

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

REGULAR MEETING

MINUTES

Town Commission Meeting Room

4501 Ocean Drive

Tuesday, May 8, 2007

7:00 P.M.

1. CALL TO ORDER, MAYOR OLIVER PARKER

Mayor Parker called the regularly scheduled Commission meeting to order at 7:02 p.m. Vice Mayor John Yanni, Commissioner Chuck Clark, Commissioner Jerome McIntee and Commissioner James Silverstone were present. Town Manager Esther Colon, Town Attorney James Cherof, and Town Clerk Tina Angelone were also present.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The pledge of Allegiance was recited.

3. INVOCATION, TOWN CHAPLAIN

Father Handrahan delivered the Invocation.

4. PRESENTATIONS

A. Deputy of the Month (Chief Gooding, Broward Sheriff's Office)

Chief Scott Gooding introduced Deputy Roberto Caceres stating that Deputy Caceres has been with the Broward Sheriff's Office for approximately five (5) years. Chief Gooding continued to say that during the early morning hours, a call was dispatched concerning two (2) suspicious males near Basin Drive. Deputy Caceres observed the two suspects on the dock, and when he attempted to stop them they fled, and they began discarding items believed to be stolen from a business on Basin Drive that had just been burglarized. The property was returned and two (2) career criminals were arrested. Deputy Caceres was named Deputy of the Month for April 2007.

B. Firefighter/Paramedic of the Month (Chief Sievers, Broward Sheriff's Office)

Reserve Firefighter Tony Burnett was honored as Firefighter/Paramedic for April. Firefighter Burnett was instrumental in getting a support unit located at Station 36, in service and ready to respond. He stated that this unit will be used to transport reserve firefighters to alarms within the Town of Lauderdale-By-The-Sea. Reserve Firefighter Burnett has taken the lead and inspired his fellow reserves and crew members. Chief Sievers concluded by saying that Reserve Firefighter Burnett has proven that he deserves the honor of being nominated Employee of the Month for April 2007.

C. South Florida Water Management

Tammy Moore discussed the water restrictions currently in place. On April 13, she stated that they entered phase II restriction. She explained that water is only allowed to be used for outdoor

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irrigation two days a week. She stated that more than 50% of the water in the South Florida region is utilized for outdoor irrigation. Because there has been a drastic decline in the well fields, lakes, canals, and aquifers, they have entered Phase II. Ms. Moore asked that municipalities help the South Florida Water Management District to educate the citizens and compliance and enforcement initiatives that are currently underway. She supplied information pertaining to water restriction. She mentioned Florida Statute 373.609 that clearly states once the Water Management declares water restrictions; they are asking that counties, as well as municipalities and law and code enforcement assist with compliance. Ms. Moore stressed that she is here because of the dire need for the residents to be informed and abide by the restrictions set forth.

Commissioner McIntee stated that there were many senior citizens and stated that there is additional cost on the water bills that many seniors cannot afford.

Ms. Moore stated that she understands that the additional cost is a surcharge being added if the resident exceeds a certain allocated amount of water. She stated that they supply water to municipalities and it is up to them to make sure that all residents and business have the water that they need.

Commissioner McIntee asked for a letter regarding the surcharge and why it is being charged.

Ms. Moore said she would work with the City of Fort Lauderdale and the City of Pompano Beach concerning this surcharge and indicated that she would report back to the Town Manager no later than tomorrow afternoon.

Commissioner Silverstone asked Ms. Moore to explain the various phases.

Ms. Moore explained that Phase I is moderate, Phase II is extreme, and Phase III is what is considered necessary to save the resources. Ms. Moore said she will be going to the governing board on Thursday to ask for the implementation of Phase III restrictions for Palm Beach and Broward Counties. The governing board will review all data provided by the staff and will also review all options. She said there has not been enough rainfall to move us away from this critical situation.

Vice Mayor Yanni mentioned the moratorium on development in Town in regard to the water restrictions and asked Ms. Moore to comment.

Ms. Moore stated that contractors and developers are utilizing water, but she stated she could not say if they were using too much. Ms. Moore continued to say that there is a stringent permitting process and contractors and developers must identify and allocate the amount of water needed for their project.

Mayor Parker thanked Ms. Moore for coming.

5. REPORTS

- A.** Status report from Economic Development Task Force by David Nixon, reference CRA.

David Nixon, 4317 El Mar Drive, reported on discussion with County staff and County Commissioners. Mr. Nixon reminded the Commission that they had already passed the finding of necessity study and that was sent out to nine (9) different departments. Mr. Nixon received a

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letter from Kathy Randazzo in the urban development planning group concerning requests and assured the Commission that none of these requests were of anything to be particularly concerned about. He stated that he spoke to consultant Charles Siemon who did not see much of anything to worry about either. He said that what is apparent is that when the fiscal constraints get tighter within every municipality and county there will be a certain amount of jealousy concerning another Community Redevelopment Agency (CRA) being established. He explained that people who already have a claim check are not particularly excited about others wanting to receive a claim check. Mr. Nixon emphasized that some people will not be receptive to it.

Mr. Nixon said that Vice Mayor Yanni set up a meeting with Commissioner Keechl. Mr. Nixon stated that he, Vice Mayor Yanni, and consultant Charles Siemon met with Commissioner Keechl in an effort to understand the "Blight." Mr. Nixon stated that Commissioner Keechl was very comfortable with the concept of "Blight" being a statutory issue not a blemish issue. Mr. Nixon stated that the goals and objectives of the Community Redevelopment Agency (CRA) is to revitalize Lauderdale-By-The-Sea, and he stated that he feels good about Commissioner Keechl's support.

Town Manager Colon wanted to know if it was going to cost the Town more money to prepare these responses.

Mr. Nixon said he did not know, but stated that if there was an additional amount, it would be minimal and would not shock anyone.

Town Manager Colon stated that the Commission should be aware it.

Commissioner McIntee stated that there were two (2) major points of concern for him. Commissioner McIntee said he believes these two (2) points are almost insurmountable, and he was not willing to spend one more dollar on this until they get an approval. Commissioner McIntee said there was a budget limit of \$50,000. Commissioner McIntee said he was concerned about paragraph four (4) referencing the findings not demonstrating a substantial number of deteriorated structures, which is the first part of a statutory definition of a blighted area. Additionally, section 1886 of the Broward County Administrative Code indicates that substantial means twenty percent (20%) or more. Commissioner McIntee said this means to him that one (1) out of every five (5) buildings have to be deteriorated, and he stated that he does not see one (1) out of five (5) buildings in this Town deteriorated. He stated that for him this is a huge flag. Commissioner McIntee read a cover letter from the human services department of Broward County that stated they had reviewed the blight and slum study for the Town of Lauderdale-By-The-Sea, and if deteriorated properties are redeveloped, they may no longer be able to re-house the households currently in residence. It further indicated that redevelopment will increase rental costs in a time when affordable housing is quickly diminishing. Commissioner McIntee stated that he is starting to feel very bad vibes about all of this.

Mr. Nixon responded and stated that Charlie Siemon is doing that analysis and should have it completed to everyone's satisfaction in the next week or so. Mr. Nixon said there is no intention of booting people from their homes and he wanted to put that issue to rest.

Commissioner McIntee stated it is common sense for a building owner redeveloping his apartment complex to want more money for rent. The Community Redevelopment Agency (CRA) is indirectly providing funds for redevelopment.

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Mr. Nixon emphasized that the CRA cannot do any of that, and if the owner renovates the building and expends the funds, he stated that they could be sure he would raise the rent. However, if the owner gets a grant to help improve the quality of life, he is not under such pressure to raise the rent.

Commissioner McIntee remained unconvinced that an owner would not raise the rent.

Mayor Parker congratulated Mr. Nixon and Mr. Siemon on a job well done. He said that most of the properties that would be redeveloped would be resort properties rented on a daily basis and would not be a concern of affordable housing. Mayor Parker indicated that he does not see anything wrong with per diem rates going up.

6. APPROVAL OF MINUTES

A. February 13, 2007 Regular Meeting

Mayor Parker asked for any additions, deletions or corrections to the minutes of the regularly scheduled Commission meeting of February 13, 2007.

Commissioner Silverstone motioned, seconded by Commissioner Clark, to approve the minutes of February 13, 2007 as written. The motion passed 5-0.

B. February 27, 2007 Regular Meeting

Mayor Parker asked for any additions, deletions or corrections to the minutes of the regularly scheduled Commission meeting of February 27, 2007. Commissioner Silverstone motioned, seconded by Commissioner Clark, to approve the minutes as written. The motion passed 5-0.

C. April 24, 2007 Regular Meeting

Mayor Parker asked for any additions, deletions or corrections to the minutes of the regularly scheduled Commission meeting of April 24, 2007.

Commissioner Silverstone motioned, seconded by Commissioner Clark, to approve the minutes as written. The motion passed 5-0.

