

City of Fort Lauderdale

City Hall
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
www.fortlauderdale.gov



Meeting Minutes - DRAFT

Tuesday, May 7, 2013

6:00 PM

City Commission Chambers

City Commission Regular Meeting

FORT LAUDERDALE CITY COMMISSION

JOHN P. "JACK" SEILER Mayor - Commissioner
BRUCE G. ROBERTS Vice Mayor - Commissioner - District I
DEAN J. TRANTALIS Commissioner - District II
BOBBY B. DuBOSE Commissioner - District III
ROMNEY ROGERS Commissioner - District IV

LEE R. FELDMAN, City Manager
JOHN HERBST, City Auditor
JONDA K. JOSEPH, City Clerk
HARRY A. STEWART, City Attorney

Meeting was called to order at 6:07 p.m. by Mayor Seiler.

ATTENDANCE ROLL CALL

Present: 5 - Mayor John P. "Jack" Seiler, Vice-Mayor Bruce G. Roberts, Commissioner Dean J. Trantalis (arrived momentarily), Commissioner Bobby B. DuBose and Commissioner Romney Rogers

Also Present: City Manager, Lee R. Feldman; City Auditor, John Herbst; City Clerk, Jonda K. Joseph; City Attorney, Harry A. Stewart; Sergeant At Arms, Sergeants Mary Gillis and Jose Pinto-Gonzalez

Vote Roll Call Order for this Meeting

Commissioner Trantalis, Commissioner DuBose, Commissioner Rogers, Vice Mayor Roberts, and Mayor Seiler

Invocation

Pastor Ryan Price, Fort Lauderdale Baptist Church

Pledge of Allegiance

Led by Mrs. Joan Sheridan.

Approval of MINUTES and Agenda

13-0569 APPROVAL OF MINUTES - March 19, 2013 Conference and Regular Meetings

Motion made by Commissioner Trantalis and seconded by Vice Mayor Roberts to approve the minutes of the March 19, 2013 Conference and Regular Meetings.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PRESENTATIONS

OB 13-0779 EXPRESSION OF SYMPATHY - FAMILY OF MARY LeCLAIRE

Mayor Seiler offered a moment of silence in memory of Mary LeClaire. He expressed sympathy to Ms. LeClaire's daughters, Arleen Gross, Assistant City Clerk II, and Gloria LeClaire, Assistant City Auditor, as well as their family members.

PRES-1 13-0651 THE MAYOR AND CITY COMMISSION WILL ISSUE A PROCLAMATION DESIGNATING MAY 5-11, 2013 AS PUBLIC SERVICE RECOGNITION WEEK IN THE CITY OF FORT LAUDERDALE

Vice Mayor Roberts presented a proclamation designating May 5-11, 2013, as Public Service Recognition Week in the City to the following three longest serving City employees: David DiPetrillo, Fire Battalion Chief; Jim Decker, Range Master; and Robert Simac, Deputy Fire Chief. Averill Dorsett, Human

Resources Director, noted that quality services are provided by over 2,300 City employees throughout the year. Deputy Chief Simac expressed gratitude to the Commission.

PRES-2 13-0706 THE MAYOR AND CITY COMMISSION WILL ISSUE A PROCLAMATION DESIGNATING MAY 13-19, 2013 AS THE 60th ANNUAL NATIONAL SALVATION ARMY WEEK IN THE CITY OF FORT LAUDERDALE

Commissioner DuBose presented a proclamation designating May 13-19, 2013, as the 60th Annual National Salvation Army Week in the City to Major Gene Hogg of the Salvation Army. Major Hogg noted the Salvation Army's goal to bring people in need back to self-sufficiency. He thanked the Commission.

PRES-3 13-0708 THE MAYOR AND CITY COMMISSION WILL ISSUE A PROCLAMATION DESIGNATING MAY 5-11, 2013 AS DRINKING WATER WEEK IN THE CITY OF FORT LAUDERDALE

Commissioner Rogers presented a proclamation designating May 5-11, 2013, as Drinking Water Week in the City to Julie Leonard, Deputy Public Works Director – Utilities. Ms. Leonard thanked the Commission. She noted that Fort Lauderdale produces about 40 million gallons of quality drinking water daily. She presented awards to the 2013 Drop Savers Water Conservation Art Contest winners.

PRES-4 13-0709 THE MAYOR AND CITY COMMISSION WILL ISSUE A PROCLAMATION DESIGNATING MAY, 2013 AS JUST DRIVE MONTH IN THE CITY OF FORT LAUDERDALE

Commissioner Trantalis presented a proclamation designating May, 2013, as Just Drive Month in the City to Ronnie Medina, member of Leadership Broward Class XXXI. Ms. Medina thanked the Commission. She emphasized the pervasiveness of distracted driving, and noted the goal of this campaign to help drivers understand its potential impact.

PRES-5 13-0710 THE MAYOR AND CITY COMMISSION WILL ISSUE A PROCLAMATION DESIGNATING MAY, 2013 AS FOSTER CARE MONTH IN THE CITY OF FORT LAUDERDALE

Vice Mayor Roberts presented a proclamation designating May, 2013, as Foster Care Month in the City to Paige Patterson-Hughes of the Florida Department of Children and Families. Ms. Patterson-Hughes thanked the City for their support.

PRES-6 13-0712 THE MAYOR AND CITY COMMISSION WILL ISSUE A PROCLAMATION DESIGNATING SEPTEMBER 20, 2013 AS LAUDERDALE ISLES YACHT CLUB 60th ANNIVERSARY DAY

Commissioner Rogers presented a proclamation designating September 20, 2013, as Lauderdale Isles Yacht Club 60th Anniversary Day in the City to the club's Board Member, Elena De Figueroa-Anderson and other board members. Ms. De Figueroa-Anderson indicated that proceeds from the club's two events this year will be utilized for improvements. She thanked the City for its support. Board members provided the Commission with honorary membership cards.

OB 13-0731 WALK-ON PROCLAMATION - THE MAYOR AND CITY COMMISSION WILL ISSUE A PROCLAMATION DESIGNATING MAY 7, 2013 AS VIVA FLORIDA 500 DAY IN THE CITY OF FORT LAUDERDALE

Commissioner DuBose presented a proclamation designating May 7, 2013, as Viva Florida 500 Day in the City to Susan Howell, Viva Florida 500 Community Liaison. Ms. Howell elaborated upon historic facts about Florida, and invited the public to attend upcoming related events.

OB LAUDERDALE YACHT CLUB SAILING FOUNDATION RECOGNIZED FOR GRANTING TEN SCHOLARSHIPS TO JUNIOR SAILING PROGRAM

Mayor Seiler recognized David Rulien and Jeff Ecklund of the Lauderdale Yacht Club Sailing Foundation for providing ten scholarships to the City's Junior Sailing Program.

Consent Agenda

(CA)

Mayor Seiler announced the procedure for consent items.

Motion made by Vice Mayor Roberts and seconded by Commissioner Trantalis that Consent Agenda Items M-2, M-3, M-12, M-13, M-15, PUR-3, and PUR-6 be deleted from the Consent Agenda and considered separately, and that all remaining Consent Agenda items be approved as recommended.

CONSENT AGENDA

Approval of the Consent Agenda

Approve the Consent Agenda

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

M-1 13-0575 EVENT AGREEMENTS AND RELATED ROAD CLOSINGS: 1)PNC Bank Davie and Andrews Branch- Family Fun Grand Opening; 2)Coral Ridge Isles Homeowners Association Yard Sale; 3)Midtown Jazz Mingler and Culinary Festival; 4)American Diabetes Association's Step Out: MEGA Walk to Stop Diabetes; 5)One Stop Grand Opening and 6)Relay for Life of Carter Park.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

M-2 13-0671 AUTHORIZE APPEAL OF COURT ORDER ISSUED AGAINST CITY - Philip G. Mavon, Jr. v. City of Fort Lauderdale (Broward Circuit Court Case 12-03298.03)

Mayor Seiler opened the floor for public comment.

