

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

ROUNDTABLE MEETING

MINUTES

Jarvis Hall

4505 Ocean Drive

Tuesday, May 10, 2011

7:00 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Roseann Minnet called the meeting to order at 7:00 p.m. Vice Mayor Stuart Dodd, Commissioner Birute Ann Clotley, Commissioner Scot Sasser, and Commissioner Chris Vincent were present. Also present were Town Manager Connie Hoffmann, Town Attorney Susan Trevarthen, Town Clerk June White, and Deputy Clerk Nekisha Smith.

2. PUBLIC COMMENTS

Dennis Ritchie explained he submitted a Jarvis Hall application which included an indemnity agreement. He stated that he did not agree with the language of the agreement and refused to sign it. Mr. Ritchie advised the Commission that the agreement could cause the POA (Property Owners Association) to go out of business. He recommended the Commission require only a certificate of insurance.

Mark Brown believed the Town should follow the same elections timeline as Broward County, to save money. He was not in favor of holding a separate election in March. Mr. Brown explained that BSO was a quality police department and urged the Commission to look at the services that were provided, rather than just the cost. He understood the concerns regarding the regional costs implemented by Broward County, but reminded the Commission that those costs would still be a factor regardless of whether the Town contracted with BSO. Mr. Brown said that he was not in favor of referendums and believed it would delay the planning process for up to one year. He explained that a referendum would cause the projects to become political issues rather than policy decisions. Mr. Brown pointed out that the voters appointed the Commission to make the policy decisions for them. He urged that the Town not waste time and money by putting the issues on the ballot.

Edmund Malkoon believed that discussion regarding referendums were premature. He said that it was too soon to discuss new parking garages and a Town Hall complex. Mr. Malkoon explained that the project plans, costs, and funding sources needed to be identified before any decisions could be made. He was under the impression that the parking fund would borrow the money necessary to pay off the parking loan, from

the general fund and requested further clarification on the issue. Mr. Malkoon questioned whether the general fund would be required to charge interest to the parking fund. He believed that a bond was too costly, questioned the Town's bond rating, and the Town Manager's opinion on the feasibility of the issue. Mr. Malkoon pointed out that the only alternative to contracting with BSO was forming a Town police department, which he did not favor. He said that a Town police department was expensive and that the residents had voiced their support of BSO. Mr. Malkoon pointed out that the Commission did not identify locations for the conditional uses that were previously adopted. He questioned whether the Commission had intentions to do so.

Nectaria Chakas explained that the conditional use ordinance adopted on April 27, 2011 required Aruba Beach Cafe to apply for a paid private parking conditional use permit. She questioned why Aruba Beach Café and other business were not grandfathered as done previously with other ordinances. Ms. Chakas requested the Commission consider grandfathering those properties already providing the use, or amend the ordinance to provide exemptions to those businesses.

Ron Piersante questioned why the Town would choose to hold a separate election at a cost of \$12,000. He said that he was not in favor of placing the proposed projects on a referendum. Mr. Piersante stated that the Commission was elected by the voters to make the decisions that were best for the Town. He explained that if the projects were on a referendum, they could be voted down and questioned where the Commission would go from there. Mr. Piersante suggested the Commission get the input from the public and move forward. He reminded the Commission that the City of Pompano Beach turned down the idea to create their own police department and contracted with BSO. Mr. Piersante said that the Town already had the best and questioned why the Commission would consider alternatives.

Frank Herrmann spoke in regards to item 3A: Referendums, and stated "Just do it."

3. DISCUSSION ITEMS

Mayor Minnet added "Discussion Regarding Jarvis Hall" as agenda item 3j to address the comments made earlier by Dennis Ritchie.

a. Elections 2012

i. Option to move the March 13, 2012 Municipal Election to the 2012 Presidential Primary Election

The Commission favored moving the March 13, 2012 municipal election to save money.

Commissioner Clotley expressed concern regarding turnout numbers at the polls, but agreed to go along with the Commission. Commissioner Vincent pointed out moving the municipal election would not affect the term of office and the appointment would still occur in March. Commissioner Sasser agreed to move the municipal election.

Vice Mayor Dodd requested clarification of the appointment date. He believed there was a section in the Charter where it stated the swearing in was to take place within 30 days after the election.