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

Lawrence "Peanuts" Wick, 4900 North Ocean Boulevard, praised Deputy John Stabile for his handling of an incident occurring at the beach near Aruba Beach Café. Mr. Wick inquired about beach bathrooms and said they are needed. Mr. Wick commented on tonight's agenda specifically consent agenda items a, b and c, the variance request at 1603 West Terra Mar Drive, and the issue of Mayor Parker versus Stuart Dodd.

Diane Boutin, Windjammer Resort Beach Club at 4244 El Mar Drive, discussed the overlay district stating that it was first brought up when the aging structures were not legally conforming. She stated that the Town was trying to spur renovations and keep the downtown viable and to improve the hospitality district. Some properties have not seen construction in thirty-five years (35) and some houses in the past five (5) to eight (8) years. Ms. Boutin added that no one wants to get rich, but certainly want to be safe and go towards greener properties. She stated that the overlay district allows a little bit of flexibility and is a good thing for the time.

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John W. MacMillan of 223 Commercial Boulevard discussed how over thirty-three (33) years ago he bought a private island, and out of the 30,000 islands, the government of Ontario decided that only 2,500 would allow residents on them. He stated that this was done a long time ago with the idea of being progressive, but protecting the whole environment at the same time for everyone. He said it is worth a lot more than it was when he first purchased it. Mr. MacMillan said he was reporting this to the Commission because he believes they may be looking at what we have in Lauderdale-By-The-Sea wrongly. He said that if the Town is kept more open and friendly, the real estate values would go up considerably. He stated that people will desire to be here, and they are worrying about something that is not really a problem. He added that the Town needs to continue growing at a moderate pace, keeping the height levels low. He stated that the Town will enjoy more profits, but more importantly a great lifestyle.

Bob Terrien, 5100 N Ocean Boulevard, commented on Old Business Item F regarding public comments on Town related matters. He stated that he does not think this is working. He added that since March 2006, public comments have become personal attacks on what is commonly referred to as the "old guard" Commission. In the past, he stated, Commissioners have had no problem with the way meetings have been conducted or with public comments. Mr. Terrien indicated that, to him, these personal attacks are all aimed for political purposes and for the next election. Mr. Terrien believed the wisest thing to do is hear public comments at the end of the evening. Mr. Terrien also commented on the Old Business Item G. Mr. Terrien was at that meeting, and stated he did not see any influence asserted on anyone's comments.

Leo Holt, 1581 Terra Mar Drive, commented that he has lived on Terra Mar Island for the past nineteen (19) years, and he advised the Commission of the gross abuse being indicted of 1603 West Terra Mar Drive. Mr. Holt said he and his neighbors are objecting to the house as it is out of proportion for the Island, it is substantially higher than it should be, and there is a safety issue because of its proximity to the Intracoastal Waterway and the seawall. He concluded, stating that the house was built with total disregard to the neighbors.

Maureen McIntee, 1612 SE 21 Avenue, stated that five (5) old guard commissioners have cost the Town more money in legal fees by fighting against the will of the people than those 762 petition signing citizens who stood up and are fighting for what they believe is right. She discussed the money the old guard cost the taxpayers.

Frank Herrmann, 4244 Seagrape Drive, stated that he would always choose good over evil and humorous talk over spiteful talk. Mr. Herrmann said he was tired of being threatened by law suits that are constantly being talked about by the Commission. Mr. Herrmann said there should be no more trash talk.

Stuart Dodd, 232 Imperial Lane, asked if there was any advance on getting someone to operate the time clock. Mr. Dodd commented on Old Business Item 12 and wanted to know why the Town's water system should be given away to Fort Lauderdale. Mr. Dodd questioned Commissioner Clark stating that Commissioner Clark is in favor of fourteen (14) stories, but speaks out against developments in Pompano Beach. He asked how far back do the old versions of public comments go. He asked for the opportunity to speak again concerning agenda items when it is an item that is contentious to deserve ones full attention. Mr. Dodd asked that this be included back in the rules concerning public comments.

Barbara Cole, 221 Washington Avenue and 5000 North Ocean Boulevard, commented on Old Business Item G and said she recollected at the last Master Plan Steering Committee meeting a letter was sent to the students again warning them not to pay any attention to what they were told. Ms. Cole asked Town Manager Colon about thermostat settings in government buildings,

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and stated that attendees just get colder and colder each time they come to meetings. Ms. Cole said when she moved to Lauderdale-By-The-Sea, it was a tourist destination; it was quaint. She said it was a gem. Ms. Cole emphasized the Town's quality of life and said they could commiserate with Pompano Beach, but shouldn't forget the residents of the Town. Ms. Cole said there should be a cohesive plan for the Town.

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

- A. ORDINANCE NO. 2007-07:** AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE BY THE SEA, FLORIDA AMENDING CHAPTER 20, "UTILITIES," OF THE TOWN'S CODE OF ORDINANCES CREATING A NEW ARTICLE V TITLED "WATER CONSERVATION REGULATIONS" CREATING SECTIONS 20-46 THROUGH 20-52, PROVIDING FOR WATER CONSERVATION REGULATIONS DURING PERIODS OF WATER SHORTAGES; PROVIDING FOR DEFINITIONS, ENFORCEMENT PROCEDURES AND PENALTIES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND EFFECTIVE DATE. (First Reading April 24, 2007)

Town Attorney Cherof read the Ordinance 2007-07 by title only.

Mayor Parker opened the public hearing. No one came forward, and the public hearing was closed.

Commissioner Clark motioned, seconded by Commissioner Silverstone to adopt Ordinance 2007-07 on second reading.

Mayor Parker stated that he had a couple of problems with the ordinance the way it was presented. He stated that the first violation should be a warning and agreed that for the second violation there should be a \$50.00 fine. He continued and stated that a third violation should be a \$100.00 fine and the fourth violation should carry a \$250.00 fine. Mayor Parker stated that he does believe anyone should go to jail for a violation. Mayor Parker suggested amending the ordinance to reflect these outlined amounts. Vice Mayor Gianni seconded the amended motion.

Commissioner Silverstone said he believes the first offense should be a warning, the second offense should be a \$50.00 fine and the third offense should be a \$250.00 fine.

Mayor Parker said he would accept those terms, but he wanted the jail time to be removed.

Commissioner Silverstone questioned section 20-52 and asked Town Attorney Cherof who would have the authority to declare a water shortage emergency.

Attorney Cherof stated that the South Florida Water Management has that authority. An ordinance could be drafted to allow a municipal the right to declare a water emergency. HE indicated that procedures and guidelines would have to be set for making that determination.

Mayor Parker asked if the ordinance could be amended to agree with the emergency.

Attorney Cherof indicated that that is a power delegated to the district under state law.

Commissioner Silverstone asked about the phrasing.

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Attorney Cherof stated that Commissioner Silverstone was interpreting the ordinance correctly, but there has been an enacting ordinance determining what standards to be used to declare a water emergency.

Mayor Parker amended his motion as outlined by Commissioner Silverstone. Vice Mayor Yanni agreed to the amended motion.

Commissioner Silverstone asked Mr. Cherof if the Town had the authority to place a lien on a property if the fines are not paid. Attorney Cherof said that would be a code enforcement action and would be enforced by a county court judge. Mr. Cherof explained that in twenty-five (25) years or so of prosecuting municipal ordinance violations for cities all over Broward County, he had never seen a county court judge impose incarceration for a violation. Additionally, he has never heard of a municipality actually seeking it. He stated that the language is more of deterrent than something that would actually be exercised. Mr. Cherof stated that he would not request incarceration unless specifically directed by this Commission in prosecuting a violation of one of the Town's ordinances.

Vice Mayor Yanni referred to Commissioner McIntee's statement regarding surcharges on excessive water usage and expressed concern over what method is being used for the assessment. Vice Mayor Yanni said staff should be directed to look into this because he believes a lot of residents are being taken advantage of concerning their water billing.

Mayor Parker said he would allow a motion to direct Town Administration to look into it.

Commissioner McIntee agreed with Mr. Cherof's comments that no one is going to jail and believes the ordinance is clear. He further stated that the ordinance must be substantial.

Commissioner Silverstone desired to withdraw his amendment to Mayor Parker's amended motion and asked to leave the ordinance as written concerning incarceration.

Commissioner Silverstone moved, seconded by Commissioner Clark, to amend Mayor Parker's amended motion.

Mayor Parker asked if there would be a problem with a county court judge collecting fines.

Town Attorney Cherof said regarding cases in county court against property owners there is no difficulty with the court's order being enforced. There are other types of violations where people are transient in nature and fines never get paid.

Mayor Parker reiterated that he did not want the provision for jail time in the ordinance.

Vice Mayor Yanni asked if this was a citation by code enforcement, would they have to appear in county court, or would they appear before a code enforcement board.

Town Attorney Cherof stated that the procedure is to enable enforcement through a county court, not the code enforcement board.