Walter Morgan, representing Mr. Mavon, indicated that a permitted boat dock was built on this property in 1969, and, in 2010, a permit was granted to Mr. Mavon's contractor to build a boat basin (seawall). However, the City issued a request to cease building the basin when it was substantially finished, but not yet complete because of question about the permit's validity. The City later consented to Mr. Mavon's request to complete the basin because of a flooding issue, and it was finished at the end of 2010. The City recommended it be presented to the Marine Advisory Board (MAB) to correct the situation. It was unanimously approved, but the City had other issues with it and it was not brought before the Commission. In 2011, Mr. Mavon followed the suggestion made by the City Attorney's office to file a lawsuit in order to resolve this matter. The circuit court ruled in Mr. Mavon's favor that equitable estoppel should be invoked against the City because the equities are in his favor. He asked the Commission not to authorize an appeal. He pointed out that Mr. Mavon has fulfilled all requests. He has not used the basin, is not seeking any damages and is willing to sign a release.

James Gorman, owner of Atlantic Harbor Seawalls, Inc., explained that he built the seawall for Mr. Mavon. All required permits were issued. The new seawall has prevented flooding as the property is located in a low-lying area.

Edwin Hague, Illinois resident, thought the seawall would increase safety by allowing Mr. Mavon to secure his boat against weather events, and by increasing the amount of ingress and egress space in the canal. He asked the Commission not to authorize any appeal.

Ken Koessler, 147 Royal Palm Drive, noted that an impartial judgment has been rendered. He thought moving forward with an appeal would be using good funds for a bad cause.

Scott Liberman, 821 Solar Isle Drive, indicated that he owns the property adjacent to Mr. Mavon's basin. He contended that Mr. Mavon has evaded the City's regulations. The basin is located on what the City determined to be a sub-standard lot that is not adjacent to or connected to Mr. Mavon's primary residence. Rather, the basin is connected to (Mr. Liberman's) property. He claimed the City Attorney stated in an email that Mr. Mavon's only recourse was to bring the matter before the Board of Adjustment and, either, seek a review of the City's opinion that the basin violated the ULDR (Unified Land Development Regulations), or to seek a variance. He convinced the City Attorney to allow him to go directly to the court system and by-step the Board of Adjustment. By doing so, Mr. Liberman indicated that he was deprived of his rights to due process and to participate in the litigation process. He believed this sets a bad precedent. There are factual and legal errors that oblige the City to appeal. He claimed that Mr. Mayon incurred 95 percent of his expense to complete the project under the pretext of resolving a flooding issue, after being made aware that the permit was issued in error. But flooding is still a significant issue on Solar Isle Drive, so there was no undue hardship. He urged the Commission to move forward with the appeal.

There was no one else wishing to speak.

Mayor Seiler noted that the court opinion indicates that he, as mayor, authorized the work to continue to prevent flooding. He understood the City was notified of serious flooding on Solar Isle and the open construction area was contributing to the flooding. He never had any communications with any contractor or owner. He did not believe he has any authority to authorize the work unless under marshall law. The City Attorney confirmed that the mayor does not have such authority. There are some factual errors in the opinion. He thought one inaccuracy noted in the opinion that Mayor Seiler lifted the hold on Mr. Mavon's project was derived from an email response from Mayor Seiler to a homeowner's association member, stating that the hold had been lifted. However, the email did not indicate that Mayor Seiler lifted the hold, or played any role in lifting the hold. The City Attorney pointed out that this recommendation to appeal is not based on factual errors, but rather the case itself. He believed the right decision was made for the wrong reason. The issue is that equitable estoppel does not apply to local government if it is a mistake of law; but the principles of equitable estoppel do apply if it is a mistake of fact. The only reason

for this recommendation was to clarify whether it was a mistake of fact or a mistake of law as that is not stated in the court's opinion. The court's decision is correct if it is a mistake of fact. The theory is that a person who administers the principles of law as established by the Commission cannot, by their mistake, approve something that the Commission has determined to be illegal. If City staff makes a mistake of law, equitable estoppel would not apply; but equitable estoppel principles would apply for a mistake of fact.

In response to Commissioner Rogers, the City Attorney indicated that, to his knowledge, there was no stipulated fact relating to Mr. Mavon's alleged \$71,000 expenditure. He confirmed his recommendation that Mr. Mavon file the court action. The rationale would have been the same regardless of the applicant. The equitable estoppel issue could not be determined through the administrative process and was inappropriate for the Code Enforcement Board or the Board of Adjustment to raise. He did not see a reason to put Mr. Mavon through a process where he had no chance of prevailing and would have put off the time period in which he would have to make arguments on equitable estoppel. The equitable estoppel arguments could have been made at a later date and, rather than waste the City's and court's time, he recommended the principles of exhaustion of administrative remedies be waived. If this appeal is approved, it would be handled by outside counsel but he was uncertain of the cost. He confirmed the validity of Commissioner Rogers' theory that it could be beneficial to only have a circuit court order and not an appellate court decision for any similar cases with inaccurate facts in the future. However it is not probable that an appellate opinion could be worse than this circuit court opinion. Commissioner Rogers expressed concerns about the expense and the precedent that an appellate court decision could set, as well as the potential for not winning.

In response to Commissioner Trantalis, the City Attorney confirmed that the mistake of fact relates to there being no principal structure on the property. The mistake of law relates to whether a dock is prohibited when there are two parcels of property adjacent to one another but separated by a street, easement or something else, without unity of title and without a principal structure. The unity of title theory has been applied such that the properties must be located next to each other and physically touch. Mr. Mavon's adjacent properties do not physically touch because they are separated by a street. He confirmed for Commissioner Trantalis that the court viewed homeowners on Idlewyld Drive who also own waterfront property across the street and have dockage rights as analogous. He verified that Mr. Mavon could file a unity of title using that analogous situation in order to accommodate the City's requirement for a principal structure. Commissioner Trantalis was concerned about the adjacent properties being sold separately. Hence, he wanted a unity of title in place. In response to Commissioner Trantalis, the City Attorney thought a unity of title would preclude the properties from being sold separately however his recommendation was to get clarification. Commissioner Trantalis indicated that establishing a legal connection between the two properties would render moot whether it was a mistake of law or a mistake of fact. In further response, the City Attorney advised the City has thirty days from April 24 to file an appeal. Commissioner Trantalis suggested the item be deferred to May 21, and a unity of title be filed in the meantime. He felt more comfortable about not pursuing an appeal if that measure is taken because the City would be maintaining consistent policy in terms of ensuring that a principal structure is always connected to the boat dock.

The City Attorney confirmed for Vice Mayor Roberts that the general fact pattern is the same as a previous matter concerning lighting at Cardinal Gibbons High School. Vice Mayor Roberts did not wish to move forward with this appeal for the sake of fairness and consistency. The City Attorney explained to Mayor Seiler that a motion for rehearing was not filed within ten days because it took staff some time to determine what the order stated as it lacked clarity. Requesting a rehearing could provide a means for clarification on the equitable estoppel issue, extend deadlines, and allow time for analysis. Mayor Seiler also wanted clarity on the mayor having authority to order work be completed when it is not an emergency situation. He expressed concern about Mr. Liberman's claim that he was not given opportunity to be heard on the issue. The City Attorney advised that Mr. Liberman filed a motion to intervene, but the judge determined that he did not have sufficient interest. In further response, he noted that the City's Board of Adjustment would not take up the issue of equitable estoppel.

Commissioner Rogers pointed out that the 10-day deadline to file for rehearing has expired. Commissioner Trantalis reiterated that the only course of action is to file a notice of appeal within thirty days. The unity of title could likely be executed and recorded by the May 21 Commission meeting. When the unity of title is in place, the issue of whether it is a mistake of fact or mistake of law would be rendered moot and the City would remain consistent with its policy that a principal structure is required at a boat dock. Commissioner Rogers agreed.

