



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Thursday, September 12, 2024
6:30 PM**

1. CALL TO ORDER, MAYOR EDMUND MALKOON

Mayor Edmund Malkoon called the meeting to order at 6:30 p.m. Also present were Vice Mayor Randy Strauss, Commissioner Richard DeNapoli, Commissioner John A. Graziano, Town Manager Linda Connors, Town Attorney Susan Trevarthen, Deputy Town Manager/Public Works Director Ken Rubach, Public Works Supervisor Leroy Chasmer, Assistant to the Town Manager Courtney Easley, Development Services Director Jhanelle Campbell, Director of Budget and Finance Lucila Lang, Assistant Finance Director Edner Saint-Jean, Events and Marketing Manager Katie Anderson, and Town Clerk Katrina Adler.

Vice Mayor Strauss made a motion, seconded by Commissioner DeNapoli, to excuse Commissioner Pouloupoulos's absence from tonight's meeting. Motion carried 4-0.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

All present observed a moment of silence.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

Mayor Malkoon requested that Items 12.b and 16.a be deferred until the September 18, 2024 meeting.

5. PRESENTATIONS

None.

6. PUBLIC COMMENTS

At this time Mayor Malkoon opened public comment.

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Stuart Dodd, resident, expressed concern with the development of “McMansions.” He suggested that side setbacks for residential homes of two stories require 10 ft. rather than 7.5 ft. side setbacks, and that the square footage of a second story not exceed 60% of the first story in order to prevent a boxlike structure. He noted that other municipalities are likely to have Code requirements that the Town may wish to consider.

Mr. Dodd added that generators should not be allowed in side setbacks as part of new construction, and should instead be placed in the front or rear setback or a designated ventilated space. He concluded that the Town should reconsider its preferred architectural style of Mid-Century Modern.

Dwayne Wiseman, resident, requested that Aruba Beach Café be permitted to continue use of the Town’s Ocean Plaza for outdoor dining.

Marc Pearson, resident, addressed construction at 1931 Coral Reef Drive, stating that errors have been and continue to be made regarding permitting of the property. He asserted that the building’s rooftop includes a maintenance or recreation area which is not permitted in the Town. He requested that this issue be placed on a Commission Agenda in October 2024.

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

7. PUBLIC SAFETY DISCUSSION

None.

8. TOWN MANAGER REPORT

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

c. Town Manager Report

Town Manager Linda Connors stated that she has spoken with a representative of solid waste contractor WastePro and their fee will be reflected differently than under the previous contract.

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The contract providing the Chamber of Commerce with use of the Town's Visitor Center includes two one-year optional renewal periods which end in December 2024. It was determined that the Commissioners would be provided with a copy of the agreement for review and would make a decision at the next scheduled meeting.

Wednesday, October 2, 2024, between the hours of 8 a.m. and 10 a.m. will be "Coffee with a Cop Day" at the Village Grille. Residents are invited to meet the Broward Sheriff's Office (BSO) representatives who serve Lauderdale-By-The-Sea.

The Town's annual holiday tree-lighting ceremony, which has historically been referred to as Christmas-By-The-Sea, is scheduled for the first Wednesday in December. While the event includes no religious undertones, Staff recognizes that it may be perceived as a religiously themed event. She requested consensus from the Commission on whether or not to continue using the name Christmas-By-The-Sea or bring forward alternatives for consideration.

Commissioner DeNapoli stated that the name of the event should remain the same, as Christmas Day is a recognized federal holiday. There was consensus from the Commission to continue with the name. Vice Mayor Strauss recommended that the Town also partner with Rabbi Bentzion Singer on the annual Chanukah-By-The-Sea event as well, including a stipend for its cost.

Town Manager Connors continued that a Stop Work order was issued for the roof structure of the Sea Lord Hotel in 2021, as the building deviated from its original approved Site Plan. After several submissions and reviews by the Town, Staff has determined that the hotel may install its proposed rooftop photovoltaic solar system on top of an elevated roof canopy, although it exceeds the maximum height restrictions established in the Town Charter and the Town Code of Ordinances. This is due to a preemption in Section 163.04 of Florida Statutes. The legal opinion resulting from this review process is attached to the Agenda.

Town Manager Connors further clarified that the top of the building's elevator is 47 ft. 8 in., while the top of its electrical and mechanical rooms are both 42 ft. 9 in. The top of the solar panels would be 8 in. above the solar panel deck at 43 ft. 5 in. The property owner has received clearance to re-start work on the property, and revisions are under review. The project is expected to be complete soon.

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The Town's four Level III electrical charging stations on A1A are now live, providing power at a rate established by Florida Power and Light (FPL) for the fast charging of electrical vehicles.

The Town's Founders Day celebration is scheduled for Saturday, October 5, 2024 at Friedt Park from 11 a.m. to 3 p.m. Boo!-By-The-Sea will be held on October 26, 2024 from 10 a.m. to 1 p.m. and will include activities in the West Business Plazas. The next Town Commission meeting is scheduled for Wednesday, September 18, 2024 and will be preceded by the second budget hearing, which will be scheduled for 5:01 p.m.

