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# TOWN OF LAUDERDALE-BY-THE-SEA

## TOWN COMMISSION

### REGULAR MEETING MINUTES

Jarvis Hall

***4505 Ocean Drive***
***Tuesday, September 27, 2011***
***7:00 P.M.***

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**1.** CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Roseann Minnet called the meeting to order at 7:10 p.m. Also present were Vice Mayor Stuart Dodd, Commissioner Birute Ann Clottey, Commissioner Chris Vincent, Commissioner Scot Sasser, Town Attorney Susan L. Trevarthen, Town Manager Connie Hoffmann, and Town Clerk June White.

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

**3.** INVOCATION - Reverend George Hunsaker

Reverend Hunsaker gave the Invocation.

**4.** ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

Mayor Minnet moved New Business item 17a forward for discussion with Old Business item 16a, Renewal of Solid Waste Collection Contract.

**5.** PRESENTATIONS

There were no presentations.

**6.** PUBLIC COMMENTS

Mark Brown stated that the Town Attorney did not review two Choice Environmental items currently on the agenda, one of which was due to her law firm entering into a contract with Choice Environmental. Mr. Brown said the recommendation was for the Town to hire another law firm at $215 an hour to represent the Town in their dealings with Choice Environmental Services and avoid a conflict of interest. He stated that the Town Attorney's firm contracted with the Town first, then opted to represent Choice Environmental Services over the Town, and therefore, it was the Town Attorney's firm that created the conflict of interest and placed the town in a difficult position. Mr. Brown questioned why the Town was negotiating with Choice, even if the Town agreed to discuss a contract extension with them, as there was nothing in the contract requiring the Town to renew its contract with Choice. He felt it made more sense to put the whole

contract out to bid when it came time for renewal in the summer of 2012 and see if a better deal was forthcoming, whether with Choice or another vendor.

Guy Contrada invited everyone to the Chamber of Commerce spaghetti dinner on Wednesday, October 5. The cost was $9 for adults and $4 for children, and it would be a fun event. He thanked the Town for the drainage project near the Pavilion. Mr. Contrada commended town staff for working with the businesses in the Town to ensure they were up and running.

Joyce Murray said that years ago many residents said they needed help with their Town. She said the Town Commission and Town staff clearly answered the call and it was now time to say thank you. Ms. Murray thanked Town staff that did most of the work around the Town behind the scenes. She added that the residents of Lauderdale-By-The-Sea were to be thanked as well, as it was to their input the Commission and staff responded, recognizing it was not possible for everyone to agree on everything. She personally felt the Town Commission and staff had made Lauderdale-By-The-Sea a better town and they were to be applauded for their efforts.

Bob Fleischman thanked the Town's fire department for helping residents with their smoke detectors. He said the effort helped many residents who had no smoke detectors in their homes. Mr. Fleischman stated that although people had a right to disagree, to do so based on false or no facts amounted to pure ignorance.

Bill Vitola hoped to see bulk pickup with the claws as most towns already had that service. He explained that with claws, it would be possible for a lot more garbage to be removed on, even if the service was once a month. Regarding the Town Manager's evaluation, Mr. Vitola suggested that rather than have each Commissioner speak about how they scored each category, perhaps it would be better to give the scores to the Town Attorney and let her average out each category. He felt an evaluation of one's job performance was done by one's supervisor and should be a private matter. If anyone was interested in each Commissioner's feedback, they could get a copy of the record at Town Hall.

Louis Alfano asked if the Town Commission ever entertained the possibility of hiring a private enterprise to build and maintain a parking garage; it seemed there were many underutilized parking lots in the Town. He urged the Commission to explore the possibility of building a three-story parking garage to attract more businesses and patrons to the Town.

## 7. PUBLIC SAFETY DISCUSSION

### a. BSO Monthly Report – August 2011 (Chief Oscar Llerena)

Vice Mayor Dodd made a motion to accept the report, seconded by Commissioner Sasser. The motion carried 5-0.

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**b.** VFD Monthly Report – August 2011 (Chief Steve Paine)

Deputy Fire Chief John Louvaris stated that Chief Paine was unavailable for the present meeting.

Mayor Minnet inquired as to whether there was a legal restriction against the roster indicating whether staff members were residents or non-residents. She was aware of the percentages, but wanted to know the residency of staff members.

Lieutenant Daniel Chavez, Fire Administrator, said he would pass the Mayor's question onto the Chief and relay the answer to the Commission as soon as possible.

Vice Mayor Dodd made a motion to accept the report, seconded by Commissioner Vincent. The motion carried 5-0.

**c.** AMR Monthly Report – August 2011 (Chief Brooke Liddle)

Commissioner Vincent made a motion to accept the report, seconded by Vice Mayor Dodd. The motion carried 5-0.

**8.** TOWN MANAGER'S REPORTS

**a.** Finance Report (Finance Director Tony Bryan)

Mayor Minnet inquired if the Town was on track with all the incoming revenues. Finance Director Tony Bryan replied they were.

Commissioner Clottey made a motion to accept the report, seconded by Commissioner Vincent. The motion carried 5 - 0.

**b.** Town Manager (Town Manager Connie Hoffmann)

Town Manager Hoffmann stated the present meeting was not being broadcast live on channel 78, as Comcast Cable was down, but the meeting was being broadcast on the internet. Town Manager Hoffmann reported that the drainage installed near the Pavilion was working well; the West Tradewinds project was essentially completed, pending some repairs to a few driveways and replacement sod. She noted an asphalt patch was put in by the contractor over the area that was dug up and that needed to settle for several months, after which the Town would resurface that entire street. The City of Fort Lauderdale had promised the Town they would resurface other streets in that neighborhood after they did some water main repairs and staff would contact them to coordinate those projects. Regarding the Flamingo Avenue Drainage Project, no meeting had been held as yet with the Plaza East board of directors, although staff requested a meeting. Town Manager Hoffmann stated the Terra Mar Drainage Project was complete; the street was milled and repaved eliminating the puddles. She advised that a new phone system was installed in Town Hall, allowing anyone to leave a voice

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mail message, including after hours. Town Manager Hoffmann said the Coral Reef Project had been installed and the final installation occurred Sunday when the solar buoy was installed and was now operational. Town Manager Hoffmann noted the Terra Mar Entryway Project was underway and the South Seagrape speed humps would be installed on September 28th.

Town Manager Hoffmann said the Building Services RFP received two responses; unfortunately, one of them was deemed nonresponsive, as they failed to quote a price. She said Calvin Giordano was the remaining vendor, and staff would bring that bid back to the Commission at the next meeting for authorization to negotiate and to work with Broward County on the transition from the County's Building Inspection to Calvin Giordano. Town Manager Hoffmann said the Commission would have to adopt the Town's new fee schedule. She said the Town's projects list had begun to dwindle as most of the projects were on the completed list.

Town Manager Hoffmann noted other groups were successful in negotiating better tipping fees with Wheelabrator than the RRB (Resource Recovery Board. She said Broward County negotiated an interim agreement with the south incinerator for reduced rates that were lower than what the RRB proposed to the Town in the Interlocal Agreement (ILA) that the Town refused to sign. She indicated the BCCMA (Broward County City Managers Association) was also negotiating with Wheelabrator for lower tipping fees. Town Manager Hoffmann said the City of Miramar decided to go out for bids and invited other cities to join them in whatever agreement they would reach with Wheelabrator, or an alternate company. She added that Miramar also obtained a lower bid from Wheelabrator than the RRB did. Town Manager Hoffmann said that later, the RRB received a lower rate from Wheelabrator and passed that figure onto the cities effective October 1. Town Manager Hoffmann stated there were two respondents to Miramar's request for proposal (RFP): Wheelabrator and Bergeron. She said Bergeron's proposal had many contingencies and for now, she thought it was best to see how things played out with the Miramar contract.

Commissioner Sasser asked if Lauderdale-By-The-Sea was a part of the Miramar group. Town Manager Hoffmann answered no.

Commissioner Sasser questioned where the Town stood on the issue and what the options were. Town Manager Hoffmann replied the RRB would sunset in June 2013, when the ILA expired and, based on the Town's experience, the RRB had not served the member cities very well; she was not sure anyone wanted them to continue. She said the RRB was trying to get bids and put together a new ILA.