Greg Brewton, Sustainable Development Director, explained that the ULDR was amended about 17 years ago to prevent misuse of unity of title for cases where properties were divided by a street, for example, as the only criterion in the ULDR was that the properties have the same owner. What is now referred to as a development site in the ULDR is defined as properties with the same owner or owners that are contiguous or abutting instead of the unity of title terminology. In response to Commissioner Trantalis, he indicated that the situation on Idlewyld is an example of why the language was revised. Today's ULDR does not recognize unity of title. The City Attorney verified that unity of title would solve the issue of keeping the properties together to be sold as a unit because, although the unity of title does not exist as a concept in the ULDR from the standpoint of issuing permits, the court order would prevail.

Motion made by Commissioner Trantalis and seconded by Commissioner Rogers to approve the item subject to receipt of unity of title filing and that the appeal be extinguished upon that filing.

Approved subject to receipt of unity of title

Aye: 4 - Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

Nay: 1 - Mayor Seiler

In response to Mayor Seiler, the City Attorney clarified that staff will prepare to file the notice of appeal, but it will not be filed if a properly executed and filed unity of title is received within the deadline.

**M-3 13-0674 GRANT ACCEPTANCE - RE-ENGAGE FOR GOOD CITY
CHALLENGE GRANT - VOLUNTEER SERVICES NETWORK -
\$30,000 from Community Foundation of Broward Inc.**

The City Attorney explained that the language in the proposed agreement requires the City to indemnify. Previous grants have been amended to recognize the City's sovereign immunity. He recommended that language from the agreement approved in November of 2012 be included or limit the City's indemnity to the amount of the grant. He suggested the language be amended and the document signed. If it is not accepted, the matter would have to come back to the Commission.

Motion made by Commissioner Rogers and seconded by Commissioner DuBose to approve the item as amended with the revised indemnity language consistent with that contained in the grant acceptance of November, 2012.

Approved with revised indemnity language consistent with that contained in the grant acceptance of November, 2012

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- M-4 13-0512** ONE-YEAR AGREEMENT FOR MEDICAL GROUND TRANSPORTATION SERVICES - Aero Jet International, Inc. (D/B/A REVA, Inc.) - commencing May 8, 2013 with automatic renewal options - Fire Rescue Department
APPROVED
Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers
- M-5 13-0551** EXECUTIVE AIRPORT LIABILITY INSURANCE POLICY RENEWAL - \$10,319.43 - Federal Insurance Company
APPROVED
Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers
- M-6 13-0562** ONE-YEAR AGREEMENT FOR USE OF SCHOOL BUSES FOR CITY RECREATIONAL PROGRAMS AND EVENTS - School Board of Broward County - May 17, 2013 through May 16, 2014.
APPROVED
Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers
- M-7 13-0591** ACCEPT DONATION OF TEN SCHOLARSHIPS TO JUNIOR SAILING PROGRAM FROM LAUDERDALE YACHT CLUB SAILING FOUNDATION
APPROVED
Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers
- M-8 13-0647** GRANT APPLICATION (RATIFY) AND ACCEPTANCE FOR SUMMER FOOD SERVICE PROGRAM - Florida Department of Agriculture and Consumer Services - approximate amount of \$103,000 - free nutritional lunches and snacks at various City parks - June 17, 2013 through August 9, 2013
APPROVED
Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers
- M-9 13-0607** GRANT APPLICATION - \$98,350 - 2013 BULLETPROOF VEST PARTNERSHIP GRANT PROGRAM - United States Department of Justice
APPROVED
Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- M-10 13-0402** WORK ORDER 4 - ASPHALT PAVEMENT OVERLAY ON STREETS AND PARKING LOT IN SUNSET MEMORIAL GARDENS - Annual Asphaltic Concrete Pavement Contract with Weekley Asphalt Paving, Inc. - \$70,132.50 plus \$7,000 for engineering administration fees

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- M-11 13-0499** CHANGE ORDER 2 - SE 15 AVENUE BRIDGES OVER MARCHETTA AND CARLOTTA RIVERS - Baker Concrete Construction, Inc. - add quantities at no additional cost

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- M-12 13-0639** AMENDMENT NO. 1 TO DEVELOPER'S AGREEMENT FOR RENOVATION OF AQUATIC COMPLEX - Recreational Design and Construction, Inc. - guaranteed maximum amount of \$32,437,434

This item was removed from the consent agenda at the request of Art Seitz, however, he was not present.

Commissioner Trantalis questioned a review not occurring until the project is ninety percent complete. The City Manager advised that this has to do with the design. At ninety percent, the cost-out can be done. Commissioner Trantalis believed that was Mr. Seitz' concern.

Motion made by Commissioner Trantalis and seconded by Vice Mayor Roberts to approve the item as presented.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- M-13 13-0229** HOME PROGRAM LINE OF CREDIT - Repayment of \$662,292.87 to City's HOME Program line-of-credit account with U.S. Department of Housing and Urban Development and ratification of liability account

Commissioner DuBose had several questions and therefore he requested a thirty-day deferral.

Motion made by Commissioner DuBose and seconded by Commissioner Rogers to defer the item to June 4, 2013.

Deferred to June 4, 2013

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- M-14 13-0485** INTERNATIONAL PARKING INSTITUTE CONFERENCE AND EXPO 2013 CO-SPONSORSHIP - BANNERS - May 19-23, 2013

Mayor Seiler announced a correction to this item, the Parking Services fund number should be 461, not 460.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- M-15 13-0603** APPROPRIATING NORTHWEST PROGRESSO FLAGLER HEIGHTS COMMUNITY REDEVELOPMENT AREA FUNDS FOR POLICE SUB-STATION - \$140,000 - 1291 and 1295 Sistrunk Boulevard

Mayor Seiler announced that this item was moved to the Community Redevelopment Agency meeting of the same date.

Moved to the CRA meeting of same date

- M-16 13-0632** POLICE SUB-STATION LEASE AGREEMENT with Roy Mizell & Kurtz Funeral Home, Inc. - 1291 and 1295 Sistrunk Boulevard - five-year term with one five-year renewal option

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

CONSENT RESOLUTION

- CR-1 13-0539** CONSOLIDATED BUDGET AMENDMENT TO FISCAL YEAR 2013 BUDGET - APPROPRIATION

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- CR-2 13-0622** APPOINTMENT OF BOND DISCLOSURE COUNSEL - ISSUANCE OF PARKING REVENUE BONDS - Albert Del Castillo of Greenberg Traurig LLP as Bond Counsel and Steven Bullock, P.A. as Disclosure Counsel

In accordance with Memorandum 13-02, Mayor Seiler announced that this item was revised to include the statement that the bond and disclosure counsel contracts are subject to appropriation of bond proceeds.

Adopted subject to appropriation of bond funds

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- CR-3 13-0444** HISTORIC BRYAN HOMES - DECLARING INTENT TO LEASE, AUTHORIZING ISSUANCE OF REQUEST FOR PROPOSAL - 301 SW 3 Avenue

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PURCHASING AGENDA

- PUR-1 13-0428** FIRST ONE-YEAR EXTENSION TO AGREEMENTS FOR PROFESSIONAL TRAFFIC AND TRANSPORTATION ENGINEERING CONSULTANT SERVICES from Kimley-Horn Associates, Inc., Kittelson & Associates, Inc., Miller, Legg & Associates, Inc. and T.Y. Lin International

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- PUR-2 13-0487** PURCHASE OF ASPHALT TRENCHING MACHINE in the amount of \$127,490 from Asphalt Zipper, Inc.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- PUR-3 13-0365** THREE, FOUR-YEAR CONTRACTS FOR PURCHASE OF SAFETY SHOES in estimated amount of \$257,000 from Global Trading, Inc., Ritz Safety, LLC and Red Wing Brands of American, Inc. contingent upon approval and appropriation of funds

Charles King, 105 N. Victoria Park Road, questioned whether this is the best approach. The City Manager advised that this is a four-year contract for employees in the field. The City provides a \$125 allowance. Employees make up the difference for the cost of the shoes. Therefore, the City's cost is fixed. The shoes meet federal standards to ensure safety of the employees.

