TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

REGULAR MEETING

MINUTES

Jarvis Hall

4505 Ocean Drive
Tuesday, July 24, 2012
7:00 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

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

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION - Pastor Jim Goldsmith

Pastor Jim Goldsmith gave the Invocation

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

Item 11e was moved from the Consent Agenda to Old Business as item 16a.

5. PRESENTATIONS

a. Presentation of Certificates to the Hometown Hero nominees by the President of the Lauderdale-By-The-Sea Property Owners Association (Dennis Ritchie, Property Owners Association)

Dennis Ritchie, President of the Lauderdale-By-The-Sea Property Owners Association, presented certificates to Hometown Hero nominees Ken Brenner and Jim Silverstone.

6. PUBLIC COMMENTS

Mayor Minnet noted at the previous meeting, there were comments from the podium in reference to remarks made from both the podium and the dais. She asked each speaker to think on her words as they came up to the podium. She quoted Robert F. Kennedy:

> "That which unites us is and must be stronger than that which divides us. We can concentrate on what unites us and secure the future for all our children, or we can concentrate on what divides us and fail our duty through argument and resentment and waste."

She mentioned allowing extra time to someone by using someone else's time who signed up to speak. She would not be doing this again.

Mayor Minnet opened the meeting for public comments.

Stuart Klein, President of Sea Ranch Lakes Condominium said when they were annexed, they requested the Town give them the same beach cleaning service and sewer rate as was given to the rest of the Town. The Town did a cost benefit analysis, determining it was substantially in the Town's favor, and agreed to their requests in writing. The 1,000 owners of Sea Ranch Club and Sea Ranch Lakes North called upon the Commission to honor their commitment regarding those rates. He submitted petitions to the Town Clerk for inclusion in the record.

June Lassel believed it wrong to dig up the memorable bricks at Anglin's Square and move them. About 670 bricks is a large number for the Town to relocate. Such action would hurt many families.

Rosa Michailiuk favored leaving the donated bricks in their original location out of respect and consideration for the families. She preferred to see the pelican in the Town's branding. Ms. Michailiuk found the most recent design for Bougainvilla Drive very beautiful. She liked the trees, though not the coconuts, as they required a lot of work to maintain. Ms. Michailiuk recommended all the streets that tied in with Commercial Boulevard be improved with the same trees, pavers, etc., including Bougainvilla Drive. She noted her refusal of the tree at her property was due to the need for parking to accommodate her family's cars and not because she did not like trees. She felt the petition that 128 residents signed and presented to the Town Commission was not adequately acknowledged.

Cindy Geesey stated the project designer seemed to ignore a number of ideas presented by residents. There was no inclusion of parking meters in the plan and no assurance the entrance sign would be up to regulation for wind load. She mentioned emailing the Commission a picture of a whimsical Adirondack chair carved in the shape of a fish's head. She also emailed pictures of the beachy public bathrooms from the Villages, and easy to clean trash/recyclable station, and a weather station that would be a great backdrop for tourist pictures. Ms. Geesey encouraged the Town to include parking pay stations on Commercial Boulevard now rather than wait until the income justified them. She was opposed the Town paying for pest control on private property.

Dennis Ritchie noted that there were four piles of yard debris on Oleander Way that the neighbors believed should have been picked up. He believed the Town's website said yard debris was picked up every Monday and Thursday, but Assistant Town Bentley informed him it might be the City of Pompano Beach that was doing the pickup. He asked for Town staff to look into matter, as he had called the waste company, and they

said someone would pick up the debris. He noted this was not bulk pickup that occurred once a month, this was for yard debris only.

Bob Fleishman accepted his Hometown Hero award with great humility, stating he would always hold its meaning dear, thanking those who voted for him. Before the 2010 municipal election, the Town was very divided, and he felt it was his duty to participate in uniting the Town.

John Boutin mentioned Broward County was to host a large diving convention in 2013, the Divers Equipment & Manufacturers Association (DEMA). He suggested offering certified divers a special parking permit for Datura Avenue and Hibiscus Avenue, as well as at other locations that allowed free parking during the offseason on weekdays 6:00 a.m. to 10:00 a.m., and 8:00 p.m. to 11:00 p.m. to attract divers to Town. Making parking easier for divers would garner more positive results than lost revenues.

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

7. PUBLIC SAFETY DISCUSSION

a. BSO Monthly Report – June 2012 (Chief Oscar Llerena)

Chief Llerena formally invited all Town's residents to their Annual National Night out Against Crime event that would be held at El Prado Park between 5:00 p.m. and 8:00 p.m. on Tuesday, August 7, 2012. The 2011 event was very successful, particularly for the children.

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

b. VFD Monthly Report – June 2012 (Chief Riley Paine)

Commissioner Brown congratulated both the VFD and BSO, noting there were two very complimentary articles in the local newspaper in July that showed both departments went out of their way with some children, both local and visiting. This was excellent publicity for the Town, and the articles said the children could not have been treated better.

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

c. AMR Monthly Report – June 2012 (Chief Brooke Liddle)

Commissioner Vincent congratulated Commissioner Brown on his appointment as the Town's Representative on the Emergency Services Medical Review Committee (ESMRC). He thanked Chief Liddle for the education he received while serving on the ESMRC.

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

8. TOWN MANAGER REPORTS

a. Chamber of Commerce Monthly Report

Commissioner Dodd noted the Chamber normally organized the beach cleanup, and suggested that since the amount of the debris had gone down dramatically, the beach cleanup crew bring a few rakes to rake up the seaweed from the turtle.

The report was accepted with no further discussion.

b. Finance Report – June 2012 (Finance Director Tony Bryan)

The report was accepted without discussion.

c. Town Manager Report

Mayor Minnet stated it was important for everyone to read the Town Manager's report in the backup, as often times the Commission did not discuss everything contained in the report. A number of the questions brought forward by the public were already answered in the report.

i. Status Report on the Beach Nourishment Project

Town Manager Hoffmann stated Broward County intended to bring the sand to the Town's beaches by truck. The County expected $4.5 million from the Army Corp of Engineers to go to the planning, engineering and design of that project, but nothing was said about how it would impact the total funding for the project, which they hoped to start in 2013. She noted that it was said that in Hollywood they used the same kind of sand that was trucked in and there were some unintended impacts on the reef, but the County disputed that. Town staff made a request to the County to get the regulatory agencies' comments, as well as the County's response. When they received those documents, they would share them with the Town Commission and the public.

Commissioner Brown thought the County's report was good news for the Town. The report mentioned was there would be increased environmental regulation that should satisfy concerns expressed by residents about the safety of the Town's reefs. He assumed increased regulation meant increased monitoring and enforcement of safety measures to protect those reefs. Because of the increased environmental regulation, there would be less widening of the beach. With less sand on the beach, the Town's costs would go down, and the length of the project would be shortened. There would be regulatory emphasis on sand quality, addressing the concern from Hollywood. Finally, the County stated the proposed stage of the project going up to Hillsboro Beach would not move forward, so they would immediately transfer the $4.5 million in federal funding earmarked for the Hillsboro Beach project to his project. He noted though it was

unclear how the funding would be allocated, it meant there was $4.5 million available for the project.