Attorney Trevarthen explained that the language may have been in the Town Charter or the Town Code previously, but was not currently. She confirmed that moving the election date would not affect the terms of office, and the swearing in of newly elected officials would remain as if the election took place in March, unless the current officials consented to shorten their term by 2 months.

ii. Referendum Item for 2012 Ballot (Vice Mayor Stuart Dodd)

Vice Mayor Dodd believed that the decision to underground utilities on El Mar Drive should be up to the voters. He said there were many things to take into consideration such as the introduction of cable, telephone and electrical boxes. Vice Mayor Dodd submitted a report prepared by Quanta Technology for Florida Electric Utilities dated February 29, 2007 that stated the benefits of undergrounding, which he believed to be largely aesthetic. He wanted everyone to be aware of the costs and to hear the response from those who would be affected once the figures were presented.

Attorney Trevarthen urged the Commission to start early on the preparation of referendum questions. She added that sometimes things happened that could delay the process.

Mayor Minnet said that the Commission was elected to make decisions in a fiscally responsible manner. She said that staff was working on an RFP that would get the costs for undergrounding utilities in the downtown El Mar Drive area only. Mayor Minnet believed undergrounding the utilities would make the area safer and more attractive. She understood that the responsibility of undergrounding was on the landowner and/or developers not the Town; as it was required for Oriana and Minto. Mayor Minnet stated that the Commission already voted that the parking garage was a low priority and the Town Hall complex, an idea for the future, would be addressed in the capital improvement budget. Mayor Minnet believed it was sad that the responsibility was being placed on the voters rather than the people they elected to make such decisions. She believed the referendums were premature and the Commission needed to look at the overall plan and truly understand the costs.

Commissioner Vincent agreed that the referendum was premature. He thought it was irresponsible without having all the facts and figures available. Commissioner Vincent wanted to hear from everyone before decisions were made. He pointed out that not all taxpayers of the Town were able to vote and wanted to hear from all taxpayers, the business owners and investors as well. Commissioner Vincent stated that he needed time to digest all the information that would come forward, and therefore, the referendum was out of the question.

Commissioner Clotey agreed that a referendum was premature. She asked why the Commission would want to spend money to have the Town Attorney prepare the referendum when there were many unknown variables.

Commissioner Sasser believed it was important for the people to voice their opinion. He did not favor preparing any referendum when the Commission did not know the financial tools or instruments that would be needed to pay for the projects. Commissioner Sasser stated that once the Commission decided on which project to do, a better referendum would be to have the people decide on which financial tool they would want the Town to use to pay for that project. Commissioner Sasser said that once a complete plan was put together, the Commission would find that money was available to pay for some projects, and at that time the Commission would need to decide which projects they want to do. He said the Town Hall project was geared for the future and the issue of a parking garage had already been decided on.

Vice Mayor Dodd believed the issue of burying utilities was aesthetic only. He said the cost for just the downtown area would be in excess of \$5 million, and the cost for property owners to hookup were too high to be imposed on them. He reminded the Commission that if they chose to put the issue on referendum, ordinances would have to be adopted first.

Commissioner Sasser asked whether Vice Mayor Dodd only wanted to put the undergrounding issue on the ballot. Vice Mayor Dodd said he did; the other projects were for the future. Mayor Minnet asked Town Manager Hoffmann to clarify the code regarding the site plan approval on El Mar Drive. She understood that site plan approval for new development required undergrounding of the utilities. Mayor Minnet was never under the impression that the residents, or the taxpayers, would pay for the undergrounding; instead, that responsibility was with the landowner requesting the new development site plan approval. Vice Mayor Dodd said it would put a financial burden on anyone that would have to connect underground. Commissioner Vincent explained that if the people were not re-developing and the Town buried the utility lines, the neighboring properties would be required to connect sooner rather than later. He suggested looking for a hardship grant for the people that would have to connect prematurely.

Town Manager Hoffmann said that Sec. 20-92 of the Town code stated burying utilities would be the developer's and/or the owner's cost. She added that Sec. 20-93 stated that a waiver could be granted with recommendation from a professional engineer that explained why it would not be technically feasible to locate such utilities underground. Town Manager Hoffmann added that the Code provided if a waiver was granted by the Commission, then a dollar amount equal to the cost of placing the utilities underground as determined by the Commission, may be required to be deposited into the Town Underground Utility Trust Fund, prior to development permits being issued.

