

BERTHA W. HENRY, County Administrator

115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

March 17, 2014

Lee Feldman, City Manager  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

**Re: Broward County's Notice of Conflict Resolution Proceedings with the City of Fort Lauderdale**

Dear Lee:

In accordance with the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes ("the Act"), on March 11, 2014, the Broward County Board of County Commissioners adopted Resolution No. 2014-201, authorizing initiation of conflict resolution proceedings with the City of Fort Lauderdale ("City"). A certified copy of the Resolution is enclosed.

Conflict

The conflict that is the subject of these proceedings is the City's failure to fairly, timely, and properly process and grant Broward County's conditional use application for the new Broward Addiction Recovery Center ("BARC") to be located at 355 S.W. 28 Street in the City of Fort Lauderdale ("Property"). The Property has a Community Facility ("CF") zoning designation under the City's Unified Land Development Regulations ("ULDRs") and BARC is a Social Service Residential Facility ("SSRF") under the ULDRs. The ULDRs allow for SSRFs as a conditional use on properties having a CF designation.

In November 2013, prior to submission of an application and at the request of the City, Broward County conducted a comprehensive study of properties within the City to determine alternative sites where the BARC facility may be located. After reviewing each site with zoning designations that would allow for an SSRF and applying the applicable provisions of the ULDRs, staff determined that there were no sites suitable for construction of a BARC facility other than the Property.

On February 5, 2014, the County submitted a Development Review Committee ("DRC") application for site plan approval and Conditional Use Permit ("Application") for the siting of the proposed BARC on the Property. The Application constituted the resubmission of a previous DRC application for a proposed BARC/Nancy J. Cotterman Center master campus ("initial application"), which was rejected by the City for an alleged failure to meet the

Broward County Board of County Commissioners  
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dispersal requirements of Section 47-18.32 of the ULDRs. In e-mails from City staff dated November 20 and November 22, 2013, regarding the initial application, Ella Parker, City Urban Design & Planning Manager, indicated that the proposed BARC facility was within 1,500 feet of an existing day care facility, purportedly in violation of the aforementioned section. In response to that concern, the Application submitted on February 5, 2014, contained a specially-commissioned survey confirming that the proposed BARC is not within 1,500 feet of an existing day care facility within a residential district and, therefore, complies with the requirements of Section 47-18.32 of the ULDRs. Additionally, in response to the City's expressed concerns regarding collocation of two facilities at the Property, the Application provided for the location of only BARC on the Property.

Each year, BARC provides residential outpatient treatment and support services to more than 4,500 clients, of which approximately 29.4% are residents of the City. BARC has a daily waiting list of persons seeking services, and BARC is the only facility in Broward County to provide detoxification services for indigents. The existing BARC site is located in an old church building in the residential neighborhood of Sailboat Bend. In addition to not being designed as a facility to serve clients, the Sailboat Bend facility is filled far beyond capacity. The facility overflows every day with clients forced to wait outside for their appointments. Even if extensively renovated, the Sailboat Bend site would continue to be inadequate for its operations.

Approval of the Application would not only allow for an increased ability to provide detoxification services to the residents of the City and Broward County, but would also provide for the relocation of the BARC facility away from a residential neighborhood into a commercial area that is more than ¼ mile from any residential neighborhood. In addition, the proposed site is close to public transportation, the Broward County General Medical Center, Broward County Courthouse, and Broward County Health Department's central campus. The proposed BARC facility will be energy-efficient, LEED ("Leadership in Energy and Environmental Design") Gold certified, lowering operating costs through conservation of electricity and reuse of water. The architecture will be residential in style, with abundant parking and lush landscaping, and will include an internal courtyard and self-contained design to provide for all client services to be accessible within the building, without the need or opportunity for clients to linger outside the building.

Finally, the Application requests, if and to the extent the City determines that the BARC project does not qualify (although the County believes it does) or would not otherwise be approved for the requested Conditional Use permit, that the project be approved and the Conditional Use permit be granted under one or more of the following bases:

- (1) As a reasonable accommodation under the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 et seq., the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq., and the Rehabilitation Act ("RA"), 29 U.S.C. § 701 et seq., including a change or exception to any otherwise applicable rule, practice, or service that may be necessary to allow the handicapped persons with whom the County is associated and

to whom it provides services to have an equal opportunity to use and enjoy BARC services. As defined by 24 C.F.R. § 100.201, the term "handicap" includes drug addiction and alcoholism, and BARC provides detox and rehabilitation services to such individuals. The requested Conditional Use is a necessary and reasonable accommodation for these handicapped individuals.