Vice Mayor Sasser was against the project, noting it was odd that two people could read the same report and have completely opposite interpretations. He saw the County's report as bad news. He did not yet know what the project was to cost the Town, a project he considered a taper, not beach re-nourishment. It had been established that the Town did not need the additional sand, and that the project was to help the neighboring cities to the north and south. He could not support spending money on a project that posed such a risk to the Town's tourism and its reefs. The report stated the permitting agencies had expressed concerns that the beach nourishment project "*would have impacts to near-shore hard bottom habitat and communities beyond those projected and mitigated.*" Mitigated meaning they tried to regulate it and it did not work. Vice Mayor Sasser felt it was not money worth spending.

Mayor Minnet inquired where the Town was with regard to the beach nourishment project.

Town Manager Hoffmann indicated the Town Commission directed staff to send the County a letter stating the Town's position, which was to support the project with certain conditions.

Mayor Minnet pointed out Vice Mayor Sasser was absent from the Commission meeting when the vote was made to support the project. At that meeting, the Commission voted three to one. She voted against participating in the project.

Town Manager Hoffmann stated Town staff communicated the Commission's stance to the County. One of the provisions listed in the letter was that the Town would pay its fair cost share of the project over a three-year period. Though the Town had yet to hear back from the County, she believed the next communication would be when there was some formal action by the County, such as bringing an inter local agreement to the Town. At that time, the agreement would call for the Town to commit its involvement and dollars to the project. At that point the Commission would have to vote on that agreement.

ii. Emergency Communications Funding Formula

Commissioner Dodd thought the Town already paid the County a sizeable amount in ad valorem taxes to run the existing call centers. The County felt there would be savings by consolidating to two or three new call centers. He asked why the Town had to pay an additional $125,000 to have its emergency calls answered in 2014. It seemed the County was not giving the Town the full truth about how much the existing system cost to run. He felt if the County wished to divest the responsibility for the call centers, they should be prepared to divest the income they took from the Town's taxes to pay for the call centers.

Town Manager Hoffmann noted the County steadfastly refused to pay for consolidated emergency call centers in total. They set up a committee consisting of all the city

managers in Broward County and asked them to make recommendations to the County Commission on funding, governance and operations. However, the assignment came with the provision not to ask the County to pay for all of it, but they would continue to fund the approximate $20 million they currently put into the emergency call system, with the cities making up the rest. She indicated the committee argued on an ongoing basis that the County should be paying for it but, as the County would not pay, the committee began working on a funding formula. In a previous report, she told the Town Commission the cities that had lower tax bases and high crime wanted the funding from the cities to come through ad valorem taxation via municipal services tax unit. Municipalities like Lauderdale-By-The-Sea, Weston, Planation, cities with low crime rates and a good tax base found this unfair, as they would be subsidizing services to other cities. Town Manager Hoffmann stated of the 27 cities comprising the County's committee, the split was right down the middle as to who would benefit from having the call center funded through ad valorem taxes and who would benefit having it based on some other mechanism. The last time she updated the Commission, she informed them the City Manager of Fort Lauderdale had proposed that cities should get to choose which method of payment suited them. The Town Commission directed her to vote for this method, but that option lost the vote at the next committee meeting, at which many of the city managers were not present, and the cities wanting payment through ad valorem taxes had majority representation. Though the cities advocating the ad valorem tax were happy with their victory, the other city representatives pointed out the remaining 13 cities would likely not join, and there would be no consolidated emergency call system. At the last committee meeting, there was a compromise floated to have a funding formula that combined calls for service, ad valorem taxes and population. Though it was not voted on, the committee tentatively agreed that scenario three shown in the Commission's backup was the one they could accept; to pay 33 percent based on the three abovementioned variables. This would make the Town's cost around $125,000, assuming all the cities represented on the committee would participate. They realized some cities would not join so at the next meeting they would juggle the numbers to see what would happen when cities like Coral Springs and Planation dropped out. The people running the communication centers did not think that those cities dropping out would greatly affect the funding formula.

Commissioner Dodd reiterated his position that the situation was deplorable.

Mayor Minnet sought clarification was it due to four or five cities that had their own call centers refusing to relinquish their control?

Town Manager Hoffmann replied there were only two or three such municipalities. The real issue was the total cost now was in excess of what the County funded, and they were arguing there would be economies of scale. She thought the reason for consolidation was more of cost avoidance than cost savings.

Commissioner Dodd added the tax revenue for the County came not only through ad valorem taxes, but also through taxes on one's phone bill, so the County had various sources of revenue they were drawing on.

Mayor Minnet agreed with the sentiments expressed by Commissioner Dodd, stating it was important that members of the public call County Commissioners and express their anger regarding the situation.

Town Manager Hoffmann indicated if the funding formula was based on ad valorem taxes, the Town's cost would have been around $400,000 a year. With the new 3 way funding formula, it dropped to $125,000. She felt the Town made significant progress, though it was something the Town wished it did not have to pay for at all.

Vice Mayor Sasser stated it was very simple to get in touch with the County Commissioners, as their contact information was listed on the Town's website.

Mayor Minnet indicated the Town's County Commission representative was Commissioner Chip LaMarca, but there were nine County Commissioners, and residents could call them all.

Mayor Minnet addressed the memorial bricks stating the architects assured the Commission the bricks would be given a prominent or recognized space.

Town Manager Hoffmann affirmed the bricks would be placed prominently in that same block.

Mayor Minnet noted there were questions on the trash receptacles for the west Commercial project and believed there was Commission consensus for a consolidated trash and recycling receptacle.

Town Manager Hoffmann pointed out she received no direction from the Commission on using pay stations versus individual meters on that project. She indicated that pay stations would be expensive, that at least two of them would be needed at each shopping center, making eight in total at a significant expense that was not justified by the parking revenue generated. She said the Town had many surplus single meters, and the thought was to use them until it made financial sense to install pay stations.

Mayor Minnet commented the project warranted the Town keeping the parking meters.

9. TOWN ATTORNEY REPORT

There was no Town Attorney report.

10. APPROVAL OF MINUTES

a. June 12, 2012, Regular Commission Meeting Minutes

Commissioner Brown made a motion to approve the June 12, 2012, Regular Meeting minutes. Commissioner Dodd seconded the motion. The motion carried 5-0.

11. CONSENT AGENDA

Items 11b and 11c were pulled from the Consent Agenda for discussion.
Item 11e was moved to Old Business as item 16a.

Commissioner Dodd made a motion to approve items 11a, 11d and 11f on Consent. Commissioner Vincent seconded the motion. The motion carried 5-0.

a. Replacement of Existing Floor in Jarvis Hall (Municipal Service Director Don Prince)

This item was approved on consent.

b. Emergency Storm Drain Pump (Municipal Service Director Don Prince)

Commissioner Dodd commented $30,000 was a large sum of money to spend on one pump on a powered trailer. He questioned why Town staff chose that route rather than going with a number of smaller pumps.

Municipal Services Director Prince replied that in recent rains, some of the Town's streets and people's garages had been flooded, and there were four or five areas of the Town where the pump could be used. He said they went for a high volume pump so the regular drainage system could catch up at each location. Drainage for all five areas were either in the design stage, permitting stage or in the Five-Year Capital Plan.

Commissioner Dodd remarked, for the benefit of the residents, the capacity of the pump was about one "bath full" per second, so he was confident it would serve its purpose well.

Municipal Services Director Prince stated the pump moved 1,600 gallons per minute.