Commissioner Sasser had no desire to enter into the RRB RFP or to participate in any activity with the RRB that would prolong their existence. He wanted to know the options.

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Town Manager Hoffmann explained there were two choices: 1) to piggyback on the Miramar contract; and 2) a new ILA the BCCMA was negotiating. She said Miramar and the BCCMA were working handed-in-hand, to get the best deal possible.

Commissioner Sasser asked whether the Town had the option of waiting and then piggybacking on the best agreement. Town Manager Hoffmann affirmed this to be the case. Commissioner Sasser chose to do that.

Commissioner Clottey asked if the Town had the option to go out and get the best deal. Town Manager Hoffmann explained that the Town could elect to go that route, but it was highly unlikely the Town could get a better deal than a larger group.

Town Attorney Trevarthen understood there was no site currently permitted in Broward County other than the one Wheelabrator owned; she thought Bergeron was trying to acquire one. She believed it would be a significant challenge for the Town if it were to operate on its own.

Mayor Minnet asked that the Commission be updated as to the happenings. She asked when the next meeting in Miramar would take place. Town Manager Hoffmann said Miramar requested both Bergeron and Wheelabrator to come back with their last and best offer; however, the RRB was asking the Town for a response to the aforementioned letter.

Vice Mayor Dodd questioned whether Miramar was aware of the full negotiating power they had behind them. Town Manager Hoffmann stated Miramar knew many cities were waiting in the wings.

There was Commission consensus not to support the RRB's proposal to do an RFP for solid waste disposal and recycling services; the Town would follow the City of Miramar's and BCCMA negotiations.

Commissioner Sasser wished to know what entity built the Wheelabrator plant.

Town Manager Hoffmann said the north plant was on Waste Management property and was built by them and the south plant was on county-owned property and built by Wheelabrator; now one company. She added both were backed by Broward County who guaranteed Wheelabrator's loan to build the plant, and the pledge backing that up was the ILA, signed by all Broward cities, agreeing to take all of their solid waste to those plants.

Town Manager Hoffmann commented that although Wheelabrator paid to build the south plant, they repaid the loan used to build it with fees the County and the cities paid over the years.

There was no further discussion.

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Mayor Minnet informed the public the issue of the Town Manager's evaluation and goal setting would be discussed at item 16B under old business.

## 9. TOWN ATTORNEY REPORT

### a. Proposed County Ordinance/Code of Ethics to Municipal Officials

Town Attorney Trevarthen said new draft of the Broward County ethics ordinance was before the Commission for review. She said the County intended to set the hearing of the ethics matter for October 11, but thought it might be later. She noted the County was moving forward and the cities had been asked by the BLC to provide input. Attorney Trevarthen said the Town sent a letter containing a series of suggestions and requested they be reflected in the BLC's proposal to the County. The majority of the Town's recommendations were not accepted by the County, so the ordinance the Town received did not recognize stricter municipal regulations and the draft ordinance did not include the ability to have the County's Inspector General serve in an opinion-giving capacity. Attorney Trevarthen recalled one of the issues discussed was that everyone was faced with new rules and would have questions about how to comply. In other counties with such ethics regulations, they had an ethics commission from whom opinions could be requested for guidance to ensure appropriateness of conduct; the opinion could be used in defense of any action under an ethics code. She was heartened to receive proposals to change the County's ethics ordinance brought forth by the County Attorney and/or a number of the County Commissioners, which she forwarded to members of the Town Commission. Attorney Trevarthen stated that the proposed conditions would provide for opinion-giving function, remove the requirement that municipal elected officials would need to disclose all income from outside employment more broadly than they currently did on State Form 1, and would limit municipal elected officials from lobbying for interests other than those on behalf of their cities. Attorney Trevarthen commented on being available if the Commission felt the need to discuss the matter individually; one of the Town Attorneys would be present at the BLC ethics task force meeting to give input on the Town's behalf.

Attorney Trevarthen stated that the item prepared by the County Attorney reflected the guidance received from the County Commission in the form of a proposed ordinance.

Mayor Minnet said that the Town, as a community, had its own ethics code that was stronger than the County's proposed ethics ordinance for municipalities. She inquired as to who would take over from that point and whether the County would have precedence over the Town's ethics code. Mayor Minnet said Lauderdale-By-The-Sea was a small town and it entered into contracts with many of its local businesses, such as the Sidewalk Café Ordinance; many of the restaurants had contracts with the Town. She asked how, as a body, the County's ethics ordinance might affect such transactions.

Attorney Trevarthen stated that it was clear that the County's approach was that one ethics code applied to all government bodies, with a few adjustments for municipalities.

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The BLC's approach proposed separate ordinances, one for the County Commission and one for cities, as there were significant differences between the job of a county commissioner and city commissioner, and the circumstances of both jobs legally and practically.

On the matter of applicability, Attorney Trevarthen said the proposed County ordinance stated there could be no contact with contractors in certain ways and contributions. As this related to the right of way agreements the City had with a number of sidewalk cafes, she thought the clear intent was not to affect something like a right of way license. Everything about the County's ethics ordinance read as though it was primarily concerned with the procurement process and making sure people who sought to give roads, services, goods, etc. to a city were within a covered scope. Attorney Trevarthen remarked the literal language of the proposed ordinance was that a contractor was anyone with a contract with the Town, and a right of way license agreement constituted a contract. She felt this was an appropriate comment to take back to the BLC's ethics task force and, at a minimum, ask for further clarification on the issue to remove any uncertainty as to how far that concept applied.

Vice Mayor Dodd thought it an intrusion, if a municipal elected official had a full time job outside of their elected role, to require them to file income tax quarterly. He asked if an elected official, for instance, asked a neighbor to host a fundraising wine and cheese and if other candidates running in the same election were invited, did it need to be detailed twice, once on each candidate's financial statement that they received donations, and one from the record of the City Clerk's Office. He inquired as to whether the Town Attorney would hold a seminar to ensure the Town Commissioners did not fall foul to the County's ethics laws.

Attorney Trevarthen responded the most recent draft required municipal officials to fully disclose all compensation from outside sources. The amendment filed later removed that and said local elected officials would only have to disclose what was required to be disclosed under state law by Form 1. She explained that the difference behind it was County Commissioners, under state law, had different obligations with regard to disclosing outside income, as theirs was more of a full-time job. She pointed out the County drafted the municipal ethics ordinance, not recognizing this difference, and the amendment filed did. On the issue of the fundraiser, the duplicate filling was a likely requirement and would probably lead to numerous questions. Attorney Trevarthen indicated, on the matter of the seminar, there was a mandate in the proposed ordinance requiring municipal officials to have at least four hours of ethics training provided at the direction of the municipal attorney within 120 days of election, and then eight hours of ethics training annually.

Vice Mayor Dodd wished to know who would pay for the training sessions.

Attorney Trevarthen replied there was no proposed grant funding, though the ordinance reflected there might be a variety of sources of ethics training. She said she was

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considering whether free ethics training from the BLC (Broward League of Cities) would be viewed as a prohibited gift.

Mayor Minnet noted the League was already discussing such items. When they had their general membership meetings, they had various training sessions, and the BLC had sponsors, many of whom were private sector businesses.

Attorney Trevarthen stated the scope of the County's ethics ordinance would not reach the BLC as an entity, but the BLC under the proposed ordinance was likely to fall into the category of a vendor, as there was no specific language for it, and they sold insurance to cities.

Commissioner Sasser inquired as to the Town's recourse regarding the proposed ethics ordinance.

Attorney Trevarthen said the first layer of recourse was to make their views known to the Community Commission, whether individually, as a group of City Commissioners or through the BLC, and attempt to influence the outcome of their vote

Mayor Minnet noted the Town Commission was prepared to live by the rules set, but sought a better understanding of the rules behind the proposed ethics ordinance and how it was written.

Commissioner Sasser said that everyone voted for ethics, but not necessarily for the details being examined. For instance, one such detail he found indefinable was where the proposed ordinance said: an elected official may not engage in a scheme or artifice to deprive another of the material and tangible right of honest services or any activity in contravention of his or her duty to provide loyal service and honest governance for the residents of the governmental entity that he or she serves.