Mayor Minnet believed the referendum idea could be important in the future, but was premature. She wanted to go to the people with a complete package and not rush into anything at this time.

Vice Mayor Dodd asked how soon the Commission could expect the report from the people looking into the costs. Town Manager Hoffmann said she was attempting to put a meeting together with all three utilities. She explained that hiring someone to do the cost analysis would not happen until after the RFQ responses were received; sometime in mid to late summer. Town Manager Hoffmann indicated that FPL (Florida Power & Light) gave the Town a preliminary estimate and would provide a more specific cost estimate to the Town if we provided a survey and a \$7,500 deposit. However, FPL's estimates did not include significant costs that the Town would incur. She said that staff was attempting to get cost estimates from other municipalities that had already done undergrounding, and would bring that information to the Commission. Town Manager Hoffmann said at that time the Commission may decide that undergrounding was no longer a high priority project. She believed the Commission would be able to make that determination in the summer, during the budget process.

The consensus of the Commission was for the Town Manager to pursue other cities' experiences and costs first and if the response was not adequate, then she should go forward with FPL.

Commissioner Clotey asked whether it would be cheaper to do the storm sewers at the same time the undergrounding was done. Town Manager Hoffmann said staff would have to look at the survey to see where the sewer lines were located and whether they would be affected by the utility project. She added that an RFP went out to hire a consulting engineer that would do the analysis of the sewer system, but did not believe that their work would be complete by the end of this fiscal year.

There was no further discussion.

b. August Meetings (Mayor Roseann Minnet)

Mayor Minnet stated that there was a 7 week gap between the Commission meeting on July 26, 2011 and the one on September 13, 2011. She suggested the Commission keep the August 23, 2011 Commission meeting tentatively scheduled and cancel the August 9, 2011 Roundtable meeting. Mayor Minnet also requested casual attire for the summer schedule.

There was Commission consensus to cancel the August 9, 2011 Roundtable meeting, keep the August 23, 2011 Commission meeting on the schedule, and to adopt casual attire for the summer.

c. Transport for the July 4th Parade (Vice Mayor Dodd)

Vice Mayor Dodd asked whether the Commission preferred to be transported in the 4th of July parade in a golf cart, a flatbed truck or their personal vehicles. Mayor Minnet said she liked the jeep last year, but had no preference. Commissioner Clotney preferred a golf cart over a flatbed truck, as it would be cooler. Commissioner Sasser preferred that the transportation allowed room for children on board, such as a golf cart that had seats in the back. Vice Mayor Dodd said he would see what could be done.

d. Petition from Terra Mar Residents/Property Owners Re: Beach Access (Mayor Minnet)

Mayor Minnet said that a petition was submitted by the residents of Terra Mar Island. She suggested sending a letter to the City of Pompano Beach encouraging them to allow beach access on behalf of the residents of Lauderdale-By-The-Sea. Attorney Trevarthen stated that it was a private matter between the Terra Mar Island residents and the beach property owners. She added that nothing required the Town to add another beach access. Commissioner Sasser pointed out that part of Terra Mar Island was within the City of Pompano Beach and therefore, this was their issue as well.

The consensus of the Commission was to send the letter to the City of Pompano Beach on behalf of the Terra Mar Island residents.

e. Police Services Issues (Town Manager Connie Hoffmann)

Town Manager Hoffmann explained that BSO (Broward Sheriff's Office) informed her that there were Attorney General Opinions that indicated that the Town could not contract with another municipality for police services; that only mutual aid between Town's existing police department was allowed. Town Attorney Trevarthen stated that the law did not support the Town entering into an agreement with Fort Lauderdale for similar services offered by BSO.

Mayor Minnet stated that if the Commission chose to create a Town police department, ample time needed to be given to staff to gather all of the information necessary. She said that she was pleased with the service provided by BSO.

Commissioner Clotney explained that she was in favor of contracting with BSO; however, there were some residents who wanted to see the Commission explore other options. She said she asked the Town Manager to retrieve information from the City of Pompano Beach in regards to how much it would cost to start a police department, how long the process would take, and how long it would take to recoup the setup costs. Commissioner Clotney pointed out that the Town could not implement their own police department by October 1, 2011 and questioned whether the Commission wanted to at least look at the costs associated with doing so. She said the Commission owed it to the taxpayers to look at other alternatives.