Commissioner Graziano asked if the Town received any funding from FPL for the electrical charging stations. Deputy Town Manager/Public Works Director Ken Rubach advised that while the Town does not receive funding, vehicles are charged for parking while using the stations.

a. May 2024 Finance Report

b. June 2024 Finance Report

Director of Budget and Finance Lucila Lang reported that the Town remains on budget with revenues and expenditures. The Town is considering investment of monies; however, because its investment policy only allows for transactions with broker/dealers classified as primary dealers reporting directly to the Federal Reserve Bank of New York, this investment is on hold, as Truist Bank is not classified as a primary dealer. She is working with the Town Attorney to determine how to proceed with the investments. The Town's investment policy is stated in municipal Ordinances related to investments.

9. TOWN ATTORNEY REPORT

None.

10. APPROVAL OF MINUTES

None.

11. CONSENT AGENDA

None.

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12. OLD BUSINESS

a. Pier Sign Update

At this time Mayor Malkoon opened public comment.

Chris Vincent, 5000 N. Ocean Boulevard, recalled that the Pier sign was originally removed in 2013 to accommodate Downtown improvements. The sign was replaced following completion of the project. He recommended that the sign be brought up to date and reinstalled, but that it not be replaced until the Pier is once again in working order.

Spiro Marchelos, 2 Commercial Boulevard, stated that the Pier sign was first discussed in 2009. He asserted that the sign belongs on A1A and briefly reviewed actions taken at previous Town Commission meetings regarding the Pier sign, which was recently removed in November 2023 during another Downtown renovation and has not yet been reinstalled. He requested that it be replaced as soon as possible.

Mayor Malkoon clarified that the sign is currently in storage by the Town.

Deputy Town Manager/Public Works Director Rubach explained that the sign has not been damaged. The Town has consulted sign companies which recommended upgrading its panels and LED lighting. The sign will also require a new foundation to be poured.

The sign was removed by the Town during the recent Downtown renovation, as it was in the center of a new pathway. While not new, it was determined to be in good condition, although some maintenance will be required. The cost of these proposed repairs as well as upgraded lighting is estimated at \$17,000, which falls within the Town Manager's purchasing authority.

Deputy Town Manager/Public Works Director Rubach noted that he, the Town Manager, and the Town Clerk have reviewed Town records regarding ownership of the sign, but no information was found. He noted that Mr. Marchelos had provided a letter with information about the ownership.

Staff proposes the following two options:

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- The Town assumes ownership and all future maintenance/replacement costs of the sign
- The Pier maintains ownership of the sign and an easement agreement would be drafted for placement of a private sign on public property, as well as a maintenance agreement going forward

Mayor Malkoon noted that Mr. Marchelos had not requested the sign be moved during the Downtown project; in addition, the sign must meet engineering standards for wind load, foundation, a new pole, and other requirements. While the LED lighting upgrade is not required, it was recommended.

Commissioner Graziano requested clarification of the sign's ownership. Deputy Town Manager/Public Works Director Rubach confirmed that there is no Town documentation on record regarding ownership of the sign. Commissioner Graziano recommended that Mr. Marchelos, as owner of the Pier, meet with Town Staff to determine a financial solution toward the sign's repair and reinstallation.

Deputy Town Manager/Public Works Director Rubach also confirmed that funds are available for the improvement and reinstallation of the sign under either of the two options cited earlier.

Vice Mayor Strauss agreed that the Town is responsible for reinstalling and updating the sign. He asked if a location has been chosen for the reinstallation, and also asked what information the sign should provide until the Pier is reopened to the public, pointing out that at present, the "Open 24 Hours" included on the sign would not be accurate.

Deputy Town Manager/Public Works Director Rubach explained that a site in front of a planting bed near Tacocraft has been identified for the sign, as contemplated during the renovation.

Mr. Marchelos advised that the Pier's bait and tackle shop is now open on a 24-hour basis, and asserted that the sign is necessary to help this business. He suggested that the sign include a "Coming Soon" reference to fishing from the Pier.

Commissioner DeNapoli requested clarification from Mr. Marchelos that the sign is privately owned. Mr. Marchelos confirmed this. Commissioner DeNapoli continued that there was also consensus from the other Commissioners that the Town should pay for the reinstallation, as the Town removed the sign. This was also confirmed.

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Town Attorney Susan Trevarthen further clarified that documentation related to the reinstallation of the sign can be drafted if the Commission wants the Town to undertake this process. It was noted that the private owner of the sign would be responsible for its future maintenance.

Commissioner Graziano made a motion, seconded by Vice Mayor Strauss, to move forward with the ownership of the sign established by Mr. Marchelos's company and the cost of the easement and reinstallation to be absorbed by the Town, and that future maintenance be the responsibility of the owner. Motion carried 4-0.

Deputy Town Manager/Public Works Director Rubach advised that Town Staff will meet with a vendor and provide the Commission and the owner with a timeline for the sign's repair/replacement.

b. Discussion of 2024-25 Charter Review Board Process

This Item was deferred to the September 18, 2024 meeting.