Attorney Trevarthen stated that this was something previously discussed, and the position the Town Commission held was not to include that, as this was a quote of a federal law known as the "Honest Services" law. She indicated there was a fair amount of litigation, including a U.S. Supreme Court case on the federal statute from 2010, so there was some guidance in terms of what it meant as a concept of federal law. However, if the same wording were included in the County law, the question was whether the application would be the same as the federal law or something different. The Town Commission's position was if the guideline already existed under federal law, there was no need to include it in the proposed ordinance.

On the issue of vagueness, Attorney Trevarthen stated that the language held municipal elected officials to a duty not to create an appearance of impropriety. This was a very challenging concept to accept; judges had rules that helped them live within that obligation. It would be a significant challenge to enforce due to the level of subjectivity.

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Commissioner Sasser referred to the procurement selection committee and wondered how this would be applicable in the Town's case, as it spoke about elected officials not serving as a voting member of a selection evaluation committee. He said it made mention of elected officials not to participate or interfere in the process in any manner at such selection committee meetings or in the selection of committee members. Commissioner Sasser asked whether would no longer be permitted to attend those meetings and/or speak at them.

Attorney Trevarthen said that some portions of the proposed ordinance would have little effect on the Town Commission. She explained that history showed Broward of County Commissioners actually served as members of the selection committee with staff, and some of the language in the proposed ordinance was directed towards that history. Therefore, there was the requirement that elected officials not serve on the procurement committee; the ordinance did indicate elected officials could only inquire into aspects of the selection process with the purchasing director or applicable employee, at the conclusion of the procurement process.

Mayor Minnet noted there were two municipalities, Lighthouse Point and Plantation, with strong mayor form of governments that were different from the Town's town manager form of government.

Attorney Trevarthen stated she would take the Town's present and subsequent comments/concerns to ensure they were brought forward to the BLC.

Mayor Minnet encouraged Town Commissioners to contact Attorney Trevarthen with any questions they may have. She desired discussion on the matter of utility protection, as there had been an issue in light of what was taking place in Fort Lauderdale; she sought an understanding of where the Town was with regard to a process to help residents at present and in the future. The Town did not possess its own water system. The second matter had to do with a resident who came forward during the budget process and asked about the two readings of the fire assessment and why, in the past, the Town might not have done it.

Attorney Trevarthen spoke first on the issue of the two readings of the fire assessment, noting that because the City could do the fire assessment by resolution, the existing fee was probably done in this manner and it was legal to do it that way. She noted there was a discussion on the fire assessment in July, so the hearing in September was not the only forum in which the matter was discussed; however additional hearings could be held during the budget process in September.

Town Manager Hoffmann concurred, as the Commission adopted by resolution, the intent to adopt the fire assessment fee in July, so there were two public opportunities to comment.

Attorney Trevarthen discussed the issue of the Town's water system, stating the Town had an agreement with the City of Fort Lauderdale that included provisions for what to

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do in the event of a dispute: mediation and then arbitration. There was no provision in the agreement protecting the Town from rate increases, and this was an issue many cities were facing currently.

Mayor Minnet asked if there were any Broward cities that were starting such action against the utility provider for presentation to the Legislature.

Attorney Trevarthen stated that one city indicated they were working on lobbying for next year in the City of Miami Gardens in Dade County.

Commissioner Clottey said a resident discovered there was a state regulation prohibiting a municipality from raising a fee for a utility service if that fee was not directly related to the cost of the services being rendered. Thus, it was not legal to raise the charges to cover a budget shortfall, wondering if Attorney Trevarthen was aware of that regulation.

Attorney Trevarthen replied that if it was the desire of the Town Commission to take this on as a challenge, she could go further and do additional, more in depth case law research to determine if there was any basis on which to issue a challenge. Attorney Trevarthen believed her staff was not finding that Fort Lauderdale had changed their rates; rather, they were in the process of making a decision as to their own budget.

Town Manager Hoffmann indicated she viewed the City of Fort Lauderdale's Commission agenda and saw their rate study and a discussion of their budget, but she saw no ordinances changing the rates. She believed the Town's residents should be encouraged to attend the Fort Lauderdale public hearing and argue against any rate increases, including Town staff.

Town Attorney Trevarthen concurred, it was the simplest step.

Town Manager Hoffmann said it was a 3-2 vote in Fort Lauderdale for the budget.

Mayor Minnet felt it was important for the Town to reach out to other affected municipalities to urge the Fort Lauderdale City Commission to vote against any rate increases, such as Wilton Manors and Oakland Park.

Town Manager Hoffmann commented some of the other municipalities were affected more, as they received sewage service from Fort Lauderdale, and the latter was proposing to include a two percent dividend on the Town's bills. For sewage service, they wanted a "return on their investment" of an even higher percentage; for example, Oakland Park could expect a 21% increase in their sewage fees.

Commissioner Vincent stated he read that Fort Lauderdale had gotten a legal opinion that supported their action with respect to their being in the business to sell water.

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Attorney Trevarthen replied she had been directed by the Town Commission to look at the relevant statutes for more in depth exploration; however, part of their effort to manage the Town's legal services bill was not to delve into unauthorized research. Historically, in their representation of many cities, it would not be an easy battle to win, and there were no clear paths to turn back a rate increase. She stated that the way the statute was written, the rate setting entity had broad discretion and the consumer had little recourse but to follow it.

Mayor Minnet hoped the Commission would address the matter further to see if lobbying the Legislature to change the ordinance was feasible. Though no longer held, roundtables afforded the Commission the chance to explore such matters more, and this situation was a major concern for 50% of the Town's population and everybody in Broward County. There were certain entities controlling the water supply and fees, and the situation might end up with water being treated like gold.

Town Manager Hoffmann inquired as to whether the Commission wished staff to draft a resolution for the next meeting, opposing the imposition of a dividend by the City of Fort Lauderdale into the rate structure. Upon approval, the resolution could be sent onto the City of Fort Lauderdale.

Mayor Minnet stated that something needed to be done to get the process started. If no one voiced any objection, Fort Lauderdale would keep finding ways to raise rates. She sought and received a consensus from the Commission to direct staff to draft a resolution accordingly. If the matter needed to go further, she would bring it up with the BLC.

**10.** APPROVAL OF MINUTES

**a.** August 23, 2011, Regular Commission Meeting Minutes

Vice Mayor Dodd made a motion to approve the Regular Meeting Minutes of August 23, 2011, seconded by Commissioner Sasser. The motion carried 5 - 0.

**11.** CONSENT AGENDA

Vice Mayor Dodd made a motion to approve items 11A and 11 C on Consent, seconded by Commissioner Sasser. The motion carried 5 - 0.

**a.** Special Event Application – Alley Oop 1st Annual LBTS Skim Classic – Saturday, November 5, 2022 (Zoning and Code Supervisor Jeff Bowman)

This item was approved on consent.

**b.** Street Resurfacing Analysis (Municipal Services Director Don Prince)

This item was pulled from consent for discussion.

Vice Mayor Dodd believed road resurfacing was very expensive, and the money had to be used on a priority basis. He believed that no Commissioner wished to deal with unfounded allegations that influenced their decision to make improvements outside their own property while serving on the Commission. This was a welcomed benchmark for future road resurfacing in the Town, and it was something he requested. He inquired of the plans to include an evaluation of the Town's sidewalks.

Municipal Services Director Don Prince replied the analysis pertained only to streets and did not include sidewalks. The Town already had a Sidewalk Replacement Program created to address deteriorated sidewalks. He said that staff could explore further, if so directed by the Commission.

Vice Mayor Dodd hoped no one tripped on a sidewalk due to disrepair; it was important they were all up to standard.

Town Manager Hoffmann believed people tripping on faulty sidewalks had already happened. Municipal Services Director Prince had an annual budget of $40,000 and spent every cent repairing the sidewalks.

Commissioner Clottey understood the reasons why this was not encouraged, as it could become problematic deciding who should set the priorities. She believed Town staff was shorthanded to take on the task. She supported the analysis being done by an outside firm, but a number of citizens approached her about doing the analysis in house.

