



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, February 28, 2023
6:30 PM**

1. CALL TO ORDER, MAYOR CHRIS VINCENT

Mayor Chris Vincent called the meeting to order at 6:30 p.m. Also present were Vice Mayor Edmund Malkoon, Commissioner Alfred “Buz” Oldaker, Commissioner Theo Pouloupoulos, Commissioner Randy Strauss, Town Manager Linda Connors, Town Attorney Susan Trevarthen, Deputy Town Manager/Public Works Director Ken Rubach, Assistant to the Town Manager Courtney Easley, Director of Budget and Finance Lucila Lang, Development Services Director Jhanelle Campbell, Town Planner Susan Leven, Special Events and Marketing Manager Debbie Hime, and Town Clerk Katrina Adler.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

Pauline Brooks McGuinness gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

None.

5. PRESENTATIONS

a. Ericks Consultants Presentation

Candice Ericks and Lauren Jackson, representing Ericks Consultants, addressed an affordable housing package that is the Senate President’s key priority for the 2023 Legislative Session. This Senate Bill includes a preemption that would allow a development including 40% affordable units over a 30-year period to be approved with no public comment, architectural review, or other typical regulatory processes in commercial or mixed-use zoning districts. Municipalities would be required to grant these developments the maximum density allowed within the jurisdiction, as well as the maximum height allowed within one mile of the proposed development.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

Ms. Jackson noted that Town Manager Linda Connors had taken a proactive stance on this proposed legislation, drafting an alternative plan and providing the Town's advocates with talking points. Ms. Jackson also noted Lauderdale-By-The-Sea's unique circumstances, including its annexation of taller buildings and the height restriction in the Town's Charter. It is hoped that the Town can secure an exemption due to these circumstances.

Ms. Jackson continued that multiple preemption bills have been filed, some of which were defeated in the previous session. One preemption bill would raise the cap on sovereign immunity. Another bill would require a business impact statement for local ordinances prior to passage, as well as a "rocket docket" system for challenges to preemptions in the court system.

A vacation rental bill preemption has also been proposed, which would restrict the requirements of any local registration process, as well as capping administrative fees at \$50 for one application and \$100 for collective applications. Enforcement would be significantly restricted. A permitting bill has also been proposed which would require approval of an application within one business day.

The Governor's priorities in 2023 include court reform, which is similar to the insurance packages discussed during the 2022 Special Session. It would extend these changes to health and business claim insurance, making it more difficult to make a claim against a business but easier to make a claim against a local government.

Ms. Ericks advised that the team remains in regular communication with the Town Manager and Town Staff, and will keep the Town abreast of discussions and changes. She encouraged the Town to reach out to the team with any questions.

Town Manager Linda Connors asked if it would be beneficial for the Town Commission to pass Resolutions opposing some of the proposed bills. Ms. Jackson replied that this could be helpful in relation to the affordable housing bill, as a Resolution would lay out some of the Town's specific circumstances relating to height and annexation. Residents' signatures could also be beneficial in this case.

Commissioner Pouloupoulos also addressed the affordable housing bill, asking if there is a House Bill to accompany this Senate Bill. Ms. Jackson replied that the House Bill has not yet gone to committee. She noted that State Representative Chip LaMarca has taken a proactive stance on addressing this bill as a House member. The House Bill would require amendment in order to mirror the Senate Bill.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

Commissioner Oldaker requested additional information on potential insurance reform. Ms. Jackson stated that three to four bills have been filed by majority members of the legislature, some of which attempt to address more consumer protection issues but most of which build upon the reforms passed in the Special Session.

Town Attorney Susan Trevarthen also addressed the housing bill, pointing out that it includes a number of components that would be supported throughout the state. She recommended a nuanced message rather than opposition only, suggesting that the Town emphasize how the bill would specifically affect them.

6. PUBLIC COMMENTS

At this time Mayor Vincent opened public comment.

