

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

## **TOWN COMMISSION**

### **REGULAR MEETING**

### **MINUTES**

Town Commission Meeting Room

**4501 Ocean Drive**

**Tuesday, April 10, 2007**

**7:00 P.M.**

**AMENDED – 4/9/07 – 11:01 AM**

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

Mayor Parker called the meeting to order at 7:03 PM. Present were Vice Mayor Yanni, Commissioner McIntee, Commissioner Silverstone, and Commissioner Clark. Also present were Assistant Town Manager Esther Colon, Town Attorney Jim Cherof, and Town Clerk Tina Angelone.

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

The Pledge of Allegiance was recited

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

Commissioner McIntee delivered the invocation

#### **4. PRESENTATIONS**

##### **A. Broward Sheriff's Office – Employee of the Month**

Chief Scott Gooding announced Danny Christian as the March 2007 employee of the month based on the following reasons: On March 4<sup>th</sup> 2007, Deputy Christian heard that units were looking for car burglars; he conducted his own surveillance in the specified area and was able to spot and stop the suspects. Also, in the early hours of March 8<sup>th</sup>, 2007, Deputy Christian observed a suspicious truck in Lauderdale-By-The-Sea. He discovered the car was stolen, conducted a felony stop, and pulled out three suspects, one later confessed to stealing the truck.

Chief Gooding commended Deputy Christian's diligence and stated the deputy has earned employee of the month 6 times.

The Commission congratulated Deputy Christian.

**NOTE:** Mayor Parker stated that the agenda was amended, and that it was amended due to a letter received from Robert Baldwin. Hearing no objection, Mayor Parker amended the original agenda.

#### **5. REPORTS**

##### **A. March 2007 – Development Services Report**

Jim Bell stated that the report has been amended to include the actual addresses that were given and notices of violations/citations; he further stated that they have been enforcing the water restrictions, and the clean up after the dog laws.

Commissioner Silverstone made a motion, seconded by Vice Mayor Yanni, to accept the report. The motion was approved 5-0.

B. March 2007 – Municipal Services Report

Commissioner Clark motioned, seconded by Commissioner McIntee, to accept the report. The motion was approved 5-0.

**6. APPROVAL OF MINUTES**

A. Revised January 09, 2007

Commissioner McIntee indicated that there were items left out of the January 9<sup>th</sup> minutes and, upon research, could not recover the items because there were blank spaces in the tape.

Commissioner Clark motioned, seconded by Vice Mayor Yanni, to accept the minutes of 1/9/07. The motion was approved 3-2 with Commissioner Silverstone and Commissioner McIntee dissenting.

B. March 13, 2007

Vice Mayor Yanni motioned, seconded by Commissioner Clark to accept the minutes of 3/13/07. The motion was approved 5-0.

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

L. "Peanuts" Wick, 4900 North Ocean Drive, made some suggestions for the budget. He started with the Fourth of July Committee indicating that in his previous community they funded the fire works independent of the community, and wanted to recommend this method for next year.

Commissioner Clark stated that public should only discuss things that are a part of the evening's agenda.

Mayor Parker made a ruling that the public could only speak on issues that are part of the agenda.

Commissioner McIntee challenged the rule.

Commissioner McIntee then read from the Rules of Order, which stated that public could address any issue they wanted.

Commissioner McIntee motioned, seconded by Commissioner Silverstone, to challenge the rule.

There was a discussion on whether the Rules of Order were updated or not. Mr. Cherof indicated that the Town Rules of Order forwarded to Commissioner Silverstone are the ones the Commission adopted shortly after the last election, but they were not updated to include the supplemental rules that were established when they set up the procedure for the 30 minute public comments.

Commissioner McIntee indicated that he wanted to support his challenge with documentation and asked Mr. Cherof if that was appropriate. Mr. Cherof indicated that challenges could be supported with any pertinent documents.

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Commissioner McIntee presented the Rules of Order that were generated by the Commission to set up new rules and procedures. He read: "Public comments shall be listed on the agenda following the approval of minutes unless requirements mandate that an item be a first item of business; the order of business will be maintained for a prior period and will be reconsidered at the first meeting in July." He specified that the Chair, on numerous times, said that if an agenda item is discussed, it should not be discussed at Public Comments and should be addressed at the agenda item so there was not a mix.

The challenge was rejected, and the point of order was sustained 3-2 with the Commissioner Silverstone and Commissioner McIntee dissenting.

Vice Mayor Yanni stated that when they check out the legalities of Public Comments then the Commission can revoke.

L. "Peanuts" Wick continued with his comments. He stated that he approves of the Jarvis Hall project. He stated funding should be done by an independent foundation or a trust fund. He noted that Pa De Gennaro's is serving outside, which is in violation of their contract. He also did not understand why the Town is giving away Town property on a cul-de-sac. He stated that the Town should cover Mayor Parker's legal fees, and that the issue should be deferred to the Mayor or a private group. He indicated that the total cost for the three ideas he came up with would be in excess of savings of \$350,000 that could be used to improve El Mar Drive's water situation.

Bob Roberts, 220 Imperial Lane, noticed an item under the consent agenda referring to the Town Entryway Project, which would have large 16 or 17 foot pelicans. He believed the idea to be ridiculous.

Bob Terrien, 5100 N Ocean Blvd, indicated his view on the Town Entryway Project was contrary to the previous speaker. He stated that the pelicans were approved. He indicated that there was considerable time by the steering committee on the issue. He stated that the commission approved it. He suggested that, in the future, when something is approved it should be followed through. He also stated that before someone turns his nose at an issue, he should know what it is about. He then discussed Oriana; r.e., building permits. He stated that mistakes are costly and the process for correcting mistakes is to go back and get things re-approved. He stated that this is not what has taken Town land, contrary to the beliefs of Town members. He stated that there has been outrageous comments regarding bribery and misdeeds, but nothing has been proven to this point. He urged the townspeople to let Oriana go on and complete their project.

Stuart Dodd, 232 Imperial Lane, referred to an item under 13A regarding the Master Plan Steering Committee. He hoped the Commission would agree to dismiss Michael Arker for his deplorable attack from the dais on Mrs. Barbara Cole. He stated that Mr. Arker was heard to threaten Barbara Cole. He further indicated that the "f" word was used repeatedly used inside Jarvis Hall and stated that Mr. Wick and Mrs. Carr were dismissed for much less than this.

Mayor Parker questioned where the item was found under the agenda. Mr. Dodd indicated that the item was Item 18a listed under the future agenda (June 12, 2007). Mr. Dodd raised the issue that the behavior was disgusting and stated that it was not right.

A short discussion followed regarding procedural issues of public comments.

Mr. Dodd moved on to Mr. Baldwin's resignation. He stated that two key personnel from administration were being replaced: Town Manager and Town Clerk. He stated that it was imperative that things become a clean slate for the new personnel. He was alarmed by Commissioner Clark's recent suggestion to lower the standards and qualifications. He stated that Mr. Baldwin was highly

qualified when he was employed and believes that Mr. Baldwin made a mess of things. He continued and stated that the Town should find true professionals who want to work in the Town and who are capable of running the Town despite the acrimonious political situation that currently exists. He wants sanity, integrity, and harmony to be restored to the dais. Mr. Dodd indicated that Mayor Parker is entitled for his cost for the recall that he would have incurred had he been defended by a league of cities attorney. The fact that he chose an expensive attorney that won him the case was his choice and, therefore, his privilege to pay for it. He further stated that the cost of the special election is all he should have been paid since it was the cheapest solution for the town, which was about \$5,000.

Maureen McIntee, 1612 SE 21 Ave, addressed Old Business Item 12D. She stated that the Town has an insurance policy for litigation and if the Mayor's case qualified under that policy he should have taken it. She further indicated that if his case did not qualify under that policy, the burden of the additional expense should not fall on the taxpayers. She stated that it was a personal decision to hire an expensive attorney. She stated that he should bear the expense. She indicated that it was agreed that Master Plan Steering Committee would decide on the gateways. She wanted to know where it was written that a vote was taken and by who. She then stated that she hoped the pelicans were not going to be made of Styrofoam. Mrs. McIntee stated that at the previous Master Plan Steering Committee meeting people on the committee attacked another citizen and a board member. She stated that, previously, three members of the dais dismissed two board members because they attacked a citizen.

**NOTE:** Commissioner Silverstone asked to move New Business Item A forward. Commissioner McIntee made a motion, seconded by Commissioner Silverstone to overrule the Chair and move New Business Item A forward. The motion passed 4-1 with Mayor Parker dissenting.

Barbara Cole, 221 Washingtonia and 5000 North Ocean Blvd, began with Item 10b. She stated that she attended the previous Master Plan Steering Committee (MPSC). She indicated that the MPSC were bringing in 26 students and she stated that at the MPSC there was a discussion that they may also complete the entryway. Mrs. Cole then indicated that she was attacked last night and hoped that the Commission was honorable last time. She moved on to New Business 13C. She stated that she read a paper over the weekend and called the new secretary/treasurer of Sea Colony. After hearing and reading two papers, she wanted to find out about two members of the dais that the town would be bankrupted by CIC. She stated that the Commission has stated for months that Sea Colony is suing the town. She wanted to know why no one spoke to the new secretary and Bonnie Myer (previous secretary). She indicated that CIC is behind Sea Colony and their developer. She said they should have been allowed to build.