13. NEW BUSINESS

- a. Resolution 2024-38: A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A REVOCABLE LICENSE AGREEMENT WITH ARUBA BAY, INC. FOR USE OF THE OCEAN PLAZA FOR OUTDOOR DINING; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR IMPLEMENTATION, CONFLICTS, AND FOR AN EFFECTIVE DATE.**

At this time Mayor Malkoon opened public comment.

Chris Vincent, 5000 N. Ocean Boulevard, recalled that he had served as Mayor when the Resolution allowing use of the Ocean Plaza by Aruba Bay, Inc. was first drafted. He recommended that the Commission allow the continued use of the Ocean Plaza by Aruba Beach Café, pointing out that the Town faces competition from the nearby city of Pompano Beach. Because the Resolution provides conditional use, it may be reviewed at any time if that becomes necessary.

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Nectaria Chakas, representing Aruba Bay, Inc., recalled that the first application for a revocable license was approved in 2023, with the requirement that the Applicant renew the license annually. She noted that the business plans to expand the restaurant onto the beach, although expansion is not anticipated in the near future. The restaurant has maintained the Plaza in its licensed area and its outdoor dining option is very popular.

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

Commissioner Graziano commented that Aruba has been a reliable partner to the Town in its use of the Ocean Plaza. He recommended renewing the revocable license for one year due to the plans for future expansion of the restaurant.

Mayor Malkoon recalled that outdoor dining was permitted in the Ocean Plaza following the COVID-19 pandemic, when the Commission allowed Downtown restaurants to expand their outdoor dining options through sidewalk cafés that extended into parking spaces. Because Aruba did not have these spaces, they entered into a special use agreement for the Ocean Plaza.

During the last year, the agreement for use of the Plaza was renewed because the Town's Downtown renovation project was underway, which required new agreements for other restaurants' sidewalk cafés. The same opportunity was provided to Aruba. Mayor Malkoon noted that there are some rust stains from outdoor tables in the Plaza. He concluded that he was happy to hear of the restaurant's plans to expand and hoped to restore the Plaza for public use.

Vice Mayor Strauss observed that the agreement requires annual reconsideration and renewal so the Commission may determine whether or not it is still working as intended for both the restaurant and the Town. He added that the Town has learned several lessons following the COVID-19 pandemic, including the continued popularity of outdoor dining. He felt this option, like the Pier, was a key consideration in attracting visitors to the Town.

Vice Mayor Strauss advised that the use of the Ocean Plaza by Aruba has demonstrated the partnership between the business and the Town, as the restaurant has been a good steward of the area. He felt the rust stains in the Plaza could be easily resolved by Aruba, and noted that the Town retains the right to use the Plaza for public events as needed. For these reasons, he was in favor of continuing the agreement.

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Commissioner DeNapoli requested clarification of the time frame of the current contract. Town Attorney Trevarthen replied that the license is renewable annually for each fiscal year, with the next year to begin on October 1, 2024. The Town receives \$34/foot in revenue, which brings in approximately \$27,200 per year.

Commissioner DeNapoli stated that while he was appreciative of outdoor seating options, changes associated with the pandemic may not be permanent. He suggested considering a six-month extension of the agreement rather than one year.

Mayor Malkoon requested information on how the fair market rate had been established for use of the Plaza. Assistant to the Town Manager Courtney Easley clarified that the Commission established this rate, as the rate for sidewalk café space is \$18/foot. The rate for use of the Plaza is higher because it is considered a premium location.

Mayor Malkoon also addressed maintenance, including the rust stains on the Plaza's pavers. He asked if the Town works with Aruba to correct any maintenance issues they may identify. Deputy Town Manager/Public Works Director Rubach confirmed this, pointing out that Aruba has been consistently responsive to any concerns. He noted that most of the maintenance is needed in the primary seating area, as some of the pavers have deteriorated. Because it is custom stone, and the vendor is located on Florida's West Coast, the premium for service from that vendor is very high. The Town has not yet identified an alternative vendor.

Commissioner Graziano stated that he did not feel a six-month agreement was compatible with a good business plan, and recommended renewing the agreement for one year.

Commissioner Graziano made a motion, seconded by Vice Mayor Strauss, to accept the licensing agreement with Aruba Bay, Inc. for another year, beginning October 1, 2024, under the same terms and fee schedule.

Commissioner DeNapoli explained that his proposal for a six-month renewal was in light of the restaurant's plans for expansion in the future. Ms. Chakas advised that it would take at least one year for the business to secure permits from the Florida Department of Environmental Protection (DEP) before expanding.

Motion carried 3-1 (Mayor Malkoon dissenting).

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b. Resolution 2024-39: A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, SELECTING AND AUTHORIZING NEGOTIATIONS WITH FLYNN ENGINEERING SERVICES, P.A. AS THE MOST QUALIFIED FIRM FOR TOWN ENGINEERING SERVICES PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2024-07-02, AND FURTHER AUTHORIZING, IF NECESSARY, NEGOTIATIONS WITH THE SECOND MOST QUALIFIED FIRM, COLLIERS ENGINEERING & DESIGN, INC., FOR THE AWARD OF A CONTINUING CONTRACT FOR SUCH SERVICES; PROVIDING FOR IMPLEMENTATION AND AN EFFECTIVE DATE.