(2) To avoid discrimination under the FHA, ADA, RA, and the Florida Fair Housing Act, §760.26, Florida Statutes, against handicapped or disabled individuals. As well-established under Florida and federal caselaw, these laws protect individuals suffering from handicaps and disabilities including drug addiction or alcoholism, and the requirements apply to municipal zoning decisions. Under the circumstances described above, denial of the requested Conditional Use permit would constitute both intentional discrimination (*i.e.*, disparate treatment) as well as disparate impact.

(3) As a special exception, whether adjudged under any standard including the governmental-proprietary test, the power of eminent domain test, or the balancing of interests tests, so as to allow County to site BARC at the site in order to provide for the public interest. See Fort Lauderdale ULDR § 47-18.26; *City of Temple Terrace v. Hillsborough Ass'n of Retarded Citizens, Inc.*, 322 So. 2d 571 (2d DCA 1975), *aff'd*, 332 So. 2d 610 (Fla. 1976) (providing for non-deferential, de novo judicial review of municipal zoning decisions rejecting facilities that are in the public interest and proposed by other government).

(4) To avoid legal challenge on the basis of arbitrary and capricious action including imposing a dispersal requirement without the requisite support or background in light of the absence of any evidence of clustering or how the dispersal requirement would promote integration; the paucity of alternative sites available; the lack of factual support, the irrational fear, and the prejudiced assertions that instigated the dispersal requirement; the lack of evidence of adverse impact; and the undue burden imposed on social service facilities.

The reasonable accommodation being sought is necessary in order to site the BARC facility on the Property and is no more than is necessary to address the needs of the residents of Broward County.

Section 47.24.1 of the ULDRs provides that an application for a development permit must contain the information identified by the specific application form for a development permit and that, "[w]ithin five (5) business days of receiving an application for a development permit, the [planning and economic development] department shall review the application to determine if the information provided is complete. The department shall notify the applicant of any deficiencies in the application." The City failed to provide notification to the County within the required timeframe. After further inquiry by the County, on February 26, 2014, the City notified the County that the Application was not accepted for failure to address Subsection 47-18.32.G.1.b., *Levels II, III, IV, and V*, of the ULDR. Subsection 47-

18.32.G.1.b., *Levels II, III, IV, and V*, establishes dispersal requirements for and is applicable "[w]hen the proposed SSRF is to be located *in a residential district*." [emphasis added] A CF district is a "Public Purpose District" pursuant to Section 47-8.1 of the ULDRs and, therefore, the cited section is inapplicable.

Subsection 47-18.32.G.1.c. of the ULDRs states that the dispersal requirements shall not apply to SSRF facilities on property located entirely within nonresidential districts; however, SSRFs proposed to be located in nonresidential districts shall be one thousand five hundred (1,500) feet from any existing SSRF or child day care center in a residential district. The Application included a narrative and aerial demonstrating compliance with the dispersal requirements for SSRFs in nonresidential districts, as set forth in Subsection 47-18.32.G.1.c. Upon further inquiry by Broward County, on March 6, 2014, City staff indicated its intent to apply the requirements of Subsection 47-18.32.G.1.b. to the Application, notwithstanding the inapplicability of that subsection.

City staff has not rejected the Application, having instead declined to send it to the DRC, even with a recommendation for denial. The Application cannot move forward for consideration by the City Commission until the DRC has acted on it.

The issues in conflict are: (i) failure to properly, fairly, and timely process the Application; and (ii) improper obstruction of the Application and refusal, prior to a fair hearing, to site the BARC facility, in violation of applicable law and regulations.

#### Justification for Initiation the Conflict Resolution Process

Notwithstanding the County's efforts to have the City apply the correct ULDR provision to the Application, deem the application complete, and provide a recommendation on the application, the City has failed to schedule the County's Application for consideration by the City's DRC, thereby denying the County Conditional Use approval without due process. In its present state, the existing BARC facility and site are incompatible with continued service to the City's and County's residents and, due to its condition, may deteriorate past the point of usefulness. The County is unable to proceed with the new BARC facility because of the inability to obtain Conditional Use approval and, subsequently, permits for the construction.