Mayor Parker indicated that the issue she was bringing up was not part of the site plan. There was discussion on whether or not the issue was site plan related or not.

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

- A. **ORDINANCE NO. 2007-06:** An ordinance of the Town of Lauderdale By The Sea, Florida amending the Town code of ordinances to replace the term "Occupational License" with "Business Tax" or "Business Tax Receipt"; providing for conflicts, severability, codification and an effective date. *(First Hearing held on March 27, 2007).*

Mayor Parker asked the attorney to read the 2007-06 ordinance. Mayor Parker asked the attorney to explain the ordinance. The attorney explained that it would be more accurate and beneficial to the public to cease referring to occupational licenses by that term and instead call them "business tax."

He indicated that the passed Chapter 2006-152 laws of Florida required all municipalities to author their administrative procedures to use the term business tax instead of occupational license. He indicated that the purpose of the ordinance is to conform the Code of Ordinance and directs the editor of the Code to make that substitution and phrase. Mr. Cherof indicated that the ordinance is a housekeeping item required by state statute. Mayor Parker opened discussion to the public.

Barbara Cole, 221 Washingtonia and 5000 North Ocean Blvd, wondered if the Town Attorney had looked into her question about lawyers being included under this ordinance. Mr. Cherof stated that the ordinance does not speak to the issue of subcategories of occupational license; instead, it speaks only to the substitution of phrase. He indicated that lawyers are subject to occupational license requirements of all municipalities. Mrs. Cole asked if it had always been so. Mr. Cherof it had always been the case in Lauderdale by the Sea.

Lisa Mitchell 4238 Sea Grape Drive, asked about the wording of the ordinance. She wanted to know that if it was called a tax, would the price go up since it is no longer called a license. The attorney indicated that the purpose was not to alter the framework for modifying the occupational license fee, it was simply to rename it a business tax. Mr. Cherof explained that there was still a procedure and statute that does authorize municipalities to increase occupational license taxes, but that requires a vote of the Commission, and it is usually done in conjunction with the annual budget process. Mrs. Mitchell wanted clarification on whether or not this would hurt small businesses. Mr. Cherof indicated that he did not know what she meant by that. He further clarified stating that the ordinance does not speak to the issue regarding the amount of the tax; it only refers to the wording.

Diane Bouten, General Manager, Wind Jammer Resort 4244 El Mar Drive, 5100 Bayview Drive, stated that occupational license or business tax has always been a revenue generating item. She wanted to know if the individuals and/or businesses and/or corporations who receive one are now in the business district and are recognized as a business as opposed to residential, etc. Town Attorney Cherof explained that the ordinance does not speak to that issue; it only substitutes terminology; it has nothing to do with issues of business regulations or business locations.

Mayor Parker closed public discussion. Commissioner Silverstone motioned, seconded by Commissioner Clark, to approve Ordinance 2007-06.

Mayor Parker asked the Town Attorney to clarify what would happen if the Commission did not approve the ordinance. Mr. Cherof indicated that there could potentially be a law suit from the Secretary of State to compel the Town to conform its code to state statute. Mr. Cherof stated that there is no operational effect except for substitution of phrasing. Mr. Cherof indicated that by voting "yes," the Commission was not voting for a tax, they were voting for a substitution of terminology.

Vice Mayor Yanni stated that he never saw a problem before and did not feel the terminology needed to be changed. The motion passed 4-1 with Vice Mayor Yanni dissenting.

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

## **10. CONSENT AGENDA**

**NOTE:** Mayor Parker removed each item from the Consent Agenda to discuss on their own merits.

- A. Jarvis Hall Portico Project - Approval to enter into agreement with Cubellis (Synaloski) project architect/engineer and re-bidding of project construction documents. (Vice Mayor John Yanni – John Olinzock-Municipal Services)

Mayor Parker asked if Vice Mayor Yanni wanted to make a motion to approve item A.

Vice Mayor Yanni made a motion, seconded by Commissioner Silverstone, for approval of Item A. Assistant Town Manager Colon indicated that \$75,000.00 was budgeted this fiscal year and \$400,000.00 was budgeted for next fiscal year. Assistant Town Manager Colon indicated that if the revised construction documents get in before next fiscal, they would move the funds from one fiscal to another, but she stated it has been budgeted.

Commissioner Silverstone asked Assistant Town Manager Colon if the thing they were voting on cost \$25,800. Assistant Town Manager Colon indicated that the figure was for the engineer who started work 3 years ago and the number has been revised. She explained that the figure stated is to get the architect back on and re-bid the construction documents. The motion passed 5-0.

**NOTE:** Commissioner McIntee moved to shift New Business Item 13 B forward. There were no objections.

- B. Town Entry Ways Vision Project - Approval to proceed with project construction documents. (Mayor Pro Tem Chuck Clark – John Olinzock-Municipal Services).

Commissioner Clark proposed that the issue was already passed, and wants it sent out to be bid.

Commissioner McIntee wanted to see the meeting for which this was passed.

John Olinzock stated that he did not have the meeting.

Commissioner Clark motioned, seconded by Commissioner McIntee, to table the issue until the 4/24/07 meeting. The motion passed 5-0.

## 11. RESOLUTION

## 12. OLD BUSINESS

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

Vice Mayor Yanni appointed Peggy Mohler, manager of Aruba Beach Café, to Walk Around Committee.

Commissioner Silverstone wanted to add an item to the next agenda. Commissioner Silverstone indicated that he wants to have someone removed from the Master Plan Steering Committee.

Vice Mayor Yanni requested minutes from the meeting. Steve D'Oliveira indicated that he would provide a copy of the meeting to be distributed to all commissioners.

Commissioner McIntee asked Town Attorney Cherof if a committee member had to live in town. Mr. Cherof indicated that he was not aware of any provision that requires that.

- B. Discussion and/or action regarding Chen & Associates agreement (John Olinzock, Municipal Services - tabled from 3/13/07) – postponed to 4/24/07 meeting still negotiating contract.

John Olinzock asked to postpone the issue to the next meeting (4/24/07)

Mayor Parker asked if there were any objections. There were none, so the issue was postponed to the 4/24/07 meeting.

C. Discussion and/or action for reconsideration of Oriana amended site plan approval (Commissioner McIntee – Requested 3/27/07)

Commissioner McIntee called the Oriana attorney forward. Mayor Parker turned to the town attorney to discuss the Rules of Order for a reconsideration. Mr. Cherof indicated that to make a motion for reconsideration a motion should be made, seconded, and voted on before there is any discussion on the subject matter. Mr. Cherof clarified indicating that the Commission could not get back to the main subject matter unless the motion for reconsideration passes because the matter is behind them as a Commission; they have to first retrieve it by having a motion to reconsider.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to reconsider the Oriana amended site plan. The motion to reconsider failed 3-2 with Mayor Parker, Vice Mayor Yanni, and Commissioner Clark dissenting.

Town Attorney Cherof stated that he had an update on the Oriana project, and Commissioner McIntee may be able to address his issues at that point.

Commissioner Clark moved to have the Oriana update report moved up, seconded by Commissioner McIntee. There were no objections.

Mr. Cherof stated that the Commission approved the application for amendment to the site plan with directive that the development order be prepared by Walter Keller to include the new provisions that were appropriate for inclusion as conditions of approval and also accepting the proposal made by the applicant for additional streetscape improvements to deal with pedestrian impact of the project. He indicated that the agreement has been completed. He stated that the comments he and Dick Coker had have been agreed to by the applicant. The document was presented to the dais. The agreement contained all the provisions that the Commission approved and conditions that he believed were important to deal with the issue of the escrow account, along with Mr. Coker's comments regarding the formality of the disbursement.

Mayor Parker asked if the Town was protected in bankruptcy. Mr. Cherof indicated that they were. Mr. Cherof further indicated that on page 3, paragraph 5 there was a reference to the establishment of an escrow fund and it indicated that the escrow fund does not belong to the developer. The end of the paragraph indicated that the escrow fund is only held in accordance to the agreement, and is not subject to any lien attachment, trustee proceeding, or any other judicial process or creditor of any party. Mr. Cherof recommended accepting agreement.

Commissioner Clark motioned, seconded by Vice Mayor Yanni, to accept the agreement as presented. There was a discussion regarding the balcony area found on page 3 of the development order.

Commissioner McIntee wanted to know if it was clearly stated in the site plan that under no circumstances could the patios be enclosed and used for general living space. He stated that if they are going to close and air condition them, then they have been turned into a living space.

Commissioner McIntee called for clarification of this issue. Mr. Keller stated that the revised development order that reflects what the Commission did at its last meeting prohibits them enclosing the balcony's would not call for that. Mr. Goldstein agreed that the revised order does state what Mr. Keller explained. And he pointed to page 6 of 6 on the development order, item 14, clarifies the issue. Mr. Cherof stated that the provisions of the settlement document and the conditions of approval of the development order survive the issuance of the CO's and are forever enforceable on the project.