Mayor Parker asked the Town Clerk to call the roll on the amendment to his amendment. The motion passed 4-1 with Mayor Parker dissenting.

Mayor Parker asked the Town Clerk to call the roll on the amended motion with provision of a first violation is a warning, a second violation is \$50.00 and third and subsequent violation is a

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fine not to exceed \$250.00 and/or imprisonment in county jail for a term not to exceed sixty (60) days. The motion passed 4-1 with Mayor Parker dissenting.

9. ORDINANCES (1st Reading)

- A. ORDINANCE NO. 2007-08:** AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE MUNICIPAL CODE OF ORDINANCES CHAPTER 23 TAXATION, ARTICLE V, EXEMPTIONS TO PROVIDE FOR AN INCREASED ADDITIONAL HOMESTEAD EXEMPTION FROM AD VALOREM TAXES LEVIED BY THE TOWN OF LAUDERDALE-BY-THE-SEA FOR QUALIFYING PERSONS 65 AND OLDER PURSUANT TO THE PROVISIONS OF SECTION 196.075 FLORIDA STATUTES; PROVIDING FOR A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. (Public Hearing May 22nd)

Attorney Cherof read Ordinance 2007-08 by title only.

Mayor Parker stated that last November the voters approved the Constitutional Amendment allowing for a second homestead exemption for those 65 and older. Mayor Parker said there are income requirements requiring the homeowner to make less than \$24,000 per year. Mayor Parker commented that he believes we should take care of our seniors.

Vice Mayor Yanni motioned, seconded by Commissioner McIntee, to adopt Ordinance 2007-08 on first reading.

Commissioner Silverstone indicated that he wants to raise the exemption to \$75,000.

Town Manger Colon clarified the issue saying this is the first time the Commission is addressing increasing the exemption to 50,000. The \$25,000 homestead exemption is in addition, making it a total of \$75,000. She stated that this for the Town only, and indicated that the County has yet to pass their \$50,000 homestead exemption. The Town's portion of the tax bill will be \$75,000.

The motion passed 5-0.

Mayor Parker announced that the second reading and public hearing of Ordinance 2007-08 would be heard at the regularly scheduled meeting of May 22, 2007.

- B. ORDINANCE 2007-09:** AN ORDINANCE OF THE TOWN OF LAUDERDALE BY THE SEA, FLORIDA AMENDING THE TOWN CODE OF ORDINANCES SECTION 24-68, SIGN REGULATIONS BY ZONING DISTRICT, TO CLARIFY WHEN ROOF SIGNS ARE PERMISSIBLE; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE. (Public Hearing May 22nd)

Attorney Cherof read Ordinance 2007-09 by title only. Mr. Cherof explained that there is a definition of roof signs in the code already and this provides if a store front business takes over adjacent or adjoining space that is vacated by another business, the new business is entitled to either sixteen (16) additional square feet of wall or awning sign area. He continued stating that if the store front business is taking over the entire adjoining space vacated by another business, the new business may use the existing roof signage that the old business used provided that the structure of the sign has not been altered.

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Commissioner McIntee motioned, seconded by Vice Mayor Yanni, to adopt Ordinance 2007-09 on first reading.

Mayor Parker asked if painting the sign over would be allowed.

Town Attorney Cherof answered yes. He explained that a business is allowed to alter the face, but not the sign structure.

Commissioner Silverstone asked the Town attorney if verbiage could be added allowing that the sign conform to other existing signs in terms of lettering, etc.

Attorney Cherof stated he did not understand that the Town had a code provision that mandated conforming lettering space by space along the store front.

Jim Bell clarified and stated that there is nothing in the Town Code about conforming. He said the lettering could be different. He stated that there is just a maximum square footage and sign lettering sizes.

Mayor Parker stated that the only difference would be the lettering style.

The motion passed 5-0.

Mayor Parker announced that the second reading and public hearing would be heard at the regularly scheduled Commission meeting of May 22, 2007.

10. CONSENT AGENDA

- A. Special Event Permit/ Aruba Beach Bash (John Olinzock – Municipal Services)
- B. Special Event Permit/ Villas by the Sea Grand Opening (John Olinzock – Municipal Services)
- C. Special Event Permit / Village Grille's Jazz on the Square (John Olinzock – Municipal Services)
- D. The City of Fort Lauderdale has applied for an Engineering Permit for the Town to perform work in the public Right-of-Way. The Code allows for a 2% reduction in the permit fee if an independent engineer provided by the applicant, in this case the City of Fort Lauderdale, is approved by the Town. Staff is requesting Town Commission approval of an independent engineer form the City of Fort Lauderdale to allow the City of Fort Lauderdale a reduction in the Right-of-Way Engineer permit fee from 4% of the permit cost to 2% of the permit cost (Jim Bell – Development Services)
- E. Special Event Permit / Franklin Wedding (John Olinzock – Municipal Services)
- F. Special Event Permit / Morgan Wedding (John Olinzock – Municipal Services)

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- G.** INTERLOCAL AGREEMENT: with Broward County providing for division and distribution of the proceeds of the Local Option Gas Tax imposed by the Broward County Local Option Gas Tax Ordinance.
- H.** INTERLOCAL AGREEMENT: with Broward County providing for division and distribution of the proceeds from the Broward County Additional Local Options Gas Tax on Motor Fuel Ordinance.
- I.** INTERLOCAL AGREEMENT: with Broward County providing for division and distribution of the proceeds from the Broward County Fifth Cent Additional Local Options Gas Tax on Motor Fuel for Transit.

Commissioner Silverstone motioned, seconded by Vice Mayor Yanni, to adopt Items A, C, D, E, F, G, H and I. The motion passed 5-0.

Commissioner Clark motioned, seconded by Commissioner Silverstone, to remove Item B from the consent agenda.

Town Attorney Cherof advised the Commission that it was not necessary to propose a motion to remove an item from the consent agenda.

There was no objection; Mayor Parker ordered the item removed.

11. RESOLUTION

There were no resolutions for consideration.

12. OLD BUSINESS

- A.** Discussion and/or action regarding the Town's water system to Fort Lauderdale – requesting to be tabled for 5/22/07 meeting (John Olinzock and Town Attorney – tabled from 3/13/07; tabled from 4/24/07)

John Olinzock advised that staff wished to table this to the next Commission meeting.

Mayor Parker ordered this matter be tabled to the regularly scheduled Commission meeting of May 22, 2007.

- B.** Report on the allocation of parking lots to serve the various restaurants in the Town's core area (per Commission directive at 3/27/07 meeting) (Jim Bell – Development Services) – tabled from 4/24/07 meeting

Development Services Director Jim Bell read the report on additional parking. He referred to code that indicated that since 1995, businesses have been required to meet parking requirements when adding additional customer service area(s). Mr. Bell said that when Mulligan's, Aruba's and Athena's had their sidewalk cafés approved, they needed to lease spaces from the Town to meet parking requirements. He said that Aruba is unique in that they have actually obtained additional parking outside of what they would normally be required to have. He reported that they also lease spaces from the Town between Harbor Drive and Commercial Boulevard. He stated that the code does provide for businesses to obtain privately

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leased spaces with the stipulation that they enter into an agreement with the Town making the Town aware and that there is a fifty (50) year lease.

Mayor Parker questioned the fifty (50) lease requirement.

Jim Bell stated that if a business rents from a private entity, they must enter into a lease agreement with the Town for fifty (50) years.

Vice Mayor Yanni asked if this agreement would be entered into with the property owner or the Town.

Mayor Parker asked for the section of the code Mr. Bell was referring to.

Attorney Cherof read code section 24-5.155.

Mayor Parker stated that Jim Bell is misinterpreting the code and asked Attorney Cherof for his opinion.

Attorney Cherof stated that the answer would not come from this section of the code alone, and indicated that they would need to look at procedure and interpretation in the past to see if there is anything additional in the code. Attorney Cherof deferred to Town Planner Walter Keller since he had done the parking study.

Mr. Keller stated that when the code was changed in 1995 to amend the parking regulations, the Town was having a difficult time with the businesses because almost no business could qualify for a change of use or to get Certificates of Occupancy for new businesses. He stated that several things were done to give the downtown businesses some flexibility in addressing their parking requirements. He said that provisions were put in the code to allow someone needing additional parking to be able to find parking specifically for the increased intensity. He further explained that provisions were put in the code to allow for someone to secure a lease for spaces within four hundred (400) feet of their property that they could count toward their parking, but the requirement was that there needed to be a long term lease in order for it to be counted toward required parking. He explained that any long term lease agreement had to be approved by the Town Attorney. He said that he does not know anyone who has found space and did it through this method.

Mayor Parker asked Mr. Bell if Aruba Beach Café had sufficient parking.

Mr. Bell said yes.