Commissioner Sasser commended Municipal Services Director Prince on keeping the sidewalks repaired, but thought it important for him to provide the Commission with a report on which sidewalks were in need of repair and whether Director Prince felt the budgeted amount was adequate for the repairs.

Municipal Services Director Prince stated that he, or his staff, went through the Town and determined which sidewalks had to be repaired and estimated the cost to do the work. It was a changing situation and regular checks of the sidewalks were made.

Mayor Minnet was pleased to see the matter moving forward, as this was the third element in what the Town needed within drainage and sewer to identify what could be done.

Vice Mayor Dodd made a motion to approve item 11B, seconded by Commissioner Sasser. The motion carried 5 - 0.

**c.** <u>Transfer from Parking Fund to Capital Improvement Fund – Pay Stations (Finance Director Tony Bryan)</u>

This item was approved on consent.

## 12. ORIDINANCES – PUBLIC COMMENT

There were no ordinances for consideration.

## 13. RESOLUTIONS – PUBLIC COMMENT

**a.** RESOLUTION 2011-33: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING AN AGREEMENT WITH THE LAUDERDALE-BY-THE-SEA CHAMBER OF COMMERCE FOR OPERATION AND FUNDING A VISITOR AND WELCOME CENTER; DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR REPEAL OF ANY CONFLICTING RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Mayor Minnet opened the meeting to public comments.

Arthur Franczak stated it was an annual tradition for the Lauderdale-By-The-Sea Chamber of Commerce to attend Commission meetings during the budget process and request tens of thousands of dollars in funding. He said the Commission almost always grants their request, as it wished to help local businesses and attract visitors to the Town. Mr. Franczak believed the Chamber should seek funding in from its members the private sector. He said the fact that they needed $38,000 from the Town meant the Chamber members were not finding the Chamber's services useful, including the additional $38,000. Mr. Franczak believed that when the Town awarded the funds to the Chamber, the thought was that businesses would be helped, but it was only the Chamber that was being helped. He added, as the Town conducted no survey of the number of businesses helped by the Chamber, there was no way of knowing whether help was really given, or were local businesses satisfied with Chamber's work. Mr. Franczak believed if the Town let the Chamber seek the funds in the private sector, the Town would benefit, as it would attract more visitors by forcing the Chamber to become more responsive to the needs of its members. He said his firm paid $3,000 in dues and currently paid $700; the Town subsidized the rest. Mr Franczak said that one of the reasons the Chamber was of little help to businesses was their refusal to get politically involved in defending local businesses on such issues as fire assessment fees or tax increases for fear of losing Town funding. Mr. Franczak believed that was a conflict of interest. He did not support the Chamber's recruiting members from outside of the Town, such as in Pompano and Fort Lauderdale. He said the Chamber did not supply sufficient referrals and this again seemed not to justify the membership fee he paid. Mr. Franczak added that he received a mailing list that did not include email addresses. He said not only did he pay the Chamber $700, but he spent a few thousand dollars to take advantage of their mailing list.

Paul Novak, objected to Section 3.5 as it de-incentivized the Chamber to go to Commissioner Chip La Marca and request money, if the Chamber had to reimburse funds to the Town. He pointed out the Chamber was the only organization in

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Lauderdale-By-The-Sea that really promoted the Town, and every year they went through the same thing. They appreciated the $38,000, but those funds were strictly for the payroll for the Welcome Center and used nowhere else. He failed to see why the Town would want to take the funds allocated to the Chamber and use it elsewhere, as the Chamber did not have a big budget; Lauderdale-By-The-Sea was a small town, and they were a small Chamber. Recruiting members from outside the Town was essential to the Chamber's remaining viable. Many members from outside the Town came over the bridge to dine in the Town. He urged the Town Commission to remove Section 3.5.

Bill Vitola wondered what the Town Manager's figure would be if the Town ran the Welcome Center and what hours she would suggest the Center be open. He said if it cost the Town more, the Chamber should be given the funds they requested; if the Town could do it for a cheaper cost, then the Town should operate the Center and the Chamber could use an office there. Mr. Vitola felt that every year the same subject arose and led to a debate. He believed this was less a matter of the Town funding the Chamber, and more a matter of whether the Town wanted to keep the Welcome Center and the cost to run it.

Ben Freeny thought the Chamber's president should attend the meeting to give an explanation for the Chamber's request for funding. He added that the Director of the Visitors' Center should also be present to explain why the funding was necessary. Mr. Freeny said the task should not have to fall on Mr. Novak's shoulders all the time and it would be much more convincing to have the leadership present to ask for the funding.

Ron Piersante did not believe the Town could operate the Welcome Center for $38,000. He said that he, along with other volunteers, delivered thousands of Visitors' Guides to businesses. Mr. Piersante said the Welcome Center was well utilized, and visitors were given the useful advice they requested as to where to go and what to do in the Town. He agreed the businesses over the bridge were necessary to the survival of the Chamber and the Town, as the Town did not have enough businesses to support the Chamber; and the Chamber did a very good job. Mr. Piersante urged critics to become more involved with the Chamber and its efforts. He stated that removing ones ad from the Visitors' Guide did nothing to help the Chamber. Mr. Piersante believed that if the signs directing visitors to the Welcome center were removed, it would adversely affect business coming into the Town.

With no one else wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Town Manager Hoffmann explained that if the Chamber received funds from the County for its visitors' guide, Section 3.5 did not affect those dollars; the section referred only to the operation of the Welcome Center and paid salaries. Town Manager Hoffmann said it would cost more than $38,000 for the Town to run the Welcome Center for as many hours as they were open.

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Mayor Minnet pointed out the $38,861 was for the operation of the Tourist Information Welcome Center and not for the Chamber's programming. She said the funds were to offset the labor costs of paid Chamber staff that ran the Visitor's Center. She agreed there should have been a stronger presence of the Chamber at the present meeting, as there were many residents present whose taxpayer dollars funded the Center, and they deserved the benefit of the Chamber's presence at the meeting. Mr. Novak was commended for always attending the meetings, but a stronger Chamber presence was preferred. Since she sat on the dais, Mayor Minnet had constantly requested that a Chamber Board member attend a Commission meeting at least once a month to provide a brief overview of what was happening within the Chamber. She had also hoped the Chamber would be a stronger marketing arm for the local business community. Mayor Minnet thanked the Chamber for taking the lead on such efforts as beach cleanups. Mayor Minnet said she would continue to ask questions to ensure the funds were being appropriately utilized.

Commissioner Clottey recalled that it was determined at a Commission roundtable that the Chamber director would attend a Commission meeting and provide a monthly report, which had yet to take place. She asked Mr. Novak to speak with the Chamber's president and ask her to attend a Commission meeting and provide the dais with an update of the Chamber's activities.

Mr. Novak said the issue of attending Commission meetings was discussed at the Chamber's Board of Director's meeting. Both he and the Chamber's executive director encouraged the Chamber's board members to attend every Commission meeting and give a brief update, but it had not happened. He said he could only relay the Commission's message to the Chamber's board.

Commissioner Clottey suggested Judy Swaggerty attend the Commission meeting and say a few words once a month as to the current status of the Chamber's work.

Vice Mayor Dodd said he also believed Section 3.5 was too vague and raised the issue of whether the Town should spend the $38,000 on the running of the Visitor's Center. He believed the Town needed to be absolutely clear when a donation was made by Commissioner La Marca or a government agency if the funds went toward the cost of producing the Visitor's Guide or towards the cost of the Town providing one of the two Visitor's Centers in Broward County. Vice Mayor Dodd said the burden of the latter was falling on the Town's taxpayers. He supported the Town's Chamber 100%, but rather than taking the money for the running of the Welcome Center, they should be the instrumental getting donations. Vice Mayor Dodd believed that a few years ago there was $20,000 in donations, and in 2010 the Town received $10,000 in donations; the onus should be on the Chamber to help the Town, and not leave it to the Town's administration.

Vice Mayor Dodd said any funds received from other governmental bodies for use to run the Visitor's Center should be put toward the Town's cost to run the Center and not toward the individual item. He thought the Town needed to get a realistic cost from the

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Chamber on running the whole Visitor's Center, as it seemed this picture was not forthcoming.