Commissioner Vincent asked if the Town ever subcontracted out a truck or pump in an emergency situation and, if so, what was the cost.

Municipal Services Director Prince replied to his knowledge the Town had never subcontracted anything out, but he spoke with the fire Chief, and in the event of an emergency, the Town could use a fire truck. This was not something they wanted to do, but in an emergency, one did whatever was possible to protect properties.

Vice Mayor Sasser asked where the floodwater was pumped to.

Municipal Services Director Prince said the water would normally be pumped into a canal or the Intercoastal waterway. He called Ashok Raichoudhury of the Broward County Department of Environmental Protection, and he said as long as the Town was putting its suction hose inside the inlet, it was going to the water body anyway. Town staff could keep pumping the water out as long as it did not create turbidity which he described as the force of the water hitting the bottom and stirring up the mud and muck.

Vice Mayor Sasser understood the Town could not add any more outfalls or tie into existing outfalls to drain more water. Ironically, however, the Town could purchase a $30,000 pump and send the water out into the waterways.

Municipal Services Director Prince stated it was allowed in emergency situations.

Mayor Minnet thought it was clear during the last few storms the pump was needed until the drainage projects were completed.

Commissioner Dodd made a motion to approve item 11b. Vice Mayor Sasser seconded the motion. The motion carried 5-0.

c. Hotel Improvement Program Proposed Revision (Assistant to the Town Manager Pat Himelberger)

Arthur Franczak indicated there was a feeling now that the Town should help hotels, and he was not sure if the Town should do so, as hotels were a business and, as long as the Town did nothing to hurt them, they did not need government help. He believed not all hotels were eligible to participate in the Hotel Improvement Program (HIP). To be eligible for HIP, a hotel had to be a member of either the Superior Small Lodging Association (SSLA) or have fewer than 50 rooms. He did not understand why the Town felt small hotels should get a break while large hotels should not. It was the large hotels that were in trouble not the small hotels. Renovations and upkeep such as painting and roof repairs or replacement were part of a hotel's operating costs, and the Town should not help subsidize these costs of some hotels and not others. He believed, by doing this, the Town was interfering with competition between hotels.

Commissioner Brown said the Town was setting aside money for hotels to improve their front facade. He wondered if the Town granted funding for the improvement of the front and back of hotels because they were visible from the street, should the middle of the hotel be included. He envisioned HIP as being a simple program in which any eligible hotel could participate, and it would be a very limited pilot program the Commission was trying.

Commissioner Vincent agreed with Commissioner Brown with respect to where hotel improvements were done and the Town might not need to govern where the funds would be used. He did not feel the Town was creating a competitive nature between hotels. Instead, the Town was giving a boost to hotels that could not afford to do anything to their facades, as they were too busy trying to keep up with the inside of their hotels, where they were already well regulated by outside standards, such as the Americans with Disabilities Act.

Mayor Minnet asked Ms. Himelberger to repeat some of the program guidelines, as well as examples of projects.

Assistant to the Town Manager said the purpose of HIP was twofold. One goal was to improve the general appearance of the Town's smaller hotels struggling to thrive; another was that hotels become members of SSLA, as they set hotel standards. This

was not something government entities knew how to do. If the Town's hotels became members of the SSLA and sustained their membership for about five years, in addition to facade improvements facilitated by the HIP, the quality of the hotel industry in Town would improve and the Town as a whole would benefit. She noted $50,000 in façade improvements would visibly improve a small hotel but might have little impact on a large hotel.

Mayor Minnet sought confirmation the HIP monies were to do facade improvements from the street side and, if the Commission approved, from the beach side as well.

Commissioner Vincent amended his previous request. If HIP funds were used for improvements to the entire building, the street side and the rear facades had to be done first, that is, views that could be seen, after which the funds could be used for other improvements.

Assistant to the Town Manager Himelberger indicated facade improvements were the projects that were included in the description as fundable from the HIP dollars.

Commissioner Vincent made a motion to approve item 11c with the clarification that the improvements must be visible. Commissioner Brown seconded the motion. The motion carried 5-0.

d. Amendment to Work Authorization with Architectural Alliance for Design, Permitting & Bidding Services, and Construction Oversight Services (Town Manager Connie Hoffmann)

This item was approved on consent.

e. Benihana License Agreement for Property on West Tradewinds (Assistant Town Manager Bud Bentley)

This item was moved to Old Business as item 16a.

f. Bougainvilla Drainage and Streetscape Project (Project Manager Bill Cole)

This item was approved on consent.

12. ORIDINANCES – PUBLIC COMMENTS

a. Ordinances 1st Reading

i. Ordinance 2012-13: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMG CHAPTER 20, "UTILITIES," OF THE TOWN'S CODE OF ORDINANCES BY AMENDING ARTICLE II, "SANITARY SEWER SYSTEM," SECTION 20-19 "RATES AND CHARGES", AND SECTION 20-23 "DEFINITIONS" IN ORDER TO ADOPT REVISIONS TO THE SCHEDULE OF RATES AND CHARGES FOR SANITARY SEWAGE COLLECTION, TRANSMISSION AND

DISPOSAL; AND PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

Mayor Minnet opened the discussion for public comment.

Mr. Franczak felt sure there was still an error in the rate determination methodology, and it would again create the situation where customers south of Pine Avenue would pay a different rate than those located north of Pine Avenue. He believed it would be a mistake to continue to follow Pompano methodology, which made no sense.

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

Commissioner Dodd believed when the Sea Ranch Condominiums opted to join Lauderdale-By-The-Sea back in 2000. They came with the provision that they would enjoy the same sewer and water rates as the rest of the Town rather than join the unincorporated area to the north. He was unsure if this was part of a written agreement, but it appeared Sea Ranch's sewers had always been connected to Pompano Beach's pipes, and they were billed through the Town for many years. The Commission at that time never followed through with negotiating with Pompano to transfer them under the Town's master sewer agreement. There was no incentive for Pompano to agree to such an arrangement, as they would be negotiating a loss in revenue for themselves. He noted it was discovered the Town was losing money on the sewer system so in early 2012 the Commission set the rate for all condominiums to be that of Pompano Beach. The proposal now was to leave Sea Ranch Condominium sewer rate at Pompano's rate but set the condominiums at the south end of the Town to a lower rate. asked the Town Attorney if this was legally defensible, as it appeared to contradict the spirit of the agreement made in 2000.

Town Attorney Trevarthen replied Town staff's research to date had uncovered no written agreement between the Town and Sea Ranch Condominiums to provide what was referred to in the minutes of a 1997 meeting, a letter and a flyer. There was discussion of the concept, an expression of the intent to pursue if possible, but subject to the decisions of a separate local government, the City of Pompano Beach. She indicated, as was mentioned by Commissioner Dodd, various actions were mentioned that were never taken. It was her legal opinion, based upon a review of the documents, that there was no enforceable agreement to structure Sea Ranch's rates in the manner they sought to protect them from the Pompano rates.

Commissioner Brown understood the position of the residents was they made an agreement with the Town when they were annexed and, unfortunately, the Town at the time never followed upon that agreement in a legally binding way. The same thing transpired in the north end of the Town, though some of the promises made were met, as were some of the promises to Sea Ranch Condominiums; they did get the lower sewer rate for ten years. He stated there was no basis for bringing them back under the auspices of the master sewer agreement in the south end of the Town. It would be far more problematic to ask people in the south end of the Town to subsidize the sewer

rates in Sea Ranch Condominium, and the latter would have to accept the reality of the situation, though he did not feel good saying that.

