

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

Continued from April 28, 2009

MINUTES

Town Commission Meeting Room

4501 Ocean Drive

Wednesday, April 29, 2009

4:30 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Minnet called the meeting to order at 4:30 p.m. Vice Mayor Jerry McIntee, Commissioner Jim Silverstone, Commissioner Stuart Dodd, and Commissioner Birute Ann Clotey were present. Also present were Town Attorney Susan L. Trevarthen, Town Manager Esther Colon, and Town Clerk June White.

Mayor Minnet pulled items 12a, 12e, 12f, 12g, and 12i for discussion.

Commissioner Silverstone made a motion to approve items 12b, 12c, 12d, and 12h on consent. Commissioner Clotey seconded the motion. In a roll call vote, the motion carried 5 - 0.

12. CONSENT AGENDA

- a. Award of annual Electrical Maintenance Agreement with Imperial Electrical, Inc. for Maintenance of Equipment in Town properties (Assistant Town Manager Olinzock)**

Commissioner Dodd requested comparative rates for a journeyman between the new contractor and the previous contractor so that the public was aware of the differences. Manager Colon did not have the previous contract with her. Commissioner Dodd wanted to know how she was progressing with the list of the RFP's with their renewal dates and approximate values. He said it was a competitive market and the RFP's needed to be put out there. Manager Colon stated that staff had gone out for bids as it was standard procedure.

Vice Mayor McIntee made a point of order. Mayor Minnet granted his request. Vice Mayor McIntee stated that a request for a list of RFP's had nothing to do with this item and suggested Commissioner Dodd place it on an agenda. Commissioner Dodd said he would send an email.

Manager Colon asked for clarification. Commissioner Dodd said he wanted a list of the items the Town would be going out to bid for, in advance, so that the Commission would

have a heads up and for any public input. He wanted approximate values and when they would go out. Manager Colon said some vendor contracts are annual and some are more, such as Waste Management which was a 20 year contract. She said she could give him a list of the work in progress but to go back in years it would take some time to review the contracts. Commissioner Dodd said he did not want extensive research; only to know in advance what was coming up.

Commissioner Dodd made a motion to approve Electrical Maintenance Agreement with Imperial Electrical, Inc. Vice Mayor McIntee seconded the motion. In a roll call vote, the motion carried 5 - 0.

- b. Award of annual Streetlight Maintenance Agreement with Imperial Electrical, Inc. for Maintenance of Streetlights throughout Town (Assistant Town Manager Olinzock)
- c. Commission approval of 3rd amendment for the community bus with Broward County (Manager Colon)
- d. Commission approval of Special Event Permit application for LBTS Chamber of Commerce Event "Lauderdale-By-The-Sea Craft Festival", Saturday, October 31, 2009, 5:00 AM thru Sunday, November 1, 2009, 9:00 PM (Assistant Town Manager Olinzock)
- e. Commission approval of Special Event Permit application for Village Grille's "Jazz in the Square" event, every Friday evening, 4:30 PM till 11:30 PM, May 16, 2009 thru May 15, 2010 (Assistant Town Manager Olinzock)

Dave Gadsby said that the event had gone on for five years and he had burdened the costs. He said if the Town did not want to go ahead with it anymore he would go elsewhere. Mr. Gadsby added that the bands were the same bands he always used.

Mayor Minnet asked whether Mr. Gadsby paid for his parking spaces. Mr. Gadsby said he paid for 11 spots for the time of the event. He added he also paid \$100 application fee.

Commissioner Clotney went on record that even though the time of the event was to 11:30 PM, the music stopped on time. She added that they needed an hour and a half to clean up. Mr. Gadsby agreed.

Commissioner Silverstone stated that based on fairness other restaurants paid \$18 per square foot for the same outdoor service Village Grille offered during special events. He asked whether Mr. Gadsby would object to the fee. Mr. Gadsby said the reason the business was operated in the street was to defray the cost of the event. He added that sometimes the event lost money and he did it for the good will of the Town.

Mr. Gadsby said it was a tremendous expense and he was not in favor of an additional expense. Town Manager said the fee for Village Grille would be approximately \$200 per event.

Vice Mayor McIntee thought the approximated \$200 fee was fair and would only be charged for the hours during a cafe event which could work out to approximately \$100. Commissioner Dodd questioned where the calculations came from. Manager Colon said she calculated by square footage and Vice Mayor McIntee was breaking it down by time. Vice Mayor McIntee stated that if the business showed a loss, the Town could waive the fee.