Commissioner Sasser asked, based on the donations over the last two years, what specifically were those donations made for, such as that from Commissioner La Marca.

Mayor Minnet replied that the donation was to offset the production cost of the Visitor's Guide.

Commissioner Sasser recognized the donation was for the Visitor's Guide specifically, but questioned whether the Commission was requesting that the Chamber return money to the Town in the equivalent amount of the donation; if not, then he agreed with Mr. Novak that 3.5 meant nothing and the language should be removed from the resolution. Commissioner Sasser said if his interpretation was incorrect, then he requested a member of staff or the Commission to clarify the meaning of section 3.5, as the Commission knew where the funds were coming from and what they were being used for, and 3.5 did not touch the issue.

Town Manager Hoffmann understood that in the past, when the Chamber received the funds from the Broward Convention & Visitors Bureau, the monies were for the operation of the Visitor's Center. In 2010, staff included the language in 3.5 in the Town's contract with the Chamber. The Chamber then informed the Town they were going to get a $10,000 donation from the Visitor's Bureau and asked if the funds were sent to offset the cost of the Visitor's Center, the Chamber could not keep the money based on the language of the agreement. She believed the Chamber then negotiated with the Visitor's Bureau for the donation to be made for something other than the Welcome Center.

Commissioner Sasser reiterated his position, the Commission and staff were well aware the way the donation from the Visitor's Bureau was made to the Center was done in a way to circumvent section 3.5. Thus, keep section 3.5 and include the Visitor's Guide in the criteria for funds to be reimbursed to the Town or remove it.

Mayor Minnet inquired that, if section 3.5 were removed, and the Chamber was given a donation specifically for the running of the Visitor's Center, the Town could receive no reimbursements.

Town Attorney Trevarthen affirmed this to be the case; if section 3.5 was taken out, there could be no reimbursement to the Town for donations to the Chamber to run the Visitor's Center.

Commissioner Sasser pointed out there was a loophole in the contract between the Town and the Chamber that had been taken advantage of and would continue to do so, meaning no impunity toward the Chamber.

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Commissioner Clottey stated that the Chamber needed an incentive to seek outside funding. She said that if the Chamber sought and received donations, only to return the funds to the Town, there was no incentive for them to fundraise.

Vice Mayor Dodd believed the Chamber needed to furnish the Commission with the real cost breakdown for running the Visitor's Center. He wanted no one to be under any illusion as to what it cost to run the Visitor's Center, and it provided a clear view of how donations could be applied to offset such costs.

Commissioner Vincent noted that the Welcome Center and the Chamber worked hand-in-hand to everyone's favor. If the Town asked for a portion or all of funds allocated to the Chamber, the Chamber would be reluctant to seek outside funds. Commissioner Vincent said the Chamber should be given the $38,000 and perhaps in following year, the Chamber might not need the full $38,000 because they would be more motivated and successful in their fundraising and business promotion efforts.

Mayor Minnet stated that the Town needed to realistically look at the costs to run the Visitor's Center and the comments from the Commission, staff, residents and business owners should be taken into consideration, as that would facilitate an understanding of what benefit the Center brought to the Town, to better justify the funds given to the Chamber for that purpose.

Commissioner Sasser made a motion to adopt Resolution 2011-33 with the understanding that there will be no funding considered for FY2012-2013 until the submission of audited financials, which showed the costs to run the Welcome Center. Commissioner Vincent seconded the motion. The motion carried 5-0.

**b.** **RESOLUTION 2011-34:** A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING A SERVICE AGREEMENT BETWEEN THE TOWN OF LAUDERDALE-BY-THE-SEA AND BIEN-AIME, INC., TO OPERATE THE COMMUNITY CENTER; DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT AND TO EXPEND BUDGETED FUNDS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

Mayor Minnet opened the meeting to public comments. With no one wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Vice Mayor Dodd made a motion to adopt Resolution 2011-34. Commissioner Sasser seconded the motion. The motion carried 5-0.

**c.** **RESOLUTION 2011-35:** A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA PROVIDING FOR ISSUANCE OF A NOTICE OF INTENT CONCERNING PENDING LAND DEVELOPMENT REGULATIONS.

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Mayor Minnet opened the meeting to public comments. With no one wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Vice Mayor Dodd made a motion to adopt Resolution 2011-35. Commissioner Sasser seconded the motion. The motion carried 5-0.

d. **Resolution 2011-36:** A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, ADOPTING THE THIRD AMENDMENT TO THE SOLID WASTE , BULK WASTE, AND RECYCLING COLLECTION SERVICES AGREEMENT BETWEEN THE TOWN AND CHOICE ENVIRONMENTAL SERVICES OF BROWARD, INC.; DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT AND TO EXPEND BUDGETED FUNDS; PROVIDING FOR CONFLICTS, SERVERABILITY, AND FOR AN EFFECTIVE DATE.

Assistant Town Manager Bud Bentley reviewed the details of the proposed agreement and pointed out the disposal rates had decreased significantly. He stated Choice Environmental Services recognized the equity issue of not requesting that the rates go down, and they did this voluntarily as part of being a good corporate partner.

Mayor Minnet opened the meeting to public comments.

Bill Vitola repeated his request to have bulk pickup with the claws. He believed that garbage cans all over the street along A1A looked terrible. Mr. Vitola stated that when the Town used Waste Management, this problem did not arise.

Edmund Malkoon requested clarification as to whether the change in the contract included not having to fit yard waste into the bins. He echoed support for more bulk pickups each month.

Ken Brenner thanked Commissioner Sasser and Assistant Town Manager Bentley for their efforts in rectifying some of the many inequities in the proposed contract. He believed that the old contract should be thrown out and a new one drafted. Mr. Brenner had full confidence in the professionalism of Town Manager Hoffmann and her ability to negotiate a fair and equitable contract.

With no one else wishing to speak, Mayor Minnet closed the public comment portion of the meeting.

Mayor Minnet questioned the charge for monthly rates for single family and duplex, regarding bulk collection, unlimited volume once per month pickup.

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Assistant Town Manager Bentley said there was a different usage of terms. Bulk trash was picked up once a month and placed on streets or curbsides for pickup; weekly, all trash had to go into the garbage can. He believed that the two previous speakers were referring to yard waste, as some of the neighboring cities tried pulling yard waste out of the mainstream garbage and treat it differently. Assistant Town Manager Bentley said the city to the south provided a separate cart pick up once a week. This had been fairly successful in reducing the presence of yard waste in trash carts. He pointed out the reduction from yard waste from the trash stream was something to be monitored and addressed.

Commissioner Sasser believed the resolution dealt only with the lowering of rates. The discussions would focus on the terms and conditions of the contract.

Commissioner Clottey requested additional explanation for the benefit for the public that the proposed decrease of just over 15 percent applied to single family and duplexes; the remaining customers would have a decrease of 5.4 percent.

Assistant Town Manager Bentley said the way the contract was bid and structured by the Town, was they requested a price for single family and duplexes, which made sense, as they were the neighborhoods where garbage was picked up, one resident after another. The second type of service that was bid was the multi-family buildings that utilized carts, and they would experience the same decrease as the single family. The next level of service was the dumpster, which had a different cost model than carts, as it required different disposal equipment as they cost more than carts and had to be replaced more often. He noted that, for dumpsters, the CPI applied to about 70 percent and the disposal rate about 30 percent of the monthly bill. Thus, the difference in the costs and rates depended on whether carts or dumpsters were used.

Commissioner Sasser made a motion to adopt Resolution 2011-36. Vice Mayor Dodd seconded the motion. The motion carried 5-0.

Town Manager Hoffmann said that Choice withheld their bills for the first quarter, so they could reflect the subject rate decrease.

Mayor Minnet recessed the meeting at 9:10 p.m. and reconvened at 9:20 p.m.

## 14. QUASI-JUDICIAL PUBLIC HEARINGS

Town Attorney Trevarthen reviewed the rules of quasi-judicial procedures, requesting the Town Commission disclose any ex parte communications pertaining to the 14a.

Mayor Minnet disclosed the owner of the subject project mentioned the project to her.

All persons wishing to speak on item 14a were duly sworn by Town Attorney Trevarthen.