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Commissioner McIntee stated that one item still bothered him. He stated that there were still two citizens who had a law suit against Oriana. He recommended that Oriana get a release from both parties and withdraw the suits against them. McIntee yielded.

The motion to approve the settlement agreement and development order passed 4-1 with Commissioner Silverstone dissenting.

- D. Discussion and/or action regarding the reimbursement of attorney fees incurred in the amount of \$31,023.87 in defending recall action in the case of: Oliver Parker v A. Stuart Dodd, et al. Case No.:07-00196(11) - (Mayor Oliver Parker).

Commissioner Silverstone asked the Town Attorney if someone is allowed to put a motion on the floor to receive payment. Mr. Cherof explained that any member of the Commission who has incurred attorney fees while defending his position while conducting public business is entitled to seek recovery of funds from the Town.

Mayor Parker brought forth a letter from the Ethics Commission signed by C. Christopher Anderson, Chief Assistant General Council stating that Mayor Parker is allowed to vote on the issue. Mayor Parker asked the Town Attorney if the town was obligated to pay him back.

Mr. Cherof stated that the town does have an obligation under case law Thornberry vs. The City of Fort Walton Beach. He read a provision that stated if a recall petition is commenced, the public has an interest and the city has a responsibility to ensure that the recall committee follows the proper procedures; i.e., that the recall petition is facially correct. He further indicated that officials should not incur personal expense to ensure that a recall committee follows the proper procedures.

Mayor Parker asked if Mr. Cherof agreed with the Ethics Commission's permitting Mayor Parker to vote. Mr. Cherof indicated that he didn't agree or disagree.

Vice Mayor Yanni motioned, seconded by Commissioner Clark, to authorize reimbursement in the amount of 31,022.87 to Mayor Parker.

Commissioner Silverstone asked the Town Attorney if the insurance with the League of Cities would cover legal services. Mr. Cherof stated that the insurance does not cover this subject of litigation because there are certain limitations on the type of defense and type of claims the Town has paid to be defended by the League. Commissioner Silverstone asked if they could put in a claim to see what happens.

Mayor Parker stated that he would allow Commissioner Silverstone to put in a motion for the Town to get reimbursed from the insurance company.

Discussion followed regarding whether or not the League of Cities would reimburse the Town.

Commissioner McIntee asked Mayor Parker if he contacted the League of Cities to see if they would have represented him.

Mayor Parker indicated that he did not.

Commissioner McIntee then asked the Town Attorney if Mayor Parker contacted him in regards to contacting the League of Cities for legal council. Commissioner McIntee wanted to know how Commissioners would go about choosing an attorney. Mr. Cherof suggested that if anyone is placed in a position where its questionable whether insurance will provide defense, then they should find an attorney that they and that, ultimately, the Town can afford because it is their protection against a defeat in a pending law suit.

Commissioner McIntee asked questions regarding the bills on the submittal from Mayor Parker. Specifically, Commissioner McIntee wanted verification if, on January 1<sup>st</sup>, Mayor Parker had a meeting with his attorney; he then asked Mayor Parker if he accessed the town computers that day to help him with the meeting, and he asked if Mayor Parker had that meeting in Town Hall.

Mayor Parker indicated that he was not in Town and had the meeting at his attorney's office.

Commissioner McIntee then asked if he accessed the Town's computers at 4:40 a.m.

Mayor Parker stated that he did not have access to the Town's computers. He further indicated that he does not have a key to Town Hall.

Commissioner McIntee wanted to know if the letter sent to ethics commission was written by Town Attorney Cherof.

Mayor Parker stated that Town Attorney Cherof did not write the letter. Mr. Cherof stated that he has advised everyone on the Commission that when there is an issue regarding ethical responsibilities to contact the commission on ethics because it is only their opinion that protects the Commission, not his (the Town Attorney).

Commissioner McIntee asked Town Attorney Cherof to get a letter from the League of Cities indicating that they would have not defended Mayor Parker for recall.

Commissioner McIntee asked the Town Clerk the report from the Town Attorney regarding whether or not the League of Cities would have provided Mayor Parker counsel on the 4/24/07 agenda.

Vice Mayor Yanni stated that there was no question about paying Mayor Parker's attorney fees. He further indicated that there was case history where the Town has paid legal fees. He stated the blame is not with Mayor Parker. He stated the blame was with the gentleman in the audience who got the petition passed.

The motion passed 5-0.

Commissioner Silverstone made a motion, seconded by Mayor Parker, to see if the Town could get reimbursed by the League of Cities insurance.

The motion passed 5-0.

Vice Mayor Yanni asked Assistant Town Manager Colon where the money would come from. Mrs. Colon indicated that the money would come from other legal fees in the town attorney's budget.

Mayor Parker asked Assistant Town Manager Colon if she could find out who accessed the computers at 4:40 am on January 1<sup>st</sup>. Mrs. Colon indicated that the servers under administration were corrupted.

### **13. NEW BUSINESS**

- A. Presentation/awards for the LBTS Volunteer Fire Explorer Competition (Commissioner Silverstone). (moved to 4/10/07 meeting)

Commissioner Silverstone indicated that before they were terminated by BSO, they had an Explorer's Program in Town for teenagers to begin firefighting duties, and at the end of the program they had a competition. He wanted to give a public acknowledgement. Commissioner Silverstone thanked the participants for their hard work and training.

The Commissioners congratulated the participants.

B. Discussion and/or action regarding signage at Athena-Kilwin (Commissioner McIntee).

Commissioner McIntee indicated that the Athena structure had the same signs in place for over 30 years, and he stated that Kilwin placed two new face plates, but they did not change the structure of the sign. He stated they did not put "Athena" up at the time, but now it is on there. Commissioner McIntee asked that the Commission give Athena-Kilwin the sign as it is.

Mayor Parker asked Mr. Bell if there would be a problem approving the sign. Mr. Bell stated that the present code indicated that any new roof sign for a project that does 25% redevelopment has to be phased out. He further indicated that if there is less than 25% improvement, roof signs are allowed. Mayor Parker asked if he could change the code to a wall sign. Town Attorney Cherof urged the Commission not to engage in interpretation of a code on a case to case basis. Instead, Mr. Cherof suggested that the Commission modify the code to conform to what the Commission believes to be the liberal rules for signage should be. Mr. Cherof stated that they should not pick and choose who can change signs or not. Town Attorney Cherof stated that exceptions should not be made when a sign code is adopted. Mr. Cherof explained that if the Commission did not like the code, they could amend it.

Commissioner Clark stated that the best way to solve the issue is to deal with it as an "area specific" change in the code. He indicated that all of the signs in that area are roof signs, and to change Athena-Kilwin to something different would not be aesthetically appealing. A discussion followed dealing with what was considered "area specific." Mr. Bell stated that both sides of A1A contain roof signs.

Mayor Parker asked the Town Attorney if he concurred on the suggestion that the Commission modify the sign code to allow area specific roof signs. Mr. Cherof indicated that he, with the assistance of Mr. Bell, could draft a code provision that would do that.

Commissioner McIntee motioned, seconded by Commissioner Silverstone, to approve the Athena-Kilwin sign. The motion passed 5-0.

Commissioner Clark motioned, seconded by Vice Mayor Yanni, to amend the sign code and direct the Town Attorney to prepare an ordinance for the next meeting. The motion passed 5-0.

C. Discussion and/or action reference standard procedures and penalties regarding major infractions of approved site plan (Commissioner Silverstone).

Commissioner Silverstone stated that the Commissioners' jobs are to protect town members and enforce laws. He indicated that he wanted to prevent what occurred with Oriana from happening again. He stated that if they approve a site plan, and it is not followed, then they do not have recourse.

Discussion followed regarding a penalty for builders.

Mr. Keller stated that he spoke with Jim Bell, and they did not know of an instance where a code had a provision to penalize someone in terms of building. He further indicated that the codes Commissioner Silverstone looked at dealt with code enforcement dealing with corrective issues. He further indicated that everyone has the right to come in for a site plan amendment, which is the

method of the remedy, but the Commission is not necessarily required to approve that site plan amendment.

Commissioner Silverstone stated that if one builds something that is not allowed on the site plan, then he is going against the code and site plan approval. He indicated that there should be a penalty method for that sort of infraction.

However, Mr. Keller indicated that the penalty a person incurs is not getting a site plan approval/ amendment and also, the bigger penalty is, they will not get a CO if they built a project without proper site plan approval; they will not be able to occupy the building, so they'll have a structure they can not use. Mr. Keller indicated that they could find instances and put improved language in the development order to make it clear to the developers that they have site plan approval and that a potential penalty would be placed if they violate the site plan approval.

Commissioner Silverstone indicated that Mr. Bell should put together a memo stating that, during the next process, someone should be out there measuring things to make sure everything is fine. He stated that he did not want to give the developer any idea that it's a possibility of getting away with any deception. He further indicated that if they find things that are not right, from that point on, the Town will start fining them until they correct it.

