TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MINUTES
Town Commission Meeting Room
4501 Ocean Drive
Wednesday, January 28, 2009 **Continued from January 27, 2009**
4:00 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Roseann Minnet called the meeting to order at 4:00 p.m. Also present were Vice Mayor Jerry McIntee, Commissioner Jim Silverstone, Commissioner Stuart Dodd, Commissioner Birute Ann Clottey, Town Manager Esther Colon, Town Clerk June White, Town Attorney Daniel L. Abbott, and Senior Office Specialist Nekisha Smith.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

11. COMMISSIONER COMMENTS

Commissioner Dodd stated that he had not received prior information regarding the presence of the Palm Club residents at the previous meeting. He wanted to know: 1) why the Commission was bending over backwards to help a cooperative that was intent on bringing legal action against the Town; 2) were government grants available for projects on private land; and 3) on whose authority was this designated an emergency and who assured the residents that they would be given the right to speak.

Commissioner Dodd stated he had other problems as well: 1) with the ATV breakdown; 2) with the ATV drivers on cell phones, not wearing seat belts, lights going, and heading to a medical call. He wanted to know who paid the insurance should they crash.

Commissioner Dodd had a problem with not getting a straight answer, or no answer at all to his questions such as the questions he had regarding the Beach Pavilion. He felt that either the Town Staff or the Commission made the decision to change the Pavilion.

Commissioner Dodd stated that he had a problem with the VFD disregarding their own by-laws and electing Vice Mayor McIntee as their Deputy Chief. He wanted to know why the Town Manager did not bring it before the Commission.

Commissioner Dodd stated that he also had a problem with the video surveillance; the two flag poles instead of one; and the "Welcome to" entryway logo; the backup material;

the minor mistakes; the lack of communication; and being expected to go to Town Hall daily; the North Tradewinds Drive petition; the Seagrape Drive curb extension; not allowing residents to reply immediately to accusations made by the Dais; the rule change regarding the right to speak on an agenda item and the right to call a Commissioner by name. Commissioner Dodd said he would continue to ask his questions until he gets the answers.

Vice Mayor McIntee was sorry that Commissioner Dodd had so many problems. He felt that the Commission should stand behind the staff. Vice Mayor McIntee asked Public Information Officer d'Oliveria to play the video of the July 8, 2008 Commission meeting that clearly indicated there were no bathrooms going in the pavilion. He asked why time was being wasted on this issue.

Vice Mayor McIntee addressed some of Commissioner Dodd's problems. He stated that no one was bending over backward to help the Palm Club. He said whether or not there was a lawsuit, the Town had to be fair. Vice Mayor McIntee said that there was a federal grant available and the opportunity should be pursued. He said no one forced the Commission to place the Palm Club on the agenda. Vice Mayor McIntee stated that the cell phone Commissioner Dodd referred to was probably the portable fire radio that was used on the fire truck for fire calls. Vice Mayor McIntee said when he ran for Deputy Chief it was done properly and according to the rules of the Volunteer Fire Department Board of Directors. Vice Mayor McIntee stated that his letter to the Ethics Committee was sent on his own letterhead and not Town letterhead. He said it was public information that anyone could obtain it from Tallahassee.

Mayor Minnet acknowledged the emails she received regarding the VFD and the tennis courts. She invited everyone to utilize the Pelican Hopper as free transportation. She thanked the Master Plan Steering Committee and the Planning & Zoning Board. Mayor Minnet believed their members worked well together. Mayor Minnet spoke about sustainability initiatives. She felt that it could work with strict guidelines within the hospitality district. She reminded everyone of the ribbon cutting for the Public Safety Building was Monday, February 2, 2009 at 5:00 p.m. and invited Reverend Hunsaker to give his blessing at the ceremony.

Commissioner Clottey thanked Manager Colon for her excellent job in taking care of the Town's finances. Commissioner Clottey said in the process of updating the Code book she learned the true meaning of the saying "where sleeping dogs lie". She said the Unified Land Code was problematic and could be for a while. Commissioner Clottey believed that everyone had rules but personality should be maintained. She said beach access and building heights had been an issue in the Town for a long time. Commissioner Clottey expressed her condolences to Cristi Furth for the death of her father. She said Cristi was very involved in the community and was responsible for removing the rope that was put up years ago to prevent public access to the beach. Commissioner Clottey said the Commercial Boulevard Pavilion will go up no matter how many arguments go on about it. She did not appreciate the accusation from a fellow Commissioner that she made something up. Commissioner Clottey believed there should be respect and the Commission needed to be specific on authority. She explained that the Town Manager had asked for direction over and over. Commissioner Clottey believed clarity was a good thing and the Commission needed to get on the same page.