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**a.** Fishermen's Pier Inc.'s Conditional Use Application for Outside Seating (Zoning and Code Supervisor Jeff Bowman)

Spiro Marchelos stated the request was for a 10 by 14 foot, 144 square foot extension of the pier and wood deck to allow additional seating and an observation deck.

Planning & Zoning, and Code Supervisor Jeff Bowman, Development Services, pointed out an error in staff's report under the conditional use application. The state approved permit was actually August 19, 2009 not 2011. The Planning & Zoning (P&Z) met on the subject issue and recommended approval, and staff recommended approval with the conditions outlined in the backup.

Mayor Minnet sought assurance the applicant was notified there were some letters sent to the Commission in reference to the music from his establishment.

Mr. Marchelos said he had not seen the letters and he was presented with a copies.

Mayor Minnet inquired if there were any pending code violations on the subject property.

Supervisor Bowman said staff was not actively pursuing any outstanding violations. The applicant had relined the parking spaces, changed the lighting on the pier, and most of the benches on the beach had been removed with the exception of one or two. Mr. Marchelos had been requested to remove all the benches, although they were not a code violation. The newest deck, used for customer service, had been approved as a waiting area and was currently illegal in its present use, until the approval of the requested conditional use. Mr. Marchelos was issued a violation for illegal use in late 2010, and staff approved a Notice of Intent to add conditional uses to the code, which he believed was approved in April or June of 2011. The application for conditional use was made in June 2011.

Mr. Marchelos stated the two letters referred to music played in the morning or the evenings; he did not have an orchestra or band; there was some music and it was a beach café, open from 7:00 to 10:00 p.m. He believed they confused his establishment with Aruba's music on Friday and Saturday nights. He assured the Commission they would follow the rules/guidelines of the Town, whatever they were.

Mayor Minnet questioned the claim that the restaurant turned their music on at 7:00 a.m.

Mr. Marchelos replied that was a false statement. However, sound travels and people on the beach sometimes played music from their stereos.

Vice Mayor Dodd understood the Pier built a decking area and called it a waiting area. Shortly after that they began serving food in that area. Upon realization, he questioned

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if such activity was legal and had the owner made any type of application to legalize the area for serving food. Supervisor Bowman said not until June 2011.

Vice Mayor Dodd stated that at present, the applicant was not permitted under the Town's code to serve food in the existing deck area. Supervisor Bowman said he was not permitted to do so by the Town. Mr. Marchelos said he was authorized to serve food by the Health Department and there was seating for 49 in the area.

Supervisor Bowman restated the Town had not granted a permit for Mr. Marchelos to use the area for anything other than a waiting deck. He added that that would change if the conditional use was approved.

Vice Mayor Dodd observed the signs in the business' parking area read area parking. Though he understood this was a situation persisting in contradiction to the Town's code, it was decided by the Commission to require the Fishermen's Pier and Aruba Beach Café to apply for a conditional use to evaluate whether beach parking could be made. Strictly under the Town's current sign code, should the business' parking be labeled "pier and restaurant parking only" until the application was granted allowing them permission for beach parking.

Mr. Marchelos indicated he allowed people from Aruba to park in his lot, as he did for other employees in town; if it was the Town's desire, he would stop such activity.

Assistant Town Manager Bentley explained the focus of the Town's code in reference to beach parking or private paid parking came about because SunTrust bank wished to officially provide that service. He reminded the Commission a code change had to be developed, and the Commission directed staff that for those businesses providing beach parking in the past, they would not be subject to the $900 application fee for conditional use. It was the understanding by staff that the Commission directed them to proceed with processing the conditional uses as quickly as possible. He said Aruba's conditional use application was scheduled for the October 19, 2011 Planning And Zoning Board agenda, and staff was working through an issue with Fishermen's Pier in order to process their application. Neither Aruba nor the Pier had been asked to stop the past practice while staff processed their conditional use application.

Vice Mayor Dodd believed, in his interpretation, there was never any intention to grant any of the exemption restaurant program spaces to any applicant with an existing car park, unless the parking was insufficient to meet the required demands of the existing use and any increase to the existing service area. Before any additional conditional use could be granted under any parking exemption program, Vice Mayor Dodd believed it would be necessary to establish exactly how many spaces were needed to satisfy existing uses of both the Pier and restaurant seating area. He favored the extension to the decking, as he believed it would benefit the tourists visiting the Town. Vice Mayor Dodd requested the applicant to be more aware of the Town codes and how they should be applied.

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Supervisor Bowman pointed out the application noted in the memo required 14 parking spaces for the outdoor dining, and under the Town's exemption program, the applicant could be approved for those 14 spaces. Staff would not immediately put those 14 spaces under the exemption program, as they would hold that until they went through the process of determining what the appropriate number of parking spaces would be under the Town code, due to the issue of the Pier not having a designated parking requirement under the code.

Vice Mayor Dodd saw no reason why the Town should allow beach parking as an added conditional use and granting the two restaurants under the exemption program.

Commissioner Clottey pointed out when people walked along the beach north/south at high tide, they could not continue walking; they had to come around and either walk down Commercial Boulevard, down El Mar Drive or over to the Town's portal. She asked Mr. Marchelos if he would consider installing a small pathway a little west of the deck, knowing this would infringe on his parking.

Mr. Marchelos responded he would have to speak with his attorney and get back to the dais. He added that currently, people cut through the alleyways and the parking area to the other side.

Town Attorney Trevarthen invited those in favor of the proposed application to speak if desired.

Mr. Freeny said the original waiting area was constructed prior to the parking exemption program. He added that this was discussed at the P&Z meeting, and he did not believe the parking spaces required for that square footage would be eligible for the Town's exemption program, whereas parking spaces for the new area would.

An unidentified male speaker expressed his support for the proposed project.

Mr. Malkoon echoed support for the project, reiterating concern mentioned by Mr. Freeny and the importance of turtle lighting remaining on the beachfront.

Town Attorney Trevarthen stated that no one wished to speak out against the project.

Mr. Marchelos said the conditional use application would bring more business into the Town and it was a turtle friendly environment.

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

Mayor Minnet was satisfied with the application and thought Commissioner Clottey's suggestion of a small boardwalk was good. She reiterated the need to ensure all code issues were addressed.

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Vice Mayor Dodd made a motion to approve with staff recommendations as submitted. Commissioner Vincent seconded the motion. The motion carried 5-0.

## 15. COMMISSION COMMENTS

Vice Mayor Dodd noted that during the Hillsborough meeting, the millage rate was set the same as the previous year, and the dredger was now back at the station, despite being caught in the current in the inlet. He added that the dredger had to be laid up against the pilings of the bridge while the tugs were repositioned, which demonstrated how strong the tide could be in the Hillsborough inlet. Vice Mayor Dodd said the painters were finishing up some last minute work on the barge, and the inlet had one set of shallows near marker # 4 giving a minimum low tide clearance of 12 feet.

Commissioner Clottey said she chaired the Halloween event this year to take place Monday, October 31, 2011, from 6:00 p.m. to 8:30 a.m. She encouraged everyone to attend. Commissioner Clottey said the younger children could spend the evening with the Great Pumpkin and friends, and take a ride through the Spooky Shores. She added that additional entertainment included drawing and costume contests for a variety of age levels, including adults, along with the traditional trick or treating, and other surprises.

Mayor Minnet invited everyone on October 1, 2011, to work with Congressman West on a reef cleanup at 7:30 a.m. She said he would be working with the local dive shops to clean up underneath the pier. Mayor Minnet urged everyone to come out and support the Congressman and the Chamber's cleanup efforts.

Commissioner Sasser wished to confirm Congressman West would be attending a Town meeting later in October. Mayor Minnet believed the date was October 18, 2011.

## 16. OLD BUSINESS

New Business item 17a was brought forward earlier in the evening for discussion at this time.