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

Deputy Town Manager/Public Works Director Rubach recalled that on July 24, 2024, the Town released a request for quotes (RFQ) with a deadline of August 9, 2024. The Town received three responses, two of which were deemed eligible for consideration.

Deputy Town Manager/Public Works Director Rubach explained that the Competitive Consultants' Negotiation Act (CCNA) is part of Florida Statutes designating what can be done regarding the negotiation of costs with vendors. In the case of competitive consultants, including engineers, the Town may not negotiate costs ahead of time. The Town instead seats a committee which ranks the responding firms based on the criteria established in the RFQ. The ranking is then provided to the Commission with Staff's recommendation.

If the Commission agrees to the ranking of Flynn Engineering Services as the most qualified firm, the Town Manager will be authorized to negotiate with that company regarding costs.

Vice Mayor Strauss requested clarification of Colliers Engineering & Design, Inc.'s location. Deputy Town Manager/Public Works Director Rubach replied that the second-ranked firm has an office in Fort Lauderdale, although their primary location is in Northeast Florida. Flynn Engineering is located within the Town, which is beneficial to Lauderdale-By-The-Sea. They are also knowledgeable regarding Broward County practices and requirements.

Commissioner Graziano did not believe a five-year contract made good business sense and recommended that it be modified to two years.

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Deputy Town Manager/Public Works Director Rubach noted that the Town's contractual agreements include protective clauses addressing severability with contracts. If the Town is unhappy with the firm's performance, they may terminate the agreement with cause. Town Attorney Trevarthen added that the contract also allows termination for convenience, which means the Town may sever the relationship, with notice, in the absence of misconduct.

Commissioner Graziano stated that he did not want to rely on the convenience clause of the contract, suggesting again that the term of the contract be shortened to two years. He expressed concern with the possibility of a lawsuit if the proposed contract were to be terminated for convenience.

Town Attorney Trevarthen explained that the convenience clause means the Town would not have to justify its termination. Commissioner Graziano concluded that this did not change his mind on the issue.

Mayor Malkoon asked why the contract period is proposed at five years. Deputy Town Manager/Public Works Director Rubach recalled that an earlier contract was for a three-year period with one two-year renewal option, and advised that he did not have an issue with enacting longer-term contracts for professional consultants. The longer contracts provide flexibility in continuing to work with selected contractors and lock in prices before they increase. He concluded that the length of the contract is at the Commission's discretion.

Commissioner Graziano stated that while there is no reason to think the contractor will not do a good job, shortening the contract to two years might result in better work. He felt a five-year contract was unconscionable and advocated for holding the contractor responsible for their performance.

Mayor Malkoon did not agree, citing the Town's established relationship with Flynn Engineering Services, its knowledge of the quality of the firm's work, and the option of the convenience clause if the Town is unhappy with the firm's performance.

Commissioner DeNapolli made a motion to approve.

Deputy Town Manager/Public Works Director Rubach clarified that if approved, Staff will bring the contract back to the Commission, including rates, after negotiation is complete.

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with the highest-ranked firm. Staff will ensure that the final contract includes a convenience clause.

Commissioner Graziano asked for clarification that the current rates of \$267/hour for the firm's principal and \$225/hour for associates have not yet been negotiated for the proposed contract. Deputy Town Manager/Public Works Director Rubach confirmed this, reiterating that the CCNA Statute prohibits the Town from negotiating with the vendor ahead of selection. The negotiations will also address the proposed 5% annual increase.

Vice Mayor Strauss seconded the motion. Motion carried 3-1 (Commissioner Graziano dissenting).

**c. Special Event Application: Wild Berry Salon Anniversary Celebration
10.10.24**

Events and Marketing Manager Katie Anderson stated that the owner of Wild Berry Salon, located in the West Plaza District, has submitted a special event application to host the business's annual anniversary celebration. The event is scheduled for Thursday, October 10, 2024 in the Eagle Ray Plaza in front of the salon and its neighbor, Big Cat Bike.

The event will include live music, complimentary wine and non-alcoholic beverages, and complimentary catering from a local provider. It will last from 6 p.m. to 10 p.m., with cleanup to conclude by 11 p.m. The Applicant anticipates roughly 100 spectators throughout the evening, served by 10 staff members as well as volunteers. The band will perform from 6 p.m. to 10 p.m. and will comply with the Town's Sound Ordinance (Code Section 13-6).

The Applicant requests use of one of the Town's power outlets for the band. Per Resolution 2017-41, the \$125 electrical fee may be waived. The band will erect a 10x10 canopy. The Town recommends that sound from the band be angled toward the west to lessen its impact on neighboring establishments.

The anticipated setup for the event is shown on a site map. The Applicant understands that the final layout and Site Plan are subject to the Fire Marshal's approval. The Fire Marshal has reviewed the proposed map and will schedule a walk-through with the Applicant on the day of the event.