Commissioner Silverstone believed that opinions were being used instead of facts. He felt both sides of an issue should be obtained and explored and encouraged the newspapers and bloggers to pursue facts. Commissioner Silverstone said the Commission could not be a strong Town and facilitate the Town Manager's position or direct the Town Manager to run the Town or direct her if one of the Commissioners had problems to the extent of Commissioner Dodd's issues. He suggested that Commissioner Dodd bring his concerns to a workshop / roundtable meeting for discussion and to work them out.

13. RESOLUTION - "Public Comments"

a. Resolution 2009-04: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA AMENDING FIRE RESCUE AND SAFETY SERVICE FEES BY DECREASING BY 10% THE PERIODIC/ANNUAL FIRE SAFETY INSPECTION FEES FOR EXISTING BUILDINGS

Attorney Abbott read Resolution 2009-04 by title.

Mayor Minnet opened the meeting for public comment.

Barbara Cole hoped that since the Commission was going forward with Burton and Associates' fees maybe it could be lowered more.

Lawrence Wick did not think Burton & Associates should be looking at this. He thought it would benefit the people if the Commission moved forward with it.

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

Commissioner Dodd wanted to table Resolution 2009-04 in order to get the word out to the condominiums. He also wanted to "divorce" the EMS portion.

Commissioner Dodd made a motion to table to the February 10, 2009 Commission meeting.

Mayor Minnet asked for clarification between the false alarm fees in the schedule and the false alarm fees on the ordinance. Attorney Abbott explained that the attachments were copies of the Broward County fees and should not be there. Vice Mayor McIntee was concerned that people currently being inspected would pay more than they should.

Attorney Abbott suggested that the Commission could move the Resolution as written while omitting the EMS fees as related to false alarm fees.

Manager Colon stated that this was an existing ordinance that had fees and suggested that to simplify she would like to have separate fee schedules; one for fire and one for EMS, and one for all the others. She felt that with approval of the Commission the 10% could be retroactive as of October 1, 2008 for fire inspection fees only.

Commissioner Dodd said he had discussed that with the Town Manager. He suggested that if the resident was overcharged a credit could be issued. Commissioner Dodd agreed with Vice Mayor McIntee. He did not want to overcharge anyone. Commissioner Dodd felt it was necessary to get moving on the inspections and in doing so allow a 2 week grace period to those waiting for their inspections.

Commissioner Clottey felt it was only right to repay people that had overpaid and not bill anyone in the next few weeks and wait to bill them at the proper amount. Vice Mayor McIntee clarified that the VFD did the billing.

Commissioner Dodd made a motion to table to February 10, 2009. Commissioner Clottey seconded the motion. The motion carried 4-1. Commissioner Silverstone voted no.

Commissioner Dodd made another motion to direct the Town Attorney to create and Ordinance to separate the fees. Attorney Abbott stated that Manager Colon suggested separating the fees by separate Resolution. He added that if the Commission was in agreement he would suggest draft the Resolutions. Commissioner Dodd agreed.

14. QUASI JUDICIAL PUBLIC HEARINGS

a. A Variance request to allow setback requirements from Section 30-242 of the Towns Zoning Code opposed to the applicable 30-241 to construct a single family home within the RM-25 Zoning District. Property is located at 4312 El Mar Dr. - Staff recommends tabling to January 13, 2009 - This item was tabled until December 17, 2008 at which time the Board will consider the application. The applicant agreed and is to provide revised plans increasing the setbacks for the board to review (Assistant Manager Olinzock) Tabled at the December 16, 2008 Commission meeting to allow BOA to review revised plans - BOA recommended approval with conditions - Applicant requesting Table to January 27, 2009 - Tabled at the January 13, 2007 Commission meeting by Commissioner Silverstone

Attorney Abbott opened the Quasi Judicial Public Hearing and swore in those wishing to give testimony.

Attorney Nectaria Chakas represented the applicant. She displayed a survey that showed there were zero setbacks to the structure. Attorney Chakas said that at their first meeting in November 2008 with the Board of Adjustment, 3 variances were requested – one for the north, one for the south, and one for a front yard setback. She stated that at that time the Board of Adjustment requested they reduce the number of variance requests and, as a result, the applicant eliminated the variance request for the front yard setback. Attorney Chaska said that at the December 2008 Board of Adjustment meeting the applicant agreed to eliminate the variance request for the south. She said the Board of Adjustment ultimately approved a variance for the north - a 5 foot variance to the main building and a 7 foot variance to a roof overhang. Attorney Chakas stated that the applicant came before the Commission for approval of a variance for 5 foot setback to the main building and a 7 foot roof overhang.

