduled meeting of April 10, 2007 when there is further direction from Town Manager Baldwin. The motion was seconded by Commissioner McIntee and carried unanimously.

**13. NEW BUSINESS**

- A. Discussion and/or action regarding bonds for work within rights-of-way (*Development Services Director Jim Bell*) (*continued from February 13, 2007*)

Development Services Director Jim Bell said at the last Commission meeting staff was asked to look into, according to Town code, whether or not bonds were required for projects doing work in the right of way. Mr. Bell said we do have that provision in the code, but we did not have a template for the actual performance bond, making it unclear as to exactly what the responsibility of the developer would be. In the past, we have had an application, but the permitting was done in a different location. We have now consolidated all the permits in one location and everything is addressed up front.

- B. Discussion and/or action regarding the possibility of providing a public monument to place names of those who have been honored (*Commissioner Jim Silverstone*) (*tabled from February 27, 2007*)

Commissioner Silverstone said he believed it would be beneficial to have a monument in one space where residents could be recognized for their contributions to the Town. Commissioner Silverstone requested the Master Plan Steering Committee be tasked with this assignment.

It was decided by Commission consensus to grant Commissioner Silverstone's request.

- C. Discussion and/or action regarding the possibility of providing a speed hump on West Terra Mar Drive (*Mayor Pro Tem Chuck Clark*) (*tabled from February 27, 2007*)

Mayor Pro Tem Clerk said that Chief Gooding and his staff have already done a study of the area determining that it really was not necessary to have a speed hump. Mayor Pro Tem Clark continued to say the problem is that there is already a speed hump on East Terra Mar Drive and people reroute to avoid it. Mayor Pro Tem Clark suggested that, without further study, a speed hump be installed on West Terra Mar Drive.

Mayor Pro Tem Clark motioned to install a speed hump on West Terra Mar Drive at a location to be determined by him. Mayor Parker seconded the motion.

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Acting Assistant Town Manager Colon asked if this was coming out of next year's budget.

Commissioner McIntee asked Town Planner Walter Keller to approximate a cost.

Town Planner Keller replied these can be installed under the Broward County bid and can be installed for probably \$2,000.

Mayor Parker directed Acting Assistant Town Manager Colon to report back to the Commission if the cost exceeds \$4,000.

There was no further discussion and Mayor Parker asked the Clerk to call the roll.

The motion carried unanimously.

- D. Discussion and/or action regarding the selection of a professional engineering consultant (*Municipal Services Director William Mason*) (*tabled from February 27, 2007*)

Vice-Mayor Yanni motioned to authorize the administration to negotiate a contract with Chen & Associates for professional engineering services. The motion was seconded by Commissioner McIntee and carried unanimously.

Commissioner McIntee motioned to have an RFP for a new town planner. The motion was seconded by Commissioner Silverstone and carried unanimously.

- E. Discussion and/or action regarding additional information to be recorded in order to clarify the land use on specific property (*Development Services Director Jim Bell*) (*tabled from February 27, 2007*)

Town Attorney Cherof reminded the Commission that because in the past there has been no way of recording residential uses in commercial properties, this is done as a way of recording that information as a matter of record.

- F. Discussion and/or action regarding the appointment of a Director, Alternate, and Second Alternate to attend and vote at any Board of Director or General Membership meeting

Mayor Parker advised that this procedure was already addressed by resolution several years ago. The Mayor is the director, the Vice-Mayor is the alternate and the second alternate would be the Mayor Pro Tem.

Vice-Mayor Yanni stated he would defer to another Commissioner because he does not have the time to attend meetings.

It was decided by Commission consensus to appoint Mayor Parker the director, Mayor Pro Tem Clark, the alternate and Commissioner McIntee the second alternate.

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G. Discussion and/or action regarding Air and Sea Show 2008  
(Commissioner Jerry McIntee)

Commissioner McIntee said he was approached by one of the leaders of the Air & Sea Show about hosting the 2008 Air & Sea Show in Lauderdale-By-the-Sea. Fort Lauderdale wants no part of the Air & Sea Show after this year and the event has been offered to Lauderdale-By-the-Sea. It would be a giant undertaking, but it would be a wonderful event for us. Commissioner McIntee intends to pitch this idea to the residents and bring it back as an agenda item at the regularly scheduled Commission meeting of April 10, 2007.

A discussion ensued concerning the feasibility of hosting an event of this proportion. Vice-Mayor Yanni motioned to appoint Commissioner McIntee as the chairman and fact finder and have him report back to the Commission. The motion was seconded by Commissioner Silverstone and carried unanimously.

**14. TOWN MANAGER REPORT**

A. Sea Ranch Lakes/Lauderdale-By-The-Sea Boundary Correction

Development Services Director Jim Bell said at the end of last meeting, the Commission directed staff to get a second opinion on the legal description that was provided in the back up for this annexation. Town Planner Walter Keller was asked to provide a map of the area and provide his findings to the Commission.