Motion made by Vice Mayor Roberts and seconded by Commissioner DuBose to approve the item as presented.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- PUR-4 13-0514** ONE-YEAR CONTRACT FOR PURCHASE OF AQUEOUS AMMONIA in estimated amount of \$92,967 from Tanner Industries, Inc. and authorize the City Manager to approve renewal options contingent upon approval and appropriation of funds

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

- PUR-5 13-0535** ONE-YEAR CONTRACT FOR PURCHASE OF STORM STRUCTURE CLEANING SERVICES in estimated amount of \$120,280 from A&A Drainage & Vac Services, Inc. and authorize the City Manager to approve renewal options contingent upon approval and appropriation of funds

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PUR-6 13-0560 TEN-YEAR CONTRACT FOR PROCESSING OF PROGRAM RECYCLABLE SERVICES in the total revenue amount of \$2,228,000 from Waste Management, Inc. of Florida and authorize City Manager to approve renewal options

Ali Waldman, general counsel for Sun Bergeron, recalled City staff's recommendation in January to award Waste Management, Inc. (Waste Management) a five-year contract for the processing of program recyclables. But, since then, Broward County terminated ReCommunity which offered higher revenue to the City. Also, Sun Bergeron recently submitted bid proposals to the cities of Hollywood and Southwest Ranches, and Southwest Ranches issued them a notice of intention to award a contract for the same service component set forth in this item. The contract with Southwest Ranches is providing a greater revenue stream to that city, and Fort Lauderdale could piggyback onto that contract. Hollywood's RFP results will be opened on May 18. She asked the Commission to defer this item to June 4 as these recent happenings could generate more revenue to the City.

John Albert, representing Waste Management, Inc., asked the Commission to adhere to staff's recommendation as the City's process was followed. In response to Commissioner Trantalis, he confirmed that Waste Management offers commercial recycling. It is a service that municipalities cannot franchise. He believed that all hauling companies offer recycling. The City Manager clarified that the proposed contract is strictly for disposal of recyclable materials gathered from single family residences. Commercial recycling collection is a free market system. However, the City received a grant through the Broward County Resource Recovery Board (RRB) and will be increasing its commercial recycling efforts. He explained to Commissioner Rogers that the RFP lists the recyclable materials collected. The list could be amended via negotiation, or the contract could be terminated for convenience. In further response, Mr. Albert was not aware of any recycling provider that accepts plastic garbage bags.

In light of Ms. Waldman's references to other cities receiving more favorable contracts, Commissioner DuBose asked whether Waste Management is offering the City a most favored nation clause. Mr. Albert had no objection to one if Waste Management is awarded the bid, but he was unsure if the RFP called for one. He thought Ms. Waldman's remark simply indicated a belief that other companies are offering a better deal. Commissioner DuBose stressed the Commission's fiduciary responsibility to obtain the best contract for the residents. Mr. Albert elaborated upon the difference between providing and offering a service in terms of a company's capability to perform. Waste Management has provided, not just offered, this service for many years. Waste Management will honor a most favored nation clause if it is awarded a contract with another municipality.

In response to Vice Mayor Roberts, the City Manager advised that this is the only proposal received for this component. He knew of Southwest Ranches' intent to award to Sun Bergeron, but was not aware of the disposal facility's location which must be within 15 traveling miles of City Hall. It is not possible to make an apples-to-apples comparison to Southwest Ranches tonight. But, all City contracts have a termination for convenience clause. So the City can terminate the contract and go back out to bid if the market is not well represented by this proposal. Vice Mayor Roberts suggested this item simply be deferred for thirty days to allow time to check on what might be possible through Southwest Ranches.

Mayor Seiler questioned why the City only received one proposal. Joe Goldstein of Shutts and Bowen, outside counsel for Sun Bergeron, explained that, when the City's RFP was issued, Broward County had a pending contract with ReCommunity for program recyclables. Sun Bergeron was a team member with ReCommunity at that time, and ReCommunity was going to use some of Waste Management's transfer stations. Due to their relationship, Sun Bergeron was unable to submit an RFP to the City and, consequently Waste Management was the only bidder. However, ReCommunity's contract with Broward

County was terminated for convenience about a month after the City's RFP deadline. It could not secure a location. Since then, Sun Bergeron has bid in Hollywood and Southwest Ranches, and their facility would comply with the City's traveling distance requirement. In response to the City Manager's inquiry, he explained that the Sun Twelve facility located at 2308 College Avenue in Davie is expected to be available at the end of the year. In the interim, the Sun Two facility located at 2281 NW 16 Street in Pompano Beach would be utilized. In further response to Mayor Seiler, he believed Waste Services of Florida, Inc. (WSI) did not respond to the City's RFP because they do not have a facility for the proposed services. As to one other company that did not submit a proposal, he suspected that their facility is not within the distance requirement of the City. As for comparing the proposed figures with the Southwest Ranches RFP, the most significant figure is the percentage of the adjusted market value for the recyclables. He indicated that Waste Management proposed 35 percent in Fort Lauderdale, and a lesser amount in Southwest Ranches. Sun Bergeron proposed 40 percent in Southwest Ranches and Hollywood.

Motion made by Vice Mayor Roberts and seconded by Commissioner DuBose to defer the item to June 4, 2013.

In response to Mayor Seiler, the City Manager advised the City's current contract will expire on July 3. Staff will need time to award a contract. He suggested a decision be made on June 4 for all of the elements at the latest.

Deferred to June 4, 2013

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PUR-7 13-0576 THREE-YEAR CONTRACT FOR RECORDS STORAGE, RETRIEVAL AND DISPOSAL SERVICES in estimated amount of \$118,278.90 from U & M Transfer, Inc. and authorize City Manager to approve renewal options contingent upon approval and appropriation of funds
APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PUR-8 13-0547 INCREASED EXPENDITURE FOR PLUMBING MAINTENANCE SERVICES in estimated amount of \$30,000 from A-1 Paradise Plumbing, Inc. d/b/a Paradise Service Technologies
APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PUR-9 13-0625 WORK ORDER 1 - ROOF REPLACEMENT FOR HOLIDAY PARK GYMNASIUM in amount of \$174,132 from Advanced Roofing, Inc.
APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PUR-10 13-0633 PURCHASE OF AMMUNITION in total amount of \$78,591 from Florida Bullet, Inc. (\$45,371 proprietary and \$33,220 utilizing ITB 132-11128)
APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

OB 13-0713 WALK-ON - SHORT-TERM LEASE FOR TEMPORARY HEALTH AND WELLNESS CENTER (\$3,300.34 per month) - 300 SE 15 Street

Motion made by Vice Mayor Rodstrom and seconded by Commissioner DuBose to approve the lease with Broward Health as described in Memorandum 13-0713. A copy of the memorandum was made part of the record.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

CITIZEN PRESENTATIONS

CIT-1 13-0583 DENNIS ULMER - Remembering Memorial Day

Mr. Ulmer read a prepared statement about this topic. A copy of the statement is attached to these minutes.

CIT-2 13-0577 VIRGIL E. NIEDERRITER - Development of our Community

Mr. Niederriter was not present.

CIT-3 13-0581 JOSEPHINE JONES - Modification of City's ordinance - Backyard Hens

On behalf of the Fort Lauderdale Hen Project, Ms. Jones indicated that backyard hens are harmless, productive pets. The City should change its related ordinance in accordance with other major cities. She claimed there is strong community support; a petition is currently in circulation. Many people already own chickens. She elaborated upon common myths surrounding chickens and encouraged the City to support urban agriculture. In response to Commissioner Trantalis and Mayor Seiler, Ms. Jones agreed to provide information about this cause, including requirements and implementation guidelines, as well as sample ordinances from other cities.