### 17a. Appointment of Mr. Andrew S. Maurodis to Provide Legal Representation to the Town for Solid Waste Collection Issues (Assistant Town Manager Bud Bentley)

Town Attorney Trevarthen said her office began representing Choice Environmental on a matter involving the City of Miami, a similar contracting issue. Though not a direct conflict of interest, and in an abundance of caution, she recommended stepping back from representing the Town on the issue. She explained when such a conflict of interest arose, there was either a withdrawal of the attorney, or a waiver of the conflict, and she proposed a withdrawal from the specific proceedings and presented the Town Manager with names of attorneys capable in that area. Attorney Trevarthen said staff could present the Commission with their recommendation to hire Andrew Maurodis, the City Attorney for the cities of Parkland and Deerfield Beach. She worked with Mr. Maurodis over the years and could testify to his competence and familiarity with the

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subject issues. If the Town decided to waive the conflict of interest in order to have Attorney Trevarthen continue to represent the Town in the matter, there would have to be a waiver from Choice as well. Attorney Trevarthen said that in the past she stepped back when she discovered a member of her firm represented someone on a previous bid on the subject contract.

Commissioner Sasser stated that he discussed the matter with Attorney Trevarthen and although he appreciated her recommendation of Mr. Maurodis, he felt it was too late, as he did not wish to be put in the present situation. Commissioner Sasser believed it reached a point of being above reproach, and the original recommendation for the Town to remain beyond reproach should be kept, and go with outside counsel. He believed the $215 per hour fee for outside legal services should be discussed separately, with the option to remove those expenses from the Attorney's budget allocation. Commissioner Sasser said the Attorney's office chose to opt out in favor of Choice, and subtracting those funds would be a goodwill gesture to the Town after making that decision.

Vice Mayor Dodd said he also spoke with Attorney Trevarthen on the subject matter, and felt the Town was being ditched by her law firm, Weiss Serota. It was possible for Attorney Trevarthen to continue representing the Town on its pending litigation case involving Buena Vista. He understood her position of feeling it was an ethical issue where it was wiser to err on the side of caution. Vice Mayor Dodd said she had mentioned the possibility of a waiver, which he felt was a better route to go, as the Town Commission and staff were familiar with working with her. He stated that if Attorney Trevarthen was willing to accept the waiver from the Town and from Choice, that would release her from any ethical issues, and her experience with Choice and the issues facing the Town was invaluable. Vice Mayor Dodd was reluctant to hand the matter over to another attorney, regardless of how highly recommended he came.

Town Manager Hoffmann pointed out the only additional cost she foresaw with Attorney Maurodis was the cost for him to be made current on the issues, as the Town paid Attorney Trevarthen on an hourly basis for her work on the matter. Mr. Maurodis was a very experienced municipal attorney, and was very helpful to the Town on the Ester Colon issue.

Attorney Trevarthen did not think to ask for a waiver, but if it was the desire of the Commission that she remain involved, a waiver would be sufficient to allow her to do that. If the waiver was chosen, consideration of the proposed item would have to be deferred to create a waiver.

Mayor Minnet inquired if Vice Mayor Dodd wished to make a motion to defer the matter.

Vice Mayor Dodd replied if the Commission was of a consensus to proceed as such, he was in favor of continuing the matter to the next Commission meeting.

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Commissioner Clottey believed Attorney Trevarthen had represented the Town well, but she was not in favor of having the same attorney represent the Town whose firm was representing the other side, even if it was in another town. The matter would be much less controversial if the Town elected to go with an outside attorney, even if it cost a little more money. Commissioner Sasser agreed.

Commissioner Sasser made a motion to approve. Commissioner Vincent seconded the motion. The motion carried 5-0.

**16a.** Renewal of the Solid Waste Collection Contract (Assistant Town Manager Bud Bentley)

Assistant Town Manager Bentley stated that the discussion was focused on the renewal of the Town's solid waste collection contract, not a proposed renewal; it was a status report and the Town Commission was not being asked to approve the renewal of the existing contract. This was for a point of clarification in light of the questions and feedback he was receiving from the public. He stated the contract with Choice expired on June 20, 2012; in the second amendment, staff clarified the renewal process to allow both parties to recognize the time it took to reach an agreement or for the Town to make the decision not to renew and rebid the service. He pointed out rebidding garbage service was not a 45-day process, reminding the dais of the extensive discussions concerning various aspects in the last negotiations, such as the appropriateness of the RFP, the service level to be provided, etc. The contract provided that before the Town Manager gave the Commission a recommendation on renewing the existing contract, either she, or her designee, would meet with the contractor to go over the various issues both parties might wish to see in a renewed agreement. He noted staff already held a preliminary meeting with Choice and had gone through the contract and identified the issues they felt should be addressed, stating Commissioner Sasser, the Town Commission's liaison, was involved in that process. It would be a policy decision that had to be made in the near future; one was for the Town Manager to proceed with sitting with Choice and working out the various issues, and one of the reasons for the matter being on the present agenda was to show the dais the list of issues raised by staff. If there were other concerns, they could be added and addressed in the next set of negotiations. Assistant Town Manager Bentley indicated the alternative to this route was for the Commission to direct staff to rebid the contract.

Town Manager Hoffmann clarified the Commission directed staff to compile a list of the issues staff recommending looking at in considering the renewal of the contract.

Commissioner Sasser said Assistant Town Manager Bentley and Mr. Smith did most of the work, reiterating the matter before the Commission was not for renewal but to give them an idea of the issues for renegotiation. He felt Choice had been a good partner, as the Town went to them in mid contract and asked them to renegotiate a number of items, all of which they did not have to do, but they did, and this helped the Town's residents and Commission to get things done in a relatively quick manner. He assured Choice the Town would strive to be a good partner as well, and it was not his intention

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to make a recommendation that the Town renew the contract, but what it was before the Commission was enough and, based on the feedback from Mr. Smith, they had no problem with accommodating the Town. The request was for the Town Commission to direct staff to continue the negotiation process with Choice, then bringing the issue back for further discussion if needed, and the decision could be made whether to go to RFP.

Commissioner Vincent sensed hesitation by a few Commissioners to turn the process over to Attorney Mauridos to act on the Town's behalf, which seemed to imply the contract was faulty, as he was a very qualified attorney. Everything appeared to be moving forward smoothly, and he accepted Attorney Trevarthen's decision to recuse herself on the subject matter as the ethical thing to do.

Assistant Town Manager Bentley clarified it was not staff's intention for an attorney to negotiate a contract renewal with Choice.

Mayor Minnet felt it necessary to say the procedure of renewing the contract with Choice could go forward, but the Commission might still elect to go out to RFP in the end.

Vice Mayor Dodd said he did not consider Attorney Mauridos' qualifications in question. He believed the negotiations could be done by staff, Commissioner Sasser and Mr. Smith without the presence of an attorney.

Assistant Town Manager Bentley concurred, stating staff would consult the attorney at times throughout the process regarding any legal issues on which they desired guidance.

Vice Mayor Dodd stated his position on the matter was that Choice had done a terrific job in the Town, but there were still significant issues regarding recycling and staff needed to conduct more research. He observed Choice was prepared to give the recycling bins, and this usually resulted in a doubling of the recycling tonnage; he wondered if the Town would receive any benefit from that increase or had the matter been approached at all. He questioned if the Town would genuinely embrace recycling, so that commercial properties could have the same recycling residential uses enjoyed; it was the same bin sitting outside with recycling, so he wished to know why they were being charged more than residents. Vice Mayor Dodd recommended addressing biodegradable yard waste, as they were currently being comingled with regular garbage. This was not being responsible, and he was unsure if there were any legal aspects but had not made any inquiries of Choice; many cities did not comingle the two, and there were probably better options available. The issues raised were significant, and he liked the original research where consumers received a credit for their recycling using bins with a barcode. He reiterated, if the Town intended to seriously embrace recycling, these were issues that should be considered in the new contract, as the contract would be affected by the changes in the recycling fee, and the trash tonnage would decrease.