Commissioner Sasser explained that he was happy with the service provided by BSO; however, he preferred to negotiate from a position of strength which he did not feel the Town could. He said that he was not in favor of creating a Town police department at this time. Commissioner Sasser stated that he was concerned that each contract was only for one year and questioned how long would BSO continue to provide service to the Town after receiving a notice of termination and at what rate.

Vice Mayor Dodd reminded the Commission that the Town previously had their own police department and he recalled that a majority of the officer wanted to join BSO. He explained that the Town had to make the best with the contact they had. Vice Mayor Dodd did not want staff to spend much time looking at alternatives. Commissioner Clotey reiterated that the Commission owed it to the taxpayers to look at the costs to create their own professional police department.

Commissioner Vincent agreed that BSO did a great job for the Town. He was not in favor look at other alternatives at this time. Commissioner Vincent was concerned that Broward County would pass down regional costs if more municipalities implemented their own police departments. He believed that the price for PSAP's (emergency communication) was a small price to pay for a service the Town did not pay for in the past. Commissioner Vincent was confident that the Town Manager could negotiate the increase amount down. Town Manager Hoffmann explained that the negotiations revolved around the staffing level that was needed for the Town. She felt that there were options to reduce the assigned staff level without negatively impacting the service provided. Town Manager Hoffmann explained that Broward County has required that BSO include overhead costs and other post-employment benefits in their charges to the contract cities. She advised the Commission that if they wanted to look at alternative police services, that would have to be done very carefully and without haste, next fiscal year.

Commissioner Sasser believed that the issue was whether the Commission should direct staff to continue negotiations with BSO. He believed that negotiations could reduce the \$500,000 increase by half. Commissioner Sasser stated that the Commission should take their time developing this agreement to avoid being in the same position next year.

Mayor Minnet suggested holding a workshop in 6 months to discuss the options and, meanwhile staff would collect information from the City of Pompano Beach in regards to the creating a police department. She stated this was not the time to look at alternatives for budget and safety reasons, and the Town should continue with negotiations. Town Manager Hoffmann suggested discussion of whether the Commission wanted to study the cost of setting up a police department in late September or early October when the Commission sets her priorities for the following year, and that she now concentrate on negotiations with BSO.

It was the consensus of the Commission for the Town Manager to continue negotiations with BSO, place the item on the agenda in October to determine whether the

Commission wanted to look at alternatives to start their own police department, and place a resolution on the next agenda urging Broward County to stop passing down the costs for regional services.

Town Manager Hoffmann informed the Commission that the COP grant rules were changed to where the Town would need to apply for the grant rather than BSO. She explained that the grant would not cover the full salary amount for a police officer. Town Manager Hoffmann added that based on the evaluation criteria, it was unlikely that the Town would be selected and recommended that the Town not apply for the grant. The Commission agreed.

Town Manager Hoffmann stated that she was not sure which entity would bill the Town for the PSAP as the issue was unresolved. She said that she would present a report at the May 24, 2011 Regular Commission meeting in regards to the BSO contract and hoped to finish negotiations by June 1, 2011.

f. Parking System Debt (Acting Finance Director Doug Haag) (Requested at the April 27, 2011 Commission meeting by Commissioner Chris Vincent)

Commissioner Sasser believed that the parking loan should be paid off. Mayor Minnet did not agree as the parking fund self-funded and believed they needed to have more information regarding the penalty fee. Commission Sasser disagreed that the parking fund was self-funded because money was moved from the parking fund into the general fund. He believed that the Town was spending money on interest every year, when the money was available to pay it off. Commissioner Sasser agreed that more information regarding the penalty fee should be obtained. Commissioner Vincent agreed with Commission Sasser but did not believe there was a need to pay it off immediately. He did not want to pay off the parking loan and then have to go out for a new loan later.

Commissioner Clotey said she agreed with Commissioner Sasser, but there were many projects that needed to get done first and the Commission needed to look carefully at the options before they pay off the loan. She pointed out that this was the only debt the Town had.

Vice Mayor Dodd asked whether the Town's current rate on investments would make up for the interest paid in the parking loan. Acting Finance Director Haag said it would not. He added that it would reduce the undesignated general fund reserves by 50% if the loan was to be paid off. He believed it was better to continue evaluating the terms of the parking loan and look at the funding requirements needed to complete capital improvement projects.