Mr. Bell stated that there could be a fine placed for failure to comply with the building code. Mr. Bell stated there would be an initial fine and then a remedy of the situation. He stated that the fine is usually minimal. Mr. Bell stated he would defer to the Town Attorney on the issue.

Commissioner Silverstone asked Town Attorney Cherof if there was anything the Commission could do to help prevent something like the Oriana incident from happening again.

Town Attorney Cherof indicated that there was nothing to which Commissioner Silverstone suggested, but stated they could do something through code enforcement or through an ordinance prosecuted through County Court. He further indicated that they could do injunctive relief if the Commission wanted it. He then indicated that the process itself could result in a beneficial end if they press the issue forward. Town Attorney Cherof explained that code enforcement would have an insignificant benefit. He explained that it was one thing to have the language of the code enforcement, but it was another thing to have a successful mechanism for implementing it.

Commissioner Clark asked Mr. Bell for suggestions on preventing something like the Oriana incident from happening again. Commissioner Clark stated that he recalled a possible solution such that before any permitting was granted, a Town review would take place.

Mr. Bell concurred with Commissioner Clark and indicated that he sent a memo out previously outlining new measures.

Commissioner Clark asked if the implementation of the new measures on a regular basis would solve the problem.

Mr. Bell stated that he believed they would; he then indicated that it may not catch things immediately, but ultimately it would. Mr. Bell then illustrated what he meant with examples. Mr. Bell stated that they would have a double check at final sign off as well. Mr. Bell indicated there is now a sign off at both the beginning and end of a project to find out if sheets were swapped out. He further stated that they have a slab survey to use as well.

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Commissioner McIntee stated that he agrees with both Mr. Bell and Commissioner Clark; he reminded Mr. Bell that builders need to have scale models to prevent grievous errors.

Commissioner Silverstone wanted the issue placed on the 4/24/07 agenda for further discussion.

D. Discussion and/or action reference nomination to fill vacancy (1) Board of Adjustment (Jim Bell, Development Services).

Mr. Bell stated that Sarah Stewart moved, and they have a vacancy. Mr. Bell stated that there were two alternates: Helen Swinghammer and Robert Perkins. Mr. Bell indicated that he wanted the Commission's permission before moving them up.

Mayor Parker recalled that Commissioner McIntee made the last nomination and that Commissioner Silverstone was next in line.

Commissioner McIntee stated that he wanted to table the issue for two weeks, so he may find out who is next in line.

Vice Mayor Yanni suggested moving the first alternate up.

Commissioner McIntee indicated that Commissioner Clark had noted that alternates cannot move up.

Mayor Parker suggested having the first alternate serve until they find a replacement. He then stated that issue will be tabled until the 5/22/07 meeting to find out whose turn it is to make an appointment. Mayor Parker stated that they need time to fill the appointment, and stated that an advertisement needs to be placed in Town Topics.

E. Discussion and/or action scheduling of future Commission workshops pertaining to the proposed Unified Land Development Code (Jim Bell, Development Services).

Mr. Bell stated that the Commission had previously decided to adopt the Unified Land Development Code by going through a series of workshops. He wanted to schedule future workshop times. He suggested breaking it down by code section or topic.

Commissioner McIntee asked Town Attorney Cherof if three commissioners (as a subcommittee) could go and then report back to all five commissioners. Town Attorney Cherof stated that it was fine, but all the commissioners needed to vote on any amendment to the code or the adoption of the land development.

Commissioner McIntee asked if the subcommittee of commissioners could contact the other commissioners to look into issues.

Mr. Bell stated the only communication that could occur would have to be in the Sunshine Communications.

Commissioner McIntee asked if that could be done by posting to Town Hall. Mr. Bell concurred.

Bell stated he wasn't sure how long the workshops would take. Commissioner McIntee moved to create subcommittees to report back to the entire Commission.

Mayor Parker stated that he wanted to make sure that if all commissioners wanted to attend then they should be allowed.

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Vice Mayor Yanni indicated that he did not think the idea of subcommittees would work. He believed that if a subcommittee brings back ideas to the entire Commission, and the Commission does not agree, then they are back to ground zero. He suggested that all commissioners attend all the meetings to deal with issues and vote quickly.

Commissioner McIntee stated that Vice Mayor Yanni had a good argument, and he indicated that he was trying to look for ways to reduce their hours of meetings.

Mr. Bell stated that one of the ways they originally suggested to reduce meeting times effort of the professional staff and developing the land development regulations could be accepted as one document and then deal with it by exception; i.e., come back after the adoption. Further, he suggested that after educated the citizens of what has been done, to let the citizens bring back issues that needed to be reexamined and deal with those one by one by exception.

Commissioner Clark motioned to deal with land development code meetings in the way Mr. Bell suggested.

Mayor Parker indicated that there are a number of things in the Land Development Code that they can only do if it is put to the vote of the electric.

Town Attorney Cherof indicated that most of the provisions of the Land Development Code that were in the last draft proposal did not go to the issue of use, which is the subject matter the charter provision requires a referendum on. Most were unrelated to that and could be adopted. He stated he examined that which was being presented to the Commission did not violate any provision of the charter that required a referendum vote. Town Attorney Cherof then discussed a former issue raised regarding docks that derailed the entire train when it should have derailed that one car of that train.

Commissioner McIntee then stated that he refined his motion in that the Commission will allow administration to generate what they feel is necessary for the Town, and if the Commission had any problems with it, they will bring it up individually after administration comes in with their final presentations. Commissioner Clark seconded the motion.

Vice Mayor Yanni asked how long they should give to administration.  
Commissioner McIntee stated he did not care how long they would take.

Mr. Bell deferred to the Assistant Town Manager about funding.

Assistant Town Manager Colon suggested that they not short change themselves because the budget is coming up quickly. And, she also suggested that when they redline the report so that Mr. Bell can see what the Commission agrees and disagrees with as well as presenting the changes.

Both Commissioner McIntee and Commissioner Clark agreed with Assistant Town Manager Colon's suggestions.

Mayor Parker then asked Mr. Bell for a time frame.

Commissioner McIntee stated that they should not place a time restriction. He indicated that the motion was on the table and stated that Mr. Bell can take as long as he needs.

Mr. Parker asked Mr. Bell for a time frame again.

Mr. Bell indicated that he would not need six months and stated he was not sure what he needed.

Town Attorney Cherof stated that at the next commission meeting they would present a reasonable time frame for completing it.

Mr. Bell then asked if the presentation of the time frame could be postponed to the meeting after next because he was going away.

Mayor Parker then stated that there was a motion out to follow the procedure outline by the Town Attorney with redlining and then he stated that Mr. Bell would come back with a report on May 8<sup>th</sup> as to how close they are with coming up with something.

Commissioner McIntee said that he made his motion, and he indicated that he did not need Mayor Parker to change the motion. He restated his motion stating he wanted Mr. Bell and the administration to go forward with the Unified Land Development and come back with whatever they believe to be right and if the Commission had any problems they would challenge them and correct them.

Mayor Parker said that was fine and then asked Commissioner Clark if he seconded the motion. Commissioner Clark said he did. The motion passed 5-0.

Mayor Parker asked Mr. Bell if he had any objection to reporting back to the Commission during the first meeting in May. Mr. Bell stated that he did not have a problem. Mayor Parker told Mr. Bell to come back with a schedule at the 5/8/07 meeting.

F. Discussion and/or action reference clarification on a private valet parking business as an allowed use in the Town (Jim Bell, Development Services).

Mr. Bell stated that they had received an application for an occupational license to allow private valet parking business at the Sun Bank building. He stated that the site had extra spaces that are in excess of their required parking, so they wanted to have a private valet business come in and park cars in those spaces for the amount that's above their required parking.

Mayor Parker wanted to know who they would be valeting for. Mr. Bell indicated that it would be for anyone who wanted to park at any location, not specific for any business.

Mayor Parker asked for clarification. And, he wanted to know if they would pull in the Sun Bank lot.

Mr. Bell stated they would pull into the Sun Bank lot for the service.

Vice Mayor Yanni wanted to know how many spots were available.

Mr. Bell indicated that he did not have the information with him at the moment because they haven't gone that far along in the process.

Mr. Bell continued explaining that, typically, the Town has allowed valet parking if it is associated with a specific business, property, or restaurant. And he stated that the B1 zoning district does not list valet parking as an allowed use in the zoning district; it is implied as an accessory use or an allowable use ancillary to an existing business. Mr. Bell then stated that, typically, the Town enters into lease agreements to allow parking areas for different businesses in Town if they feel they want to have additional parking. But, he stated that this reference is not for a particular business, but the valet company maybe going to other business throughout town. He went further to explain that the Town

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has metered parking spaces and the Town could potentially lose revenue if a person decided to park in a valet lot instead of using the Town's metered lot. He wanted to get clarification and a position on the issue from the Commission if they feel the valet lot should be an allowed use in the Town. The staff's position/recommendation was that if a private valet parking lot intended to serve areas other than the site it's located on is not an allowed use, and in order for a valet parking use to be allowed a code amendment would be required.