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Grant Smith, general counsel for Choice, stated they were happy to partner with the Town, and he had been a regular visitor to work on the various issues that arose. On the issue of the conflict of interest with Ms. Trevarthen, he would not have supported a waiver for the precise reason voiced by Commissioners Clottey and Sasser of the need to be above reproach, and it had nothing to do his trusting Attorney Trevarthen or her firm. He thought the contract a fair one, and the Assistant Town Manager had gone through and done a very good job penciling in the changes that needed to be made and to address the Commission's concern. At some level, after the business points were negotiated, it just took a lawyer to incorporate them into the document to make the layout and language consistent. He knew Mr. Mauridos to be a very competent lawyer, and it would take him very little time to get up to speed with the concerns in the contract, as he understood the base issues and could effectuate the changes and present the Commission with a workable document. Mr. Smith said Assistant Town Manager Bentley gave him a first draft of the list of comments, and there would likely be more, as well as discussions on what Choice could and/or could not do, and have an exchange of ideas on how to achieve an agreement. They understood the time frame it took, and that such room for negotiation was built into the contract; he believed Choice had earned the extension of their contract based on their level of performance. Mr. Smith recalled the original contract negotiation was for five years, and due to their low bid and other factors, the contract was made for three years to allow them time to prove themselves. The Commission would consider renewal if they did a satisfactory job, and they stood ready to negotiate and work out a renewal agreement with the Town.

Mayor Minnet said the previous RFP did not reflect the needs of the community; both the Commission and Choice had done a great job to bring these matters forward and rectifying them. She questioned whether residents deserved the Town going back out with an RFP to address the needs mentioned by Vice Mayor Dodd and other residents, and create an open field, or should Choice have carte blanche to negotiate a renewal based on the list of concerns. The residents came first. She read staff's recommendations for continuing the negotiations as reflected in the backup, receiving an acknowledgement from Choice they understood staff's terms.

Commission Sasser made a motion to continue discussions of a contract renewal as recommended by staff, including the points raised by Vice Mayor Dodd and residents, with the understanding that the Town could still go out for RFP. Commissioner Vincent seconded the motion. The motion carried 4-1. Mayor Minnet voted no.

Town Manager Hoffmann inquired if there were any other areas other than the three mentioned by Vice Mayor Dodd the Commission wished staff to include in the talks with Choice.

Vice Mayor Dodd thought more time should be allowed for the Commission to come up with suggestions, including getting further residential input. Mayor Minnet agreed residential feedback was essential, and other issues such as bulk pickup should be included in the discussions. Commissioner Sasser said he received complaints as to the discrepancy in the charges between residential and commercial consumers.

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Mayor Minnet urged the Commissioners to contact Town Manager Hoffmann with further concerns they wished addressed in the negotiations with Choice.

**b.** Schedule Town Manager Evaluation & Goal Setting (Town Manager Connie Hoffmann)

Town Manager Hoffmann was concerned that if her evaluation was discussed at the next regular Commission meeting there would be insufficient time to go through the goals and discuss goal setting. She would be on vacation for October 25, 2011 Commission meeting, and she believed Mayor Minnet would be away for the first meeting in November and noted that would push discussion of the goals close to Thanksgiving. At present, she believed the immediate priorities were made clear; getting the capital projects moving and proceeding with previously set priorities. She was comfortable if the Commission said those were the goals and a detailed list could be discussed in November.

Commissioner Sasser indicated he would be requesting an excused absence from the Commission meeting on November 11, 2011.

Mayor Minnet asked the Commission to schedule a special meeting to discuss the Town Manager's evaluation and the goals.

There was Commission consensus to schedule a Special Commission meeting on October 6, 2011, at 6:30 p.m. to discuss the Town Manager's evaluation and goal-setting.

Commissioner Vincent inquired as to what information should be brought to that meeting and whether it would to be a full evaluation.

Mayor Minnet said that a number of residents, such as Mr. Vitola, had given their recommendations on how the process should take place, such as members of the dais would forward their evaluation to the Town Attorney and she would compile them into a summary for presentation at the meeting. She believed that it was preferable to the Commission to present their individual evaluations of the Town Manager.

Commissioner Clottey thought it a good idea for the Town Attorney, or an appointed person, to collect the individual evaluations from the Commission and put it together. She also favored that the Commission be provided with the summary sheets, so they could come to the meeting prepared for discussion, rather than see it for the first time at the meeting.

Mayor Minnet concurred that all the evaluations should be turned in by October 3, 2011 so they could be reviewed prior to the meeting on October 6th.

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Town Attorney Trevarthen stated that it was properly noted earlier that the information in the evaluation was a matter of public record.

Mayor Minnet observed the cost aspect had to be considered, as she expected it would take Attorney Trevarthen at least three or four hours to review and consolidate the individual evaluations into one summary evaluation.

Vice Mayor Dodd sought clarification as to whether Commissioner Clotted requested only the value of the ratings from 1 thru 5, or requesting a backup statement given to justify the figure.

Commissioner Clottey had no problem doing it either way. She said a spreadsheet would be fine, as there were only five members on the Commission.

Vice Mayor Dodd felt it might be easier to simply give people copies of the evaluations; there seemed little reason to go to the added expense of collating all of them.

Commissioner Clottey stated she was satisfied with that but preferred them before the meeting.

Mayor Minnet said everyone appeared to agree that if all the evaluations were handed in by October 3, 2011 it would allow enough time to get the documents back to the Commission for them to be prepared for the October 6, 2011 Commission meeting.

Commissioner Sasser suggested the Commission to be prepared to give an overall rating of the Town Manager for the next regular meeting, and take three to five minutes to comment on their reason for the rating they assigned. He added that the detailed information for the evaluation could be made available, and this would circumvent the need to have Ms. Trevarthen consolidate the five evaluations.

Mayor Minnet had no objection allowing five minutes for each Commissioner to give their recommended evaluation of the Town Manager. She agreed the backup information would be made available to the public and the Commissioners prior to October 3, 2011.

Commissioner Sasser inquired as to who the evaluations would be turned in to, and how soon would that have to be done for them to be available to the public and Commission by October 3, 2011.

Mayor Minnet said they should be given to the Town Clerk by the coming Friday.

Town Manager Hoffmann indicated the Commissioners could turn the evaluations in by Monday morning, and staff would have them ready for distribution by later in the day on Monday.

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Mayor Minnet asked the Commission if they wanted any input from the public on the evaluation.

Commissioner Sasser recalled in 2010, the Town Manager devised a set of goals and the Commission prioritized them. He asked whether this process would be repeated with the Commission adding to the goal list if necessary, or would the Commission prefer to compile its own list of goals.

Town Manager Hoffmann responded she could prepare a list of potential goals again, and the Commission could discuss and prioritize them as desired.

Commissioner Sasser concurred, as Ms. Hoffmann's list provided some structure around the beginning of the conversation as far as what her goals should be.

Town Manager Hoffmann believed her contract stated she was to give her input as well. She intended to give a summary status of the goals set at her last evaluation and would also present her accomplishments that were not on the goals list. Town Manager Hoffmann said that information would be provided to the Commission by Friday, September 30, 2011 for inclusion in their evaluations.

Vice Mayor Dodd requested a reminder of the goal that was added at the end of the 2010 list.

Mayor Minnet believed the additional goal was a summary of the efficiency of government.

**17.** NEW BUSINESS

**a.** Appointment of Mr. Andrew S. Maurodis to Provide Legal Representation to the Town for Solid Waste Collection Issues (Assistant Town Manager Bud Bentley)

This item was moved forward earlier in the evening. See item 16a for detailed discussion.

**b.** Commission approval of four (4) Hardship Permit Applications (Town Clerk June White)

Commissioner Clottey had no objection to approving the above hardship permits. She requested the Commission consider charging a higher fee next year fiscal year.

Vice Mayor Dodd made a motion to approve. Commissioner Sasser seconded the motion. The motion carried 5-0.

**c.** Commission Consideration of Commission Meeting Dates November and December 2011 (Town Clerk June White)

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There was Commission consensus to schedule the November and December Commission meetings as follows:

November 8, 2011, November 29, 2011, December 13, 2011

There was a Commission consensus to grant an excused absence for Commissioner Sasser on October 11, 2012.

There was a Commission consensus to grant an excused absence for Mayor Minnet on November 8, 2012.

**18.** ADJOURNMENT

Vice Mayor Dodd made a motion to adjourn. With no further business before the Commission, Mayor Minnet adjourned the meeting at 10:45 p.m.

**19.** FUTURE AGENDA ITEMS

_____
Mayor Roseann Minnet

ATTEST:

_____ _____
Town Clerk, June White, CMC Date

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