Commissioner Sasser wanted to make sure the public understood that reducing the undesignated general fund by 50% would not hurt the Town, as there were other funds available, such as \$4 million in the capital fund.

Vice Mayor Dodd believed the Town was financially strong and should go to SunTrust and negotiate the pre-payment penalty fee; either waive the pre-payment penalty fee or re-structure the financing. Vice Mayor Dodd believed the Town should look at the amount needed to pay off the loan and obtain a loan at a lower interest rate to pay it off. Commissioner Vincent reiterated that he did not want to pay down the loan and re-borrow money later.

Mayor Minnet pointed out that the parking rates were being adjusted which would help pay off the debt. She suggested obtaining all the information to determine whether it would be feasible to pay off the parking loan. Mayor Minnet said the capital improvement budget would need to be looked at also with regard to funding the master plan projects. She suggested that staff gather the information and talk with SunTrust. Town Manager Hoffmann stated that the issue was to either hold on to the funds in order to do some of the planned projects, or wait and see whether they wished to pay it off or re-finance it at a later date. Mayor Minnet said that was a major concern during budget time; if they pay off the parking debt it would reduce the amount of available funds for capital improvement projects. She asked whether there would be a pre-payment penalty if they paid off 49% of the loan; at what point did the pre-payment penalty take effect?

It was the consensus of the Commission for staff to analyze the capital improvement budget and continue to obtain information from SunTrust; Commission to look at all the options during budget time.

g. Broward County Ethics Ordinance (Mayor Roseann Minnet)

Mayor Minnet said that the Broward League of Cities was asking the Commission to review the Broward County Ethics ordinance and requested Commission recommendations. She requested direction as to whether the Commission wished to proceed and send their recommendations to the Broward League of Cities, who in turn would forward a revised ordinance to Broward County for consideration.

Town Manager Hoffmann said that the Broward League of Cities needed the Commission's recommendations by the end of May.

Mayor Minnet asked whether the Broward County Ethics ordinance would supersede the Town's ethics ordinance. Attorney Trevarthen explained that, to the extent there was conflict, the Town's Code may be affected. She summarized the major components of the ordinance: 1) there was no reference to recusal for voting conflicts of interest; 2) acceptance of gifts; 3) restrictions on outside/concurrent employment; 4) lobbyist registration; 5) honest services fraud; 6) charitable contributions fundraising; 7) elected officials could not serve as members on a procurement selection committee or participate or interfere at such meetings; 8) financial disclosure; and 9) training and education. Attorney Trevarthen stated that a municipality could opt-out of any or all code provisions, by ordinance adopted by 4/5^{ths} of a vote.

Attorney Trevarthen said it was important for the Commission to state their opinion because there was a wide range of municipalities in Broward County.

Commission Sasser asked if they could recommend that only municipalities with their own ethics ordinance be allowed to opt-out. Attorney Trevarthen said that it could be an alternative, that if there was not to be a complete opt-out, that there could be an opt-out if the municipality adopted their own ethics ordinance.

Vice Mayor Dodd inquired as to what the penalties would be if a municipality was in violation of the Broward County Code of Ethics.

Town Manager Hoffmann suggested that language be added stating that costs of the County Inspector General's office shall not be delegated to the municipality. She also suggested the Commission decide on which items they wanted staff to bring back at the May 24, 2011 Commission meeting to present to the Broward League of Cities.

The consensus of the Commission was to 1) add language that if the opt-out option was chosen the municipality could have their own ethics ordinance; 2) define penalties; 3) eliminate the honest fraud language as it was already covered by federal law; 4) add language that any costs to the Inspector General's office shall not be charged to, or born by, the municipality; 5) add that the Inspector General shall render opinions on ethics questions.

h. Sign Ordinance 2010-16 (Zoning and Code Compliance Supervisor Jeff Bowman)
Approved 1st reading April 27, 2011

Mayor Minnet suggested the Commission accept the language staff proposed regarding sandwich signs and approve staff recommendations to review banner signs and signs on the side of buildings at a later date and come back to the Commission with recommendations.