Suzanne Bushnell, resident, requested an exemption for the Gug Underwater Gallery from the requirement to have a WastePro account, recalling that they were granted this exemption upon opening in 2017 and again in 2020. She asked that all past charges from their account be dismissed or absorbed by the Town, and that no future payments are assessed by WastePro.

Dave Schmidt, resident, recalled that the Town recently held a special meeting to discuss the provision of fire suppression services. He recommended that the Town speak to current and previous clients served by the Pompano Beach Fire Department as part of their due diligence.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

7. PUBLIC SAFETY DISCUSSION

a. AMR January 2023 Report

Commissioner Oldaker made a motion, seconded by Commissioner Strauss, to approve. Motion carried 5-0.

b. BSO January 2023 Report

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

Captain Tom Palmer of the Broward Sheriff's Office (BSO) advised that Deputy Raymond Suarez is Deputy of the Month for January 2023, citing his apprehension of a thief and recovery of stolen items.

Captain Palmer added that BSO has begun implementing spring break operations and will deploy an emergency lane on the beach for all-terrain vehicles (ATVs) with limited encroachment. They will carry out these operations from March 10 through March 25, with dedicated beach patrols on Saturdays and Sundays and increased personnel on Friday and Saturday nights. BSO has a social media division which will keep personnel apprised of activities.

Commissioner Strauss advised that his greatest spring break concern is traffic, and noted that the circle near the Pavilion could become an issue. Captain Palmer stated that Deputies recently wrote several citations for Stop sign violations at the circle and hope to be more visible at that location for traffic enforcement purposes.

Commissioner Strauss made a motion, seconded by Commissioner Poulopoulos, to approve. Motion carried 5-0.

c. VFD January 2023 Report

Volunteer Fire Department (VFD) Chief Judson Hopping noted that the VFD continues to provide beach patrols and will use the safety lane described by BSO Captain Palmer during spring break.

Commissioner Oldaker made a motion, seconded by Commissioner Poulopoulos, to approve. Motion carried 5-0.

8. TOWN MANAGER REPORT

Mayor Vincent requested clarification of the Town's procedure with regard to WastePro services, as raised under Public Comment. Development Services Director Jhanelle Campbell advised that Chapter 10 of Town Code requires each business maintain a trash receptacle and WastePro account without exemption. The exemption granted in 2020 appears to have been an overstep of authority by the previous Town Manager, and WastePro continued to charge for services until the account was closed.

Development Services Director Campbell continued that three months' charges were waived for all businesses if requested during this time. WastePro has indicated that no

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

request was put forth by the Gug Underwater Gallery; however, they are willing to deduct those three months from the past due fees, although the remaining fees would still be due.

Mayor Vincent also addressed public comment regarding the Town's due diligence with respect to current and/or previous clients of the Pompano Beach Fire Department. Town Manager Connors stated that the Town is currently working on that contract process.

9. TOWN ATTORNEY REPORT

Commissioner Pouloupoulos requested clarification of the timeline for the contract with the Pompano Beach Fire Department. Town Attorney Trevarthen replied that the Town has made initial contact with the City of Pompano Beach. It is hoped that the contract can be brought forward for the Commission's consideration by the end of March.

Mayor Vincent requested a quick overview of the Senate Bill addressing affordable housing. Town Attorney Trevarthen explained that because South Florida is one of the most cost-burdened locations in the United States for affordable housing, the State Legislature has recognized and prioritized this need. The bill includes components worthy of support in addition to the preemption of local authority.

10. APPROVAL OF MINUTES

a. 2-2-23 Special Meeting Minutes

Commissioner Oldaker made a motion, seconded by Commissioner Strauss, to approve. Motion carried 5-0.

11. CONSENT AGENDA

- a. Special Event Application from the Community Church for Easter Sunrise Service Sunday, April 9, 2023**
- b. Special Event Application for LBTS VFD Annual Easter Egg Hunt Saturday, April 8, 2023**
- c. Renewal of Town Contracts**

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

Commissioner Oldaker made a motion, seconded by Commissioner Poulopoulos, to approve all three Consent Items. Motion carried 5-0.