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No parking concessions have been requested for the event. Restrooms will be available for attendees in both the Wild Berry Salon and Big Cat Bike throughout the event. A courtesy notice was sent by the Town to other establishments in the Plaza. No feedback has been received. The Applicant has also personally visited the other establishments and received positive feedback on the proposed event.

Resolution 2017-41 states that the Special Event Fee for an Application by a West Commercial District establishment, submitted between 59 and 30 days prior to the event, is \$50. The Applicant has paid this fee. Staff recommends approval of the Application with the conditions outlined in the event permit [Exhibit 3].

Commissioner Graziano made a motion, seconded by Vice Mayor Strauss, to approve with conditions. Motion carried 4-0.

14. COMMISSIONER PRESENTATIONS

None.

15. COMMISSIONER COMMENTS

Commissioner Graziano shared his appreciation for the expertise of Town Staff as he continues to learn about the work they do for Lauderdale-By-The-Sea.

Commissioner DeNapoli addressed the upcoming ballot initiative, approved by the Commission, which would move the Town's elections from March to November. While a municipality may not advocate for the passage or defeat of a given ballot initiative, the Town is permitted to provide informational and explanatory language related to an initiative. This includes the printing of materials explaining the ballot measure, the placement of these materials on the Town's website, and in the *Town Topics* email, in electronic format.

Commissioner DeNapoli requested clarification of what the Town would do to offer explanatory information. He also asked if a postcard similar to the mailer provided for vacation rental notice could be sent to Town residents.

Town Attorney Trevarthen reported that Town Clerk Katrina Adler has drafted an informational document, which the Town Attorney is currently reviewing. The document discusses the overall election as well as information about the Town's ballot measure. It will be distributed through *Town Topics*.

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Commissioner DeNapoli suggested that the Town also provide physical printed materials for residents who may not have access to electronic communications. Town Manager Connors added that a physical version of *Town Topics* will be printed prior to the election and will include the ballot measure information.

Commissioner DeNapoli clarified that he was referring to a postcard similar to the one sent to neighboring properties in advance of vacation rental registration. Town Manager Connors reiterated that this will be included in *Town Topics*, which will be available to residents via email as well as a printed version that can be sent through the mail. The printed version will also be available at Town Hall and the Visitor Center.

Commissioner DeNapoli requested Commission consensus on printing and mailing the general election and ballot measure information to all Town residents. He pointed out that voting by mail will begin in October, which means this is a timely issue. Mayor Malkoon noted that the physical version of *Town Topics* could be mailed to all residents.

Town Attorney Trevarthen added that the information does not have to constitute the entirety of the issue of *Town Topics*, as the document will include a message with information about polling places and registration in addition to an explanation of the ballot measure. It can be either included in the regular mailing of *Town Topics* or in a special election edition of the document, as the Commission desires.

Mayor Malkoon requested clarification of the cost of the proposed mailing of information to all residents. It was determined that this would be brought back to the September 18, 2024 meeting.

Commissioner DeNapoli also addressed the concerns raised during public comment regarding construction of a home, requesting that a closer look be taken at the subject property.

Commissioner DeNapoli recalled the concerns raised by Commissioner Graziano regarding the time frames of certain contracts, as well as his own suggestion regarding the time frame of the Aruba revocable license agreement. He advised that while he had voted to renew the agreement for one year in order to prevent any disruption of business; he felt bringing the Item before the Commission three weeks before the end of the current fiscal year and current agreement was a very short time frame, and requested that the next time the Item is presented to the Commission, it should be done at least three months before the end of the contract date.

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Commissioner DeNapoli continued that he also had an ongoing concern with the continuation of actions which began in response to the COVID-19 pandemic, as some of the practices begun during the pandemic seem to be carried forward indefinitely. He felt these should now be over, as the pandemic has greatly subsided.

Mayor Malkoon noted the passing of resident John O'Connor, co-owner of the Cookie Shop, on September 4, 2024, and extended condolences to his family.

Mayor Malkoon advised that an office has been established at Town Hall for use by the Commission, and is also available for use by private entities.

16. ORDINANCES 1ST READING

- a. **Ordinance 2024-08: AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 14, "OFFENSES," ARTICLE III, "RESTRICTIONS ON RESIDENCY BY SEXUAL PREDATORS AND SEXUAL OFFENDERS," OF THE CODE OF ORDINANCES TO AMEND AND CREATE DEFINITIONS AND IMPLEMENT STRICTER ENFORCEMENT MECHANISMS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.**

This Item was deferred until the September 18, 2024 meeting.

17. ORDINANCES 2ND READING

None.

18. RESOLUTIONS – PUBLIC COMMENTS

None.