Mr. Gadsby said it did not sound unreasonable for the Town to make a fee but it was expensive for him to run an event.

Commissioner Clotey felt that Mr. Gadsby already paid his dues and suggested that he tally up the amount he had put up on his own for the events. She also suggested that the Town give him the credit for what he had done and he would not have to pay anything for the next couple of years. Commissioner Silverstone thought it was a very good idea.

Commissioner Dodd was against additional fees as he believed Mr. Gadsby brought a lot to the Town.

Commissioner Dodd made a motion to approve the application as it was.

Commissioner Silverstone offered a friendly amendment to a 3 month review to get the right numbers. Commissioner Dodd did not accept. Commissioner Silverstone seconded the motion.

Vice Mayor McIntee amended the motion to a 3 month event for evaluation and come back with a figure at that time. Commissioner Silverstone seconded the amended motion.

The motion to amend carried 3-2. Commissioner Dodd and Mayor Minnet voted no.

The motion to approve the event with a 3 month term carried 5-0.

- f. Commission approval of Special Event Permit application for Athena by the Sea's "Music by the Sea" event, every Saturday evening, 4:00 PM till 11:00 PM, May 28, 2009 thru May 27, 2010 (Assistant Town Manager Olinzock)

Commissioner Dodd said he pulled this item from the consent agenda to allow the applicant to speak.

Louis Marchelos said the "Music by the Sea" event was free to the public. Spiro Marchelos said the events were put on to help the businesses and for everyone to enjoy

Lauderdale-By-The-Sea. Mr. Marchelos said if the Town wanted to charge for closure of the streets he asked that the Town take into consideration that Athena by the Sea only did events 30 days out of the year.

Commissioner Clottey said that when the Town and the Chamber had an Event the Commission should consider whether there should be an exception to allowing another event on that same day.

Vice Mayor McIntee clarified that he stated that other Towns charged businesses a fee for using a Town street.

Mayor Minnet was concerned with simultaneous events and believed it was something that the coordinator of events should look at to prevent back to back events.

Commissioner Silverstone agreed. He made a motion to approve the event with an amendment to approve the event for 3 months, exclusive of July 4th. Vice Mayor McIntee seconded the motion.

Commissioner Dodd questioned that if the beach should prove to be too difficult to display fireworks and the offer of the use of the pier became accepted, where would that leave the Town should they deny an event in the car park or the pier.

Commissioner Silverstone asked whether Commissioner Dodd spoke with anyone regarding using the pier for fireworks this year. Commissioner Dodd said he did not and referred to an email that also went to Lou Fisher and others.

Commissioner Clottey noted that the police had to sign off and believed it would be better to say it was an exception rather than take something away that had been given.

The motion carried 4-1. Mayor Minnet voted no.

- g.** Commission approval of agreement for Stormwater System Design on Commercial Boulevard east of El Mar Drive with Holland Engineering Inc., in the amount of \$3,500.00 (Assistant Town Manager Olinzock)

Commissioner Dodd wanted to know whether the Town had the right to make a business comply with current regulations if the regulations were not in place at the time the business came into existence.

Attorney Trevarthen stated that the Town could not make them come into compliance unless they redeveloped or added on.

Commissioner Dodd made a motion to approve. Commissioner Clottey seconded the motion. The motion carried 5-0.

- h. Commission approval to authorize the recording of the attached Code Enforcement lien - 1749 SE 19th Avenue (Assistant Town Manager Olinzock)
- i. Commission approval of amendment to existing agreement with Enforcement Technology, Inc. for Processing Parking Citations - \$2,100.00 (Assistant Town Manager Olinzock)

Commissioner Dodd noticed that the contract went back to 1996. He asked what the current charges were and how many machines the Town had. Assistant Town Manager Olinzock stated the charge was \$110 per month and 3 machines. He added that the equipment was almost 14 years old and obsolete and he was working with Manager Colon to replace the handhelds as they were not compatible with the new parking meters in El Prado.

Manager Colon said the Town paid approximately \$24,000 a year. She said without the handheld the Town would have to go out for a whole new parking system.

Commissioner Dodd wanted to see what other bids went out.

Manager Colon said she would gladly RFP the item and stated that it would cost the Town more than \$24,000 as a whole new parking system would be needed. Manager Colon stated that the Town had not been piggybacking; the Town was using an existing meter that was outdated. She said she would go out to RFP and the Commission could direct her as to where to obtain the funds and put a new parking system in place. Manager Colon asked to table this item if Commissioner Dodd motioned it.