Vice Mayor Yanni stated that he believed the Commission changed the code for valet parking in B1.

Mayor Parker said that was not the case.

Discussion followed regarding controversy in the lot by a bar.

Mayor Parker clarified the issue stating that the bar was going to park the cars there, but were going to valet in another location.

Commissioner McIntee stated that they changed the foot from the business from 200 feet to 1000 feet. And, he further indicated that it was not valet service; it was where people could park and print at those lots.

Mayor Parker stated that the business at hand was different because it is someone running a separate valet business.

Vice Mayor Yanni again indicated that he thought they changed the code to allow valet parking in B1.

Mayor Parker stated that the Commission had a recommendation from staff and asked for a motion. Commissioner McIntee, motioned to follow the recommendations of staff that the Town does not allow the valet business to begin at the Sun Bank.

Mr. Bell then asked if they would want a code amendment to allow it.

Mayor Parker clarified and stated that the motion is to follow staff recommendations that the valet is not an allowable use. He further stated that valet as an ancillary use to a restaurant or hotel is one thing, but a stand alone valet is another.

Mr. Bell then asked if the Commission would want to direct staff to allow it as a use in the future.

Mayor Parker stated that staff's recommendation was to not allow the valet business, which is what the Commission is following.

Mr. Bell then stated that he also said that in order for it to be allowed a code amendment would be required. He wanted to know if the Commission wanted to follow that as well. Mayor Parker indicated that the Commission did not want to do that at this time.

Mayor Parker seconded Commissioner McIntee's motion.

Commissioner Silverstone asked restaurant and business owners in the audience if they had any reason why it would benefit or dis-benefit them.

Vice Mayor Yanni asked the name of the valet company.

Mr. Bell indicated that the company was Asta Parking.

Janet Denny, Kilwin's, 117 Commercial Blvd. stated that right now Kilwin's has 24 employees, and they, as well as other restaurant workers in the area, have no place to park. The only place they have that is somewhat permissible to park is the SunTrust building. She wanted to know that if the space was used for something else, did the Commission have any recommendations on employee parking. Mayor Parker asked Ms. Denney if she was aware of the employee parking lot that costs \$5.00 or \$10.00 a month.

Mrs. Denney explained that she understood that parking to be very limited. And, she restated that she had 24 employees.

Mayor Parker stated that giving the SunTrust spaces over to Asta valet would be taking spaces from Kilwin's employees who needed the spaces to park.

The motion passed 5-0. Mayor Parker indicated that would follow staff recommendations that the valet parking is not an allowable use without a code change.

G. Discussion and/or action reference Sidewalk Café permit for Pa De Gennaro's Restaurant - 4337 North Ocean Boulevard (Jim Bell, Development Services).

Mr. Bell stated that staff had received an application they requested for a sidewalk café from Pa De Gennaro's Restaurant. Mr. Bell indicated that Pa De Gennaro's put seats outside on their property, and staff determined that, in doing so, that met the criteria for a sidewalk café. Mr. Bell recommended the item for approval, but stated that the applicant did not want to put a barrier between the tables and chairs as is referenced in the code. Mr. Bell stated that the owners felt that there would not be enough room given the width of the sidewalk to allow people to get by the tables and chairs. Mr. Bell stated that his staff looked at various barriers available and believed that a movie theater type of rope barricade would suffice. He then explained that the rope would be a temporary use, meaning that the rope would not be there all the time. The rope area, tables and chairs would be placed back in the restaurant at closing.

Mayor Parker asked if the applicant agreed to the rope barrier.

Mr. Bell stated that the issue of the rope barrier is the only disagreement that the applicant has with staff. He indicated that the applicant wanted to have the chairs and tables out there and the permit would not like to have the barrier.

Mayor Parker asked Mr. Bell if the Town's ordinance required a barrier.

Mr. Bell indicated that the ordinance does require a barrier.

Mayor Parker asked if Mr. Bell if he would accept the rope barrier. .

Vice Mayor Yanni wanted to know if the code mattered since it was private property. Vice Mayor Yanni further stated that the barriers they have now divides city property from the businesses. He stated that all of that was on the owner's property.

Commissioner McIntee stated that Item G and Item H are the same issue.

Mayor Parker stated that whatever rule they do on Item G, they will do for Item H, but they will have to do separate motions.

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Mr. Bell read the code, which states that a removal barrier, a design of which shall be approved by the Town shall be required to separate sidewalk cafes service from pedestrian and vehicle or pass of traffic.

Mayor Parker motioned to grant the sidewalk café application on the condition that they have a rope barrier.

Vice Mayor Yanni indicated that he would like to amend Mayor Parker's motion. He indicated that he would like to approve the sidewalk café without the rope.

Town Attorney Cherof stated that they could not make that amendment because the barrier is a code requirement.

Vice Mayor Yanni stated that the restaurant was on private property.

Town Attorney Cherof stated that it makes no difference because the applicant and the Commission have to meet all the requirements of that section of the code.

Mayor Parker asked for a second to his original motion to grant approval with the rope barrier. Vice Mayor Yanni seconded.

Commissioner McIntee stated there are a number of sidewalk cafes in the Town, and he wanted to know if, according to Town ordinance, there needs to be appropriate parking available for places that have seating for food.

Mr. Bell stated that would need four parking spaces a piece. And in order to allow the additional square footage; he indicated what was determined that was there was a Chinese restaurant and two bays. And, the restaurant had seating, and that seating has been taken away so that the seating balanced out and there was sufficient parking.

Commissioner McIntee then asked Mr. Bell if all they needed was the rope barrier, and asked Mr. Bell if he was satisfied with that. Mr. Bell stated he was.

Commissioner McIntee then reminded Mr. Bell about a study on parking spaces that was asked at a previous meeting. Mr. Bell indicated that it would be part of the 4/24/04 agenda.

Commissioner Clark asked whether the parking spaces required were in addition to the normal parking places that the restaurant already has to have.

Mr. Bell stated that it was in addition. He then explained that the restaurant, at this point, is strictly take-out, and does not have a customer service area. So the tables that are out there are the customer service area.

Mr. Bell again confirmed that there was adequate parking.

Mr. Bell corrected himself, as the discussion between he and Commissioner Clark referenced the Noodle Box, not Pa De Gennaro's. He then said that they added the square footage to Pa De Gennaro's restaurant. Mr. Bell explained that the Chinese restaurant is in the area where the deli is and the Noodle Box is, so that 99 square foot got taken away, and then they added in the square footage of the actual Pa De Gennaro's restaurant and what they want to do with the sidewalk café.

The motion passed 5-0 for a sidewalk café permit with a rope barrier.

- H. Discussion and/or action reference Sidewalk Café permit for Noodle Box Restaurant - 4337 North Ocean Boulevard (Jim Bell, Development Services).

Mayor Parker motioned, seconded by Commissioner McIntee, for a sidewalk café permit with a rope barrier. The motion passed 5-0.

- I. Discussion and/or action reference the abandonment of Garden Court. Consideration to retract cul-de-sac vacation of Garden Court and rescind site plan approval for Garden Court Townhouses (Jim Bell, Development Services).

Mr. Bell stated that he has provided the Commission with the original development order related to the project, a map showing the area, and a survey that shows the Marina Village project and the cul-de-sac that touches their portion of the property. Mr. Bell recommended that they be given until May 15<sup>th</sup> to record the abandonment because the developers are significantly moving along. He indicated that Mr. Cherof had reviewed documents that their attorney has sent. Mr. Bell further indicated that their civil engineer was also looking at the revised easements and new layout of the road. He stated that, yes, Garden Court, took a long time to get to this point, but in the past few weeks they made a forward motion.

Mayor Parker conjectured on what would happen if the Commission granted the abandonment at this point, and the Developers of Garden Court Townhomes abandons the project. He asked if the Town would be stuck with the abandonment.

Mr. Bell stated that there was discussion of that issue at the last meeting, and stated that there were some possible discussions on some legal things they could do to the development order to ensure that there would be some sort of catch between the two, and he indicated that Mr. Cherof was going to check into the legality of that.

Mr. Cherof stated that based upon the quick turn around of documents that the property owner's attorney sent to him that the Garden Court developers were serious about moving forward and not abandoning the project.

Mayor Parker asked if there was anyway to hold up the abandonment until they have completed. He wanted to know how the Town could protect itself.

Mr. Cherof stated that they could by proceeding in the manner that Mr. Bell outlined.

Mayor Parker wanted to know how to get the property back if they do not finish the project.

Mr. Cherof explained that the Town would not record until the Town is satisfied that the project is going to be completed.

Mr. Bell stated that they could have the legal department and the civil engineer total agree that it is a complete document, but they would not bring it to the Commission for signature until they go through the whole building permit process and get a CO. He said that they could be sitting on it for a year, but at least if would be previously reviewed.

Garden Court architect Rick Rodriguez with Rodriguez Design Group, 901 S Federal Hwy, Ste. 200 stated that Garden Court is composed of two buildings. The construction documents are ready to go in for permit for one of the buildings. But, he stated that they could not go in for permit without the vacate of the cul-de-sac because it was part of the site plan approval process.