Mayor Minnet remarked there was a lot of communication on this particular subject but, most importantly, there seemed to be no agreement and no vote. She said there were minutes that backed up the fact that Town staff met with Pompano Beach representatives in 1997 and stated that the City of Pompano Beach indicated they were not willing to renegotiate the sewer rates. It was important to understand that in 1997 the City of Pompano Beach said no. The Town Commission did its best to research things due to its fiscal responsibility to each and every one of its residents. She agreed there were things with the City of Pompano Beach that were not equitable. She mentioned the residents would take the brunt of the proposed sewer rate modification, and she had a real problem with that. The Town was going to reduce the utility tax on water service so some relief could be granted to residents, but there was no way for the Town to control what Fort Lauderdale would do, and the latter already announced they were likely to have a seven to eight percent increase in their water bill that would totally negate what the Town was trying to do on the utility tax side. The reality was there were many people who were going to be unhappy. She believed the allocation among sewer users was fairer, but not fair to the residents.

Commissioner Brown asked if it made any sense for the Town to sell the sewer lines in the south part of the Town, as it had in the north, to get the Town out of the rate setting, maintenance and improvement business. He was not necessarily advocating the action but wanted to get the Town Manager's opinion.

Town Manager Hoffmann said there were only two potential buyers, Pompano Beach and Fort Lauderdale, as they were the only utility providers with connections to the Town. She believed they would want the Town to complete the repairs it was starting before either city would consider buying the sewer lines. While such an action might take the Town off the hot seat, she did not know that it would be in the best interest of consumers in the south end of Town. If the lines were sold to Pompano, then everyone would keep paying what they were paying. She noted Fort Lauderdale was doing all sorts of accounting manipulations with their water and sewer system, charging extra fees to their water and sewer fund to support their general fund, so it was highly unlikely selling the lines would benefit Lauderdale-By-The-Sea residents.

Vice Mayor Sasser felt more work could be done in the proposed ordinance. He believed the Town could give the residents more than was being offered; single family houses were all getting an increase, and he wanted to try to mitigate that as much as possible.

Commissioner Vincent concurred with the message the rest of the Town Commission conveyed, that this was something they had to deal with, and it was not 100 percent desirable. It was clear there was a problem, but it was unclear if an acceptable solution had been found. The reason for having the first reading of an ordinance was to allow discussion and get resident feedback. After the first reading, there was still time for more review and consideration before the second reading. He believed that, as a

process, it worked, as it gave the Town Commission and staff ample time to discuss the particulars and to be transparent.

Mayor Minnet pointed out the residents that would experience an increase was single family homeowners and the larger restaurants, with most other customers seeing a decrease.

Town Manager Hoffmann affirmed it was the single-family home rates that would go up. People in multi-family dwellings south of Pine Avenue, with the exception of a few duplexes would see their sewer bills go down substantially. Residents to the north of Pine Avenue were unaffected, by the proposed changes in rates.

Mayor Minnet pointed out that residents to the north were affected by the rate increase Pompano instituted in 2005 or 2006.

Town Manager Hoffmann felt the Town Commission and staff thought outside of the box on the proposed sewer rates in two respects: 1) the Town put much more emphasis on the volumetric rate in the rate structure than cities normally did in response to Lauderdale-By-The-Sea customers asking us to pay only for the amount they used and eliminate the monthly fixed rate; and 2) the rate consultant analyzed the data for the last year of how much water the Town's customers used and what their proportionate share of the system use was. This was what caused single-family rates to go up. The consultant discovered they were putting substantially more of a demand on the system than multi-family users; he also found out that in the Town, the multi-family properties placed a lesser demand than was normal for condominiums or apartment buildings in other cities he had studied all over Florida. She believed this was due to the Town being a barrier island community, and many of the people that owned condominiums and apartments were only in residence three or four months of the year. By looking at the actual usage, it shifted some of the cost to the single-family homes and restaurants, and away from the hotels and the multi-family. Town Manager Hoffmann thought the proposed rate structure was much fairer than the current rate structure the Town was operating under. If the Commission felt Town staff needed to tweak the rate structure more, then the Commission needed to give staff direction on how they wished staff to do it.

Commissioner Dodd remarked the proposed rate structure was a lot fairer, though probably not ideal. He was prepared to vote to approve the ordinance on first reading, as the Town Commission and staff did an immense amount of work and came up with a solution that was based on how much water a customer used. He mentioned asking repeatedly for customers to be made to pay only for what they used and not be charged by pipe or meter size.

Commissioner Dodd made a motion to adopt Ordinance 2012-13 on first reading. Commissioner Brown seconded the motion. The motion carried 4-1. Vice Mayor Sasser voted no.

b. Ordinances 2nd Reading

i. **Ordinance 2012-11:** AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING ARTICLE V "ZONING" OF CHAPTER 30, UNIFIED LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES, BY AMENDING SECTION 30-313, GENERAL PROVISIONS, TO PROVIDE REQUIREMENTS FOR WINDOW SCREENING FOR VACANT COMMERCIAL USES, INCLUDING HOTELS AND MOTELS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

Mayor Minnet opened the discussion for public comment.

John Boutin was unsure how to describe vacant. Was it defined as empty or nonoperational? Alley Oop was not vacant, but they were not operational. The hotel at the south end of Town was nonoperational, but one could clearly see it was not vacant.

With no one else wishing to speak, Mayor Minnet closed the public comment portion of the discussion. She asked Town staff to address the issue of vacant versus nonoperational.

Town Attorney Trevarthen referred to page two, line 53 of the backup, where a definition of vacant was detailed.

Commissioner Dodd complimented Athena by the Sea for the screen they erected during construction. He asked Town staff to look at bringing the use of screening for construction before the Commission at a later date, as it was not covered in the ordinance. He expressed concern that a vague definition of artwork of a professional nature could leave the Town open to something unwanted, as people's definition of artwork differed. There appeared to be no final clause that gave the Town the right to have any unsuitable artwork removed.

Mayor Minnet inquired if the artwork had to be approved by the Town Manager.

Town Attorney Trevarthen replied there was a process detailed in the document, as well as specifications, and artwork of a professional nature was one of the kinds of screening material that could be approved. The Town had total say over the materials provided by the Town, but with regard to the materials prepared by the property owner, the Town could regulate whether it actually screened the interior, but the Town could not mandate what was placed on the screen.

Commissioner Vincent questioned whether the Town would allow it if someone chose to paint a holiday theme.

Town Planner Connors believed holiday decorations were covered in the Town's sign code.

Commissioner Vincent clarified he was referring to totally blocking out the window.

Town Attorney Trevarthen referred to section two at line 85 which said, "...*shall include artwork or photography but not text, including but not limited to* ..." Thus, the Town did not preclude a holiday-type of message, rather cloth or paper had been mandated.

Commissioner Vincent wondered if it was possible to allow students from local schools to acquire community service hours to draw what the Town's administration felt was appropriate rather than purchasing art work.