Town Planner Walter Keller distributed sketches that were prepared for Craven & Thompson on legal descriptions for both Lauderdale-By-The-Sea and the Village of Sea Ranch Lakes. They were prepared about six (6) months ago. Essentially, there are some minor scrivener's changes, but to the best of Mr. Keller's knowledge, this does not change anything. Mr. Keller said he could find no reason why the Town would not want to be supportive.

Commissioner McIntee motioned to indicate to Ms. Bogdanoff that the Town is supportive of legislative action. The motion was seconded by Vice-Mayor Yanni and carried unanimously.

B. Mayor and Commissioners' Salary Survey

Acting Assistant Town Manager Colon stated that she believed one of the Commissioners requested a survey, which she has provided.

Commissioner McIntee asked Town Attorney Cherof what the procedure would be to increase the Commission salaries.

Town Attorney Cherof explained it would take an ordinance to change salaries.

Commissioner McIntee requested a report from Town Attorney Cherof regarding salary increases at the regularly scheduled meeting of April 10, 2007.

C. Proposed Legislative Changes

Acting Assistant Town Manager Colon provided the Commission with the current affect on revenue reduction according to the proposed property tax reform. As it stands, there would be a

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3.8 million dollar reduction. Obviously, this would be a changing document. Ms. Colon said she would keep the Commission informed as best as she could.

Acting Assistant Town Manager Colon advised the Commission the tennis courts are being resurfaced and notices are being sent.

Ms. Colon reported there was a change order signed by Municipal Services Director Bill Mason for the Bougainvillea Drive parking lot currently under construction. Additionally, it appears this project is going to be short \$58,000. There was \$80,000 estimated for electrical and landscaping. We have already paid \$12,658 for the underground conduit. There is currently \$8,900 left in the account. Ms. Colon said there are options for recovering this money, but much of this depends on projected income from parking.

Mayor Parker said there was a contract for this project.

Ms. Colon reported there is a contract for the construction, but we did not go out for bid for the poles and electrical work. It appears someone placed an order for the poles without bids.

Commissioner McIntee expressed concern that orders were placed with authorization and what is the established purchasing amount.

Ms. Colon responded that anything over \$15,000 requires a bid process and anything under \$15,000 requires the purchase order process.

Mayor Parker motioned to appropriate \$58,000 to the electrical work, landscaping and to approve and pay for the change order. The motion was seconded by Commissioner McIntee and carried unanimously.

Ms. Colon stated that \$72,500 was contracted for two (2) beach access walkways. Craven & Thompson's contract was \$23,800. Kevin Hart was requested to bid this project since they were going to piggyback on the existing parking lot contractors. Ms. Colon is hopeful she will have sufficient funds, but gave the Commission a heads up that she may come up a little short on this project as well.

Commissioner McIntee motioned to give Acting Assistant Manager Colon full reign to do whatever is necessary to get this project underway and completed. The motion was seconded by Vice-Mayor Yanni and carried unanimously.

## **15. TOWN ATTORNEY REPORT**

Town Attorney Cherof distributed the revocable license agreement with Aruba Café for their sidewalk café. Mr. Cherof pointed out a proposed amendment to paragraph 4 dealing with compensation. This agreement has been approved by the Commission, but is back before the Commission because the modification needs approval.

Vice-Mayor Yanni motioned to approve the modification. Commissioner McIntee seconded the motion.

Commissioner McIntee stated that Aruba Café is one of finest establishments in Lauderdale-By-The-Sea. Commissioner McIntee continued to say that the Master Plan Steering Committee is concerned that while preparing for the pavilion, there is concern it will infringe on the lease agreement we have with the Aruba Café.

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Town Planner Keller said he has been looking at the Aruba sidewalk café the Commission approved because of the concerns of the Master Plan Steering Committee. Essentially, the Aruba Café is extending the outside dining onto the public sidewalk and extending the public sidewalk to south and building a landscape similar to the Village Grille. The original footprint of the beach pavilion did overlap with the Aruba outside dining.

Commissioner McIntee stated the Aruba Café should be put on notice that the pavilion footprint takes precedence over the outside dining and added this as an amendment to his original motion. The motion was seconded by Mayor Parker and carried unanimously.

Peggy Moehler and Guy Contrada spoke on behalf of the Aruba Cafes saying they do not believe the outside dining will affect the footprint of the pavilion and asked if something could be worked out. Ms. Moehler said approximately \$30,000 in architect fees has already been expended.

Mayor Parker asked the Clerk to call the roll on the amended motion stating the pavilion takes precedence over the licensing agreement with the Aruba Café. The motion carried unanimously.