19. QUASI JUDICIAL PUBLIC HEARINGS

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

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- a. **The applicant seeks approval of a Conditional Use Permit for a waiver of the requirements of the Town's sign regulations, Article VIII, "Sign Regulations," of Chapter 30, "Unified Land Development Regulations," of the Code of Ordinances for installation of a new Mid-Century Modern Style sign which does not meet the requirements of the Code of Ordinances. The proposed sign includes letters that are 18 inches in height where the Town Code allows for a maximum letter height of 12 inches. In addition, the proposed sign includes a symbol that is 24 inches in height where the Code only allows for a maximum symbol size of 12 inches. Finally, the total square footage of the proposed sign is 40 square feet where the Town Code allows for a maximum sign square footage of 32 square feet. The request requires conditional use approval to permit installation of the proposed sign.**

Development Services Director Jhanelle Campbell stated that this Item requests conditional use for the installation of a Mid-Century Modern-style sign at Pier 14 Tapas and Cocktails. Town Code allows for Applicants to request conditional use approval for signs that do not align with the Town's preferred architectural style of Mid-Century Modern.

The requested sign has letters which are 18 in. high where 12 in. heights are allowed by Code. The sign's symbol height is 24 in. high where 12 in. are allowed by Code. The total square footage of the sign exceeds the allowed square footage of 32 sq. ft. The sign is 40.5 sq. ft.

The sign's rendering was submitted to the Town's architect, who approved and agreed that its style is Mid-Century Modern. It would be installed in the Town's B-1 zoning district.

A public participation meeting was held in relation to the Application, but was attended by no members of the public. Notice for both the public participation meeting and tonight's Commission meeting were sent to all residents within a 300 ft. radius of the subject property. The Town has received no responses in relation to the Application.

If approved, the sign must adhere to the drawing provided within the Commission's backup materials. The symbol height may not exceed 24 in., the total sign area may not exceed 40.5 sq. ft., and the letter height may not exceed 18 in. The development order

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also requires that the Applicant obtain a building permit no later than March 12, 2025. All outstanding debts to the Town must be paid before the permit may be issued.

Commissioner DeNapoli requested additional information on the sizing of the sign. Development Services Director Campbell explained that the request would allow an additional 6 in. of letter size and an additional 12 in. of symbol size, as well as an additional 7.5 sq. ft. of total sign square footage. She cited other examples in the Town of similar conditional use requests which have been approved in the past when the letters reflected the Mid-Century Modern architectural style.

Commissioner Graziano requested a timetable on the establishment of the sign. Development Services Director Campbell replied that the development order requires the building permit to be obtained by March 12, 2025; however, the sign is expected to be in place sooner.

Christian Jacques, Applicant, stated that the sign was designed by a company with previous experience in Lauderdale-By-The-Sea. He described the sign as minimalistic despite the size of the lettering, and asserted his intent for the restaurant to be a good neighbor.

At this time Mayor Malkoon opened public comment.

Spiro Marchelos, 2 Commercial Boulevard, stated that the Application should be approved.

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

Vice Mayor Strauss made a motion, seconded by Commissioner Graziano, to approve. Motion carried 4-0.

- b. Appeal from an Administrative Decision (2024-AAD-01) (the "Appeal") pursuant to Chapter 30, "Unified Land Development Regulations," ARTICLE IX, "Appeals," Section 30-531 of the Town Code of Ordinances ("Town Code") for approval to be classified as a drug store/pharmacy (with no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. SS 893.03, 893.035, or 893.0355) as such is a permitted use within the B-**

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1 zoning district pursuant to Section 30-271 a (1) (z) of the Town Code.

Development Services Director Campbell stated that the request is an appeal from administrative decision 2024-AAD-01. The business, Elite CBD, has asked to be classified as a drugstore/pharmacy in the B-1 zoning district on Commercial Boulevard. There would be no on-site writing of prescriptions for controlled substances as identified in Schedule II, III, and IV.

Town Staff reviewed the Applicant's proposal and denied the request, as the business does not meet the legal definition of "pharmacy" under Florida Statute 465, the Florida Pharmacy Act. A pharmacy is defined as a location where medicinal drugs are compounded and/or dispensed and prescriptions are filled. Elite CBD's products and supplements do not fall within these categories.

CBD supplements do not meet the definition under the Florida Pharmacy Act, and the Applicant has not provided evidence that their business should be classified as a pharmacy or drugstore. Town Staff also presented the request to the Town's Planning and Zoning Board at its most recent meeting. The Planning and Zoning Board recommended that Staff's denial be upheld.

Commissioner Graziano asked if the Applicant had applied for any other designation. Development Services Director Campbell replied that the Applicant had considered several other categories listed as permitted within the B-1 zoning district; however, it was her professional opinion that the Applicant's business model does not fit any of the uses currently permitted in that district.

Following the Planning and Zoning Board meeting, the Applicant emailed the Development Services Director to state that they would like to add the sale of leather goods to be added to their business model. This request was not included in the appeal of the administrative decision, as the business model described in that Application included only supplements. The Applicant may choose to reapply with an amended business model.

Aviv Fhima, Applicant, gave a presentation on the appeal, stating that the business sells vitamins and supplements, over-the-counter health and wellness products, personal care items, and goods other than CBD. This practice aligns closely with the drugstore/pharmacy category. The business fully complies with all local, state, and

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federal regulations regarding the sales of its products. All offered products are legal and safe.

Mr. Fhima requested that the appeal not be limited by a technicality, asserting that the store is a drugstore without prescription pharmacy services. He defined “drugstore” as a retail establishment where the items mentioned above are sold, along with other general goods and convenience items.