CIT-4 13-0580 CHRISTINE TIMMON - Legalize Prostitution and End Alimony

Ms. Timmon believed current alimony laws are unfair to men. She elaborated upon current alimony laws as well as Florida's Alimony Reform Bill which Governor Rick Scott vetoed. She thought prostitution should be legalized and regulated. Further, alimony laws should be reformed so that it cannot be paid unless the marriage is finalized with consummation; otherwise, either party can obtain an annulment. The law should be changed to reflect that consummation finalizes a marriage. She provided a handout concerning this matter. A copy of the handout was made part of the record. She suggested individuals enter into civil unions rather than marriages.

CIT-5 13-0578 EDWARD LEUCHS - Marriage Equality

Mr. Leuchs, representing Dolphin Democrats, believed President Obama influenced a change in public opinion on marriage equality. A majority is in support, and this is the time for local governments and states to address this matter. He thought the Defense of Marriage Act (DOMA) will be overturned. He commented on tourism revenue generated for the City by the gay community, and these individuals'

rights should be valued. He asked for this topic to be included on a Commission agenda in September, following the Supreme Court's action (on DOMA). He submitted a resolution that has been adopted by over 300 cities nationwide, including 14 councils in Broward County. Eighteen mayors in Broward County have signed another format of the resolution. A copy of the resolution is attached to these minutes. In response to Commissioner Trantalis, he explained that the resolution was submitted because the format meets the national model and includes all of the desired criteria.

RESOLUTIONS

R-1 13-0574 APPOINTMENT OF CITY BOARD AND COMMITTEE MEMBERS - vacancy information provided under Conference Item BD-2

The City Clerk announced the appointees/re-appointees who were the subjects of this resolution:

Board of Adjustment	Caldwell Cooper (Consensus) Charlotte Rodstrom (Consensus/Alternate)
Education Advisory Board	Reverend Ben Sorensen (Commissioner Rogers)
Northwest-Progresso-Flagler Heights Redevelopment Board	Nate Ernest-Jones (Commissioner Trantalis) Julia Parker (Commissioner Trantalis) Sam Monroe (Commissioner DuBose) Ron Centamore (Commissioner Rogers)
Sunrise Key Neighborhood Improvement District, Board of Directors	Caldwell Cooper (Consensus) Larry Eldridge (Consensus) Mark Grant (Consensus) Tom Harmon (Consensus) Jay Weiss (Consensus)
Sustainability Advisory Board	Cheryl G. Whitfield (Commissioner DuBose)

The City Clerk announced that Bob Oelke's appointment on the Budget Advisory Board will not be delayed, rather it became effective on April 16, 2013.

Commissioner Trantalis introduced the resolution which was read by title only.

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis,
Commissioner DuBose and Commissioner Rogers

R-2 13-0690 SOUTHSIDE CULTURAL CENTER - DECLARING CITY'S INTENT TO LEASE PREMISES TO NOVA SOUTHEASTERN UNIVERSITY, INC. - Thirty years with two, ten year renewal options

In response to Mayor Seiler, the City Manager confirmed that Nova Southeastern University, Inc. has requested this item be deferred to June 4, 2013.

Motion made by Commissioner Trantalis and seconded by Vice Mayor Roberts to defer the item to June 4, 2013.

Deferred to June 4, 2013

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis,
Commissioner DuBose and Commissioner Rogers

R-3 13-0478 QUASI-JUDICIAL - SITE PLAN LEVEL II DEVELOPMENT PERMIT WITH ALLOCATION OF POST 2003 DWELLING UNITS - residential development and parking garage - Pinnacle at Tarpon River - Case 36-R-13

Applicant: Pinnacle Housing Group
Location: 805 SE 3 Avenue
Zoning: RAC-CC
Future Land Use: Downtown Regional Activity Center

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or experts opinions received and make them part of the record.

Members of the Commission announced with whom he had spoken with and/or site visits made concerning this matter.

In response to Commissioner Trantalis, Joe Pasquale, architect representing the Applicant, explained the sidewalk width ranges from eight feet on the north side to almost 13 feet on the south side along 3rd Avenue. Commissioner Trantalis noted that an eight foot width is insufficient for desired walkable and 'dineable' sidewalks. Mr. Pasquale noted the 13 foot area of sidewalk is located at the building's southeast corner on 9th and 3rd Avenue. This section is being built so a restaurant could be added. Commissioner Trantalis thought the proposed landscaping is sparse. Keith Poliakoff of Becker & Poliakoff, P.A., representing the Applicant, noted that, according to the City's guidelines, oak trees will be planted on 3rd Avenue and a combination of palm and oak trees will be planted at the corners. The building's stepback will be increased by two feet in order to include more oaks. Commissioner Trantalis thought the parking element on the side yard is unattractive, looking at the elevation facing 9th Street. Mr. Pasquale explained the parking garage is completely enclosed by a fitness center at that elevation, other than two access drives. In response to Mayor Seiler, Tim Wheat, Vice President of Pinnacle Housing Group (Applicant), presented a display board depicting aerial photo simulation images of the proposed project set forth on page 7 (A-4.0) of Exhibit 1, Commission Agenda Report 13-0478. In further response, Mr. Pasquale confirmed the west side is wrapped by townhouses. A 10 foot utility easement is located on the north side which will be screened, in accordance with the master plan and any required landscaping. Commissioner Trantalis expressed support for a 13 foot setback for the sidewalk which encourages active street use.

In further response to Commissioner Trantalis, Mr. Pasquale explained that the proposed project will be one, two, and three-bedroom rental units. As for rental rates, Mr. Wheat noted that there is a blend of workforce and market rates. Workforce rentals range from \$708 (monthly) for a one bedroom unit to \$987 for a three bedroom. The price for market rate units will be driven by the marketplace. He verified the majority of units are workforce. About \$27 million of the \$30.8 million total development cost will be derived from syndicated tax credits. The proposed is the Applicant's first such development in Fort Lauderdale and its thirteenth in Florida. Commissioner Trantalis commended the proposed price point as other projects with higher price points offer less. Mr. Wheat indicated the Applicant does not own any other property in Fort Lauderdale, but was recently selected by Fort Lauderdale Housing Authority to work on a redevelopment venture. The project before the Commission will be the Applicant's seventh development in Broward County.

The following are responses to additional questions posed by Commissioner Trantalis. Mr. Wheat went on to explain the development will have an electronic proximity entry system. The entry to the resident part of the parking garage will be gated, and all access points will have interior and exterior electronic surveillance. Residents will utilize a key fob system for entry. There will be 24-hour onsite management,

and a management office facing 3rd Avenue that operates during regular business hours. Generally, a courtesy officer patrols parking lots and common areas in the evenings. As for lighting, he indicated that they hope to obtain LEED (Leadership in Energy and Environmental Design) certification for homes, silver level and have solar panels in the garage. Mr. Pasquale explained the proposed lighting is in accordance with the City's master plan; lighting poles at 60 feet on center, staggered along the right-of-way areas. The proposed lighting will have enough lumens, depending upon the requirement necessary for the street. Commissioner Trantalis wanted more than enough lighting installed. Mr. Poliakoff presented a display board depicting the site plan set forth on page 9 (A-6.0) of Exhibit 1. Mr. Pasquale noted the lighting on 9th Street will exceed the master plan requirement. He noted the fitness center and other components will be lighted and draw activity to the street. Residents can enter the fitness center from the street or the parking garage. As for lighting on 3rd Avenue, there will be four poles as well as lighting at the bottom of the building and canopy lights at the entrance. A five foot cover over the walkway will have additional lights.

