

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

## **TOWN COMMISSION**

### **SPECIAL MEETING MINUTES**

Town Commission Meeting Room

**4501 Ocean Drive**

**Saturday, November 18, 2006**

**10:00 A.M.**

#### **1. CALL TO ORDER, VICE MAYOR JOHN YANNI**

The meeting was called to order by Vice Mayor Yanni at 10:03 a.m. Present were Vice Mayor Yanni, Mayor Pro Tem Clark, Commissioner Silverstone and Commissioner McIntee. Also present were Town Attorney James Cherof and Town Clerk Medina.

Mayor Parker and Town Manager Baldwin were not present.

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

The Pledge of Allegiance was recited.

Vice Mayor Yanni stated that he had received a request to have the public comments heard first. On a consensus of 3-1, with Mayor Pro Tem Clark dissenting, the order on the agenda was changed.

It was agreed that the public comments to be heard were the remaining speakers from the November 14, 2006 meeting. It was also agreed that speakers would be allotted only two minutes in an effort to move on with the official business at hand.

#### **Public Comments**

Maureen McIntee, 1612 Southwest 21 Avenue, expressed her belief in her husband's expertise as a firefighter and suggested everyone read his resume. She spoke in favor of the leadership of the Volunteer Fire Department and the department in general.

Hannah Homestead, 274 Capri Avenue, referenced Chief Chuck Lello's letter regarding safety violations and asked for specifics noted in the letter. She also believed that Vice Mayor John Yanni should request a new letter with regards to possible conflicts in voting on issues that dealt with the Broward Sheriff's Office.

Barbara Cole, 5000 West Ocean Boulevard, stated that she was pleased that the Volunteer Fire Department had been provided with the keys to the station and indicated that she was hopeful that issues of concern could be resolved during negotiations.

Marc Furth, 4525 El Mar Drive, felt that the Broward Sheriff's Office was only trying to get the competition out of the way. He felt that the Volunteers had presented themselves well during the workshops and should be allowed to provide townwide fire suppression.

Mr. Furth stated that he had been serving as the Volunteers photographer, indicating that he had seen them in training and felt that they were training hard. He felt that they were working hard to meet the goals set by the Town Commission. Mr. Furth stated that the workshops should be reinstated so the Volunteers could begin to work again. He felt that in this manner, the Town could work towards a common goal.

Mr. Charles, stated that the only thing he did not like was the heavy-handedness in which the sheriff had shown as though the citizens could not control themselves to conduct its business. He indicated that he did not know all the facts concerning this issue, but felt that if the Commission were working and properly representing him, he should not be in attendance at a meeting. Mr. Charles stated that the citizens had the right to know all the facts and that care had to be taken to review all the information.

Ann Boglia stated that her husband had developed Bel Air 50 years ago and that she had personally used the services of the Volunteers for her husband, her mother, and for her grandson. She indicated that they were prompt and courteous and, each time, had the situation well under control.

Bill Vitalio, 3261 Spanish River, stated that he did not believe the sheriff should have locked the doors, but suspend the chief as they would in their own station. He indicated that before the Volunteers took over, many issues had to be reviewed, with the Town being well represented. Mr. Vitalio stated that State mandates, training, certification, equipment, and OSHA requirements and inspections, etc., had to all be reviewed to ensure compliance.

Vice Mayor Yanni introduced Joe Barbara, a former Volunteer, Mayor and Commissioner of the Town.

### **3. SPECIAL BUSINESS**

- A. Discussion and/or action regarding fire services and public safety. Available options include, but are not limited to, the following:
1. Going with Broward Sheriff's Office alone\*
  2. Going with Volunteer Fire Department alone\*\*
  3. Maintaining the status quo
  4. Scheduling more workshops

\*subsequent to this item being placed on the agenda, the Town Manager received notification from Sheriff Ken Jenne, that the Sheriff's agreement with the Volunteer Fire Department was being terminated immediately and requesting the Town's consent thereto. The Sheriff's request is being treated as a collateral issue to Option #1. (See attached letters)

\*\*at the Special meeting of November 10, 2006, a motion was made by

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Commissioner Silverstone, seconded by Commissioner McIntee, to terminate the contract of Broward Sheriff's Office for breach of contract with the Town and to put the Volunteer Fire Department back in service. The discussion on this motion was tabled to this meeting.

The original motion was read into the record.

Commissioner Silverstone made a motion to amend, seconded by Commissioner McIntee, to give notice of intent to terminate or amend the contract with BSO with regards to fire suppression services and to deny BSO's request to terminate the contract with the Lauderdale-By-The-Sea Volunteer Fire Department.

Attorney Cherof suggested that the motion be separated into two motions to ensure that both material provisions of the motion were correctly addressed. There were no objections.

Commissioner Silverstone made a motion to amend, seconded by Commissioner McIntee, to give notice of intent to terminate or amend the contract with BSO with regards to fire suppression services.