Mayor Parker stated that it makes no sense for the code to stipulate that someone would need to enter into a fifty (50) year lease to acquire parking above and beyond what they are required to have. Mayor Parker asked if Aruba Beach Café would need to have additional parking for the sidewalk café and reiterated that he did not see the need for a fifty (50) year lease.

Commissioner McIntee stated that there are four (4) restaurants in Town: Aruba Beach Café, Mulligan's, Athena's, and Village Grille. He stated that none of these four (4) need parking spaces for their interior customer service because they are grandfathered. Commissioner McIntee asked for a report on how many parking spaces each of these establishments are obligated to have for their exterior customer service areas. Additionally, Commissioner McIntee wanted documentation on where these spaces are secured in Town. Commissioner McIntee

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asked Town Manager Colon to make certain that staff clearly understands what he is asking for so he can make further determination.

Mayor Parker stated that Commissioner McIntee's ignorance is glaring, and he obviously does not understand what is going on. He said that the Town has not leased existing parking spaces to most of these businesses, but rather had given credits.

Commissioner McIntee asked Attorney Cherof if the issue or his request was inappropriate.

Attorney Cherof said it was not. Mr. Cherof continued to say that in this forum a Commissioner could ask staff to undertake some additional research on any issue.

Commissioner McIntee reiterated that he wants the documentation he previously requested and wants the report in a month.

Commissioner Silverstone acknowledged that the Mayor could reprimand a Commissioner and asked Attorney Cherof if he could motion to reprimand the Mayor.

Commissioner Silverstone motioned, seconded by Commissioner McIntee, to reprimand Mayor Parker. The motion passed 5-0.

Commissioner Silverstone said he had a problem with letters that had been sent with regard to providing documentation concerning fifty (50) year leases. Commissioner Silverstone asked for a freeze concerning the letters and asked Attorney Cherof what action was needed to accomplish this.

Attorney Cherof indicated he did not think any action was required and believes that Commissioner Silverstone had just provided appropriate direction to administrative staff. Attorney Cherof stated that in the absence of another Commissioner providing additional direction or contrary direction, which is what Mr. Bell will probably do. Attorney Cherof explained to staff that any enforcement action is going to be abated pending Commission review of off-site parking requirements.

Mr. Bell proposed that these issues be brought up at the ULDR as code amendment issues allowing the Commission to review the matter at that time.

Vice Mayor Yanni stated that the Town has four (4) striving restaurants downtown bringing business into the Town. He stressed that the Commission should be trying to help these businesses instead of trying to make it difficult for their customers to find parking places. He continued to say that this situation has been going on for twenty (20) years, and expressed that if something is not broke, then do not fix it; let it go.

Commissioner McIntee assured everyone he is pro-business, and he stated he would do whatever it takes to solve the parking problem even if it means opening up free parking on Commercial during the evenings. He said there are a lot of ways to solve this problem and that if everyone works together it will get solved.

Mayor Parker addressed Mr. Bell and stated that, with the exception of Athena's which rents 10 spaces, the other restaurants do not rent specific spaces. He said that they are given credit for spaces, and they do not block out spaces, and they cannot point to specific spaces.

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Jim Bell responded that Mulligan's leases ten (10) spaces at the municipal parking lot in the front of Town Hall and agreed with Mayor Parker's assessment of the situation.

Mayor Parker asked Attorney Cherof if he would need an opportunity to research the requirement concerning the fifty (50) year requirement for excess parking.

Attorney Cherof stated he would like to look at the code provision to see, not simply what it says, but how it has been applied. He indicated that how it has been applied is pertinent to its interpretation. Mr. Cherof stated he would report to the Commission at their next meeting.

Mr. Bell said that the obvious issue here is the intent of the fifty-year (50) lease and the real intent is for any new required parking.

Town Planner Keller stated that no research was necessary. He said the reason for the fifty (50) year lease was long term and a mechanism to ensure required parking. Mr. Keller said to his knowledge no one in Town has ever used that.

Town Manager Colon stated that when someone says what the intent is, and staff cannot interpret a code, and even the Commission has a problem interpreting the code, then perhaps the code needs to be made clearer. Ms. Colon stated some businesses have exceptions and some do not. She noted that staff is going to bring this forward to the Town Attorney in an effort to try and establish uniformity in agreements.

Mayor Parker stated Athena's wanted to lease the spaces at night, so they could get those spaces. He said those spaces are earmarked so that people did not have to put in tickets, and it had nothing to do w/ the outdoor café.

Town Manager Colon stated that these are the clarifications needed in order not to put staff in the situation of being in the middle.

Attorney Cherof advised that these are not legal issues, they are Town policies.

Attorney Cherof stated that types of business should be provided with parking relief, and not just restaurants. He said he would need policy direction on that, and there is no way to draft anything until the Commission weighs in on that.

Town Manager Colon stated that valet parking will be brought up as well.

Mayor Parker stated that when Mulligan's came to Town, they took a store front and made it into a restaurant. He said that when they established their sidewalk café, they either had to lease ten (10) spaces or cut back on the customer service area inside.

Vice Mayor Yanni mentioned valet companies and asked Town Attorney Cherof if there was a possibility of adopting an ordinance requiring that valet companies must give parking spaces back when they and/or if they go out of business.

Attorney Cherof advised that they probably could not do that. He indicated that this would be an impairment of a contract. He explained that the issue goes back to a policy level of who will be provided parking within the Town. He stated that currently there is no permitted use to engage in operating a commercial parking lot, but the lease arrangements approximate that.

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Commissioner Silverstone questioned the hours that meters are bagged on Commercial Boulevard west of Bougainvillea Drive, and asked Acting Municipal Services Director John Olinzock for clarification.

Acting Municipal Services Director John Olinzock stated he referred to the Commission meeting minutes, which stated that the hours are from 7:00 a.m. on Monday morning to 6:00 p.m. on Saturday evening.

The Commission expressed that they believed these times to be incorrect and directed Town Manager Colon to revisit the audio tapes to determine whether or not these times were correctly recorded in the meeting minutes.

Mayor Parker said if indeed these times are correctly recorded in the minutes, the ordinance would need to be amended.

- C. Discussion and/or action regarding allowing drive-thru businesses in the Town and whether Staff should begin code amendments to allow drive-thru businesses (Jim Bell – Development Services) (tabled from 4/24/07)

Mayor Parker stated that the item confused him because there are already at least three (3) drive-thru businesses in Town, namely SunTrust Bank, Burger King and Dr. G's Pharmacy.

Development Services Director Jim Bell stated these are nonconforming uses and are grandfathered. Mr. Bell said that currently there is nothing in the code that addresses what the Town would typically have with a drive-thru business in terms of queuing, stacking, access, amount of lanes, etc.

Mr. Bell stated that there was an applicant present at this meeting who is requesting a drive-thru business.

Mr. Bell stated that there are no standards for this conditional use to bring before the Commission.

Mayor Parker stated that Mr. Bell and the applicant could work out these details prior to addressing the Commission.

Vice Mayor Yanni asked what type of business is asking for the drive-thru services.

Mr. Bell responded that it was a coffee shop.

Applicant Chris Weaver came forward and told the Commission that he is in the process of negotiating a purchase with the owners at 251 Commercial Boulevard where the former First Church Christian Scientist was located. Additionally, he stated that he is in the process of negotiating with Starbucks Coffee Shop to put a very nice coffee shop and espresso bar in that part of Town.

Mayor Parker asked about the parking lot.

Weaver clarified that the church and reading room has a parking lot on the north side of the two (2) buildings which are part of the actual real property.

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Commissioner McIntee said he believes Starbuck's is a great corporation and would also be great for the Town and he stated that he would be behind whatever was necessary to help Mr. Weaver obtain his drive-thru.

Mayor Parker expressed concern about putting in a drive-thru in an area that backs up to a residential area.

Mr. Weaver stated that these discussions are premature, and indicated that they are not even close to having a site plan. Mr. Weaver stated that the code does not provide for drive-thru business in Lauderdale-By-The-Sea and the businesses that are currently in Lauderdale-By-The-Sea are grandfathered. He stated that currently drive-thru service is prohibited and new businesses are prohibited from doing so.

Vice Mayor Yanni stated that he believes Starbuck's would be a great asset to the Town and assured Mr. Weaver that the Commission would do everything possible to help get it done.

Mr. Bell said he would bring this back to the Commission at their first meeting in June.

D. Review of special events permit application process (John Olinzock – Municipal Services) (tabled from 4/24/07)

Acting Municipal Services Director John Olinzock referred to the application form that is a revision of the application form currently being used. Mr. Olinzock recommended to the Commission that staff begin using this revised application because it covers all kinds of categories that municipal services experiences when they receive applications.

Commissioner Silverstone motioned, seconded by Commissioner McIntee, to approve the use of the revised form.

Vice Mayor Yanni asked if the application lead-time was thirty (30) or sixty (60) days.

Mr. Olinzock stated the ordinance requires sixty (60) days.