Town Attorney Trevarthen indicated line 93 of the ordinance dealt with the Town developing preprinted materials that was open ended in terms of what was possible under the code's language. She stated the way the code was written, the Town could provide coverings that might have any number of pictures on them.

Commissioner Vincent questioned whether it could be applied with paint or window paint.

Town Attorney Trevarthen responded the ordinance was written to require paper or fabric. If there was a desire to add paint, aesthetic input was required from the Town Commission and staff.

Commissioner Vincent wished to make a motion to approve the ordinance with the potential for discussion on allowing the type of artwork approved to be applied, using the appropriate paint, and to allow the property owner the opportunity to extend an offer to local students to produce artwork for community hours.

Town Manager Hoffmann remarked line 104 of the ordinance covered seasonal window treatments. She asked Town Attorney Trevarthen if the ordinance could require the Town to approve the artwork.

Town Attorney Trevarthen did not think it possible. The appropriate way to structure the program was to provide the kinds of standards the Town had, including what was covered, how well it was covered, and that it was not tattered in appearance. Other fabrications could be discussed, but the Town should not dictate the content.

Vice Mayor Sasser questioned if it would be possible to put it on paper and have it preapproved by Town staff. This way the printing could be on different media, such as fabric or paper.

Town Attorney Trevarthen mentioned paint applied directly to the glass was not covered by the wording. Paint applied to appropriate fabric or paper was permissible.

Commissioner Vincent withdrew his first motion to make a motion to approve on second reading, allowing the painting of an approved design on fabric or paper that was approved by the Town. This applied to the rendering of the artwork whatever it was.

Mayor Minnet believed the language had to be structured by the Town Attorney.

Town Attorney Trevarthen sought clarity on the intent of the motion maker. The ordinance already contained language that the Town provided coverings at line 93, and there was no real need to say more than the language reflected.

Commissioner Vincent questioned the use of the word "preprinted" in the language.

Mayor Minnet felt the discussion was on important issues. As this was the second reading of the ordinance, she recommended a motion to table, deferring the discussion and vote to a date certain.

Commissioner Dodd made a motion to table the second reading of Ordinance 2012-11 to the time certain of the August 21, 2012, Commission meeting. Commissioner Vincent seconded the motion. The motion carried 5-0

ii. **Ordinance 2012-12:** AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING ARTICLE V "ZONING" OF CHAPTER 30, UNIFIED LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES, BY AMENDING SECTION 30-318, MINIMUM PARKING REQUIREMENTS, TO REVISE AND CLARIFY PARKING REQUIREMENTS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

Mayor Minnet opened the discussion for public comment. With no one wishing to speak, she closed the public comment portion of the discussion.

Commissioner Dodd expressed concerns stating on July 4, there were 61 cars crowded into the pier's car park; on July 7 at 11:00 a.m., there were 51; and on July 8 at 1:00 p.m. there were 56 cars. He said the cars were parked so tightly, there was no room for any car to leave quickly, and he thought this presented both a fire and safety issue. This was a total disregard of the purpose for which the car park was intended, as it was to supply four parking spaces for the bait shop, 25 spaces for retail, 22 spaces for the restaurant, and originally the pier had to propose 16 spaces. He stated even without the pier, there were insufficient spaces to allow for beach parking in the pier's car park. He believed the capacity was around 44 cars. Even without the 16 spaces needed to service the pier users, the parking lot was overcapacity and there was no room for beach parking. He believed the pier parking lot was filled with beach parking, thereby using Town parking spaces to satisfy their retail customers. The pier parking lot should be used for the purpose it was intended: retail, restaurant and pier visitors. He indicated if the property owner wished to demolish the retail and build a car park, he would give his full support but, as it stood, he was in favor of only allowing beach parking by valet to their other parking lot. There must be some observance of fire and safety rules. At no time should cars or vans be double parked to block exits and other cars. He added if these breaches of the Town's code continued, he would request that the property owner's conditional use application be rejected until such time that they could show the dais they were willing and able to observe the Town's laws.

Mayor Minnet was not in favor of the ordinance on first reading. She felt the ordinance was somewhat shortsighted and would cause further problems in the Town's parking situation. She understood this particular section of the ordinance only dealt with pier parking, asking if there were requirements for retail in the pier parking lot.

Town Planner Connors replied Town staff had been doing research as part of the review of the conditional use application the pier submitted months ago. Staff recommended establishing a pier parking standard first. The parking lot presently served the pier, the restaurant, the bait shop, and the retail establishments located in the building west of the pier parking lot. She said the conditional use application that would summarize all the information they were putting together for paid private parking for the lot next to Jo Jo's would go before the Planning and Zoning Board in August.

Mayor Minnet clarified her question was how many parking spaces were they required to have for the retail within the pier parking lot.

Town Planner Connors believed it was 25 spaces.

Mayor Minnet commented as the ordinance was now written, the pier would have no parking requirements. When they came forward with their conditional use application for a valet service, they would have to dedicate at least 25 spaces to retail.

Town Planner Connors indicated Town staff would look at the uses associated with the parking lot, take into consideration the provision of the parking code in 1995 and determine what remaining parking, if any, they could utilize. If they had no remaining parking in the lot, then that would be noted, but they could still utilize the parking lot to the west for valet parking.

Vice Mayor Sasser remarked this was what he said all along, and the way the ordinance was written was the pier deck area was not associated with another use, which was his intention all along. If the bait shop and the restaurant each had to fulfill parking requirements, it followed the valet parking would too.

Vice Mayor Sasser made a motion to adopt Ordinance 2012-12 on second reading. Commissioner Vincent seconded the motion. The motion carried 3-2. Mayor Minnet and Commissioner Dodd voted no.

13. RESOLUTIONS – PUBLIC COMMENT

There were no resolutions for consideration.

14. QUASI-JUDICIAL PUBLIC HEARINGS

There were no quasi-judicial items for consideration.

15. COMMISSION COMMENTS

Commissioner Brown understood Mayor Minnet wanted to Chair the 2013 Fourth of July celebrations to which he was assigned. He willingly traded it for Easter with her.

Commissioner Dodd noted there was a Hillsboro Inlet meeting and they discussed the budget, hoping to keep the millage rate the same as the last four years in a row. There were problems with the monitoring forced on them by the environmental agencies. He said the monitoring of the bird situation continued, and there was a false turtle nest, the second in 16 years, that occurred near where they had some of the dredge pipes stored. This was actually inside the harbor and not on the main beaches outside the inlet. He indicated they were still trying to get many of the permitting issues resolved, and the board approved the purchase of new monitoring devices, so they could accurately define the true volume of sand being bypassed.

Mayor Minnet reminded everyone the Town was in the middle of BugFest that focused on the Town's coral reefs. She encouraged all residents to get involved, noting many of the Town's businesses were embarking upon wonderful activities, from dive shops to restaurants, urging everyone to take a look at some of the events listed on the Town's website. Town staff, along with the dive committee worked very hard on the event and had done an incredible job. She also hoped to see everyone at the BSO Night out Against Crime at El Prado Park.

16. OLD BUSINESS

a. Benihana License Agreement for Property on West Tradewinds (Assistant Town Manager Bud Bentley)

Assistant Town Manager Bentley commented there was still no agreement with Benihana.

Town Manager Hoffmann believed the existing agreement that expired September 2011 allowed Benihana 48 hours' notice of termination, so the Town had already, in its negotiations, made a major concession to extend that time to six months.