There was Commission consensus to approve the language for sandwich signs and present Ordinance 2010-16 to the Commission for second reading on May 24, 2011.

i. Fee for Processing a Conditional Use Application (Assistant Town Manager Bud Bentley)

Vice Mayor Dodd asked for an explanation as to why the proposed ordinance did not contain a grandfathering clause. He said that Aruba Beach Café provided paid private parking service for approximately 20 years and believed it was incomprehensible to charge them a one-time \$900 conditional use permit fee. Attorney Trevarthen explained that for many years the Town took the position that this service was not a legal use; it was just not enforced. She said that the proposed Ordinance made it clear that they were allowed to provide that service. once the conditional use was approved. Attorney Trevarthen stated that if there was evidence to show that the service was legally

established prior to adoption of the Code language that prohibited it, then they would be recognized as a non-conforming use.

Commissioner Sasser believed that the Town should have taken more time on developing the ordinance. He inquired as to how many required spaces the business needed, and were the parking spaces in the lots that were used for parking, or in other lots. Attorney Trevarthen stated that those were facts she did not have as no application had been submitted. Commissioner Sasser asked whether the Commission wanted to implement grandfathering. Vice Mayor Dodd was concerned with the enforceability and asked whether a Code Officer would have to ask each driver whether they were going to the restaurant or to the beach. Attorney Trevarthen said that it would be in the Town's discretion and believed the Town did not have the resources to do that. Assistant Town Manager Bentley explained that staff was not penalizing anyone that provided this service in the past; no one had been cited, and no one was before the Code Enforcement Board. He said that staff created a conditional use so that those businesses would be legally allowed to provide those services in the future. He said the expense to process the application could be reduced when the Commission developed the fees under Resolution.

Commissioner Sasser inquired as to whether the Commission wanted to require the conditional use application process for everyone, or only for future applicants, and whether the Commission wanted to require a \$900 permit fee from everyone, or just for future applications. Commissioner Vincent believed they needed to be careful because they did not know how many people were going to come forward saying that they had been providing this service. Mayor Minnet did not want to put an additional burden on the businesses at this time. She suggested that everyone go through the application process, but anyone submitting an application prior to adoption of the Resolution establishing specific fees would be exempt from the \$900 conditional use application fee providing they submit proof within 3 months that they had been providing paid parking services.

Town Manager Hoffmann asked what would be considered proof. Assistant Town Manager Bentley suggested that the application fee not go into effect until June 1st, that way anyone could apply and would not have to prove anything.

The consensus of the Commission was that anyone wishing to apply for the conditional use permit for paid parking only would go through the application process and pay the \$900 permit fee, but anyone submitting their application prior to June 1, 2011 would be exempt from the \$900 permit fee.

j. Jarvis Hall

This item was added earlier in the evening.

Town Manager Hoffmann explained that Town Code required that applicants provide an indemnity and hold harmless certificate to use Jarvis Hall. Attorney Trevarthen stated

that, if it was not a code requirement, it would be a risk management decision.

Vice Mayor Dodd asked if the Commission waived that requirement, and someone came into Jarvis Hall and slipped on a wet floor, could they sue the Town. Attorney Trevarthen said it was a risk management issue; staff could talk to the insurance company to see what the implications were. Commissioner Sasser asked why the Town's general insurance did not cover that scenario. Town Manager Hoffmann said it did, but a previous Commission added language to the Town code requiring the party using Jarvis Hall to indemnify the Town. She suggested changing the language to require commercial entities to provide it and exclude Town residents and civic associations from that requirement. Vice Mayor Dodd agreed.

Commissioner Vincent wanted to know who the existing associations were. Mayor Minnet said she did not want to exclude future associations.

The consensus of the Commission was to accept staff recommendation to exclude Town residents and/or Town property owners associations from signing a hold harmless agreement. Town Manager Hoffmann would bring back a code revision ordinance for the May 24, 2011 Commission meeting.

4. OTHER TOWN BUSINESS

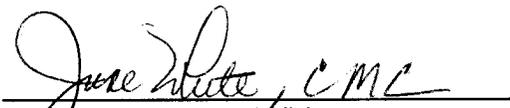
5. ADJOURNMENT

With no further business before the Commission, Mayor Minnet adjourned the meeting 10:15 p.m.



Mayor Roseann Minnet

ATTEST:



Town Clerk, June White

5/26/2011

Date