Commissioner Clark expressed that he didn't know why this became a commission issue, and he stated that it should be an administrative issue and staff should be able to approve their own forms.

Town Manager Colon stated that the Commission has wanted to be informed in the past.

Commissioner Clark stated that the approval was not needed from the Commission.

Mr. Olinzock informed the Commission that one of the forms is from the Broward County Fire Marshall and is a mandatory form that is an attachment to the Town's application.

Mayor Parker asked if this application would apply to Town sponsored special events.

Mr. Olinzock answered yes.

Mayor Parker wanted to know who fills out forms for Town sponsored special events.

Commissioner McIntee replied whoever is assigned the event.

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There was no further discussion. The motioned passed 5-0.

- E.** Offsite Public Works Facility, Notice of Building Safety Inspection Program (John Olinzock – Municipal Services) (tabled from 4/24/07)

Commissioner Silverstone motioned, seconded by Commissioner McIntee, to proceed with the inspection of the building. The motion passed 5-0.

- F.** Discussion and/or action regarding public comments on town related matters (Commissioner McIntee) (tabled from 4/24/07)

Commissioner McIntee stated that his issue has been resolved, and he removed the item.

- G.** Discussion and/or action on inappropriate influences of architecture students by Mayor Parker regarding the pavilion foot of Commercial (Commissioner McIntee) (tabled from 4/24/07)

Commissioner McIntee stated that this is old information, and he stated that he sees no reason to pursue it further. He stated that he has been assured by Sandra Booth that professors and students were advised to disregard any advice from any Commissioner. Commissioner McIntee withdrew this item.

- H.** Discussion and/or action on internal affairs complaints to Broward Sheriff's Office and request for polygraph to Chief Gooding Broward Sheriff's Office (Commissioner McIntee) (tabled from 4/24/07)

Commissioner McIntee said he spoke with Internal Affairs today and gave a sworn statement. He also offered to take a polygraph and indicated he would expect the fire department personnel to do the same thing.

- I.** Discussion and/or action regarding the cost of the Fourth of July celebrations and bids for any cost over \$15,000 (Commissioner McIntee) (tabled from 4/24/07)

Commissioner McIntee questioned Commissioner Clark on whether or not there has been a bid for the barge and the fireworks.

Commissioner Clark stated the barge and the fireworks have been bid, and he explained that they are awaiting the third bid.

Commissioner McIntee said he received a call from a former volunteer worker and was told that the former worker was not happy about how the money was being handled for the event. He stated that last year there was no check and balance.

Commissioner Clark stated that to his knowledge that is not true, and he stated that all the cash that came in was transferred to finance and deposited in the bank.

Town Manager Colon advised the Commission that she understands the Town has received confirmation and she indicated that the Town is piggybacking the bid for the fireworks, but there has been no confirmation for the barge.

Commissioner Clark said he was aware of that and is awaiting fuel calculations.

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J. Discussion and/or action on Commissioner's comments at meetings
(Commissioner McIntee) (tabled from 4/24/07)

Commissioner McIntee motioned, seconded by Commissioner Silverstone, to rotate Commissioners' comments allowing each Commissioner to have the last say.

Commissioner McIntee said that the Town Clerk can set up who was last/next.

Mayor Parker stated that the charter advises that the mayor votes last, so he thinks he should speak last for commissioner comments.

Commissioner Silverstone said he was not familiar with that section of the charter and disagreed with Mayor Parker's opinion.

Town Attorney Cherof advised that this issue is not addressed in the charter or the code.

In order to research the code regarding this matter, Mayor Parker recessed the meeting at 9:15 p.m.

Mayor Parker reconvened the meeting at 9:22 p.m.

Town Attorney Cherof indicated that the Mayor does vote last.

Mayor Parker asked if the mayor would chair the meetings.

Town Attorney Cherof stated the section provides that the Mayor/Commissioner shall preside at all meetings of the Town Commission and perform all duties consistent with his/her office and shall have a voice and vote in the proceedings, but no veto power. The Mayor/Commissioner shall vote on the roll call.

Commissioner McIntee stated this is not a roll call and had to do with Commissioner Comments.

Mayor Parker stated that it also had to do with chairing the meeting, and he said as chairman, he wants to speak last. Mayor Parker said that Commissioner McIntee would use it to tell lies.

Commissioner Silverstone stated that he was wrong about the mayor not voting last. He said that he believed that the subject is Commissioner Comments, and since they are equal as Commissioners they should rotate the order of comments.

Vice Mayor Yanni stated that they have been doing it this way for forty (40) years, and he said that speaking last would not give anyone an advantage.

The motion failed with Vice Mayor Yanni, Commissioner Clark, and Mayor Parker dissenting.

K. Discussion and/or action regarding inviting all faith based denominations to
Lauderdale-By-The-Sea to deliver the invocation (Commissioner Silverstone)
(tabled from 4/24/07)

Commissioner Silverstone directed Town Manager Colon to write a letter to all the faith based denominations located in Lauderdale by the Sea to inquire if they are interested in delivering the invocation, and he stated that it should be rotated. He stated that it shows that the Town is making an attempt to do this, and he thinks that that says a lot.

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Vice Mayor Yanni stated that it was wrong, and that they would be making a circus out of this. He said that the Town has a priest that comes each week and he said that Howard Weston was here for years. He said if something is working then why change it.

Commissioner Clark stated that he doesn't have a problem changing this; however, he said that Father Handrahan has been appointed for the duration of this Commission, and he said that he did not want to ask him to step aside. He said that if he wants to do that willingly, that is another issue. He said that he favors leaving him in the position until March 2008, and at that time if they still want it changed, they can do it then.

Commissioner McIntee stated that someone should ask Father Handrahan if he wants to stay on, and he said that it's a new environment out there. He further stated that there are a lot of Jewish people in Town who are not represented along with Protestants and Muslims. He wanted to know why the Town is saying that it should only be the Catholic minister. He said he can't accept that because they are a public body who are supposed to be impartial. He said when we show that we stick to one faith, it becomes a problem. He then provided an example of most major fire and police departments who have multiple individuals who are their chaplains. He said that the diverse population should be represented.

Mayor Parker stated that he spoke to Father Handrahan about the issue and stated that he agreed to stay on until March of next year.

Commissioner McIntee stated that he would call Father Handrahan to make sure he wants to do it.

Vice Mayor Yanni asked what happens when they send letters out and get no responses and then go back to Father Handrahan saying that they received no response so now we want to keep you.

Commissioner Silverstone stated that the issue that Vice Mayor Yanni brought up was not his motion.

Vice Mayor Yanni said it could happen.

Commissioner Silverstone agreed. He said that the reality is they probably will not get responses, but it will show that the Town is trying to do this, and he pointed out that Father Handrahan would be in the rotation as well.

Vice Mayor Yanni stated that he never heard anyone complain about what they were doing.

Commissioner Silverstone stated that he was concerned because Father Handrahan did not show up on a few occasions and he heard that the Father may have been upset because he got delayed.

Commissioner McIntee, seconded by Commissioner Silverstone, motioned to table the issue until the next meeting to discuss this issue with Father Handrahan. The motion passed 3-2 with Vice Mayor Yanni and Mayor Parker dissenting.

- L. Per Commission direction at the 4/10/07 meeting, Staff is providing the Commission an update on the time needed for preparation of revisions to the proposed Unified Land Development Regulations. (Jim Bell – Development Services)

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Commissioner Silverstone motioned to accept the dates.

Commissioner Silverstone asked Development Services Director Bell what time he was looking at for this to take place.

Mr. Bell stated that the actual thing would be on July 24, which would be a workshop meeting before the regular meeting.

Mayor Parker asked for the dates.

Jim Bell stated that it was in the back-up. He indicated that the July 24th meeting would be at 6 p.m.

Commissioner Clark stated that he did not think it would be enough time.

Mr. Bell stated that on June 1st, he would provide information based on timeline.

Mayor Parker asked Town Attorney Cherof if the timeline was sufficient.

Town Attorney Cherof stated that if it worked for the Commission, then it was fine.

Commissioner McIntee asked Mr. Bell if it was laborious.

Mr. Bell indicated that he did not work on it from the beginning.

Commissioner McIntee asked Town Attorney Cherof if there was any rush to get this done.

Attorney Cherof said that he thinks that there is. He then mentioned the merger of the land development regulation has been under review for about four (4) years and he said the sooner it's reconciled the better.

Commissioner McIntee stated that maybe they should look at it in September then they would have more time to work on it.

Attorney Cherof stated that it should be whenever it is convenient to the Commission.

Commissioner McIntee asked Mr. Bell if August was a good month to put it together.

Mr. Bell deferred to Town Manager Colon.

Town Manger Colon stated that whenever the Commission wants it, they will be ready. She said they would be doing land development and budget at the same time.