12. OLD BUSINESS

None.

13. NEW BUSINESS

The following Item was taken out of order on the Agenda.

- a. Resolution 2023-14 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING ADDENDUM NUMBER 2 OF THE SANITARY SEWER AGREEMENT WITH THE CITY OF POMPANO BEACH; PROVIDING FOR EXECUTION, IMPLEMENTATION, AND FOR AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Deputy Town Manager/Public Works Director Ken Rubach explained that this agreement hands over the sewer system built as a result of the Palm Club settlement to the city of Pompano Beach. Both water and sanitary sewer utilities north of Pine Avenue are owned by Pompano Beach. This system is now complete.

Commissioner Poulopoulos made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

b. Community Shuttle Partnership with Broward County Transit

Special Events and Marketing Manager Debbie Hime noted that Broward County Transit (BCT) has partnered with the Town for 21 years to provide local shuttle service. Over the last few years, some concerns have arisen over how this agreement is operated, including:

- Average daily ridership is required to be 7.2 passengers, but is currently down to 3 or 4 passengers
- BCT requires the Town to pay for the conversion of non-County stops to Americans with Disabilities Act (ADA) compliance

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

- BCT has recently asked the Town to inspect the bus each month and sign off on its compliance for operation
- There are a number of inconsistencies by the operator due to a shortage of drivers, resulting in days when the bus does not run or does not leave its bay in time, compromising the consistency of the program
- BCT wants to have one contract for all Broward County shuttles, with a single contractor and price per hour

Due to these ongoing concerns, as well as the decrease in ridership, overall changes to public transportation, and rise of microtransit, Staff suggests that the Town cancel this service from BCT. If the Commission wishes to pursue cancellation, public notice and a public hearing would be required, most likely at the next Commission meeting. Staff is considering other options, such as Circuit, whose services are outlined in the Commissioners' backup materials.

Vice Mayor Malkoon noted that some residents rely on shuttle service to access health care at Holy Cross Hospital, and recommended that they be informed if the Town chooses to proceed with microtransit services instead.

Commissioner Oldaker addressed ADA requirements for bus stops, asking if the Town would be responsible for any stops outside Town limits. Special Events and Marketing Manager Hime explained that there would be two to three stops in question. The Town has informed BCT that they would not pay for these stops.

Mayor Vincent requested clarification of some of the terms included in the proposed termination agreement. Town Attorney Trevarthen stated that one provision refers to the Town's choice to stop the service, pointing out that it does not address what may happen when the contractor fails to deliver service. If the Commission wishes to pursue termination, she would work with Town Staff to determine the appropriate steps to wind down service.

Mayor Vincent continued that additional public opinion should be heard before the Town makes a determination on this issue, but noted that he was leaning toward the implementation of microtransit as a possible option. He was in favor of negotiations with a provider such as Circuit to ensure this would be an acceptable option for residents. The Commissioners agreed by consensus to explore Circuit as an alternative to the Town's current shuttle service.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

- c. Resolution 2023-12 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING THE 2023 AMENDMENT TO THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR THE DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE THREE CENT ADDITIONAL LOCAL OPTION GAS TAX ON MOTOR FUEL; AUTHORIZING EXECUTION OF THE 2023 AMENDMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE and Resolution 2023-13 – A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING THE 2023 AMENDMENT TO THE INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR DIVISION AND DISTRIBUTION OF THE PROCEEDS FROM THE BROWARD COUNTY ADDITIONAL ONE-CENT LOCAL OPTION GAS TAX (FIFTH CENT) ON EVERY GALLON OF MOTOR FUEL; AUTHORIZING EXECUTION OF THE 2023 AMENDMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Director of Budget and Finance Lucila Lang explained that these two interlocal agreements (ILAs) come before the Commission for annual approval. This year, Broward County has combined the two agreements to use population numbers from the Bureau of Economic and Business Research (BEBR) so the two ILAs do not have to continue coming before the Commission each year.

Commissioner Oldaker made a motion, seconded by Vice Mayor Malkoon, to approve. Motion carried 5-0.