Attorney Abbott asked whether Assistant Town Manager Olinzock represented the Town and whether he had any questions for the client. Assistant Town Manager Olinzock did not have any questions. Attorney Abbott asked whether the Commission had any questions.

Vice Mayor McIntee inquired as to when the present occupants would be leaving.

Frank Zokaites indicated that the hotel would take reservations until the applicant was ready to go. He added that the people staying there were short term transients. Mr. Zokaites expected the permits to take approximately 6 months.

Vice Mayor McIntee inquired of the projected value when finished. Mr. Zokaites estimated $4 million with $50,000 in property tax.

Commissioner Clottey requested that the view of the ocean not be blocked. Mr. Frank Zokaites said it would not block the view as there was an open type of fence. Attorney Chakas said landscaping would be adjusted not to obstruct the view.

Commissioner Dodd questioned the height to the elevator shaft from the ground. Mr. Zokaites said he was not asking for a height variance. He believed it was approximately 42 feet to the top of the elevator shaft. Commissioner Dodd said the backup showed the height at 56 feet. Mr. Zokaites believed that was wrong and should be approximately 44 feet. Commissioner Dodd wanted to know whether the bottom floor was habitable. Mr. Zokaites said it would not be habitable. Commissioner Dodd asked whether the driveway could be made with pervious material. Mr. Zokaites said he intended to lay pavers over sand. Commissioner Dodd asked why the air conditioning unit was on the roof. Mr. Zokaites believed it would be less noisy up there and less affected by the salt.

Commissioner Silverstone asked Mr. George Crossman if he had found anything incorrect when they came before the Board of Adjustment. Mr. Crossman said he did not. He felt it was more desirable. Commissioner Silverstone believed it was a great project and preferred a single family home over condos and hotels.

Joe Couriel said they were very cooperative in making changes. He explained that the building had to be shifted to the north to allow for emergency vehicles. Mr. Couriel said the vote was unanimous.

Attorney Abbott swore in Cristi Furth. Ms. Furth was concerned about the building height. She said the current height limit was 33 feet. Mr. Zokaites said if you take the average grade around the building it would be 48 feet, according to Commissioner Silverstone, to the very top of the elevator shaft. Mr. Zokaites said if you measure from the dirt to the top of the roof it was 34 feet. He reminded everyone he was not seeking a height variance. Ms. Furth stated that elevator shafts were not included in the height limit but the peak of the roof line may be in violation of the Ordinance. Attorney Chakas believed it still met Town Code.

Attorney Abbott asked if any of the parties or the Commission had any questions for Mr. Crossman or for Mr. Couriel. Vice Mayor McIntee asked whether Mr. Couriel believed the applicant complied with the height limitation at 33 feet. Mr. Couriel believed it did meet the Code requirements.

Attorney Abbott asked if any of the parties or the Commission had any questions for Ms. Furth. There were none. Attorney Abbott asked if any of the parties or the Commission had any questions for Attorney Chakas. There were none.

There were no more witnesses.

Attorney Abbott opened the meeting to any member wishing to speak. Attorney Abbott swore in Lawrence Wick.

Mr. Wick explained that it would meet Code if the center line of the top part of the roof was less than 33 foot over what is currently shown as 18" which was what the State described. Mr. Zokaites stated that the roof was actually a flat roof. Mr. Wick stated that as a flat roof it was a 33 foot height limit.

Commissioner Dodd asked where the 33 feet started. Assistant Town Manager Olinzock explained that the County coordinates were R49-66 and a 100 year storm elevation and feet for that particular area was 19.1 feet and the 100 years storm design grade elevation was 5.6 feet. Commissioner Dodd asked for clarification that the measurement would begin at the 5.6 foot mark. Assistant Town Manager Olinzock agreed.

Commissioner Silverstone wanted to hear from Mr. Crossman. Mr. Crossman said there were 2 definitions of grade: 1) 24 inches above the crown of the highest adjourning road; 2) grade level established as the lowest habitable first floor elevation permitted by the regulations of all local, county, state and the federal government having jurisdiction over the subject property, referred to as the scrub level.

With no more speakers and/or questions, Attorney Abbott concluded the hearing and turned the item over to the Commission. He advised the Commission that the issue of the height was not before the Commission. Attorney Abbott said the subject of deliberation was for a variance for a side yard 5 foot setback on the north side of the building and a 7 foot roof overhang.