Assistant Town Manager Bentley added the successor agreement proposed the termination period would go to ten days. One of the reasons there was no agreement at present was Benihana did not like the business deal and asked for additional assurances on reasons the Commission could terminate the license. He noted they predicated this position upon what they said was their experience in the financial marketplace, where financial lenders wanted more assurances. Given this, Town staff tried to craft an agreement for the west parcel. For the east parcel, they could access Basin Drive or petition FDOT for a curb cut on Commercial Boulevard. The Benihana representative informed him that, due to their valet parking, an entrance off of Basin would be their preference, and that could be easily constructed in 30 days.

Howard Nelson, representative for Benihana, stated the restaurant enjoyed its relationship with the Town. He wished to correct a number of small items, as this was not an issue that first came up in 2006. Site access to their property both east and west had been from day one across the Town's property, and it was only in the 2006 site redo that the Town asked for an agreement, which they had no objection to and still did not object entering into a license agreement. He wished to correct the belief as stated by Mr. Bentley that they did not like the business deal, as this sounded as though they were unhappy with the money. Frankly, they were not happy with a 100 percent increase between the two agreements, but it was not a $40,000 versus a $20,000 issue. His firm got involved in the matter when Benihana was refinancing all their properties. The property located in the Town was difficult to finance because it had absolutely no legal access to the main restaurant property, and problematic access to its parking lot. He said this was not the only factor that "killed" their financing deal, but it was a major aspect, and neither he nor anyone in his law firm could convince their New York bankers they had reasonable long-term access. Thus, even though they had questions about the calculation, they were not seeking to reduce the fee, though such an offer would not be rejected; they sought more certainty that their property could not be cut off. They did not want to enter into an agreement with the Town that was predicated on the fact that their access could be cut off with 48 hours or ten days or six months' notice, with their only remedy being to go to court. Mr. Nelson stated this was not the type of agreement his firm wished to recommend to their client, as they preferred an agreement with more certainty. This certainty consisted of three requests, the first being to establish a longer term agreement, as Benihana planned to stay at its present location for a very long time to come; five years was a very short term to have the ability to access one's property. He knew the Town Commission had the residents' and Benihana's best interests at heart, but on any given day, with five members on the dais, the restaurant was only three "bad meals" away from the termination of their access agreement. If the Town had a parking plan, they would use it and work through the access issues with the Town. He said this was better than having no recourse if at any given moment the Town said, with no plans for the property they would terminate the agreement and give Benihana six months to find alternative access. Mr. Nelson stated it was not their best alternative to use Basin Drive. They did not have the ability to access their east parking lot from Commercial Boulevard, not because of their use, but due to the existing curb cut. He said the only way they could get a curb cut based upon the proximity to the corner was if the Town closed off its curb cut on Commercial Boulevard. They had no desire to bring their restaurant traffic pass the single family houses and the residences on Basin Drive. They preferred the continued access across Tradewinds. More importantly, they had no access to their restaurant, so, secondly, they were requesting some procedural certainty. Thirdly, they wished that even upon termination, they had the ability not to surrender the property until they could accommodate reasonable access, as it would be very difficult for them to tell their customers the closest they could get them to the restaurant was the west side of Tradewinds. Mr. Nelson asked the Commission to direct Town staff to enter into negotiations with Benihana, reiterating they were not trying to renegotiate the price but trying to add more certainty into the agreement for the three abovementioned reasons.

Commissioner Vincent understood Benihana's predicament, and he was puzzled that they even entered into an agreement in 2006 that only gave them 48 hours; six months for an operation like Benihana's was more understandable.

Assistant Town Manager Bentley thought it helpful to revisit why the previous license had been structured in such a manner, as that information might lead the Commission to different opinions. He believed for the west parcel, the Town had a deed from the platter. The dedication of the west parcel was that it should be used only for parking or walking; if it was not used for either, it would revert to the person that gave the Town the deed. He asked Town Attorney Trevarthen to make the distinction between a license agreement and an actual lease of property.

Commissioner Vincent asked if the only way the parcel could revert back to the original owners would be if the Town vacated the parcel.

Assistant Town Manager Bentley answered no, it was not right of way, so it would not be a vacation process, and both parcels were outside the right of ways.

Mayor Minnet remarked the Commission needed to educate itself as far as who owned what property, what happened to it if the Town vacated that property, as the east side was different from the west side. She agreed the Town needed to enter into the best equitable arrangement with Benihana, which had been an incredible partner with the Town for many, many years, and she was certainly in favor of the Town getting an agreement to that effect. She was hearing many questions each member of the Commission had, and she recommended maybe limiting those questions, and if they exceeded a certain time, the Commission would get with staff and go through them to prevent sitting and discussing the matter for another hour or more. Town staff asked for direction on whether the Commission wished to create an agreement that would be more equitable and longer, which was what Benihana requested.

Commissioner Vincent felt the issue was Benihana was in full agreement with the $40,000, and did the Town want to extend the negotiations further with a six-month or more termination within that lease agreement.

Assistant Town Manager Bentley affirmed this to be the case recapping Mr. Nelson's three requests: 1) longer terms; 2) restrictions on the Town's ability to terminate the agreement; and 3) a clause that the west parcel would not be surrendered until Benihana had an access point. Town staff's position was number three was the reasonable thing to do, and it was justifiable based upon what would happen legally, as there would be the potential for lawsuits. Town staff could not understand why the Town Commission would wish to enter into a longer term than five years, despite the possibility of terminating with six months' notice. Additionally, why would the Commission want to impose additional restrictions on reasons to terminate the agreement, as there was no way to foresee all possible reasons that would make termination desirable for the Town.

Mr. Nelson responded the reason for requesting a longer term than five years was Benihana had no plans to leave in five years and preferred an agreement that moved

forward in the future. He did not believe when the Town Commission went through discussions with the Town Attorney they would find that affected the nature or viability of the agreement, and the proposal sent back to Town staff was for a longer series of rolling terms. The six months was what it was, but they were asking for some type of vehicle, whereby, if the Town had a use where they adopted a plan and the streetscapes changed in the area, then Benihana would have some say in the public hearing. He said they desired some reason to give investment bankers when they sought financing what the mile markers were that could cause Benihana to lose the opportunity to access their property. They could sign the agreement tomorrow and two days after the Commission could decide to terminate, and they would have six months to move out without being given a plan of use of the public property. He understood the Town's desire to retain its freedom, but Benihana needed to retain the financeability and accessibility of their property.

Town Attorney Trevarthen stated it occurred to her there was another option, which was to come up with a plan for alternative access now. It could be solved in time if such an eventuality emerged, or it could be solved by planning it out now, so it was in place in the event the agreement was cancelled. She did not know if this was something discussed previously.

Mr. Nelson pointed out the west parcel was the most problematic. Unless it was the Town's decision that they did not like Benihana's current access plan, the only use they had for the west parcel was access. An alternative access agreement would use up 80 percent of the existing parcel, which was their concern. Unless the Town wished to severely restrict their access and have valets pull up and back out with no turnaround room within their property or tear down a part of their structure, alternative access would look much like the current access. He said, with respect to Basin Drive, if it were the Town's desire for Benihana to start driving past the residential parcels to get to their parking lot, they would be more than happy to discuss that option.