Mr. Fhima continued that a drugstore does not require a pharmacy, as it operates as a retail outlet selling the aforementioned items without the need to fill prescriptions. While many drugstores include a pharmacy, it is not a requirement. For this reason, he felt the business could be categorized as a drugstore/pharmacy.

The business’s products are approved by the Federal Drug Administration (FDA) and are fully legal for sale in Florida. No prescriptions are necessary, as all sales are over-the-counter. Items for sale include health and body products, vitamins, and supplements, many of which do not contain CBD. He emphasized that the focus of the business is on pain management.

Mr. Fhima continued that it was his belief that vitamin and supplement stores carry similar products, which he felt aligned with the category of drugstore. The current store is located in Coral Ridge Mall. Because the owners are from the Lauderdale-By-The-Sea area, they are interested in opening within the Town. He also noted that many Town residents are over the age of 50 and experience chronic pain and sleep issues, which can be addressed by the store.

Vice Mayor Strauss asked if the Town’s Ordinance specifically requires a drugstore to include a pharmacist in order to operate as such. Development Services Director Campbell replied that the category is drugstore/pharmacy with no on-site prescription writing for controlled substances as described earlier. She felt the slash included in the category indicates that both services should exist together.

Vice Mayor Strauss also requested clarification that in order to operate as a drugstore, a business must also have a pharmacist on-site for the purpose of dealing with controlled substances. Development Services Director Campbell confirmed that this was her interpretation of Code.

Vice Mayor Strauss observed that none of the items cited in the Applicant’s presentation were controlled substances. Development Services Director Campbell referred to

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Florida Statutes, which define a pharmacy as a location where medicinal drugs are compounded/dispensed or prescriptions are filled. None of these activities are proposed to occur at the establishment.

Vice Mayor Strauss continued that he would also like to better understand what will be distributed by the store. He acknowledged that there may be a concern that the store would be a distributor of THC products in the future if those products become legal in the state of Florida. Development Services Director Campbell advised that this was not presented as part of the establishment's business model.

Mayor Malkoon asked if the term "drugstore/pharmacy" was considered to be an "and/or" example or if the two words were essentially classified as the same. Town Attorney Trevarthen replied that the Town Commission is considered the author of the Town's laws. Because the law in question is zoning law, the responsibility to interpret the meaning of that law falls to Development Services Staff, who apply their experience and judgment in interpreting that Code. Staff has also reached out to the Town Attorney with regard to their interpretation, and the Town Attorney found their interpretation to be a reasonable one.

Town Attorney Trevarthen continued that as the authors of Town Code, the Commission may have a different view of the issue, and may take action either on Staff's decision or on clarifying the list of permitted uses. She noted that this discussion has a long history within the Town, and pointed out that the Commission has been extremely specific in ensuring there is no discretion or flexibility in the interpretation of uses.

Commissioner DeNapoli asked if there is any other approved use with which the store may be able to comply. Development Services Director Campbell replied that she did not see any other such category in her evaluation of the Application, unless the Commission directed her to interpret another category that could fit the proposed business.

Commissioner DeNapoli also asked if the impact of Amendment 3 on the November 2024 Florida ballot would have any effect on this issue. Town Attorney Trevarthen replied that the Town has already processed an Ordinance in relation to Amendment 3, which prohibits uses related to medical marijuana. The effect of that Ordinance is to cover the broader potential for adult personal use of marijuana.

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Town Attorney Trevarthen added that it was her understanding that the products proposed for sale by the Applicant do not meet the criteria for products that would be subject to a medical marijuana Statute.

Commissioner DeNapoli asked if a vitamin store would be an allowed use. Development Services Director Campbell advised that in her interpretation, the Town does not have a category that would allow the approval of a vitamin shop.

Town Attorney Trevarthen recalled that this issue was first addressed at some length in 2011. Approximately three years ago, the Commission comprehensively revisited uses in the B-1 district once more. She noted that the result closely reflects what the Commission had wanted at that time; however, the Commission may revisit the issue again going forward, outside of tonight's appeal, if they wished. They may also provide Staff with direction related to the current appeal.

Vice Mayor Strauss described the proposed business as similar to a vitamin shop, noting that those stores also do not have a pharmacist on staff. He was not certain why the Application was denied, pointing out that Ordinances which do not specifically deny vitamin shops can create issues of ambiguity. His concern was that the store could be shut out of conducting legitimate business in the Town.

Vice Mayor Strauss continued that because the Town cannot account for every possible scenario, they had created a protection plan to allow the Commission to review whether or not a specific use may or may not be allowed. He felt the proposed business is an example of one of these uses. He concluded that he did not take issue with the Application, as he did not believe the lack of a pharmacy violated permitted uses. He felt the store could benefit residents of the Town.

Commissioner Graziano requested clarification of the term "CBD." He explained that if that term were not used in the Application, it would be unlikely to raise as many questions about the business. While he did not believe the store would fall into the category of drugstore/pharmacy, he also characterized it as similar to a vitamin shop.