In response to Commissioner Rogers, Mr. Pasquale explained that the Tree Table on page 2 of Exhibit 1 reflects the existing trees. There will be oaks on the street sides pursuant to the City's design guidelines. In further response, Mr. Wheat believed the fitness center will only be for residents. The possibility of allowing limited memberships to non-residents was explored, but it has posed liability issues. The fitness center will be operated with in-house personnel. In the event a yoga and pilates studio function is added, a third-party may be utilized for instruction. Commissioner Rogers believed this is an affordable market rate product. In response to Mayor Seiler, Mr. Wheat indicated that a property tax exemption will not be sought. Commissioner Rogers noted the Applicant has met with neighbors about the proposed project and received positive comments.

Commissioner Rogers introduced the resolution which was read by title only.

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PUBLIC HEARINGS

PH-1 13-0584 QUASI-JUDICIAL - RESOLUTION - WAIVER OF LIMITATIONS OF UNIFIED LAND DEVELOPMENT REGULATIONS, SECTION 47-19.3 C & D - construction and maintenance to maintain three triple-pile clusters, relocate a single pile and single finger pier extending specified distances from the property line - 720 NE 20th Avenue

Applicant: John C. Gorman, Jr. and Cheryl J. Gorman

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or expert opinions received and make them part of the record.

Members of the Commission announced with whom he had spoken with and/or site visits made concerning this matter.

In response to Mayor Seiler, David Nutter of B and M Marine, representing the Applicant, indicated this is the first time this matter has been brought forward. However, a neighboring property is on this agenda. Andrew Cuba, Marine Facilities Manager, referred to a table provided in the backup. There have been nine waivers for neighboring properties on this street since 1983.

Mayor Seiler opened the floor for public comment.

Charles King, 105 North Victoria Park Road, opposed the trend of docking large boats behind small houses which are often only used by the boat crew. It looks like a shipyard. A similar issue is occurring on the property in item PH-4. This is a zoning issue that should be addressed by the Commission. Residents are concerned about large diesel trucks in the neighborhood that are used to fuel the boats. He contended that the president of the Victoria Park Civic Association had no knowledge of this item.

There was no one else wishing to speak.

In response to Commissioner Trantalis, Mr. Cuba did not believe the proposed is a significant impact on navigation as it extends some eighty feet into an 810 foot wide waterway. The adjacent property owners were provided notice of this matter twice. Mayor Seiler pointed out the numerous other dock waivers granted in the area. Mr. Cuba added that his telephone number was included on the notices for, both, the Marine Advisory Board and the Commission hearings, but he has received no calls.

Commissioner Trantalis asked whether staff will be recommending the ULDR be modified to allow larger boats in the area. The City Manager indicated that this issue can be raised at the May 13 Marine Industry Strategy workshop; some vetting is first needed before staff can make a recommendation. Commissioner Trantalis wanted to know what standard was used for this recommendation. Mr. Cuba explained the Applicant listed their extraordinary circumstance to include safely mooring the vessels. Also, this property is located on an exceptionally wide body of water. He did not believe the City is encouraging larger vessels by allowing these pilings to be placed at the proposed distance. In response to Mayor Seiler, both Mr. Cuba and Mr. Nutter confirmed the proposed pilings will be inside the riparian lines, in front of the Applicant's property.

Vice Mayor Roberts introduced the resolution which was read by title only.

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PH-2 13-0585

QUASI-JUDICIAL - RESOLUTION - WAIVER OF LIMITATIONS OF UNIFIED LAND DEVELOPMENT REGULATIONS, SECTION 47-19.3.C & D - renovating an existing marina to include construction and maintenance of eight mooring piles extending various distances and three floating piers extending various distances from the property line - 435 Seabreeze Boulevard

Applicant: E. Mark Pawuk, Trustee of Emil Pawuk Disclaimer Trust and Emil Pawuk New Family Trust

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or expert opinions received and make them part of the record.

Mayor Seiler announced a site visit made concerning this matter.

Tyler Chappell of The Chappell Group, representing the Applicant, presented slides concerning this matter. A copy of the slides is attached to these minutes. The marina is being renovated and the operator, Westrec Marinas, is seeking to construct floating docks on the west side. The neighboring

Venetian Condominium requested the larger vessels be moved to the western side to avoid having them use the New River Sound for maneuvering. He described the necessary reconfiguration as shown on the slides. He noted that this marina has been in existence since the 1980's, and the proposed waiver is only for the proposed renovation, not for the existing docks. The area to be renovated is west of The Venetian peninsula so there is a significant amount of waterway for vessels to maneuver. He submitted letters of support from The Venetian Condominium as well as the Marine Industries Association of South Florida and Show Management that produces the boat show which were made part of the record.

Commissioner Trantalis introduced the resolution which was read by title only.

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PH-3 13-0589 QUASI-JUDICIAL - RESOLUTION - WAIVER OF LIMITATIONS OF UNIFIED LAND DEVELOPMENT REGULATIONS, SECTION 47-19.3 C. - construction and maintenance of four post boatlift extending 39.3 feet from the property line - 209 Birch Road

Applicant: Hank Hury and Dr. James Cross

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or expert opinions received and make them part of the record.

Mayor Seiler announced a site visit made concerning this matter.

Don Hall, representing the Applicant, indicated the proposed waiver is for a boat hoist (hoist) to be installed at Alhambra Place Condominium. This waiver was unanimously approved by the Marine Advisory Board. The proposed hoist would extend 39.3 feet into the Intracoastal. In 2009, the City approved a hoist at the same condominium that extends 48.1 feet into the Intracoastal. The proposed property is located on a wide part of the Intracoastal, 725 feet; and the hoist would be 407.8 feet from the eastern edge of the navigable channel. A hoist is especially needed at this site because it is located in an open wake zone where boat speeds are not restricted, and there is an accumulation of trash in this dock area which is not good when starting the boat motor. As for neighborhood compatibility, Mr. Hall explained to Commissioner Trantalis that the Central Beach Alliance unanimously recommended this item.

There being no individuals wishing to speak on this matter, a **motion** was made by Commissioner Trantalis and seconded by Vice Mayor Roberts to close the public hearing. Roll call showed: AYES: Commissioner Trantalis, Commissioner DuBose, Commissioner Rogers, Vice Mayor Roberts, and Mayor Seiler. NAYS: None.

Mr. Hall noted that there is a companion item for this matter because there will be two hoists on the docks. It has been approved by the Development Review Committee. If no member of the Commission requests it be reviewed by May 17 (call-up provision), it will be approved. He asked if there is any intention to call-up the item. In response to Mayor Seiler, the City Attorney advised that the Commission can vote to waive the call-up requirement.

Vice Mayor Roberts introduced the resolution which was read by title only.

Adopted and City Commission Request for Review "call-up" provision was waived at request of Applicant.

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

Motion made by Commissioner Rogers and seconded by Vice Mayor Roberts to waive the City Commission request for review "call-up" provision.

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

The City Attorney pointed out that it would have been necessary to amend the resolution if the motion to waive the call-up provision had not passed unanimously.

PH-4 13-0590 QUASI-JUDICIAL - RESOLUTION - WAIVER OF LIMITATIONS OF UNIFIED LAND DEVELOPMENT REGULATIONS, SECTION 47-19.3.C & D - construction and maintenance of seven triple pile clusters and replacement of existing finger pier extending specified distances from the property line - 816 NE 20 Avenue

Applicant: 816 Building LLC (Andreas Grossauer)

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or expert opinions received and make them part of the record.

Mayor Seiler, Vice Mayor Roberts, and Commissioner Rogers announced site visits made as well as receipt of an email communication from Robert Terrance Riley.

Mayor Seiler referred to questions posed in the email from Mr. Riley mentioned above. Tyler Chappell of The Chappell Group, representing the Applicant, provided the following responses for Mr. Riley. He spoke to adjacent property owner, Mr. Riley, about his concerns and has received a letter of support from him. He assured Mr. Riley the triple pile clusters would be placed inside the riparian rights lines. To make certain of that, the Applicant will conduct an "as-built" (survey) after the pilings are installed. Further, the Applicant has assured Mr. Riley there will be no live-aboards consistent with the zoning district. In further response to Mayor Seiler, he had no objection to including these conditions in the resolution.