Attorney Cherof explained the provisions of the contract between the Town and the Sheriff, indicating that the contract could be canceled for either convenience or for cause. He indicated that the Commission needed to identify which type of termination was being sought. Attorney Cherof stated that the proposed amendment to the contract would have to be clarified as well to include some sort of timetable.

Attorney Cherof stated that based on the second motion to be discussed, the Commission had to understand that the contract indicated that consent to termination would not unreasonably be held and, therefore, the Commission would need to identify the reason why the consent was being withheld.

Commissioner McIntee stated that this had been a very aggressive few weeks, with the majority, in his opinion, being in favor of the Volunteers. He indicated that the Sheriff had advised that he would not be attending today's meeting. Commissioner McIntee provided a history of the workshops and felt that the Sheriff should have been in attendance today to discuss this matter. He stated that the Volunteers had met or exceeded all qualifications and that it was not the Volunteers who would not work together.

Commissioner McIntee stated that originally the Sheriff had stated that he would meet

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with the Volunteers on this coming Monday, but had since changed the meeting to the following week. He felt that the Sheriff was basically stopping the workings of the government. Commissioner McIntee referenced the food that had spoiled since the Sheriff had locked the doors, the cabinet he claimed had been broken into and the computers that had been taken, although he noted they did belong to the Sheriff's Office. He stated that the three Commissioners that had gone in favor of the Broward Sheriff's Office were at risk of never winning a run again.

Commissioner Silverstone stated that the computer had been purchased with a grant obtained by the Volunteers and that although the keys had been returned, the Volunteers could not conduct any business without the computer. He stated that the internet hub had also been removed and that this equipment was the Volunteers' property. Commissioner Silverstone stated that this issue had cost him a lot of money personally and that this issue was now based on "principle and beyond almost logic".

Commissioner Silverstone stated that a third party should be hired to determine the best method in which to eliminate the Broward Sheriff's Office. He felt that what was done to the Volunteers was unconscionable.

Commissioner Silverstone introduced Patrick Pointu who proceeded to provide details regarding his certifications issued by the State. He explained that since he was also a certified instructor, he was sharing his knowledge with all the Volunteers. Mr. Pointu stated that he did not trust the Sheriff's Office because they did not allow the Volunteers to participate on calls. He felt that the Volunteers worked to meet the Commission's goals, but the Sheriff's Office was not cooperating.

Commissioner Silverstone stated that the Volunteers who drove an engine were driver/engineer certified, while employees of the Sheriff's Office were not. He indicated, too, that although the Volunteers submitted to random drug testing, the Sheriff's Office did not. Commissioner Silverstone stated that the contract was unfair as the Volunteers could not negate the contract if it found that the Sheriff's Office was unsafe.

Mayor Pro Tem Clark stated that in the last two weeks he had received more telephone calls than the entire time he sat as a commissioner. He indicated that no one was saying that the Volunteers had not improved considerably in the last couple of years; however, that said, there was another half of the Town that did not feel the same way. Mayor Pro Tem Clark felt that this meeting was doing nothing short of stirring the pot. He indicated that the individuals sitting at the dais had agreed to negotiate with the Sheriff's Office within a period of two weeks. Mayor Pro Tem Clark stated that his understanding was that those negotiations would begin the Monday after Thanksgiving. He felt that if the Volunteers really wanted to negotiate a working relationship with the Sheriff's Office, this meeting should not have been held. Mayor Pro Tem Clark indicated that if negotiations were at an impasse, the Commission could take the necessary actions at that time.

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Commissioner McIntee questioned if the Sheriff should be in attendance. Mayor Pro Tem Clark responded negatively, stating that if negotiations were to be held, a public debate should not be considered. He felt that was the correct way to run negotiations. Commissioner McIntee disagreed.

Commissioner Silverstone explained that the reason he wrote the changes to the original motion was in order to provide proper notice of the Town's intent. He indicated that the motion also provided the Commission with the option to amend the contract to maintain emergency medical services, while cancelling fire suppression services. Commissioner McIntee stated that the second part of the motion was to deny consent of the termination of the contract with the Volunteers. He indicated that this issue could be fought in court; however, he felt that with the more time that went by, motivation by the Volunteers and the residents would be lost.

Commissioner Silverstone questioned how much time was necessary to advise the Sheriff that a violation of the contract existed. Attorney Cherof explained the provision of the contract dealing with termination, referenced as Article 17. He indicated that if a breach of contract was cited, then the specific breach would need to be identified.

Commissioner Silverstone further amended his motion to provide for a twelve month notice.

Commissioner Silverstone asked for confirmation that moving forward with a notice of intent did not specifically "seal the deal". Attorney Cherof explained that nothing would prohibit the parties from engaging in negotiations to resurrect the contract in an amended form, but indicated that the intent would begin the termination process.

Commissioner Silverstone confirmed that he wished to include the language for the intent of termination.

Commissioner Silverstone stated that the second motion was still to immediately deny the consent to terminate the contract with the Volunteers and the Sheriff.