Mayor Minnet asked Attorney Abbott for a brief explanation of the criteria for a variance. Attorney Abbott advised the Commission that they should base their decisions on the following criteria: a) special conditions and circumstances affected the land structure or building involved preventing the reasonable use of such land structure of building; b) the circumstances which caused the hardship were peculiar to the property or to such a small number of properties that they clearly constitute market exception to other properties in the district; c) the literal interpretation of provisions of the particular regulation would result in a particular hardship upon the owner as distinguished from a mere inconvenience; d) the hardship was not self created or the result of a mere disregard for, or ignorance of the provisions of the regulations; e) the variance was the minimum variance that would make possible the reasonable use of the property and that the variance would be in harmony with the general purpose and the intent of the applicable zoning regulations and would not be injurious to the neighborhood or otherwise detrimental to the public welfare; f) the grant of the variance did not permit a use not generally permitted in the district involved or use expressly or by implication prohibited by the terms of the regulations of the district in which the effected property laid; g) financial hardship was not a basis for granting a variance unless the failure to grant the variance would render the property unusable as a permitting use in the zoning district in which the property laid.

Commissioner Dodd asked whether it was the Attorney's opinion as to whether the client met the terms. Attorney Abbott said he was uncomfortable evaluating the evidence that was presented. He suggested the Commission evaluated the evidence and testimony. Commissioner Dodd suggested the go ahead.

Mayor Minnet was pleased to see a single family on El Mar Drive. She was concerned with the denseness / density. Vice Mayor McIntee did not feel it was as dense as what was currently there.

Vice Mayor McIntee made a motion to accept the variance.

Commissioner Silverstone was concerned that people would buy up property there and start building homes that would change the appearance of El Mar Drive and block the view of the ocean. He thought it fit in with the Town and because a house sat there originally, it made sense. Commissioner Clottey liked the project. She was concerned with the height and thought staff should go back and revisit the code.

Commissioner Dodd seconded the motion. The motion carried 4-1. Mayor Minnet voted no.

Mayor Minnet recessed the meeting at 5:50 p.m. and reconvened at 6:00 p.m.

15. OLD BUSINESS

a. Discussion and/or action concerning drafting a referendum for a Charter change to take effect after the next election in 2010 to prevent a conflict of interest ever occurring between employment with a public safety provider for the Town of Lauderdale-By-The-Sea and that of an elected official (Tabled at the December 1, 2008 Commission meeting by Vice Mayor McIntee) Pending 1/13/09 Workshop

Vice Mayor McIntee withdrew this item.

Commissioner Dodd said this was his item originally. He wanted to know if Vice Mayor McIntee was withdrawing the item to table it.

Commissioner Dodd placed this item on the February 24, 2009 agenda.

b. Discussion and/or action regarding Town sign at Commercial Blvd and A1A (Vice Mayor McIntee) Tabled at the January 22, 2009 Commission meeting.

Vice Mayor McIntee wanted documentation as to whether the sign was registered as a historical sign.

Vice Mayor McIntee tabled this item to the February 24, 2009 Commission meeting with direction for further research. There were no objections.

16. NEW BUSINESS

a. Discussion and/or action on specific location of Adopt A Street signage (Mayor Minnet)

- **a.** Town Hall
- **b.** Town Parks
- **c.** Designated Locations

Mayor Minnet wanted to place a sign at Town Hall and at the Town parks.

Commissioner Clottey believed the signs needed to have a purpose. She said the current signs were the worst signs that she had ever seen.

Vice Mayor McIntee agreed. He stated that the Commission previously agreed that if someone wanted to place the sign on their own property, they could.

Vice Mayor McIntee made a motion to table to the March 10, 2009 Commission meeting to research the last vote on this matter. Commissioner Silverstone seconded the motion. The motion carried 4-1. Mayor Minnet voted no.

Commissioner Dodd requested back up information. Direction was given to include backup.

Mayor Minnet stated that Adopt-A-Street had specific signs that had been sign friendly to over 19 communities. She stated that it was a requirement that the sign be placed in the community or that community would not be part of the Adopt-A-Street program. Mayor Minnet said this was why she had placed it back on the agenda.

b. Commemorative Tree Policy (Mayor Minnet)

Mayor Minnet provided a copy of the City of Pembroke Pines tree policy. Commissioner Silverstone liked it. Vice Mayor McIntee wanted to know who purchased the tree. Mayor Minnet explained that the Town purchased the tree and the applicant paid for it.

Vice Mayor McIntee made a motion to adopt a Commemorative Tree Policy. Commissioner Dodd seconded the motion.

Attorney Abbott asked whether the Commission wanted him to create an actual policy or to adopt the policy presented.

Mayor Minnet clarified that the motion should be to have the Town Manager review the policy. Vice Mayor McIntee amended his motion to establish a Commemorative Tree Policy with parameters set by the Town Manager. Commissioner Dodd seconded.