Mayor Minnet asked if the Commission was in favor of a longer-term agreement along the lines of Mr. Nelson's requests.

Commissioner Brown commented the Town was looking at developing long-term parking solutions. Logically, the Benihana parking lot appeared to be a potential site for a garage. He asked if it was possible to include some language in the agreement that said if the Town ever wished to talk to Benihana about the possibility of a garage being built on their property, they would be amenable to such a discussion. The language would not say Benihana had to agree to anything or pay for the structure or that the Town would ever do this, but at least it kept that option on the table.

Mr. Nelson responded Benihana would be amenable to that discussion now or any time in the future. It was a suggestion they would be thrilled to discuss.

Vice Mayor Sasser understood what Benihana asked for and that the Town had not agreed. He questioned what the Town had asked of Benihana that they had yet to agree to; had they refused any of Town staff's requests. For example, he heard rumors the Town requested access through Benihana's property and was refused.

Assistant Town Manager Bentley replied Town staff suggested edits, updated the indemnification language, kept the existing payment formula but applied the new parking rates. Those items were on the table and not rejected. What Vice Mayor Sasser was asking about was several businesses in the plaza to the east asked for a turning movement that allowed westbound traffic to somehow turn and enter that plaza. FDOT did not allow a U-turn at this location due to the sight distances and the speed of traffic off Commercial Boulevard. Town staff initially asked Benihana if they could do a curb break at a particular location that would not result in the loss of a parking space. In subsequent discussions, Benihana's operational manager onsite stated this did not work for Benihana, as theirs was a full valet lot. Though they said patrons could self park, by the nature of their parking operation, this was not the practice.

Town Manager Hoffmann summarized Town staff made the request, Benihana said no, and gave operational reasons for their refusal. This had been explained to the Commission in the past.

Mr. Nelson commented the Town's parking consultant, in going through the Benihana property, advised it was not operationally feasible. He affirmed they had listed operational problems as their reason for refusing the Town's requests and agreed to discuss alternative routes that would not interfere with theirs, and the answer they got from the Town was they were no longer interested. Benihana would be more than happy to renew that discussion when the Town desired.

Vice Mayor Sasser queried if other Town requests had been refused by Benihana.

Town Manager Hoffmann clarified there were no new requests being made she was aware of other than the one just mentioned.

Assistant Town Manager Bentley affirmed this to be the case, as the original license was recently updated, and the only request made that Town staff explored was the public movement through the Benihana parking lot.

Vice Mayor Sasser wished to open up those discussions, perhaps engaging the input of traffic engineer Molly Hughes. He realized there was valet parking in their lot, and if there was some way to mark the spaces as valet parking, so members of the public did not drive onto the site and park, he was open to discuss the three issues Mr. Nelson brought up. Benihana's marketing material stated the restaurant was located in Fort Lauderdale, and that did not convey that partnership feel Mr. Nelson mentioned earlier. He asked that Mr. Nelson take that back to Benihana.

Mr. Nelson responded he already took that back, stating it was a marketing issue for location. They enjoyed being situated in Lauderdale-By-The-Sea, as theirs was the first building people saw coming over the bridge. They would look into the matter.

Commissioner Dodd stated the agreement was, presumably, solely with Benihana, questioning if the latter decided to sell the property if the agreement with the Town would be null and void.

Mr. Nelson replied it was not their intention to sell.

Commissioner Dodd asked what would transpire if Benihana had financial difficulty and decided not to pay the Town the fee of the standing agreement.

Mr. Nelson imagined if Benihana fell on such hard times that they were unable to pay a $40,000 agreement, it would be a cause to terminate the agreement by the Town.

Commissioner Dodd wished language included in the contract to address such a situation. He asked if Benihana was happy with basing the annual fee on the Town's current parking rates in light of the request for a parking agreement of ten years, and there was no way of knowing what the parking rate would be in the future.

Mr. Nelson preferred not to use the term "happy", as the agreement was being predicated on 23 spaces when they were only getting four spaces, with the rest being access; it presumed the spaces were occupied ten hours a day, 365 days a year. Commissioner Dodd thought Mr. Nelson's requests were reasonable, but he agreed with the Vice Mayor that he wished to see negotiations attempted again with regard to opening up the possibility of the access previously requested by the Town.

Mr. Nelson hoped the Commission understood the insurance liability issues and the abandonment of property issues by opening a private parking lot to right of way, but he felt sure they could handle them in the agreement, if the Town would be willing to indemnify Benihana.

Commissioner Vincent felt in opening discussions on a potential, future parking garage, it was important to remember Benihana owned two parcels and leased one. He was unsure if it was big enough, unless three owners were involved and could agree to move forward to build a parking garage.

Mr. Nelson replied, though there were actually four separate parcels in the parking lot, they were all owned by Benihana or the entity that recently took over their property ownership. The leased parcel was an existing traffic thru-way out into the parking lot that could continue to be used as such in the future.

Mayor Minnet was pleased Benihana was the first building seen as they came over the bridge, but it was also a very sharp turn for people to access that property. She asked Chief Llerena if there had been any problems with the backup of traffic as far as valet parking was concerned, and had Benihana worked with the police on creating a solution if such a problem existed.

Chief Llerena stated it was brought to his attention by several sources, both from the public and his deputies, that there was a problem, particularly during season, with vehicles backing up. His traffic deputy worked with Benihana, and a resolution had been reached. He had not been notified of any ongoing problems, but it was currently off season, and they would monitor the situation when the season picked up again. Valet

cars stacking up and affecting traffic on Commercial Boulevard was an issue that needed to be addressed.

Mayor Minnet supported further negotiations between the Town and Benihana to determine if their requests could be accomplished. She thought the Town needed to look at creating an ordinance that dealt with valet operations that bled onto streets to see how such activities could be regulated. It was understandable why Benihana was not getting the support it desired from the New York bankers without the proper agreement. She asked the Town Manager if she received sufficient direction to move forward or whether she felt the need to meet with the Commission individually to review their concerns.

Town Manager Hoffmann summarized what she thought were the concerns brought up by the Town Commission. The Commission still wanted the public vehicular access across the Benihana property and to include some wording that Benihana was amenable to future discussions of a parking garage on their property. With regard to the marketing issue of identifying the Town as the restaurant location, this was not a part of the agreement.

Mr. Nelson thought the three requests he put forward for his client should be added.

Town Manager Hoffmann replied the inclusion of the three requests by Benihana was a given.

There was a Commission consensus to move forward with Benihana to include negotiations of vehicular access across the valet lot to the southwest public lot, a possible parking garage, and the following three requests from Benihana:

1. A longer term for the contract
2. A methodology for termination of the contract
3. Upon termination, time to accommodate access issues.

17. NEW BUSINESS

a. Creating New Parking Permit and Adjusting Parking Rates (Assistant Town Manager Bud Bentley)

i. Disabled parking permits parking policy

Assistant Town Manager Bentley reviewed the details of the subject item as indicated in the backup.

Town Manager Hoffmann stated this was something the Commission already adopted by either resolution or ordinance, and Town staff would begin implementing it. Enforcement would begin unless the Commission directed otherwise.

Commissioner Brown mentioned being approached by someone stating they got a ticket in the Town for parking in a handicap spot. The individual had a handicap permit but it

was issued in New York not Florida. They went before the Town Magistrate who voided the ticket. He wondered if it was the Town's policy to give people with out-of-town handicap permits tickets for parking in the Town's handicap spaces.