Attorney Cherof indicated that depending on what happens in June at the State level, he said that they could have a very busy budget session. He indicated that he would not recommend doing the land development during budget time.

Commissioner McIntee suggested putting land development at the end of the budget; he suggested bringing it back during the first meeting in September, so they have the month of August to put it together.

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Mayor Parker stated that they should leave the schedule the way it is.

A short discussion regarding when to deal with the land development followed.

Commissioner Silverstone stated that the Town Manger should assign it; he stated that whatever works for her, they should follow.

Mayor Parker suggested that instead of having the Town Commission have the meeting on July 24th.

Commissioner Silverstone stated they should stick with it until the Town Manger sees fit to change it.

Commissioner Clark stated that he would like a hard copy ten (10) days before the workshop.

Mr. Bell said that he would be sure to provide the copies by July 15th.

Town Attorney Cherof said that the schedule works for him.

Mayor Parker ordered to follow the timeline and have a workshop on July 24th.

- M.** Discussion and/or action regarding recovery of court costs from Stuart Dodd in the case of Oliver Parker v. A. Stuart Dodd, et al., Case No.: 07-00196(11) (Mayor Parker)

Mayor Parker read the letter from his attorney that discussed a letter from Mr. Schulmiester. He then read a letter from Mr. Schulmiester, which discussed the invoice to the city with his cost and indicated that the committee would not pay more than \$500.

Mayor Parker stated that he has been reimbursed for attorney's fees and cost, and he said that since he has been reimbursed, his right to seek costs is now subrogated to the Town and the Town stands in his shoes, and he stated that he does not have the authority to say that they are not going to recover the cost because he could be liable to the Town.

Commissioner Silverstone asked for clarification of the cost.

Mayor Parker stated that it was court costs.

Com. McIntee motioned, seconded by Commissioner Silverstone, to recover the cost from Stuart Dodd and the Committee. The motion passed 5-0.

- N.** Discussion and/or action regarding BSO letter of complaint dated 4/11/07 and event report dated 4/7/07 (Mayor Parker)

Mayor Parker read the letter of complaint. He explained the incident and read what the report noted. Mayor Parker stated that he believed the behavior to be reprehensible. And he wanted to reprimand Commissioner McIntee for behavior unbecoming a Commissioner. Mayor Parker called for a motion to reprimand Commissioner McIntee.

Commissioner Clark said the issue was beaten to death in a previous meeting, and he said that it is under investigation and suggested that the Commission wait for the investigation to be completed.

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Commissioner Clark, seconded by Vice Mayor Yanni, motioned to table the issue pending the internal affairs report. The motion passed 3-2 with Commissioner McIntee and Commissioner Silverstone dissenting.

13. NEW BUSINESS

A. PUBLIC HEARING – Variance for 1603 West Terra Mar Drive (Jim Bell – Development Services)

Attorney Cherof swore in the people who wished to testify.

Development Services Director Bell stated that the application was for approval of a variance allowing the building footprint of the property at 1603 West Terra Mar Drive to exceed the maximum building coverage requirement. He pointed to the site plan submitted to the Board of Adjustment. He said that the revised site plan only requires a variance for the building footprint to be exceeded.

Mr. Bell stated that the owner of the property, Mr. Bayman, had built a house, and in February of 2007, Staff did a site inspection of the property and found that three items have not been met. He said that the previous development services director approved the building plans that indicated these various things could be exceeded. He said that staff asked the owner to revise the plans into compliance as best as possible. He said to date, the applicant has met two of the three requirements: the amount of the impervious area and the overall maximum impervious area coverage, which includes the building footprint, the driveway, and the porch. He stated the applicant has not been able to correct the actual building footprint coverage because it is far under construction. He said that the applicant is currently 4% over the required building coverage. HE said the required building coverage is 40% and he said the building is at 44%.

Mr. Bell stated that staff recommends approval of the variance because the plans were preapproved and the building is pretty far along. He indicated that the Board of Adjustment, at their April 17th meeting, recommended approval in a 4-0 vote in addition to denial of the other variances.

Commissioner McIntee asked for the square footage of the lot.

Mr. Bell noted that it was 10,454 square foot.

Commissioner McIntee asked how many square feet is a house that would be legal; he asked if it would be 40% of that.

Mr. Bell stated that a legal house would be 4182.

Commissioner McIntee asked the square footage of the house on the property now.

Mr. Bell stated that it was 4684.

Commissioner McIntee stated that there was approximately an additional 550 additional square footage.

Mr. Bell stated that it was 502 square feet.

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Commissioner McIntee then computed the figures and noted that it was not 4%, but was instead 13%.

Mr. Bell stated that his calculations were 4.8 %.

Commissioner McIntee stated that his figures were wrong.

Commissioner McIntee calculated figures again and wanted to know where he was wrong.

Mr. Bell stated that it was 40% of the lot, and stated that it is looked at in terms of the lot.

Commissioner McIntee asked what the pervious area was supposed to be.

Mr. Bell stated that the pervious area was to be 40%.

Discussion of the percentages followed.

Commissioner McIntee asked if there is any question that the owner of the house built the house 600 square feet then he should have without permission. He stated that if the owner tears down the 600 square feet, then he would support it, and if he doesn't then he wants to deny the variance.

Commissioner Silverstone motioned, seconded by Com McIntee, to deny the variance.

Attorney Cherof said that it was premature to do that because it was a quasi judicial proceeding.

Mayor Parker stated that after the evidence is presented, he would see if they still want the motion.

Attorney Cherof stated that the applicant has the burden to establish the legal basis on the variance; he stated it is not Staff that has the burden.

Mayor Parker addressed Mr. Bell's memo with him. He referred to the variance issue in the code. He then read from the memo. He asked Mr. Bell what the "hardship" was, and he wanted clarification on whether the house was built before he requested a variance.

Mr. Bell explained the 2006 Staff approved building plans that allowed these figures. He stated that he thinks previous staff followed old town requirements. He said that the setbacks and the heights were followed correctly, but the other areas regarding the pervious area were not.

Mayor Parker asked Attorney Cherof if this met the definition of a hardship.

Attorney Cherof said that he did not think it met the definition because the property owner may not rely upon an error made by Staff; he said that there is a precedent in Town to establish that rule of law.

Mayor Parker asked if there was any liability to the Town.

Attorney Cherof stated that he would not want to comment on the liability until or if there is a claim.

Mayor Parker asked if they should be concerned.

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Attorney Cherof stated yes, they should.

Attorney Cherof stated that the property owner could make a claim of equitable estoppels meaning that in reliance upon actions in the Town because he proceeded and expended a huge amount of money in compliance to what his direction was; he stated that it would not be grounds for a variance.

Commissioner Clark stated that he understood that the applicant has the burden to establish all the correct data.

Mr. Bell stated that hardship is not the only criteria.

Commissioner Clark said that the architect should have found out all of this without reliance on staff.

Attorney Cherof agreed with Commissioner Clark, and said that the burden is on the property owner and their professional consultants.

Commissioner Clark asked if there was any way for the owner to knock off 500 or 600 feet off.

Mr. Bell stated that he is not at liberty to say.

Leo Holt, 1581 West Terra Mar, said that the confusion may have been from the plans received from Town hall. He said that the plans have been changed, but in reality it was not. He said that plan A shows the house to be 5297 square feet footprint; and landscape 2700 feet. He said that Plan B showed the footprint as being changed, but in reality it was not. He said that plan C is different as well. He said that that they are all wrong. He said the building is over 28% over 4188 square feet. He said the building still stands at 5297. He discussed the square footage of the pervious area. He said that there is a building that is 28% oversized and he does not have 40% pervious area required by the codes. He said that he cannot agree that the variance should be approved.

Commissioner McIntee asked how he knew the footprint is 5100 square feet if the plans show 4600.

Mr. Holt explained that in one of the plans from City Hall showed that. A discussion of figures followed. He indicated that the building had never been changed. He asked what right the owner had to waive the \$1,000 fee. Discussion followed.

Mayor Parker stated that he thinks the missing 500 some square feet comes from the paved deck and covered patio, which would give the area under roof, the real footprint, 5200 square feet.

Vito Ciairro, 1755 East Terra Mar Drive, stated that he is supporting Leo Holt and his problem. He said that he believes someone goofed. He discussed the 25 foot setback rule and stated that the house looks to be at a 14 ½ foot setback. He said that Mr. Holt spoke to one of the inspectors who told him about the seawall, and the inspector said it was not his problem. And he stated that he believed someone goofed.

Tom Carr, 254 Miramar, stated that he did not want to testify.

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Vice Mayor Yanni asked Mr. Carr why the Board of Adjustment voted for the variance.