Attorney Cherof referenced the contract again and indicated that although the Sheriff was to obtain consent from the Town regarding the termination, the contract was specific that the consent would not be unreasonably withheld. He stated that if the consent was to be withheld, a reason was to be identified so that it could be included in the letter, otherwise the response the Town would get was that it had not exercised its obligations under the contract as the reasons for withholding the consent were not identified.

Commissioner Silverstone stated that the reason to be identified was that based on

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conversations with Chief Lello, of the Broward Sheriff's Office, it was admitted that there were no immediate threats to anyone's health or safety and that this matter could have been worked out with negotiations as currently proposed. Commissioner McIntee seconded the motion.

Commissioner McIntee asked for confirmation that by taking this action the Commission was protecting its rights to terminate the Sheriff's Office at a later date. Attorney Cherof explained that once the letter was written, it constituted a notice of termination of the agreement and it puts into play a twelve month period to wind down the operations of the Sheriff. He further explained that the termination would be a date certain, twelve months out.

Commissioner McIntee felt that this action would be in line with the resolution generated by this dais, that the Volunteers be prepared to take over fire suppression within three years. He indicated that in the spirit of being fair, this action did not say the Commission was through but only beginning the process.

Clerk Medina asked for clarification as the last amendment combined the motions and, additionally, for clarification regarding the identified reasons for the intent of termination. Attorney Cherof asked Commissioner Silverstone if he had any objections to separating the motion into two sections. Commissioner Silverstone replied negatively.

Attorney Cherof read the motion into the record as follows: a motion to terminate the Town's contract with the Sheriff pursuant to 17.1 of the agreement, that is to provide 12 months written notice of termination and, also, to include a request for amendment of the agreement where we open negotiations for a new agreement. In a roll call vote, the motion failed, 2-2, with Vice Mayor Yanni and Mayor Pro Tem Clark dissenting.

Mayor Pro Tem Clark felt that this action created an impasse even before negotiations began.

Attorney Cherof read the second motion into the record as follows: a motion to advise the Sheriff that the Town was withholding consent of the Sheriff's termination of his agreement with the Volunteers, with the stated grounds that there was no stated immediate threat to the public safety operations and, there was an indication that any problems, if any, could be worked out with negotiations.

Commissioner McIntee asked for confirmation that this action flatly told the Sheriff that he could not terminate the contract with the Volunteers. Attorney Cherof replied that this action indicated that the Town did not recognize the Sheriff's termination of the agreement because the Town did not consent, and that the Town was not consenting for the stated reasons. Commissioner McIntee stated that the Town was saying that since there was a breach of contract by the Sheriff's Office, the Sheriff could not "ever" terminate the contract without the expressed consent of the Town. Attorney Cherof replied negatively, stating that this action solely withheld consent of the termination. He

indicated that what the Sheriff could do under his direct contract with the Volunteers was a matter of a contract between the Sheriff and the Volunteers, not with the Town. Attorney Cherof stated that if the Sheriff breached the contract and the Volunteers could make a case to that affect, they had specific remedies. He indicated that, conversely, if the Sheriff had properly exercised his rights to terminate the contract with the Volunteers, he would prevail in that action. Attorney Cherof explained that this issue was not the Commission's fight, but rather, a matter of contract between the Sheriff and the Volunteers. He indicated that if the Town wished to be included as part of the litigation at some point, there was probably some ability to do so.

The motion failed 2-2, with Vice Mayor Yanni and Mayor Pro Tem Clark dissenting.

Mayor Pro Tem Clark stated again that he believed this action would create an impasse before negotiations were given the opportunity to resolve the problems being discussed.

Commissioner McIntee made a motion, seconded by Commissioner Silverstone, to consent to the BSO termination of the Volunteers.

At Vice Mayor Yanni's request, Attorney Cherof stated that this action did not terminate the Volunteers as the Town did not have a contract with the Volunteers. He further explained that the Sheriff had requested that the Town consent to his termination of the contract with the Volunteers.

Attorney Cherof asked, depending on the outcome of this motion, when the Commission wished notification to be provided to the Sheriff. He asked if the Town wished to wait until negotiations were concluded. Commissioner McIntee stated that if the motion were approved, the Sheriff should be notified immediately. Vice Mayor Yanni questioned the motive for this motion, feeling that it could ruin negotiations. Mayor Pro Tem Clark asked Commissioner McIntee, as a representative of the Volunteer Fire Department, if negotiations were even wanted. Commissioner McIntee did not wish to discuss the item further and requested a vote.

The motion failed, 2-2, with Commissioners McIntee and Silverstone dissenting.

#### **4. PUBLIC COMMENTS** *(remainder from November 14, 2006)*

Public comments were heard earlier in the meeting.

#### **5. ADJOURNMENT**

Mayor Pro Tem Clark made a motion to adjourn. As there was no further business to

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discuss, the meeting was adjourned at 11:12 a.m.

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Oliver Parker, Mayor

ATTEST:

\_\_\_\_\_  
Alina Medina, Town Clerk

Date Accepted:\_\_\_\_\_