It was clarified that the term "CBD" refers to cannabidiol. Town Attorney Trevarthen further clarified that while the product is derived from hemp, it is considered to be non-euphoric in nature.

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Mr. Fhima stated that most of the business's customers are over the age of 50 and experience some type of pain. The products sold include creams for muscles and joints, as well as oils that can be placed under the tongue for relaxation.

Mr. Fhima emphasized that the store specializes in and will only sell CBD products. Cannabidiol is derived from the part of the marijuana plant that carries no psychedelic effects and can be used to alleviate inflammation or anxiety. He added that the business has no plans to become a dispensary.

Town Attorney Trevarthen advised that the list of approved uses includes a Section called YYY, which addresses uses not listed in Code. This Section states that any use not listed may be authorized by the Town Manager only if the proposed use is similar to a listed use; otherwise an amendment to the chapter would be required. The amendment process would require a consultation with the Town Commission if there is a proposal to find a non-listed use similar to a listed use.

Town Attorney Trevarthen continued that if the Commission is inclined to grant the appeal, one way to proceed would be to use the language in Section YYY to make a finding that the proposed use is similar to a drugstore/pharmacy, such as a vitamin store, and that going forward, that use would be treated as similar.

Vice Mayor Strauss asked if the Commission would be able to proceed using the language of Section YYY at tonight's meeting, or if it must be tabled and revisited at another time. Town Attorney Trevarthen replied that this could be done tonight with the Applicant's concurrence.

Town Manager Connors observed that Town Staff seeks to be conservative in its decisions, particularly with regard to new uses that may not be specifically covered by Code. Should the Commission wish to consider the proposed use similar to a drugstore/pharmacy, Town Staff may proceed in that direction; however, she emphasized that the Commission would not be able to limit the number of businesses which may wish to come into the Town with that specific use.

Town Attorney Trevarthen noted that if the Commission feels the proposed business should be treated as a drugstore, they would grant the appeal. Vice Mayor Strauss reiterated that, like Commissioner Graziano, he felt the use was more accurately likened to a vitamin shop, but asked if "vitamin shop" would then have to be likened to a drugstore/pharmacy. Town Manager Connors clarified that this would be a similar use

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but not the same, and could be considered as a “vitamin/supplement store” for greater clarity. It would not be a conditional use.

Town Manager Connors suggested that “vitamin/supplement store” was a more appropriate categorization for the proposed business, as it does not clearly fit within the definitions the Town has investigated. It was clarified that conditional uses are categorized in a separate section and require additional review and consideration.

Commissioner DeNapoli asked if the Town’s existing Ordinance would block medical marijuana dispensaries from operating in the Town. Town Attorney Trevarthen confirmed this. Commissioner DeNapoli suggested that the Commission consider whether or not more stores like the proposed business could come into the Town.

Mr. Fhima reiterated that the products that would be sold by the store would not be similar to THC and the store would not operate in a similar manner to a dispensary, as they would have no dispensary license. This would not be affected by the passage of Amendment 3.

Commissioner DeNapoli asked if another business of the same nature would automatically be approved as a similar use, or if the Commission would have to hear individual requests. Town Attorney Trevarthen replied that if the Commission finds the profile of another business to be similar to the proposed store, that interpretation would be applied more generally going forward.

Town Attorney Trevarthen added that another possibility is to reopen the list of uses permitted in the B-1 zoning district. If a use currently permitted is later removed from the approved list, that use would be considered legally nonconforming and could remain in the Town as long as they remain compliant with the law.

Commissioner Graziano asked if Code can be amended to eliminate the word “pharmacy” to ensure that the public does not perceive the Commission as approving the store and its business model as a pharmacy. Commissioner DeNapoli asked if Code could be amended to allow for a vitamin shop, under which the proposed business could qualify as a permitted use. Town Attorney Trevarthen replied that this could be done, but would require a minimum of two months before it would come before the Commission, as it must first go before the Planning and Zoning Board. If the Commission determines tonight that the requested use would be permitted, the business can proceed immediately.

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At this time Mayor Malkoon opened public comment.

Marc Pearson, resident, commented that he had attended the Planning and Zoning Board meeting at which the appeal was discussed. While he did not consider himself knowledgeable about CBD, he was in favor of the proposed business.

Mr. Pearson also addressed the interpretation of zoning Code, noting that Ordinances typically refer to dictionary definitions of uses, such as “drugstore.”

Vice Mayor Strauss made a motion to allow the Applicant to proceed under similar use as stated in Section YYY.

Town Attorney Trevarthen requested clarification of the specific use to which the Commission found the proposed use to be similar. Vice Chair Strauss clarified that his **motion** was intended to find it similar to a drugstore.

Mayor Malkoon expressed concern that the proposed use does not meet Florida requirements for a drugstore. Town Attorney Trevarthen confirmed that the Town may find the uses to be similar even if the use does not meet those requirements.

Commissioner Graziano seconded the motion, Motion carried 4-0.

20. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 8:47 p.m.



Mayor Edmund Malkoon

ATTEST:



Katrina Adler, Town Clerk

10/11/2024 | 11:10 AM EDT

Date