Mr. Carr stated that he worked the calculations based on the plans given to them. He said that he also came up with over 50% of the property being structure. He said the owner was also asking for a circular drive and a double drive for his two car garage. He said that agreed to eliminate the patio in the back that ran up to the seawall and the walkway to the north side of the house. He indicated that he made a count of the driveways and six (6) out of (16) had straight drives into the house. He stated that Jeff Bowman stated that there was a mathematical error in the original plans and that the patio under roof did not count as part of the house; and he said that he accepted his math that it was only 4 % or 5 % greater than what was allowed.

Mr. Joesph Couriel, 222 N. Tradewinds Ave, stated that they went on staff recommendation. He stated that the architect used "funny" math. He said that he did not want to be perceived as anti-everything, so he followed staff recommendation.

Attorney Cherof stated that notwithstanding the content of the Staff's memo; he said the Staff's memo does not address the issue of property of the property owner having to comply with all seven (7) elements of the code to be granted a variance. He further stated that they do not meet the seven (7) provisions of the code for being granted a variance. And, he stated that had the property been built in old town, then the coverage issue would not be an issue; it would comply with the old Town provisions of the code. He stated that they should have as many properties in the consolidation of the Town being in compliance with the code. He stated that there is a reason for expediting the reconciliation of the code, so they would not have this issue.

Commissioner Silverstone renewed his motion, seconded by Commissioner McIntee to deny the variance.

The motion to deny the variance passed 5-0.

- B.** Discussion and/or action regarding issuing residents warnings first before a citation if they are in violation of water restriction rules (Mayor Parker)

The issue was resolved at the 2nd reading of Ordinance 2007-07.

- C.** Discussion and/or action regarding moratorium of buildings due to water emergency (Commissioner McIntee)

Commissioner McIntee asked Attorney Cherof how they could create a moratorium in support of the water emergency in southern Florida.

Attorney Cherof stated that moratoriums are appropriate when the Commission has directed Staff to undertake a study that would result in the zoning code change.

Commissioner McIntee asked if a zoning code change was necessary for a temporary situation.

Attorney Cherof stated that it is necessary.

Commissioner McIntee motioned to direct Staff to establish a zoning code change for a nine (9) month moratorium on any kind of new structures being built or site plans being approved.

Attorney Cherof stated that what Commissioner McIntee is looking for is for both staff and the Town Attorney's office to determine what the factual and legal foundation would be for imposing a moratorium.

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Commissioner McIntee motioned, seconded by Silverstone, to place moratorium.

Vice Mayor stated that he thought that water management deals with new construction and how much water they were going to use, and if it was too much, they were denied.

Commissioner McIntee stated that his theory is to stop anyone asking for the water because there isn't the water to give out, but they're obligated to give the water out if they start. So he's asking for nine (9) months to catch up and then go back to normal.

Vice Mayor stated that they got in trouble before for putting a moratorium on a building.

Mayor Parker asked Attorney Cherof if they could impose a moratorium to conserve water.

Attorney Cherof stated that that is not likely.

Mayor Parker asked if they could pretend to be considering a zoning change when they are not.

Attorney Cherof said no.

Mayor Parker stated that given the comments of Commissioner McIntee that he wants to do it in order to preserve water, and given that there are no zoning changes that they are considering, he asked if it would just be a sham.

Attorney Cherof stated that he believes Commissioner McIntee wants to direct administration and staff and legal to explore whether or not there could be a foundation for establishing a moratorium. He stated that it would be a difficult foundation to establish, but not necessarily impossible. He said there could be conditions that natural resources are so scarce that additional building should not occur.

Mayor Parker stated that the South Florida Water Management District has stated that if someone applies they would negotiate for water, and if they demand too much, they would not let them build.

Attorney Cherof stated that it was premature for him to render an opinion on it, and he would rather gather the facts, assuming the Commission is on board.

Mayor Parker stated that he didn't believe they should tell people that they cannot build on a vacant lot, and he's unclear of the effect on Villas by the Sea and their plans to build.

Vice Mayor Yanni suggested waiting for the study and see what happens after that.

Mayor Parker asked for the report from Attorney Cherof for the next meeting.

Commissioner McIntee stated that he agreed with Attorney Cherof.

Attorney Cherof stated that the motion would be a directive to staff and the Town attorney to undertake the necessary research to determine whether or not a moratorium could be put imposed due to the water shortage.

The motion passed 5-0.

- D.** Discussion and/or action to remove overlay districts (Commissioner Silverstone)

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Commissioner Silverstone stated that he cannot support the overlay district and Marina district that is in effect. He wanted to know that per case law once there is an overlay district, if a developer is not allowed to build within that overlay district, he may have a right to sue. He asked Attorney Cherof if that was true.

Attorney Cherof stated that he did not recall that warning.

Commissioner Silverstone exemplified stating that if someone is allowed to build a two story house in the overlay district and they have to abide by the setbacks, but if one goes three stories, then they are allowed to take up more land, and he said that he didn't think that that was the intent of the overlay districts. He said the intent of the Town was to maintain a seaside village. He said he is against people finding ways to abuse it, and he motioned, seconded by Commissioner McIntee that the overlay district should be removed and then revised.

Vice Mayor Yanni stated that he doesn't see anything wrong with the overlay district. And he said that he thinks that there should be a 25 foot front setback with no variances. He said any site plan that was previously approved, doesn't have to bid by that, they have to abide by the overlay district, but any new construction should abide by the 25 foot front setback.

Mayor Parker stated that he said that he wanted to correct a statement regarding the overlay district. He stated in order to get the lesser setbacks, one has to comply with certain design criteria. He said the purpose of the relaxed setbacks is rewards for complying with the design criteria. He said that one of the biggest criteria is eliminating back out parking. He said that the reason why the taller buildings have the relaxed setbacks is because they have parking underneath.

Mayor Parker said that the setbacks should stay how they are, and he thinks that they need some flexibility to encourage new development.

Commissioner Clark stated that with regard to the current overlay district, he's opposed to throwing it away, but he is not opposed to revising it.

Commissioner McIntee stated that the overlay district is a joke. He said that Oriana was a disaster and a building on Seagrape that looks like army barracks. He said that Oriana is in the hospitality district, but there is not one room for rent in Oriana, and he asked what happened to hospitality. He said that he would bet anyone that a fire truck could not make a turn in the driveway.

Chief Sievers stated that the fire engine could not make the turn.

Commissioner McIntee said that they were told that they could make the turn. He asked Chief Sievers if he checked Oriana to see if they could make the turn.

Chief Sievers stated that the truck would have to pull straight in, but he stated that he would get the information in writing.

Commissioner McIntee asked the Town Clerk to place the issue concerning inaccessible roadways by the fire department at Oriana on the next agenda.

Discussion followed.

Commissioner McIntee suggested wiping out the overlay district and then rebuilding it the way they want it.

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Commissioner Silverstone restated that he wanted to eliminate it now, and then bring it back to make changes.

Mayor Parker asked Chief Sievers what the NFPA requirements are with regard to egress and regress of a fire truck to be discussed at the next meeting.

Chief Sievers stated that Oriana does meet the regulations, but stated that it does not have a turning radius.

Mayor Parker stated that he wanted to know, from a real expert, the exact rules and regulations are violated by whatever they find.

Chief Sievers stated that it does meet code.

Mayor Parker wanted to know, at the next meeting, if it also met Broward County codes.

Mayor Parker stated that he agreed with Commissioner Clark's idea about revisiting the overlay districts to see if they need fine tuning. He pointed out that until they adopted the overlay districts, the Town was not receiving any rebuilding. He said they went for decades without any rebuilding in the Town, and he stated that they adopted the overlay district to give builder's incentives to come and build.

Attorney Cherof stated that changes to the overlay district requires submission to the voters.

Discussion followed.

Commissioner McIntee stated that they should have a workshop.

Mayor Parker stated that they should have a workshop to discuss changes and propose the changes for next March.

Commissioner Silverstone stated that, based on discussion, he would not be able to repeal the overlay district and asked the Town attorney if this was correct.

Attorney Cherof stated that he it could not be done with the vote of the Commission at this point.

Commissioner Silverstone amended his motion to place on the agenda future workshops to review the overlay district.

Mayor Parker ordered the issue to be placed on the next agenda.

E. Discussion and/or action formalizing the Town Mission Statement (Commissioner Silverstone)

Commissioner Silverstone stated that the purpose for doing this is to clear up disagreements and get on the same page. He read from his draft of the mission statement. He asked the Commissioners to add, delete, etc. and have the Town Clerk to polish it up.

Mayor Parker suggested a grammatical correction.

Commissioner Clark congratulated Commissioner Silverstone on the mission statement.

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Mayor Parker directed the Town Clerk to bring the revised mission statement to the next meeting.

F. Report on public records request regarding tape referred to in 4/27/07
Commission Meeting (Mayor Parker)

He said that when the public records request was made, he received a response that no such tape exists. He asked the Town attorney what the legal recourse is in order to procure the tape. Mayor Parker stated that he believes the tape exists and he wants the tape.

Attorney Cherof stated that the first step is to make a formal request for the tape, which was done.