Mayor Parker asked the Clerk to call the roll on the revocable license agreement as amended. The motion carried unanimously.

Town Attorney Cherof said several Commission meetings ago he was instructed to review the contract for the underwater reef project because the individual consultant doing the job or his attorney had made changes to it. Mr. Cherof reviewed the contract and the legal format of the changes is just fine. Mr. Cherof is bringing this particular issue to the Commission for approval. The contract makes no provision for the contractor/consultant to provide any insurance for liability to the Town. There is an indemnification provision and is by a non for profit company that is registered in New York State, but has a mailing address in Massachusetts. Mr. Cherof advised the Commission of the risk associated with this, the rest of the contract is fine and he has given his approval of it.

Commissioner McIntee motioned to approve the agreement for the underwater reef project. The motion was seconded by Mayor Parker and carried unanimously.

- A. Report concerning Code Section 24-4.3(g) (*tabled from February 27, 2007*)

Town Attorney said he was not sure there was anything to report on this unless there was some additional information on site plan extensions or amendments that the Commission is thinking about. Mr. Cherof said this is a carry over and he is not sure why this was added.

Commissioner McIntee said he may have requested it, but it is no longer of importance.

- B. Request for a closed door session in accordance with the procedures set forth in Florida Statutes Section 286.011(8) to discuss the following pending litigation (*tabled from February 27, 2007*):

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Case No. 06-1156(21), The Town vs. The Coastal Arms, Inc., James Edmonson, The Palm Yacht & Beach Club, Inc., Delrado, Inc. d/b/a El Dorado, in the Circuit Court of the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida

Town Attorney Cherof said he is required, in a public meeting a request to meet with Commissioners behind closed doors.

It was decided by Commission consensus to schedule a closed-door shade session during the next regularly scheduled Commission meeting of March 27, 2007 at 6:00 p.m.

Town Attorney Cherof told the Commission he is suggesting adding a list of future agenda items with fixed dates. This will allow us to better track issues that are pending. It was decided by Commission consensus to include pending items as part of the agenda.

## **16. COMMISSIONER COMMENTS**

Vice-Mayor Yanni commented on untruths that are often times published in a local news publication. Vice-Mayor Yanni said he wanted to clear up statements that are misleading and said when lowering the millage rate someone will have to pay. Vice-Mayor Yanni said he was disturbed last evening when a resident publicly called the Town Clerk a cancer.

Commissioner McIntee expressed concern over the budget and items being purchased without authorization. Commissioner McIntee expressed outrage at the presentation made by Attorney Richard Coker, said he contacted the bar association and he is generating the complaint he promised. Commissioner McIntee wants Mr. Coker's resignation. He had an obligation to treat each Commissioner equally and he failed to do so.

Commissioner Silverstone responded to Vice-Mayor Yanni's comments regarding lowering the millage rate. Commissioner Silverstone asked the Commission if they would be in favor of placing the American Flag and our Town Flag at the entrances to Lauderdale-By-The-Sea. Commissioner Silverstone commended Ms. Colon for doing a great job and he has heard a lot of positive comments. Commissioner Silverstone concurred with Commission McIntee concerning Attorney Coker.

Mayor Pro Tem Clark reminded all that the property owners association would have a meeting in March. Mayor Pro Tem Clark said the attitudes and demeanor of the Commission bother him to no end. The Commission should be staying away from hateful, vindictive remarks and do the level best for what is best for the Town. Anything less is totally unacceptable.

Mayor Parker said he wanted to make it clear that Attorney Coker was not required to give all the Commissioners information. Mayor Parker said he did not initiate conversations with Attorney Coker nor did he have any conversations with anyone from Oriana. Mayor Parker addressed Vice-Mayor Yanni's comment on lowering the millage rate and concurred. Mayor Parker wished all a Happy St. Patrick's Day and invited everyone to attend the festivities downtown.

Acting Assistant Town Manager Colon advised the Commission that the Lauderdale-By-The-Sea Property Owners Association had to reschedule their meeting to accommodate this

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Commission meeting. They have incurred a \$30 expense for mailing notices that will need to be resent.

Mayor Parker motioned to reimburse the Lauderdale-By-The-Sea Property Owners Association for the mailing expense. The motion was seconded by Vice-Mayor Yanni and carried unanimously.

**17. PUBLIC COMMENTS** (*remaining members of the public to speak at this time*)

There were no public comments at this time.

**18. ADJOURNMENT**

Commissioner McIntee motioned to adjourn the meeting. There was no objection and Mayor Parker adjourned the meeting 9:01 p.m.

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Mayor Oliver Parker

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**ATTEST:**

\_\_\_\_\_  
Dolores Regis for Town Clerk's Office

\_\_\_\_\_  
Date