Commissioner Dodd agreed to table the item and asked to what date the Town Manager wanted. Vice Mayor McIntee seconded the motion.

Commissioner Dodd made a motion to defer this item to June 23, 2009. Manager Colon advised that the handhelds were outdated and leased and should the equipment fail the Town would not be able to write tickets. She hoped to get the RFP out within 60 days for a whole new system. Commissioner Dodd believed that the Company might be happy to loan the Town a handheld.

The motion carried 4-1. Commissioner Silverstone voted no.

- j. Lynn University - Spring Concert May 18, 2009 - Community Church at 6:00 PM - \$1750.00. This item was approved at the April 28, 2009 Commission meeting

13. RESOLUTION - "Public Comments"

- a. Resolution 2009-13: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA OPPOSING SENATE BILL 1000/HOUSE BILL 365 ENTITLED AN ACT RELATING TO DISCRETIONARY

SALES SURTAXES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE (Requested at the April 20, 2009 Commission meeting by Mayor Minnet)

Attorney Trevarthen read Resolution 2009-13 by title.

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

Commissioner Silverstone made a motion to adopt Resolution 2009-13. Vice Mayor McIntee seconded the motion.

In a roll call vote, the motion carried 5 - 0.

14. QUASI JUDICIAL PUBLIC HEARINGS

15. OLD BUSINESS

- a. Selection by Town Commission of design for custom banners in the Hospitality and Business District of Town (Assistant Town Manager Olinzock)

Assistant Town Manager Olinzock stated there were additional banners submitted after the deadline for agenda item submission.

Vice Mayor McIntee made a motion to defer this item to the May 12, 2009 Commission meeting. Commissioner Dodd seconded the motion. The motion carried 5-0.

- b. Discussion and/or action regarding Kite Surfing (Vice Mayor McIntee) This item was deferred to May 26, 2009 at the April 28, 2009 Commission meeting
- c. Discussion and/or action to change the passes at Bougainvilla Parking Lot to the portals for employees of the Broward County Sea Turtle Conservation Program (Mayor Minnet) This item was deferred to the April 28, 2009 Commission meeting by Commissioner Clotey

Commissioner Clotey said she deferred this item until the Town manager returned to clarify the information was correct. Manager Colon said that last year they were issued parking permits for Bougainvilla Parking lot and this year they were issued the for same place and that both the Mayor and the Assistant Town Manager were notified of that location.

Mayor Minnet wanted to know where they parked last year. Manager Colon said they parked at the Bougainvilla parking lot.

Vice Mayor McIntee made a motion to keep the parking permits at the Bougainvilla Parking lot. Commissioner Dodd seconded the motion to include a letter be sent explaining that if they were found abusing the parking passes it would jeopardize

the passes for the future. Commissioner Clotey wanted to know if they had to park by the beach to rescue a turtle and got a ticket what would become of the ticket. Manager Colon explained that they would be allowed to unload their equipment by the beach but they could not park there. Commissioner Dodd seconded the motion.

In a roll call vote, the motion carried 5 - 0.

- d. Discussion and/or action concerning lack of lighting in the Pavilion with regard to public safety (Commissioner Dodd) This item was deferred to the April 28, 2009 Commission meeting by Commissioner Dodd

Commissioner Dodd stated that Broward County approved the construction of a building with a condition that there would be no lighting. He inquired as who would be liable if something should happen. Attorney Trevarthen said it was a permit condition and most permit conditions could be changed. She said her concern was with the pedestrian traffic and cars.

Commissioner Dodd made a motion to supply limited lighting that would be turtle friendly, such as recessed LED lighting that would shine downward.

Commissioner Silverstone seconded the motion with a friendly amendment to direct the Town Manager to obtain costs and to bring it back for review.

Vice Mayor McIntee suggested a friendly amendment to purchase 50 portable wall red lights to plug into plugs as a temporary solution.

Although she knew that turtles were not attracted to red lights, Mayor Minnet did not think red lights should be in the Downtown District and suggested a yellow low pressure sodium light as an alternate.

Manager Colon stated that there was a permitting process that needed to be followed to put lights in the pavilion. She said Broward County informed her that in order to put in lights a Town Engineer had to do the specs.

Commissioner Dodd made a motion to go forward with LED lighting as soon as possible and follow the permitting process. Commissioner Silverstone seconded the motion. The motion carried 5-0.