14. COMMISSIONER COMMENTS

Commissioner Oldaker acknowledged the passing of longtime resident Robert Pollack, owner of the Camera Clinic.

15. ORDINANCES 1ST READING

None.

16. ORDINANCES 2ND READING

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

- a. **Ordinance 2023-01 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION,” ARTICLE I “IN GENERAL,” SECTION 2-1 “LOBBYIST REGULATIONS” TO REFLECT CHANGES IN COUNTY REGULATIONS RE REPORTING CONTACTS; AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Commissioner Strauss made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

17. RESOLUTIONS – PUBLIC COMMENTS

None.

18. QUASI JUDICIAL PUBLIC HEARINGS

- a. **Site Plan Modification (2022-L2-SPM-02), Conditional Use (2022-CU-01), and Flex Unit Allocation (2022-FXU-01) requests for the proposed mixed-use development, including two second-floor dwelling units within the B-1 zoning district for property located at 233 E. Commercial Boulevard.**

Town Attorney Trevarthen explained the procedures for the hearing of quasi-judicial items, and the Commissioners disclosed any ex parte communications on the Item. Any individuals wishing to speak on the Item were sworn in at this time.

Town Planner Susan Leven stated that there are three applications for the property at 233 E. Commercial Boulevard. The Applicant plans to create two dwelling units on the building’s second floor, which formerly housed an office. One second-floor unit was constructed without permits before the current owners took possession of the building.

The Applicant requests Site Plan modification to review parking, conditional use approval to allow for mixed use in the building, and the allocation of flexibility units to

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

allow for the two second-floor residential units. Planner Leven showed renderings of the original plans for the building, as well as the layout of the proposed dwelling units.

Conditional use requires compatibility of the proposed use with surroundings. This includes criteria addressing traffic, impacts on light and air, design, and signage (if applicable). The new use must be compliant with the Town's Code and Comprehensive Plan, and adverse impacts must be mitigated.

Site Plan modification primarily addresses parking. There are 19 required spaces for the uses in the building, 12 of which were credited with the construction of the Plaza. The restaurant includes two exempt spaces from a prior parking exemption application, which leaves a requirement of 5 physical spaces behind the building, two of which are used for the restaurant, one for the real estate office, and one per residential unit.

The flexibility unit allocation process is done in conjunction with Broward County. The Town has 278 flexibility units currently available for allocation. The Application requests two such units.

The Planning and Zoning Board voted unanimously to recommend approval of all three Applications with conditions at their February 16, 2023 meeting. Staff also recommends approval with the conditions stated in the development order.

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Commissioner Poulopoulos made a motion, seconded by Vice Mayor Malkoon, to approve. Motion carried 5-0.

13. NEW BUSINESS

a. Application for Relief of Code Compliance Lien at 1500 South Ocean Boulevard, Unit 1608 (Leisure Towers Condominium)

Bernard Pita, representing Calvin, Giordano and Associates, explained that the request is for relief of Code Enforcement fines at 1500 South Ocean Boulevard, Unit 1608. The current owner has owned the property since September 14, 2021. On October 13, 2021, the Town issued a notice of violation of Chapter 105.1 of Florida Building Code, which addressed interior demolition and renovations at the subject address. The violation was brought into compliance on September 14, 2022, through issuance of an after-the-fact

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

permit for the work. Fines for this violation were \$100/day and ran for 231 days, totaling \$23,100.

The Commission must consider all relevant factors when determining whether relief is appropriate for Code fines. These include:

- The nature and gravity of the violation
- The length of the time between the Magistrate's order, the compliance deadline, and the date on which the violation was brought into compliance

Mr. Pita noted that the Town considers unpermitted work to be a serious violation, which was compounded by the location of the unit on one of the upper levels of a high-rise condominium. This resulted in high-risk impact to all surrounding units and unit owners.

Mr. Pita added that while the owner brought the property into compliance within 231 days, the permit process took only 34 days. There were no other current or previous violations by the respondent on the subject property.