Mayor Parker asked if the Garden Court developers could go forward if the developers give the Town the vacation.

Commissioner McIntee asked Mr. Rodriguez what he had done for the Town to acquire that free property.

Mr. Rodriguez indicated that the site plan approval in the original meetings with the Commission there was a win-win situation. The win for the Town was that they would not lose any beach access.

Commissioner McIntee interjected, indicating that the view would be lost.

Mr. Rodriguez indicated that it was still their property at that point. He stated that both pools are on that point. He stated that as far as anyone could have gone before was as far as anyone can go now.

Commissioner McIntee stated that Mr. Rodriguez was not being very sincere. He stated that if the Garden Court developers did not have the top center of the circle of that roadway, they could not build the building.

Mr. Rodriguez agreed; however, he stated that they have not built the building there, but had the pool located at that point.

Commissioner McIntee stated that he had a problem giving the Town's personal property away. He stated that the Town was designed where the cul-de-sacs had lollipop ends to them so people could drive down and see some water, and he believes the Garden Court developers are wiping that out completely. He stated that he was 100% against giving this property to the Garden Court developers. He asked Town Attorney Cherof how the Commission could prevent giving the property away. Town Attorney Cherof explained that the property Commissioner McIntee referred to as the Town's property was actually right of way. It stated that it is right of way and the determination as to whether or not abandon it rests upon the Commission's determination as to whether or not it continues to serve a public purpose to keep it as right of way. If it does not serve a public purpose as right of way, then the Commission would be justified in abandoning it.

Commissioner McIntee wanted to know if the Commission was under any obligation, at this time, to grant the Garden Court developers the property. He further stated that they are behind on their deadlines. Commissioner McIntee stated that as far as he's concerned the developers already broke their contract with the Town.

Town Attorney Cherof made clear that the developers did not have a contract with the Town, but he stated that they did fail to meet the conditions of approval, and the Commission is within its rights to rescind that approval.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to rescind the approval.

A discussion followed regarding rescinding the approval.

Mr. Rodriguez stated that two roads further up have a condition where the pools are located at the end of the cul-de-sac that is similar to the way they have their project designed. And another road further north is even more constricted than their design. He explained that he can not speak for the original reason for the cul-de-sac, but if the intent was to see the waterway, they would have carried it, in his opinion all the way to the water. He stated that they still own the properties there at the end of

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the cul-de-sac. He explained that what went on in the original commission meeting was that they were going to still grant access for that road, provide a turnaround for that purpose, and in return they were going to pave the road, put sidewalks in it, maintain it, and include streetscape and landscaping. He stated that all of that is where the win-win situation came from.

Commissioner McIntee stated that Mr. Rodriguez was misrepresenting that completely. He stated that in his opinion, they left the lollipop at the top so that people could drive down and do a 360° and come out and see the water. He further explained that they made it go close enough to the water that prevented builders from putting any structures between the water and that roadway. He stated that they were getting a free gift of a tremendous amount of waterfront property that the Town is getting nothing for. He stated that he believes it to be outrageous. He stated that the Town should not give any property away unless there is an absolute benefit to the Town. He says that the Garden Court developers are taking away the opportunity for people to go down and look, and they are also taking away the opportunity for people to walk down and fish or look at a boat.

Mr. Rodriguez stated that it was private property, so people could not do that.

Commissioner McIntee agreed, but stated that if the Town did not give them the lollipop ends, the developers could not build the building, and the people could still see the water.

Mr. Rodriguez stated that he could still fence it.

Commissioner McIntee said they could fence it, but they could go only up to five feet high. He further stated that the third of the circle that they are not involved in has already been built on without the Town's permission.

Mr. Rodriguez stated that if Commissioner McIntee would look two rows north, he would see how far someone could actually build within that property line. And he stated that they were not anywhere near as far as some of the existing buildings are.

Commissioner McIntee again asked Mr. Rodriguez why the Town owed the developers anything, when they did not do what they were supposed to do.

Mr. Rodriguez explained that this was their second extension on the site plan approval. He stated that they were still within that. He stated that they were still in the process of completing documents and get the vacation.

Commissioner McIntee interjected stating that the Garden Court developers were to provide the Town with a great deal of things that were never provided for until pressure was placed upon them.

Mr. Sheldon London, 10950 NW 3<sup>rd</sup> Street, Plantation, asked the Commission to indicate what timeframe they did not meet.

Town Attorney Cherof deferred the issue to Mr. Bell.

Mr. Bell indicated that the development approval is general, but it says within 45 days of site plan approval, the applicants should come back to the Town with an approved site plan and meet the conditions of approval. Mr. Bell clarified, stating that some of the conditions are some that cannot be met immediately within the 45 days, but they have to at least make an effort to do that. Mr. Bell, then stated, that to defend the applicant a bit, he explained that previous staff did not ask for the revised site plan, and did not ask for them to begin to do some of the documents required within the 45 day requirement, or at least initiate them within the 45 day requirement. So, he then stated that was why

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a lot of time had elapsed. He explained that the developers did come in for time extensions, and the Commission has granted them the time extensions. And, that is why, Mr. Bell explained, he came up with the May 15<sup>th</sup> date because the end of May is when their last time extension would expire.

Commissioner McIntee asked Mr. Bell what the Town got for the property.

Mr. Bell explained that there are significant streetscape improvements that would be done in front of the property and also in front of the Marina Village property.

Commissioner McIntee asked if they did not give the developers the top of the circle, they could not build a property there. Then he stated that they increased the value of their property.

Mr. Bell stated that they did get density out of it, but stated the Town got some streetscape improvement.

Commissioner McIntee stated that they get a million dollar building, and asked Mr. Bell if that was a reasonable assumption.

Mr. Bell stated that he was not a part of the prior negotiation.

Commissioner McIntee explained stating that by giving that section of property to the Garden Court developers, it enabled them to build an additional living space, which is in the million dollar value.

Town Attorney Cherof stated that the property is a significant return to the Town in terms of taxation. He stated that it is all part of the give and take process with these types of projects.

Commissioner McIntee stated that the Town is small and water access is limited and therefore stated that he could not support any gift of free land on the water that prevents citizens from seeing it.

Town Attorney Cherof stated that there is no canal access other than private ownership along the cul-de-sacs.

Commissioner McIntee stated that one of the most enjoyable drives in the county is Bayview Drive where people can go down and view the boats and inlets off the intercostals.

Town Attorney Cherof stated that that option does not exist in the Town.

Commissioner McIntee stated it certainly does not prevent the Town from saying that someone cannot stick a building in front of the waterway so people can not see the water.

Town Attorney Cherof stated that Commissioner McIntee's argument was essentially saying that if there was a vacant lot on the intercostals, the Town would be able to prohibit development of that lot with a single family home.

Commissioner McIntee disagreed stating that if the vacant lot was zoned for a structure than it would be fine. He stated that a building could not be placed on that lot without the Town giving Rodriguez's firm the property, and that, he said, was the difference. He stated the vacant lot had room for the property, but this does not.

Town Attorney Cherof stated that it was wrong to suggest or create the impression that somehow if we do not go forward with the project as approved the property will be open to the public to fish or

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walk up, or they may be able to peer over the fence and see the water, but that was about the extent of public interest.

Commissioner McIntee stated that to some people that is important. He stated that he appreciated the fact that Town Attorney Cherof was defending the developers.

Town Attorney Cherof stated that Commissioner McIntee's last statement regarding the defense of the developers was both misleading and improper. He stated that he was not defending anyone, but the Town. He stated that he was trying to keep the Town out of one more piece of litigation that they have become used to over the last year or so.

Vice Mayor Yanni asked if it was going to be left open for the public to go down and turn around, then why does it need to be abandoned or turned over to the developers.

Mr. Rodriguez stated that they presented a site plan originally to the Commission that included a T-turn and so on. He stated that there was a gain of one unit, but it was a give and take with the Commission originally. And he stated that they agreed on improvement to the street with access easements, utilities, drainage usage, and streetscapes.

Vice Mayor Yanni asked what the repercussions would be if the Commission did not give the developers what they asked for.

Mr. Rodriguez stated that they would lose one unit, and he stated that the site development order would be rescinded with that because it would not meet the same site plan requirements that were approved previously.

Mr. London stated that a lot of work has been done and relies on the approval of the vacation, and if it would be rescinded they would be back to square one. He stated that the abandonment was essential to the approval of the site plan.

Vice Mayor Yanni stated that he remembered when it was passed two years ago.

Mr. London stated that in November 2006 the Commission approved another 6 month extension, which takes them to May.

Vice Mayor Yanni stated he did not recall if they approved vacating the cul-de-sac.

Mr. Rodriguez stated that the project originally came up for the end of July, where the site plan was basically approved, pending the approval of the vacating of the cul-de-sac. At that time, he stated, there were some conditions to be met that had to be included in the site plan. He stated that when the project came up for the 9/6/06 Commission meeting, the site plan that was presenting including the number of corrections that had to be done on the site plan. The other conditions that were requested had to do with engineering issues during the construction document phase or during the construction phase, or issues regarding home owners association documents, not directly related to the site plan itself.