16. NEW BUSINESS

- a. Discussion and/or action regarding the setting of Budget Workshops and Special Commission meetings and Public Hearings for Fire Assessment, Millage, Budget and TRIM (Clerk White)
- b. Commission approval of Vendor for July 4th Beach Blast Celebration 2009 Fireworks Display - \$15,000.00 (Assistant Town Manager Olinzock) This item was

approved at the April 28, 2009 Commission meeting

- c. Discussion and/or action for an Ordinance to ban "totters" from prowling the streets of Town stealing valuable recycling material from the refuse collector (Commissioner Dodd)

Commissioner Dodd explained that he put this item on the agenda to give the police power to stop people from taking valuable recycling materials that was put out for the recycling company. Commissioner Silverstone wanted to know whether it was illegal for someone to take his trash. Attorney Trevarthen said she did not know but with Commission direction she would research.

Commissioner Clotey was under the impression that when she put her trash out it was available to the public to go through it.

Vice Mayor McIntee stated that if the material was placed in the swale it was public property and the person taking the material could not be charged. Vice Mayor McIntee said he never heard anyone complain. He added that if the vehicle was overstuffed they could be cited.

Commissioner Dodd made a motion to defer to May 26, 2009 for the Town Attorney to research. Commissioner Silverstone seconded the motion. The motion carried 5-0.

- d. Discussion and/or action regarding a directive to the Town Manager to inform all Commissioners whenever there is a fatality in Town from anything other than natural causes (Commissioner Dodd)

Commissioner Dodd believed this was a matter of course. He preferred a heads up so that when he was asked whether he had heard such and such he would be able to respond. He suggested the Town Manager notify the Commission when she received the information.

Commissioner Silverstone believed BSO should make notification as they would be aware of any situation.

Commissioner Dodd said it did not matter who did it and asked that the Town Manager discuss it with BSO.

- e. Discussion and/or action regarding the continuation of Commission meetings. Proposal to approve automatically continuing on the next evening at 21:00. Users of Jarvis Hall (P&Z and P.O.A.) please take note not to book the Wednesday after a Commission meeting (Commissioner Dodd)

Commissioner Dodd wanted to continue the meetings to carry over automatically to the following night at 7:00 PM.

Commissioner Silverstone believed it was a judgment call to be determined at the meeting.

Mayor Minnet was not in favor of 7:00 PM. She believed the Commission needed to look at the length of the meetings and make adjustments. She suggested placing a time certain on presentations and look at the public comments as there used to be a 10 person limit.

Commissioner Silverstone thought it would be wise to speak during public comments on subjects that were on the agenda only. He said other comments could be deferred to the end of the agenda. Commissioner Silverstone noted that there were a lot of things on the agenda that should not be.

Attorney Trevarthen said there was not a legal requirement to have public comments. She suggested having public comments once a month if the Commission wanted it.

Commissioner Clotey was not in favor of eliminating public comments. She said she would rather sit at the meetings until 1:00 a.m. if necessary to get the meeting done. Commissioner Dodd did not think the meeting should go beyond 11:00 p.m. as it was ineffective. Vice Mayor McIntee agreed that late night meetings were not productive.

Mayor Minnet believed the Commission was agreeable to getting through the meetings in a timely manner and hoped that they would not need to worry about continuing the meetings.

- f. Request for Workshop to discuss sound Ordinance before second reading of proposed new Ordinance (Commissioner Dodd)

Commissioner Dodd had requests from business owners to open the ordinance for a workshop. He suggested advertising a sunshine notice for 3 or more commissioners to do a walk around and take meter readings on a Friday night or Saturday night.

Commissioner Dodd made a motion to hear from the residents and the business owners at a workshop. Mayor Minnet stepped down and passed the gavel to Vice Mayor McIntee. Mayor Minnet seconded the motion.

Commissioner Clotey said that some people suggested that Broward County rules should take precedence, but she believed their level of noise that was too low at 60 decibels.

Commissioner Dodd asked to recognize someone from the audience. Mayor Minnet asked whether a Town Ordinance could override or supersede the Broward County Ordinance. Attorney Trevarthen said the Town's regulation would apply.

Peggy Mohler asked who the person was that was playing the music after 10:00 p.m. She said Aruba and the Village Grille's doors were closed at 10:00 p.m. except for one occasion which was rectified. She said if the Town did not want them to do the events on the weekends they would not do it. Ms. Mohler suggested the town go after the person that was going after 10:00 p.m.