Mr. Pita reviewed additional financial information regarding the case, including the hearing costs, standard mitigation application fee, after-the-fact double fee to obtain the necessary permit, and actual contract costs to correct the violation. The owner is requesting 100% mitigation of the \$23,100 fine. Staff recommends that any payments be required within 30 days, or by Monday, March 27, 2023.

Commissioner Poulopoulos requested clarification of the nature of the Code violation. Mr. Pita replied that there was total interior demolition of the unit, including the removal and exposure of wiring and drywall. He was not aware of any plumbing involvement, although multiple disciplines may have been involved with the demolition. Because the unit is located on the 16th floor, there was the potential for impacts on other units.

Commissioner Oldaker observed that building management is typically aware of this type of total demolition when it occurs in the building. Mr. Pita pointed out that the complainant in this case was a property manager. The contractor was licensed in the state of Florida.

Vice Mayor Malkoon noted that the Applicant did not honor the request to stop work on the renovation. He commented that much of this issue could have been addressed through a response to the first notice.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

Mayor Vincent asked how it was known work was being done to the unit before the first notice of violation was issued. Mr. Pita reiterated that the property management was the complainant at that time. The original inspector was granted consent to inspect the property and immediately contacted the Town's Building Department, which issued a Stop Work order. Mayor Vincent commented that accountability in this case falls on the property owner, and should fall on the building's management as well for allowing the work to take place.

Mirtha Reinkendorf Masias, Applicant, stated that she invested in the unit in 2021. She had selected a contractor with the belief that they would take all necessary steps. She was informed of the notice of work done without a permit and spoke with the contractor, who told her the renovation was "minor work." She added that this contractor had attended three hearings with her before disappearing with her money. A new contractor was engaged for the renovation and obtained the permits.

Ms. Masias continued that she had come from Peru multiple times in relation to the case and had contacted the Police with regard to the first contractor. She advised that she had documentation to show her involvement in the case.

Mayor Vincent explained that his concern was that the building manager was the first entity to recognize the work was unpermitted, and immediately informed Code Compliance. The building manager then allowed the work to continue for an additional number of months before contacting the building inspector a second time. He recommended that the Applicant consider action against the building for this reason, as there should have been no work done once the Stop Work order was issued.

Vice Mayor Malkoon pointed out that notice had been sent to an address in Boynton Beach, which was on the Broward County Property Appraiser's website. Ms. Masias replied that this was the address of a family member, as she resides outside the country. She indicated that she had received the notices regarding the Code violation.

Mayor Vincent asked when the after-the-fact permit for the work was issued. Mr. Pita advised that it was issued on September 14, 2022. Development Services Director Campbell explained that the violation was brought into compliance when the permit was issued, which was why no final inspection date was included in the backup materials.

Mayor Vincent stated that he wished to know when work on the unit was closed out and a Certificate of Occupancy (CO) was issued, as this would reflect whether or not more work was done once the after-the-fact permit was issued. Development Services

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 28, 2023

Director Campbell advised that there were two complaints regarding the work being done without a permit, which would indicate that more work was done without a permit prior to the second complaint on April 27, 2022.

Commissioner Strauss observed that unscrupulous contractors have been a significant problem over the last five years; however, he felt building management should take responsibility for ensuring that contractors are vetted, licensed, and ensured, and have a permit when they work in a condominium. He added that the owner of a unit must be held responsible for work on the property they are renovating, even if it is an investment property.

Town Attorney Trevarthen advised that costs and application fees have already been paid, and reiterated that the Applicant's request is for 100% mitigation of the \$23,100 fee. She referred the Commissioners to the Staff Report, noting that the criteria that govern any motion to be made are included in that document.

Commissioner Oldaker made a motion, seconded by Commissioner Poulopoulos, to mitigate the fine by 25% to \$17,325. Motion carried 5-0.

19. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 8:18 p.m.

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Mayor Chris Vincent

ATTEST:

DocuSigned by:



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Town Clerk

4/4/2023

Date