Mayor Seiler opened the floor for public comment.

Charles King, 105 North Victoria Park Road, thought this item is similar to PH-1 as it involves docking large ships. The entire neighborhood should be notified of this matter. He was concerned with commercialization of the area. Mayor Seiler noted the zoning is different than PH-1. Mayor Seiler and Commissioner Rogers pointed out that although the ROA zoning for this property allows the owner to rent out their dock, live-aboards are not permitted. In response to Mayor Seiler, Mr. King clarified that his objection is based on allowing pilings to be installed further out in the waterway which allows for larger boats. Mayor Seiler noted that the boat must still be within the size requirements as relate to elements like riparian rights lines. Mr. King thought the zoning is antiquated. Debate ensued between Mayor Seiler and Mr. King about the basis of Mr. King's objection to this item. Commissioner Trantalis invited Mr. King to attend the Commission's Marine Industry Strategy Workshop on May 13.

Mr. Chappell added that the Applicant was provided letters of support from both adjacent property owners, as well as two other property owners on the street. Also, the Applicant agrees to meet the conditions of the zoning requirements.

There being no other individuals wishing to speak on this matter, a **motion** was made by Commissioner Trantalis and seconded by Vice Mayor Roberts to close the public hearing. Roll call showed: AYES: Commissioner Trantalis, Commissioner DuBose, Commissioner Rogers, Vice Mayor Roberts, and Mayor Seiler. NAYS: None.

Vice Mayor Roberts introduced the resolution which was read by title only.

Adopted subject to as-built drawings being prepared after installation to ensure the clusters are within the riparian rights' line and there will be no live-aboards.

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PH-5 13-0597 QUASI-JUDICIAL - APPEAL - HISTORIC PRESERVATION BOARD - DEMOLITION OF SINGLE FAMILY HOME - 716 SW 4th Place (Bryan Place) - Case 11-H-08

Applicant: City of Fort Lauderdale
Location: 716 SW 4 Place - Bryan Place
Zoning: Residential Single-Family/Low Medium Density (RS-8)
Future Land Use: Low Medium

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or expert opinions received and make them part of the record.

Mayor Seiler announced the item, including the process and the options available to the Commission.

Members of the Commission announced with whom he had spoken with and/or site visits made concerning this matter.

As a point of order, Charles Jordon, 1225 SW 4 Court (Trust for Historic Sailboat Bend), advised that he was the property owner when this appeal was filed. The City's Unified Land Development Regulations (ULDR) defines the applicant as the property owner. The City filed an appeal and referred to Charles and Donna Jordan as the applicant which is in the Commission's backup of the meeting. He presented a notice of commencement filed by the demolition contractor presumed by the City representing they owned the property. The notice of commencement is attached to these minutes. The City Manager indicated this is simply a matter to determine whether a hearing should be held. Mr. Jordan indicated that the City supposedly filed an appeal on December 31, 2008, but there is nothing to indicate that the appeal was time/date stamped by the Clerk. Therefore, he contended it is improperly filed. He felt this portion of the meeting should be canceled. Mayor Seiler felt this concerns duties of the Unsafe Structures Board which supersedes the requirement of Section 47-24.11(2). The City Attorney concurred.

Greg Brewton, Director of Sustainable Development, explained the history of this case as outlined in Commission Agenda Memorandum 13-0597. As ruled by the Unsafe Structures Board, staff concurs that the structure is unsafe and it should be demolished. He confirmed for Mayor Seiler that the property owner has been discharged from bankruptcy and nothing has been done to rehabilitate the structure. It

may be more unsafe now.

The City Manager believed the Commission should rule tonight to uphold the Unsafe Structures Board order to demolish the structure or hold a hearing if it wishes to seek further evidence. Mayor Seiler opened the floor for public comment on this issue.

Ed Strobel, 716 SW 4 Place, displayed photographs and indicated he believes the photographs show that the property is unsafe, in such disrepair, it is not possible to make it useful and examples of what neighbors have had to tolerate for the past few years. The photos have all been taken in the last thirty days. There is evidence of vagrants. In response to the City Manager, Mr. Strobel advised that he supports the Unsafe Structures Board order and if the appeal is granted, he would promptly proceed with demolition at his expense.

Christina Strobel, 716 SW 4 Place, asked that the matter be heard and decided this evening.

Joseph Lanier, 4430 NE 24 Terrace, asked that the matter be heard and decided this evening.

Ryan St. George, 3410 SW 24 Court, asked that the matter be heard and decided this evening.

William Cosbie, 811 NE 2 Street, asked that the matter be heard and decided this evening.

Trey Willett, 723 SW 4 Place, supported the matter being heard and decided this evening. In response to Mayor Seiler and Commissioner Trantalis, Mr. Willett indicated that he resides across the street from the subject property and although he has not observed any vagrants, he has noticed uniformed police at the site every day. He has resided across the street for the last year. Commissioner Trantalis was concerned that the property was allowed to deteriorate. There are not very many examples of this architecture that can be associated with the community's history. It is a shame that deterioration of such properties is allowed and because of the property's condition, the decision is taken out of the Commission's hands. He advocated for people to have pride in the historic properties that are still in good condition.

Susan McClellan, 5495 NE 25 Avenue, strongly objected to the demolition. She felt everyone involved is at fault. She referred to the City's accomplishments with respect to historic preservation, specifically their design guidelines. The Historic Preservation Board (HPB) heard how the property would be restored, but money failed. There should have probably been a completion bond. She agreed that Mr. Jordan did not follow through with his commitment. Ms. McClellan explained why the house was moved to another site. Commissioner Trantalis asked who would pay for the restoration at this point. In response to Ms. McClellan, Mayor Seiler questioned proceeding in the same fashion as the case of the Shippey House. Commissioner Trantalis indicated it simply does not make economic sense. Mayor Seiler felt it is an issue that should have been raised with Mr. Jordan in 2008. He commented on the disappointing volunteer support of the Shippey House and did not think another such case could be added to the City's budget. Commissioner Rogers referred to the demolition notice of commencement and pointed out that it would not have been possible for Mr. Jordan to cut the house in half and move it without HPB approval. If the owner of a historic property does not take responsibility for maintaining it, the same situation will occur over and over. The cost has to be recognized. Mayor Seiler did not think anyone would defend the actions of Mr. Jordan. Ms. McClellan clarified that she does not defend his conduct. Her comments are toward preserving the building.

Robin Sherman, 1312 SW 4 Street, supported the demolition. She responded to questions of the Commission, indicating that she has lived in this neighborhood for three years, she does not think the structure contributes to the neighborhood whatsoever and she did not think it could be improved upon.

Mary Hughes, 728 Bryan Place, advised that she lives next door to this house. She supported the demolition. In response to Mayor Seiler, she believed that Mr. Jordan actually demolished the house by cutting it in half and moving it twice. She felt it is dangerous and is destroying the neighborhood.

Dick Winer, 712 SW 4 Place, indicated he lives directly east to this house. He is a long time resident of the area. He commented on a well-known author wrote some of Fort Lauderdale's early history from this house. He supported the demolition if the matter is moved forward expeditiously. But, the matter seems to be getting more confusing by the day.

Kimberly Dees, 801 Bryan Place, supported the demolition. In response to Mayor Seiler, Ms. Dees indicated that she has resided in the neighborhood since 2009. The condition of the house has worsened.

Cliff Dees, 802 Bryan Place, supported the demolition. It has gone too far to realistically consider rehabilitation; it would be too expensive.

Bill Karney, 777 Bayshore Drive, supported the demolition. It needs to be developed and returned to the tax rolls.