#### Other Governmental Entities in Conflict with Broward County

Broward County is unaware of any other governmental entities in conflict with Broward County or the City regarding this issue.

#### Proposed Date and Place for Conflict Assessment Meeting

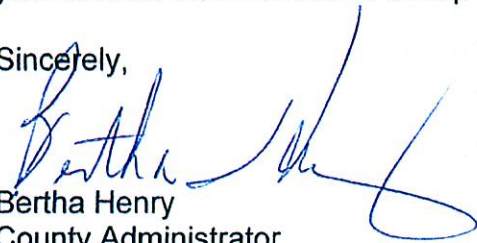
Pursuant to Section 164.1053, Florida Statutes, Broward County proposes that Broward County and the City hold a conflict assessment meeting at the Broward County Governmental Center on Thursday, April 10 or Thursday, April 17, 2014.

Proposed Attendees for Conflict Assessment Meeting

Broward County suggests that the following people attend this meeting: Broward County Administrator Bertha Henry, City Manager Lee Feldman, and legal counsel for Broward County and the City. Elected representatives may also be appointed by both parties.

Section 164.1053, Florida Statutes, requires that the Conflict Assessment meeting be held no later than thirty (30) days after receipt of this letter by the City. Please contact my office at your earliest convenience to set up the Conflict Assessment meeting.

Sincerely,



Bertha Henry  
County Administrator

Enclosure

cc: Broward County Board of County Commissioners (w/o enclosure)  
Fort Lauderdale City Commissioners (w/enclosure)  
Joni Armstrong Coffey, County Attorney (w/o enclosure)  
Cynthia Everett, City Attorney (w/enclosure)

1 RESOLUTION NO. 2014 - 201

2 A RESOLUTION OF THE BOARD OF COUNTY  
3 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,  
4 AUTHORIZING INITIATION OF CONFLICT RESOLUTION  
5 PROCEDURES PURSUANT TO CHAPTER 164, FLORIDA  
6 STATUTES, "THE FLORIDA GOVERNMENTAL CONFLICT  
7 RESOLUTION ACT," REGARDING A CONFLICT  
8 BETWEEN BROWARD COUNTY AND THE CITY OF FORT  
9 LAUDERDALE; AUTHORIZING LITIGATION, IF  
10 NECESSARY, SHOULD THE CONFLICT RESOLUTION  
11 PROCESS FAIL; AND PROVIDING FOR SEVERABILITY  
12 AND AN EFFECTIVE DATE.

13 WHEREAS, Broward County ("County") proposes to develop the property  
14 located at 355 S.W. 28 Street in the City of Fort Lauderdale ("Property") as the new  
15 Broward Addiction Recovery Center ("BARC"); and

16 WHEREAS, BARC provides residential and outpatient treatment and support  
17 services to persons affected by substance abuse and co-occurring disorders; and

18 WHEREAS, the Property has a Community Facility ("CF") zoning designation  
19 under the City of Fort Lauderdale's ("City's") Unified Land Development Regulations  
20 ("ULDR"); and

21 WHEREAS, BARC is a Social Service Residential Facility ("SSRF") under the  
22 City's ULDR; and

23 WHEREAS, the City's ULDR allows for SSRFs as a conditional use on properties  
24 having a CF designation; and

25 WHEREAS, on February 5, 2014, the County submitted an application to the City  
26 for Conditional Use approval for the proposed BARC on the Property; and

27 WHEREAS, Section 47.24.1 of the ULDR provides that an application for a  
28 development permit must contain the information identified by the specific application

1 form for a development permit; and

2 WHEREAS, Section 47-24.1 of the ULDR also provides that "[w]ithin five (5)  
3 business days of receiving an application for a development permit, the [planning and  
4 economic development] department shall review the application to determine if the  
5 information provided is complete. The department shall notify the applicant of any  
6 deficiencies in the application"; and

7 WHEREAS, after failing to provide notification to the County within the required  
8 timeframe, and only after further inquiry by the County, on February 26, 2014, the City  
9 notified the County that its application was not accepted for failure to address applicable  
10 sections of the ULDR; and