Commissioner Clottey disagreed. She did not feel the Town Manager should set the criteria. Commissioner Clottey believed the Commission should set the criteria and should be placed on the agenda for the community to be involved.

Vice Mayor McIntee withdrew his motion.

Commissioner Dodd suggested the garden club be included as to the type of tree that should be planted. Commissioner Clottey was not concerned about the tree. She was concerned on the criteria as to the type of individual that would be commemorated. Attorney Abbott agreed. Commissioner Dodd suggested the application be brought before the Commission for approval.

Vice Mayor McIntee suggested a roundtable meeting as a good way to go and not put it on the agenda until after roundtable discussion.

c. Reward Program for residents and business energy efficient improvements or purchases (Mayor Minnet)

Mayor Minnet explained she put this on the agenda to give the opportunity for residents to do more energy efficient improvements. She believed the Town should provide incentives to encourage participation. Commissioner Silverstone thought it was a good idea. He suggested part of the web page have a "Green" page with a listing of different services offered by FPL and other companies / organizations. Commissioner Silverstone inquired as to the type of incentives the Mayor was looking at. Mayor Minnet believed that rebates could be issued on the permits as other cities did. She felt that the Planning and Zoning Board may want to look at this as well.

Manager Colon advised that the web site included some green information. She said she would look at the web page and determine whether it could be made better.

Commissioner Clottey believed the idea was a very good idea. She did not feel that Town funds should be used at this time.

d. Discussion and/or action regarding valet parking for 101 Ocean and Village Grille (Vice Mayor McIntee)

Vice Mayor McIntee made a motion to table this item to the February 10, 2009 Commission meeting. Commissioner Silverstone seconded the motion. All voted in favor.

e. Commission consideration for a Lauderdale-By-The-Sea Environmental Sustainability Committee (Mayor Minnet)

Mayor Minnet proposed the creation of a Sustainability Committee to advise on environmental issues and work with the Planning and Zoning Board and Master Plan Steering Committee to pull some ideas forward. Commissioner Silverstone felt that if the waters were to rise, all coastal cities would be affected. Commissioner Dodd believed it was an excellent proposal. He felt it was not a question of "if" but a question of "when". Mayor Minnet recommended Yahn Brandt to head up the Sustainability Committee. Commissioner Dodd asked whether Mr. Brandt would select other members. Mayor Minnet said he would or Mr. Brandt could come to the next Commission meeting with his suggestions. Commissioner Dodd said he would support it. Mayor Minnet stated she would prepare it for the February 10, 2009 Commission agenda.

Mayor Minnet placed this item on the February 10, 2009 Commission agenda.

g. Discussion and/or action regarding a referendum on funding lifeguards on the beach (Commissioner Clottey)

Commissioner Clottey believed that if other referendums were going on the next election ballot this one should also be considered. Commissioner Dodd believed the taxes would be approximately $225 per household. He believed it was a high figure for residents to pay for something that would be enjoyed more by the tourist. Commissioner Clottey agreed but felt it should go on referendum along with the cost.

h. Discussion and/or action concerning the use of Jarvis Hall for profit generating activities by non-residents or for-profit organizations not having a physical presence in LBTS (Commissioner Clottey)

Commissioner Clottey was upset that a cheerleading organization, who rented a room at a hotel, was able to use Jarvis for free and actually make money on the classes she performed. She felt that when the Commission made changes to Town Code that somehow, and unintentionally, they leave loopholes. Commissioner Clottey wanted that loophole closed. Assistant Town Manager Olinzock explained that according to the letter he received it appeared that the hotel was seeking a facility for their guests. He explained further that he did not research whether it was a profit or a non-for profit organization. Attorney Abbott suggested the Commission impose restrictions upon the use of Jarvis Hall.

Vice Mayor McIntee suggested the Town Manager get together with the Town Attorney and close the loophole. Commissioner Clottey felt a fee should be charged. Assistant Town Manager Olinzock believed it could be addressed in a current Resolution. Mayor Minnet suggested the Resolution come back before the Commission.

Mayor Minnet did not feel that staff should have to do all the set up work and the Senior Center should have first priority.

17. TOWN ATTORNEY REPORT

Attorney Abbott had nothing to report.

18. FUTURE AGENDA ITEMS

19. ADJOURNMENT

Vice Mayor McIntee made a motion to adjourn. With no further business before the Commission, Mayor Minnet adjourned the meeting at 6:40 p.m.

Roseann Minnet

Mayor Roseann Minnet

ATTEST:

June White

Town Clerk, June White

3/5/09

Date