Commissioner Dodd said he wanted to do his best to make sure the noise levels were realistic. He understood that Elvis was around 95 and the meetings came in around 75. Commissioner Dodd believed the police could enforce by telling people to turn it down.

Commissioner Silverstone stated that this ordinance was to give the ability to enforce the noise ordinance that was on the books.

Commissioner Clotley acknowledged that the complaint was not against Aruba Beach Cafe. Ms. Mohler asked why not go to that particular person or establishment. Commissioner Clotley said that currently the Town had a number that could not be enforceable, but once an acceptable number was found the ordinance could be enforceable.

Vice Mayor McIntee believed Commissioner Dodd had a legitimate idea for the Commissioners to get together and go out with a decibel meter and determine what they had to do. He was not in favor of a workshop.

Attorney Trevarthen said the meeting would need to be noticed as a Sunshine meeting.

Mayor Minnet believed a workshop was a start to get things moving with the Businesses.

Attorney Trevarthen said the new Ordinance was written for DBA and DBC and for specific standards of certification she did not know whether the Town's equipment met those criteria.

Vice Mayor McIntee suggested that staff write a letter of request to borrow Ft. Lauderdale's decibel meter.

Commissioner Dodd made a motion to schedule a walk around workshop on Friday evening May 15, 2009 between 7:00 p.m. and 10:00 p.m. and an additional walk around workshop on Saturday evening, May 16, 2009 between 7:00 p.m. and 10:00 p.m. for a decibel reading and to direct the Town Manager to request the use of the City of Ft. Lauderdale's decibel meter and the attendance of BSO Deputy or a Town of Lauderdale-By-The-Sea trained Code Enforcement Officer for interpretation of decibel readings. Mayor Minnet seconded the motion. In a roll call vote, the motion carried 5 - 0.

- g.** Discussion and/or action to hold a Workshop to discuss lighting on El Mar Drive, the pavilion & Minto parking lot (Commissioner Dodd)

Commissioner Dodd asked whether staff had gone out to see if any lights could be turned back on. Manager Colon said 2 lights were turned back on.

Commissioner Dodd believed that the Town was putting the tourists and residents at risk and should look into turning on more lights that would have minimum impact on the turtles.

Manager Colon said the Fish and Wildlife actually do a walk through and make them turn the lights off. She suggested considering every third light. She said City of Ft. Lauderdale and City of Pompano were leaving some lights on.

Commissioner Dodd believed they would have to. He did not want to spend money.

Commissioner Clotney suggested the Commission combine items 16g and 16i for discussion. There were no objections.

Commissioner Dodd asked whether the other cities were shielding their lights or turning the lights off. Manager Colon said both.

Commissioner Silverstone said the law stated that the light fixture should not be visible from the beach. He said if there was a shield around the light they should be ok.

Vice Mayor McIntee supported turning on every third light. He said if a warning was received then the Town would have to obey.

Mayor Minnet said the Town needed to move forward with a plan. She felt the workshop was intended to do that.

Vice Mayor McIntee suggested taking a walk up El Mar on May 15th and 16th when they do the decibel. The Commission agreed.

- h. Move monument at El Prado Park back to its original location. Its present location is somewhat problematic during special events. Since Minto is still doing construction in the area they could be asked to move it for a nominal sum (Commissioner Clotney)

Commissioner Clotney said that the monument was in the park and would need to be moved every time there was an event. She asked the Commission to consider moving it to the median.

Commissioner Clotney made a motion to move the monument. Commissioner Silverstone seconded the motion with a question. He suggested that the monument be placed at Town Hall. Commissioner Clotney agreed. Commissioner Silverstone amended the motion to place the monument at Town Hall. The motion carried 5-0.

Town Commission Regular Meeting Minutes
April 29, 2009 continued from April 28, 2009

- i. Place shields on every third street light on El Mar Drive, the Minto Parking Lot, and A1A (Commissioner Clotney)

17. TOWN ATTORNEY REPORT

There were no reports.

18. ADJOURNMENT

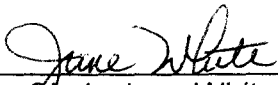
Vice Mayor McIntee made a motion to adjourn. With no other business before the Commission Mayor Minnet adjourned the meeting at 6:35 p.m.

19. FUTURE AGENDA ITEMS



Mayor Roseann Minnet

ATTEST:



Town Clerk, June White

5/27/09
Date