Vice Mayor Yanni asked if they had one side of the property and somebody else had the other.

Mr. Rodriguez stated that the same owner had all the other side and had one of the properties on the north side. The remaining properties were owned by Dave Hyatt who owns Marina Village. He indicated that they own all the properties or collaborated with the owners around the cul-de-sac.

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There was discussion on what originally happened with the site plan approval. Mayor Parker stated that it was originally approved in November 2005. He stated that as part of the approval the Town had to vacate part of the property to make the site plan conform. He stated that the Commission did take a vote on the vacation, but indicated that it was never recorded because the developers were also to provide the Commission with an easement in exchange for the vacation. Additionally, Mayor Parker stated that his recollection was that part of the consideration for getting the vacation was that the developers were supposed to complete redo the street on Garden Street and they were supposed to completely redo the sidewalks on both sides so that the sidewalks matched the sidewalk on the west side of Sea Grape. Mayor Parker then stated that the developers were actually putting sidewalks on property that they did not own.

Mr. Rodriguez stated that the timing was confusing. He indicated that the sidewalks were not to be done until the project would be done.

Mayor Parker stated that he understood that; but he stated that he was in favor of them doing the project, but he was concerned about whether or not the project will be done. He stated that last November the Commission gave them an extension, and now in April the developers were asking for another extension. He stated that as far as he could tell, nothing had been done.

Mr. Rodriguez stated that they were not asking for an extension, they were just asking for a vacation of the cul-de-sac to be approved by the city so they can submit for permit.

Mayor Parker indicated that he was still concerned that it has taken such a long time. He stated that, based on a suggestion by the Town Attorney, the developers can give the Commission the easement required and then the Town can execute the vacation that the developers require. He explained that the Town Attorney can hold both documents in escrow until the project is completed and they have done the improvements they are supposed to do, so that the Town gets their quid pro quo. Mayor Parker stated that he was concerned about giving the vacation and then may never get the easement or may never get the project or may never get the roads.

Mr. Rodriguez stated he did not think there was an issue with that; the issue was with their ability to submit for permit and get out of zoning and into Broward County. He restated that it requires the vacation of the cul-de-sac.

Mayor Parker asked Mr. Bell if Town has the vacation and the easements, and they are held in escrow, will that enable the developers to get the permits from Broward County.

Mr. Bell stated that Zoning would be the one signing off, and since he is zoning as long as he would have an ok from the attorney's office that meets the intent of the issue.

Mayor Parker stated that if they are held in escrow, they are not recorded, and the Commission would not completely lose their interest in the land until the project is completed in CO.

Mr. Rodriguez Indicated that part of the development order is that it be recorded.

Mayor Parker supposed that if the documents were held in escrow until it is completed then that would meet the development order. He asked the Town Attorney if this was so.

Town Attorney Cherof stated that he would think it would because that provision would be in favor of the Town, not in favor of the developers.

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Mr. Rodriguez stated that they also have to go through Depep and they may require that the developers show the proper surveys and the recordings of that. He said if it could be done, then they would do it.

Mr. Rodriguez indicated that the easements were submitted.

Mayor Parker disagreed. He explained that if the easements were timely submitted, the vacation would have been recorded.

Town Attorney Cherof stated that between the last Commission meeting and this Commission meeting, their new attorney prepared and submitted those documents. He stated that he forwarded them to staff, and then sent to Kevin Hart to confirm the legal descriptions.

Mayor Parker asked the Town Attorney if they held the documents in escrow pending the completion of the property, would that be acceptable.

Town Attorney Cherof stated it was acceptable from the Town's point of view, but stated he could not answer whether it was acceptable for the developers because they may have other contingencies or conditions they have to satisfy with lenders or with the County.

Discussion continued on whether or not the documents should be held in escrow.

Town Attorney Cherof stated that the Commission could also modify the development order or add an additional condition that the issuance of the last two certificates of occupancy are conditioned upon recording those documents, or providing the easement.

Mayor Parker stated that his concern was that the Commission would record the vacation and then the developers may never do the improvements. He explained that he wants assurance that the improvements will be done.

Vice Mayor Yanni suggested a 6 month time frame. He stated that if the improvements were not made within 6 months then they could take it back.

Mayor Parker again asked if it was ok to put the documents into escrow.

Mr. London stated that he would have to speak to the lender. He said if there were financing problems then, he would have a problem.

Mayor Parker stated that they could come back to the Commission in that case.

Mr. London stated that he did not have a problem giving the Town the protection they want, he was concerned whether putting them in escrow would suffice because he did not know if he was in a position to do so.

Commissioner McIntee asked if they had financing.

Mr. London stated that they have to go back in for new financing because of the time frame, and because they do not have the abandonment yet. He stated that, in concept, as long as they could get their building permits and financing they would have no problem placing the documents in escrow for the construction.

Mayor Parker stated that if they could not get financing without the easements, they could come back to the Commission.

Mr. London again stated that he did not want to commit to that at this time.

Mayor Parker stated he understood that and stated that they have not recorded the vacation, and he stated that he was not going to allow the vacation to be recorded unless they could come to some sort of an agreement.

Mr. Bell stated that their site plan is going to expire in May, and there would be no way for them to have the building permit pulled and have that issue addressed by the end of May. He suggested at the May meeting they could recommend an extension as long as they provide money. He indicated that it was similar to what was done with Oriana. He stated they have to come back at the end of May.

Commissioner McIntee stated that he just heard Town Attorney Cherof say that they everything done now, but he wanted to know what's been going on for the last 6 months. He said as soon as pressure was put on, they started to get things done. He stated the Town was giving the Garden Court developers free land.

Mayor Parker disagreed and stated that the Town was not giving them free land. He stated that there was an exchange of land. The developers give the Town an easement in exchange for a vacation. He stated that in addition there would be street improvements.

Commissioner McIntee stated that he is wary of the fact that the developers do not have financing. Mayor Parker stated he understood, and indicated that he was not prepared to authorize the recording of the vacation until some sort of language is worked out that protects the Town, either through a bond or something else.

Mayor Parker stated that there was a motion on the table to rescind the authorization to vacate any property to the developers.

Commissioner McIntee stated that they could come back with packages that the Commission could see in black and white, and the Commission can then confirm the documents. He stated that if the developers have to go through the site plan again, it is not the Commission's fault; it is the developers.

Mayor Parker motioned, seconded by Vice Mayor Yanni, to amend Commissioner McIntee's original motion rescinding the authorization, and instead stay the vacation until the Commission has assurances acceptable to the Commission that the conditions of the vacation have been met.

Mayor Parker stated, he believed, he was trying to do the same thing as Commissioner McIntee, which was not recording a vacation at this time.

The amendment to the motion passed 3-2 with Commissioner McIntee and Commissioner Silverstone dissenting.

The motion as amended passed 3-2 with Commissioner McIntee and Commissioner Silverstone dissenting.

Mayor Parker made a motion, seconded by Vice Mayor Yanni, to direct staff and the developers to enter into negotiations to resolve our impasse and come back on May 22<sup>nd</sup> with an amended development order and an extension.

Discussion regarding building permits occurred.

Jim Bell stated that the developers could begin work on some of the improvements.

The motion passed 3-2 with Commissioner McIntee and Commissioner Silverstone dissenting.

David Hiott, 2705 Worthum Lane, Kissimmee, stated that he has been hostage by the Town to comply with the development order on Garden Court. He stated that Brad Townsend told them to develop their property in conjunction with the approved development order for Garden Court. He stated they cannot go any further because they cannot get a C of O for two reasons. He stated that they had to put in the water service for an outside developer. He indicated that they developed that property at the behest of former Commissioner David Wessel. He stated they have done everything the planning department has asked. He stated they asked for a water service that was not granted; he stated that it took them 7 months to get through an ordinary plan approval between the Town, the County, and the City. He stated he's sitting on a developed project that he cannot put people in.

Commissioner McIntee stated that he had been to Mr. Hiott's location and saw that an area that was supposed to be a parking space was developed into a garden 3 x 14 feet. He stated that Mr. Hiott did that without permission.

Mr. Hiott stated he would take the garden out, but that he developed the garden on the instruction of the then development manager.

**J                    *Discussion and/or action regarding Town Manager Robert Baldwin letter dated April 06, 2007.***

Town Attorney Cherof read the letter sent by Town Manager Robert Baldwin regarding his resignation.

Mayor Parker called for a motion to accept the letter of resignation.

Commissioner McIntee discussed a conversation with Mr. Baldwin where Mr. Baldwin stated he could be talked into postponing his resignation to 90 days. Commissioner McIntee indicated that he wanted to have Esther Colon to continue on as Town Manager for the 90 days and possibly continue on after that.

Mayor Parker asked Assistant Town Manager Colon if she were willing to continue on as Town Manager temporarily.

Assistant Town Manager Esther Colon read a letter that stated her thanks to the elected officials and community members. She stated that this meeting would be the last she is attending as Assistant Town Manager. She stated that she would return to her post as the Town's finance director on 4/24/07.