11 WHEREAS, notwithstanding the County's efforts to have the City apply the  
12 correct ULDR provision to its application, deem the application complete, and provide a  
13 recommendation on the application, the City has failed to schedule the County's  
14 application for consideration by the City's Development Review Committee, thereby  
15 denying the County Conditional Use approval without due process; and

16 WHEREAS, in its present state, the existing BARC site is incompatible with  
17 continued service to the City's and County's residents, and the County is unable to  
18 proceed with the new BARC facility because of the inability to obtain Conditional Use  
19 approval and, subsequently, permits for the construction; and

20 WHEREAS, the purpose of the Florida Governmental Conflict Resolution Act  
21 ("Act") is to promote, protect, and improve the health, safety, and welfare, and to  
22 enhance intergovernmental coordination efforts by the creation of a governmental  
23 conflict resolution procedure that can provide an equitable, expeditious, effective, and  
24 inexpensive method for resolution of conflicts between and among local and regional

1 governmental entities, such as Broward County and the City of Fort Lauderdale; and

2 WHEREAS, the Act authorizes the County to initiate the conflict resolution  
3 provisions of the Act prior to initiating court proceedings against the City; and

4 WHEREAS, the Act sets forth the procedures for notice and conflict dispute  
5 resolution of intergovernmental disputes and authorizes the County to initiate the  
6 conflict resolution procedures through the passage of a resolution by its governing body;  
7 and

8 WHEREAS, this Board must authorize litigation brought on behalf of the County  
9 by the Office of the County Attorney, and the Board desires to authorize expeditious  
10 litigation in this matter, if and only if the conflict resolution procedures fail, NOW,  
11 THEREFORE,

12  
13 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF  
14 BROWARD COUNTY, FLORIDA:

15  
16 Section 1. That the foregoing "WHEREAS" clauses are ratified and confirmed  
17 as being true and correct and are made a specific part of this Resolution.

18 Section 2. Broward County, Florida, has a conflict with the City of Fort  
19 Lauderdale, Florida.

20 Section 3. The issues in conflict are: (i) failure to properly, fairly, and timely  
21 process the application; and (ii) improper obstruction of the application and refusal, prior  
22 to a fair hearing, to site the BARC facility, in violation of applicable law and regulations.

23 Section 4. Broward County, Florida, believes that the City of Fort Lauderdale,  
24 Florida, has failed to respond to the County's good faith attempts to address and resolve



1 the conflict.

2       Section 5. Broward County, Florida, hereby states its intention to initiate the  
3 conflict resolution procedures of the Act as set forth in Chapter 164, Florida Statutes,  
4 prior to initiating court proceedings to resolve the conflict between the County and the  
5 City.

6       Section 6. The Broward County Administrator and the Office of the County  
7 Attorney are hereby authorized and directed to (i) provide a certified copy of this  
8 Resolution and the letter required by Section 164.1052, Florida Statutes, to the City  
9 Manager of the City of Fort Lauderdale within five (5) days after adoption of this  
10 Resolution by certified mail, return receipt requested, to schedule a conflict assessment  
11 meeting; (ii) take all other appropriate action pursuant to Chapter 164, Florida Statutes;  
12 and (iii) if and only if dispute resolution procedures fail, to initiate litigation to seek timely  
13 consideration of the application and to challenge any adverse decision thereon.

14       Section 7. SEVERABILITY.

15       If any portion of this Resolution is determined by any Court to be invalid, the  
16 invalid portion shall be stricken, and such striking shall not affect the validity of the  
17 remainder of this Resolution. If any Court determines that this Resolution, or any  
18 portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies),  
19 property(ies), or circumstance(s), such determination shall not affect the applicability  
20 hereof to any other individual, group, entity, property, or circumstance.

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Section 8. EFFECTIVE DATE.

This Resolution shall become effective upon adoption.

ADOPTED this 11<sup>th</sup> day March, 2014. #43

Approved as to form and legal sufficiency:  
Joni Armstrong Coffey, County Attorney

By  \_\_\_\_\_  
Maite Azcoltia (date)  
Deputy County Attorney

MA/gmb  
03/06/14  
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