Mayor Parker asked if what would be next if Commissioner McIntee refused to produce the tape.

Attorney Cherof stated that production of a public record could be compelled through a court proceeding.

Commissioner Silverstone asked if the tape was considered a public record.

Attorney Cherof stated that it would be if it was made to perpetuate information regarding public activity, action of the Commissioner and the individual members of the Commission.

Mayor Parker stated that his public information request was redundant because Commissioner Clark verbally asked for the tape at the 5/8/07 meeting.

Mayor Parker asked the Town attorney if he needed a motion to direct him to procure the tape.

Attorney Cherof stated that he could, but it was his understanding that there was no tape.

Mayor Parker stated that he did not believe that there was no tape.

Discussion followed.

Attorney Cherof explained the process to procure the tape. He stated that the first step would be to have a more formal request for the record.

Mayor Parker directed the Town Attorney to draft a letter requesting the tape.

Commissioner Silverstone asked if this was under investigation, and asked why the Mayor wanted the tape.

Mayor Parker stated that he and Commissioner Clark made a public records request and stated that he wants the tape produced.

Commissioner Clark asked why it needed to go beyond two requests.

Attorney Cherof stated that there seems to be some uncertainty as to whether there is or is not a tape. He that he wanted to make certain that he documented the request.

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Commissioner McIntee asked what was considered a public record. He asked if there were items presented to the public that's part of the process of the governing agency.

Attorney Cherof stated that to the benefit of all of them, many of the things they have in their possession, in written form, in audio and video forms are not public records, but they can become public when they go public with it.

Mayor Parker stated that when the tape was alluded to, Commissioner McIntee made it a public record. He stated that furthermore, if Commissioner McIntee took a video at a Commission sponsored event then that becomes public record.

Commissioner McIntee disagreed. He stated that if the tape is out there, then what the reporter of the May 4th edition of the Pompano Pelican is pretty much the truth.

Commissioner McIntee motioned, seconded by Commissioner Silverstone, to overrule the chair's rule.

Commissioner McIntee read an article from the Pompano Pelican recalling the incident at the Easter Egg Hunt.

Discussion followed.

The motion passed 3-2 with Commissioner Clark and Mayor Parker dissenting.

Commissioner McIntee stated that it was a shame that Mayor Parker is trying to make something out of something that isn't.

Mayor Parker stated that he still wants the tape.

Commissioner Clark stated that it should be put to bed until Internal Affairs is done with its report.

Commissioner Clark motioned, seconded by Commissioner Silverstone, to table until the internal affairs investigation is completed.

The motion passes 4-1 with Mayor Parker dissenting.

The Commission motioned to extend the meeting for fifteen (15) minutes. Hearing no objections, the motion carried.

14. TOWN MANAGER REPORT

A. Payment of legal bill (Coker) (tabled from 4/24/07)

Town Manger Colon stated that there is an expense schedule for Oriana at the 12/12/06 meeting where the Commission approved \$10,000; currently there is a pending invoice for 4,800. She wanted approval to pay the last invoice in the amount of \$4,537.50.

Commissioner McIntee motioned, seconded by Commissioner Clark to pay what is indicated in the report. The motion passed 5-0.

B. Legislation Update (tabled from 4/24/07)

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Town Manager Colon read the report regarding the special session in June. She said the worst case scenario was 3+ million dollars and the second calculation is a little bit over 1 million dollars. She stated that if any action is taken that affects fiscal year 07-08, they have both scenarios.

C. Capital Improvement – 5 year plan (proposed budget 07/08)

Town Manger Colon reported that there is a master plan that involves \$80,000 of projected funds. She stated that in the current fiscal year, they have earmarked about 6.5 million dollars worth of projects, therefore there will not be enough money to continue the projected CIP plan outlined in the budget document. She stated that she needed agreement to move all the projects that have not been started over to 08/09 because they need to finish the Palm Club project, the last sanitary sewer that she wanted approval to begin negotiation, in addition, she stated that they need to slate everything over to 08/09 with the exception of the Bee Tree nourishment because they will be receiving grant funds and the A1A streetscape project which will also receive grant funds.

Mayor Parker asked about Seagrape Drive.

Town Manger Colon indicated that that would be continued next year.

Mayor Parker asked about the Jarvis Hall project.

Town Manger Colon indicated that that was a good project, and it would continue next year.

They continued through the list.

Mayor Parker motioned, seconded by Vice Mayor Yanni, to accept the report. The motion passed 5-0.

Town Manger Colon asked if they could remove the item regarding repairing the Terra Mar bridge. She stated it hasn't been done for four (4) years.

Commissioner McIntee motioned to remove it.

Commissioner Clark stated that it was a safety issue, and he indicated that Pompano is involved.

Town Manager Colon moved it over to another year.

Commissioner Silverstone seconded Commissioner McIntee's motion.

The motion failed 3-2 with Vice Mayor Yanni, Commissioner Clark, and Mayor Parker dissenting.

15. TOWN ATTORNEY REPORT

A. Discussion and/or action regarding resolution for Elected Official Pay Raise (Town Attorney- tabled from 3/13/07) (tabled from 4/24/07)

Attorney Cherof stated that he needed consensus to move forward with the resolution, and he stated he needed to know the amount of the raises as well.

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Commissioner McIntee motioned, seconded by Commissioner Silverstone, to look at a \$16,500 pay raise and wanted to check with other municipalities to see if it was in the ballpark. He stated that he wanted a report back in four (4) weeks to see if it was a reasonable figure. He said he wants the report during for the first meeting in June.

Mayor Parker stated that he thinks it's the wrong time to do a pay raise.

Commissioner Silverstone stated that he thinks it is worth it just to get more people involved.

Town Manager wanted to know how much more research.

Commissioner McIntee said he would review the report given to him by administration. He said that anyone who has put in the time into the Commission that they have deserve better for their retirement. He said that they deserve better in their retirement plan. He said that it may bring in more people to run, and he said that some people need the money; he said if it brings in bright candidates, then that's great and if it brings more money in retirement to those who have been there for years, he thinks that is good as well. He stated that he thinks that 16.5 is a reasonable figure.

Mayor Parker stated that raising pay would not raise pensions of people who have already served, and in his opinion, raising Commissioner salaries sends the wrong message, especially when the budget may have to be cut by a million or three million dollars.

Vice Mayor Yanni stated that eleven (11) years ago when he ran for commission, he did not know what the job paid because he didn't care. He said he did it because he wanted to help the community and work in the community and he said that he feels that way today. He noted that when there is a motion for a pay raise, he thinks there is a motive behind it. He said that he would go along to the next meeting to see what the report says, but he said he may not vote for a raise.

Commissioner McIntee stated that he wanted to withdraw the motion and let the pay raise die.

B. Discussion and/or action pertaining to Summons Case No. 06-021273(12) and scheduling of shade session.

Attorney Cherof stated that there is a copy of the complaint that was filed by the Volunteer Fire Association against the Town and the Sheriff's Office. He stated that he is requesting (as he is required to do under the statute, to meet with the Commission to discuss that litigation and discuss strategies for dealing with it.

Mayor Parker asked when a shade session should be.

Mayor Parker asked for Wednesday at 7 p.m.

Vice Mayor Yanni asked about Thursday.

Commissioner Clark stated that he would be out of town.

Attorney Cherof stated the meeting could not occur on Wednesday night because a closed door session must begin at a regular meeting and there is not enough time to give notice. He stated that there needs to be at least 48 hours notice.

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Mayor Parker motioned, seconded by Vice Mayor Yanni, to have a special meeting Monday at 7 p.m.

Vice mayor Yanni asked Attorney Cherof how the two Commissioners who are suing the Town be at the closed door session with the rest of the Commission.

Attorney Cherof stated that it is up to them to decide whether they can participate or not.

The motion passed 5-0.

Mayor Parker moved, seconded by Vice Mayor Yanni, to direct the Town Attorney to vigorously defend the lawsuit.

The motion passed 5-0.

Town Manager Colon asked if they were going to schedule a special meeting with a shade session opening and closing.

Mayor Parker stated that he wanted any action they need to announce at the end of it.

Commissioner McIntee asked to place an item concerning Commissioner comments on the agenda.

There was a motion to adjourn. The meeting was adjourned at 11:25 p.m.

16. COMMISSIONER COMMENTS

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

18. FUTURE AGENDA ITEMS

May 22, 2007

- A. Naming public facilities report (Master Plan Steering Committee)
- B. Cable Franchise Agreement resolution (Town Attorney)

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)

June 26, 2007

- A. Report on options for the Town to save money on building permit services and fees (per Commission directive at 3/13/07 meeting (Jim Bell – Development Services) – tabled from 4/24/07 meeting)

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July 17, 2007

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

19. ADJOURNMENT

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.

Mayor Oliver Parker

ATTEST:

Tina Angelone, Town Clerk

Date