Commissioner McIntee asked Assistant Town Manager Colon if she would stay in her temporary position for 90 days.

Ms. Colon stated she would consider it, but she stated that she needs to do what is best for her. She further stated that she would need time to decide if she will accept for the 90 day term.

Mayor Parker stated that the motion to accept Baldwin's resignation failed for lack of a second.

Mr. Cherof stated that even if Mr. Baldwin's motion for resignation is not approved, Mr. Baldwin can still leave.

Vice Mayor Yanni motioned, seconded by Commissioner McIntee, to accept Mr. Baldwin's resignation in 90 days, unless it is rescinded.

Commissioner McIntee stated that the Town car is at Mr. Baldwin's home, and he stated that the car should be brought back to the Town.

The motion passed 5-0.

Mayor Parker scheduled for the 4/24/07 meeting discussion and/or action regarding how to proceed further.

#### **14. TOWN MANAGER REPORT**

Sandra Booth of the Master Plan Steering Committee wanted to invite the Mayor and Commission to attend the meeting with the students from the Design Institute of Fort Lauderdale on 4/11/07 at 2:15 p.m... Additionally, the Planning and Zoning Board is requesting that the Town Attorney, or his designee, attend their 5/16/07 meeting to address questions they have on procedures.

Commissioner Clark asked Mr. Novak what was expected of the Mayor and Commissioners at the meeting with the design students.

Town Attorney Cherof answered, stating that they can all attend, but cannot speak because it is not a public meeting. He further recommended against Commissioners answering questions or giving speeches at this meeting since it is not posted as a public meeting.

Commissioner McIntee stated that they should not bend the footprint that is 20 x 60 foot and they can make it oval, round, square, etc. He stated his direction to the students would be to take the 20 x 60 footprint and build whatever they want that fits the footprint.

Mayor Parker added that he wants the pavilion to be used as a bandstand for concerts if possible.

Commissioner McIntee motioned, seconded by Mayor Parker, that the Commission direct Paul Novak to go back to the Master Plan Steering Committee and tell his students that they are to design whatever they want or think is best within the 20 x 60 foot space with the idea that it could possibly be created to serve as a bandstand.

Discussion followed regarding the space available and the design selection process.

Commissioner McIntee wanted to know, at the 4/24/07 meeting, how much money do we have left from original monies to complete the project, and how much have we spent.

Assistant Town Manager Colon answered Commissioner McIntee's request, stating that the request was made by Commissioner Silverstone. She stated that she believed Commissioner Silverstone had the figures.

Commissioner Silverstone stated that the challenge grant amount for the beach pavilion was \$176,548.00, and to date 42,864.29 has been spent on the project, and the cost consistency of Sun Sentinel advertising, Michael Faye Landscaping, and architectural fees, and engineering fees. The

original grant was 676,558.00; 550,000.00 was spent on portals and 176,548.00 was allocated to the beach pavilion.

Commissioner McIntee stated that the footprint was actually 20 x 80.

Commissioner McIntee amended the motion, seconded by Mayor Parker, that the Commission direct Paul Novak to go back to the Master Plan Steering Committee and tell his students that they are to design whatever they want or think is best within the 20 x 80 foot space with the idea that it could possibly be created to serve as a bandstand.

The motion passed 5-0.

Commissioner Silverstone stated that the project will be great for the Town. Stated he would like to see this as a model for what will be in the future.

Assistant Town Manager Colon stated that the total budget for the project was 580,000.00 of which 176,500.00 is grant funds.

The Planning and Zoning Board requested that town attorney attend their 5/15/07 meeting. Assistant Town Manager Colon asked approval from Town Attorney Cherof, and he stated that he or an associate would attend.

Acting Town Manager Colon asked about the approved funding of \$1800.00 for North Leisure Gardens that was granted on the condition that the Town had beach access for the public residents. She then stated that North Leisure did not have public access to grant the Town, and stated that they are paying \$1800.00 to Corniche, so Corniche is the one granting the Town access, not North Leisure. She indicated that the gate has a pass, so the public will not have access.

Vice Mayor Yanni stated that the people of North Leisure would have access.

Mayor Parker suggested making a motion amending the instructions stating that the Town would pay the \$1800.00 to North Leisure to pay the bill.

Commissioner McIntee made a motion, seconded by Mayor Parker to for the Town to pay \$1800.00 to North Leisure to pay the bill to Corniche.

Town Attorney Cherof stated that the back drop to the expenditure of public funds is that there is a public purpose. He stated that what they made a motion on was not a public purpose, but instead a limited purpose that only serves the interest of a small number of individuals. Ultimately, the general public will not have an interest.

Mayor Parker withdrew his second and made a suggestion that the Town negotiate with Corniche to gain general access.

Commissioner McIntee stated that the Commission needed to send a letter to North Leisure indicating that they acted in haste.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to send a letter of apology explaining what happened to North Leisure as well as a move to negotiate with Corniche. The motion passed 5-0.

## **15. TOWN ATTORNEY REPORT**

A. Posting of pictures (Ordinance 2007-05) – Government Access Channel  
(Town Attorney-tabled from 3/13/07)

Town Attorney stated that there is no legal prohibition against the posting of pictures of sexual offenders on the public access channel. He stated that if they do that they should try to do that as a link on the Sherriff's Office site or the Attorney General's site and in both cases proceed with extreme caution before posting a picture; i.e., have several levels of confirmation that the picture of the right person is posted. And rather than posting the picture on the public access channel, they should instead give directions on how to access the sexual predator's link.

Commissioner McIntee asked Fire Chief Sievers about a car accident and wanted a copy of the report. Com. McIntee stated that the Chief's car does not have any markings stating that the vehicle serves Lauderdale-By-The-Sea.

Mayor Parker asked if there was a problem placing the Lauderdale-By-The-Sea logo on the Chief's car. Fire Chief Sievers stated he would look into it.

Commissioner McIntee wanted to know where the accident happened.

Fire Chief Sievers stated the accident occurred on Commercial Boulevard heading to the Fire Safety Building.

**16. COMMISSIONER COMMENTS**

Vice Mayor Yanni addressed the moratorium on Sea Colony. He stated that the Town did not give them permission until the outcome of the election.

Mayor Parker stated that Mr. John Thompson, on behalf of the CIC, requested that the Town impose a moratorium for a Charter amendment. Mayor Parker stated that the Commission thought it was a good idea. The Town Attorney stated that the moratorium had to be placed on the agenda for the following meeting, so they did, and the day before the meeting Sea Colony came in with a site plan. The administration refused it because they had already declared a zoning in progress.

Vice Mayor Yanni stated that the Commission wanted them to build 15 stories, and when they did, they were to put a beach access for people on the west side of the street. He stated that problems started with CIC's petition.

Commissioner McIntee discussed Mr. Arker's actions at the Master Steering Committee. He stated that he viewed the tape and discussed Mr. Arker's inappropriate behavior. Commissioner McIntee stated the behavior was offensive and insulting. Commissioner McIntee stated that Mr. Arker should be removed for attacking a member of the audience.

Commissioner Silverstone stated that Town Topics' advertisements should be placed in the issues in an appropriate time frame. He praised the Easter sunrise service. He stated he is excited about the Town's webpage. Commissioner Silverstone stated that the Town should not give land away (in regards to the Garden Court issue). He declared that the Town is very special and wanted to advocate the Town coming together over issues.

Commissioner Clark said he hoped everyone had a good holiday. He stated that the sunrise service was a great success, and said that the kids had a great time at the Easter egg hunt.

Mayor Parker stated that he hoped everyone had a wonderful Easter and Passover, and he said the Town had a great Easter egg hunt. He noted that the Easter Bunny handed out 300 special eggs, and stated that the Town had one of the best sunrise services it's ever had.

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

**18. FUTURE AGENDA ITEMS**

**April 24, 2007**

- A. Building Department Permit Income and Building Department Studies (Development Services-tabled from 3/13/07)
- B. Discussion and/or action regarding the Town's water system to Fort Lauderdale (Town Manager-Town Attorney-tabled from 3/13/07)
- C. Elected Official Pay Raise {Resolution} (Town Attorney-tabled from 3/13/07)
- D. Parking Space Report (Development – tabled from 3/27/07)
- E. Sidewalk Standards (Walter Keller and John Olinzock – tabled from /27/07)

**June 12, 2007**

- A. Discussion and/or action regarding the selection of a professional architect for the Commercial Blvd. Beach Pavilion (Walter Keller - tabled from 3/13/07)
- B. Presentation of a professional planner consultant (Pending RFQ's - tabled from 3/13/07)

**July 17, 2007**

- A. Discussion and/or action regarding the possibility of establishing a Town Ethics Committee (Commissioner McIntee - tabled from 3/13/07)

**18. ADJOURNMENT**

Commissioner McIntee made a motion to adjourn meeting. There was no objection, and Mayor Parker adjourned the meeting at 10:39 p.m.

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

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

Town Commission Regular Meeting Agenda  
April 10, 2007

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Mayor Oliver Parker

**ATTEST:**

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Tina Angelone, Town Clerk

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Date