Town Manager Hoffmann answered no. Usually, a ticket was issued if a handicap permit was not visible in the vehicle. People who called to complain were told, if they could bring the permit into Town Hall, the ticket would be voided.

Assistant Town Manager Bentley remarked in the last incident he was aware of, the handicap permit had expired four years prior.

Mayor Minnet understood, based on the phone calls she received, there were usually three sides to every story, but she knew Town staff did an excellent job researching cases. They got the information in order, pictures were taken, and when staff was in the wrong, they corrected the error.

There was a Commission consensus to enforce the Town policy requiring all vehicles in off-street parking to pay the same fee, except for vehicles exempted by state law. The law provided four (4) hours of free off-street parking for disabled persons with a vehicle equipped with a ramp, lift or hand controls, or that had a Florida toll exemption permit.

ii. Hardship parking permit rates

Vice Mayor Sasser asked to which fund were the revenues deposited.

Town Manager Hoffmann answered the parking fund.

Vice Mayor Sasser thought it was recently discussed that the parking fund was up considerably and wondered how to tie in an increase.

Assistant Town Manager Bentley replied hardship permits brought in $6,125, and a 50 percent increase would bring in an additional $3,000. This would not build one parking space even if the Town had the property.

Vice Mayor Sasser wondered why the rates should be increased.

Assistant Town Manager Bentley responded the Town was encouraging businesses not to invest in creating their own parking, because the parking the Town was giving them was underpriced.

Vice Mayor Sasser asked if Town staff had the figure for the increase year over year from two years ago to the present.

Mayor Minnet reviewed the recent fee history in February 2009 the rate was $200; in October of 2009 the rate was increased to $210; in November of 2009 it was decreased to $100; and then on October 1, 2010, it was set at $125 plus 25 percent annual increases; October 1, 2011, the rate was kept at $125 but with no annual increase;

these changes showed the rate had significantly gone down over the last two years. She said there were a total of 49 hardship permits.

Vice Mayor Sasser inquired how many more permits did the Town have year over year, as he specifically wished to address the fact that the Town was trying to reduce people taking advantage of that. If this were the case, he would expect it to go each year if more people were taking advantage, if not, he did not see that it was much of an issue.

Town Manager Hoffmann added Town staff could bring those numbers back to the Commission, as she recalled on south El Mar, Town staff received a request for additional spaces in 2011. The reason for the requested increase in fees was due to the pricing being so ridiculously low. It was estimated at 1.5 cents an hour.

Vice Mayor Sasser noted resident parking was ridiculous as well.

Assistant Town Manager Bentley believed there was a difference, in that there was a portal, and on one side of the portal there was a resort with parking they paid for and charged a room rate to cover their business expense. On the other side of the portal, there was a business without parking that had a 1.5 cents per hour parking permit. He pointed out the latter had a competitive advantage.

Commissioner Brown stated the small hotels were not asking for the hardship parking permits every year because they were available at cut-rate prices; they were asking for them because they needed the parking spaces. The motels were built at a time when there were fewer cars and less demand for parking. His main concern was increasing hardship permits at 20 percent a year.

Commissioner Dodd believed the root cause of the problem was the Town had not made the rates realistic, and the recommendations by Town staff were to bring the Town's rates in line with other municipalities. Town staff was offering to do this over a period of time and justification for the increase was there, he would be happy to approve it. He knew there would be complaints, but at 1.5 cents an hour, the Town might as well give the parking permits away and disregard the staff time required to write up the permits. The applicants for the hardship permits came to the Town every year and the goal was to allocate the same amount each year, so as not to lose parking.

Mayor Minnet agreed they needed to be addressed and that there should be some reallocation and increase, as they were unreasonably low, though she was unsure that what Town staff proposed was correct either.

Town Manager Hoffmann commented it was important to consider it in terms of dollars. At about $60 per year per permit, could this really be considered a financial hardship for them?

There was no Commission consensus on a hardship parking permit rate increase.

iii. Employee parking permits

Assistant Town Manager Bentley reviewed the item as detailed in the backup. Town staff recommended approval.

Commissioner Brown remarked on receiving complaints from persons on Seagape Drive that employees parked and blocked their driveways, or they parked on the swale where homeowners had difficulty backing out of their driveway. He asked if the Town was aggressively enforcing illegal parking by employees, particularly in that area.

Assistant Town Manager Bentley stated on the first block of Seagrape Drive, the complaints included parking in the swale in front of the homeowners' houses, not just blocking driveways. On a first violation, a warning was given, after which a ticket was issued. This was done on a complaint basis, as it was hard to determine if a car parked in front of a house had the permission of the owner unless Town staff was informed otherwise. The Town also erected signage to reduce such occurrences, and this seemed to have resolved that issue.

Commissioner Vincent asked how such permits were issued, where were the permits displayed, and at which locations was such parking allowed?

Assistant Town Manager Bentley replied they were displayed on the vehicle's dashboard or hung from the rearview mirror. Parking was allowed on Harbor Drive, East Tradewinds Avenue, north of Commercial Boulevard, and three or four spaces on Bougainvilla Drive at the far south of Commercial Boulevard.

Commissioner Vincent inquired if an employee was not working, could the use of such passes be abused by that individual by parking as if visiting the Town rather than for work, similar to a resident pass.

Assistant Town Manager Bentley answered yes, such abuses could occur.

Commissioner Vincent observed there was no way to truly monitor whether the parked employee was working or not on a particular day.

Assistant Town Manager Bentley agreed, noting the Town did not require shift information.

Vice Mayor Sasser indicated he did not support the increase, as the workers of the Town would be impacted, and it had no significant effect on the Town's revenue. The people who could use the money the most would be hit by the increase.

The Commission did not come to a consensus on an employee parking permit rate increase.

iv. Employer purchased permits

Vice Mayor Sasser voiced his support for the item.

Mayor Minnet was concerned about the potential for abuse. Many local small businesses did not have full time employees.

Vice Mayor Sasser understood Town staff was requesting a six-month trial period.

Commissioner Dodd questioned how much the Town was willing to charge, as the decision was made not to address the previous items that brought parking permit rates up to a realistic figure.

Mayor Minnet imagined the rate would be at the same price as existing employee parking permits.

Commissioner Dodd thought this should be the direction to Town staff.

Mayor Minnet said Town staff would come back to the Commission with a recommendation on a rate for the item if the Commission wished them to move forward.

Town Manager Hoffmann withdrew the item, as she felt it was ripe for abuse.

v. Hourly rates at Oceanfront Center, town parking lots and commercial business

Vice Mayor Sasser agreed with Town staff's recommendations.

There was a Commission consensus to align the parking fee for day and night parking at the El Prado parking lot to the same price.

vi. Reserve parking space permit

There was a Commission consensus for Town staff to prepare a resolution giving the Town Manager authority to issue businesses a permit for specific parking spaces for a limited time, paying the same meter rate as the public.

vii. Prepaid parking permits

There was a Commission consensus to move forward with a resolution to allow for the issuance of nonexclusive parking permits for a specific time and date at any open meter in a specified area with no guarantee of space availability.

18. ADJOURNMENT

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

Mayor Roseann Minnet

ATTEST:

Town Clerk, June White

Date