Matthew DeFelice, 411 SW 10 Street, did not support the demolition. He noted that the City's comprehensive plan speaks of the City's commitment to historic preservation planning. He thought in 2008 the house did not meet the criteria for demolition. One criteria for demolition is that it would benefit the community, he surmised if Mr. Jordan demolished part of the structure so that it could be rehabilitated, that is probably what was in the thinking of the Unsafe Structures Board. It does not meet the criteria for demolition. He pointed out the City has decided to hear the case now that there is a property owner who wishes to proceed with the demolition. The City's policy is to ensure that people will protect these resources, therefore he questioned why it is not expected of Mr. Strobel. Mayor Seiler explained that there is already a demolition order of the Unsafe Structures Board. Mr. DeFelice felt the order is in opposition to the City's policies. In order to proceed with new development, Commissioner Rogers noted that Mr. Strobel will have to go before the Historic Preservation Board. Mr. DeFelice felt a responsible property owner who will make the repairs should be found. He felt the City should provide Mr. Strobel with an alternate means to restore the structure. If the City was really committed, there would be a preservation fund supplied by mitigation from properties destroyed that should not have been and so forth. He felt that Mr. Strobel took advantage of the situation and the City allowed it.

Mike Seal, 440 SW 8 Avenue, indicated that he has resided across the street from the subject property for three years. He supported the demolition. As a father of young children, he commented that the house has the potential to harbor predators. He is an architect by profession. He could not think of any reasonable alternative because of what has already occurred.

Margaret Brock, 1501 East Broward Boulevard (inaudible)

Dave Baber, 1225 Coontie Court, noted his experience and professional credentials with respect to historic preservation. He noted the criteria set out in the City's code and indicated that he reviewed the minutes on this matter as well dated December 1, 2008. He understood this evening is to address the appeal of the HPB decision that took place on December 1, 2008. The competent testimony indicated that Ms. Rathbun analyzed the criteria for demolition which is the rule of law upon which the HPB is to base their decision and she found that the criteria was not met. He reviewed the criteria. He concluded that based on the criteria, the Commission must uphold the HPB's decision.

Commissioner Trantalis felt the testimony is excellent if the Commission was sitting as the HPB tonight. The comments are all on-point. But, it is six years later. The house is falling apart and there is no one to save it. Mr. Baber recommended procedure be followed. A new demolition process should be applied for through the HPB. The process would be fresh. In response to Commissioner Trantalis, Mr. Baber

explained this would be his recommendation with the goal of ultimately preserving the house. In response to Mayor Seiler, Mr. Baber estimated it would be easily \$1 million to restore the house, but it is a very significant and special building. Commissioner Rogers commented that Mr. Jordan's construction cost breakdown was \$1.5 million. Mr. Baber conceded it could certainly be that much, but he is not qualified to know with certainty. In any case, he reiterated the rule of law should be followed.

Mr. Jordan pointed out that available dates for the hearing were advertised but none of them were May 7. On the day after the HPB ruled not to demolish the house, the City put a hold on his foundation permit (New World Builders) and it is still on hold today. He was prevented from proceeding. If he had been allowed to proceed, the house would have a foundation and be in one piece. It would have probably been sold shortly thereafter. During the eleven months that he owned the property, the City took away all reasonable use of it. In response to Mayor Seiler, Mr. Jordan indicated that he nor his company went into bankruptcy. The property was in his wife's bankruptcy. It was released from bankruptcy in November of 2009, therefore he questioned the diligence. In further response, he advised that as a licensed general contractor, repairs to make the house livable would be \$500,000. In response to Commissioner Rogers, he explained that the estimate of \$1.5 million and this amount of \$500,000 are two different things. The \$1.5 million also included a three-car garage, swimming pool, dock and a second-floor addition. Commissioner Rogers was concerned that Mr. Jordan cut the house in half and now wants the City to save it. Mr. Jordan claimed he never went before the HPB and asked to demolish the house. In such case, Commissioner Rogers believed his contractor lied in the notice of commencement. Mr. Jordan believed the City's contractor lied about being the property owner. There was a disagreement as to who hired Miami Wrecking Company wherein Commissioner Rogers pointed out that Miami Wrecking Company is on the documentation submitted by Mr. Jordan and Mr. Jordan indicated that the notice of commencement was fraudulently filed by Miami Wrecking on behalf of the City. Mr. Jordan advised that he did not hire Miami Wrecking Company. The City was trying to tear it down without HPB approval. He had approval to cut the house in half from the HPB and Building Department. He explained that the house was below the flood zone and because of the structure's configuration, it had to be cut in half. He confirmed for Mayor Seiler that the entire restoration, including putting the house back together, would be \$500,000. Because no one is offering the funds, Commissioner Trantalis concluded restoration is not therefore an option. Mr. Jordan felt the asset should be preserved until someone is willing to do the restoration. In response to Mayor Seiler, Mr. Jordan indicated that he owned the house with his wife for five years and during that time he invested \$400,000-\$500,000, inclusive of the down payment and work that was done. There is no significant structural difference from the time it was cut in half. It could be moved. The logic behind cutting the house in half was to raise the structure beyond the flood plain. Cutting it in half is insignificant from a structural standpoint.

Ms. McClellan explained Mr. Jordan presented a plan to the HPB that encompassed the entire house because the HPB would never be able to approve a demolition of a historic resource without a plan to significantly contribute to the historic district. The house got caught up in the bank issue. Ultimately it is a construction site that fell through. In response to Mayor Seiler, Ms. McClellan indicated that for the HPB, the criteria does not get into bonds. However, the HPB requires a rehabilitation plan. She explained for Commissioner Rogers that the HPB approved the house being cut in half because he had a plan. Commissioner Rogers did not think the house would have deteriorated in the same fashion if it was not cut in half. Ms. McClellan did not feel it is the HPB's role to collect bonds. In terms of the City's role, she supported the concept of a completion bond especially in the case of something of this magnitude. Mayor Seiler felt the City should look into the concept.

Molly Hughes submitted a petition in favor of demolition and indicated it encompasses the two-block area around the house. The petition is attached to these minutes.

There was no one else wishing to speak.

Commissioner Rogers referred to the timeline and asked whether the code would allow the Commission to consider this a new matter with the facts as they are now. The City Attorney explained the Commission could take the facts as they were then and decide that there was a departure from the essential requirements of law. This can be done because the Florida Building Code provides for the public's health, safety and welfare and municipal ordinance provides for the protection of historically worthy structures. It was his opinion that the building code, which the Unsafe Structures Board is a part of and established because of, trumps the municipal ordinance because home rule powers do not give the City authority to conflict with general law. He confirmed that it would be a departure from the essential requirements of the law to ignore the Unsafe Structures Board order. He wrote a memorandum about property at 215 SW 7 Avenue in 2009 on the same circumstances and came to the same conclusion. This opinion is supported by case law, *City of Kissimmee v. Florida Retail Federation*, Article VIII, Section 2.b of the Florida Constitution and Section 166.021(3)(c). Municipal law cannot conflict with general law.

Motion made by Vice Mayor Roberts and seconded by Commissioner DuBose to conduct the de novo hearing immediately.

APPROVED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis,
Commissioner DuBose and Commissioner Rogers

Mayor Seiler opened the de novo hearing.

Chris Augustin, City's Building Official, responded to questions of the City Manager as follows. He noted his tenure with the City and the positions he has held. He is familiar with the Unsafe Structures Board's (Board) action concerning this structure. The Board's purpose is to determine whether a structure is safe and if it is found to be unsafe, to order that it be demolished. It was his opinion that this structure is unsafe, a fire and a windstorm hazard. He did not think there are any utilities connected to it at this time. It is sitting on four to five foot structures. Other structures are taken before the Board from time to time; are found to be unsafe and are demolished. This is the worst situation he has encountered. It is the first time he has encountered a home cut in half and sitting on top of cribbing for many years.

Ed Strobel responded to questions of the City Manager as follows: He closed on this property about 2 ½-3 weeks ago. It was an outright purchase. He hopes to build a home in the range of 3,000-3,500 square feet. He looked at the original recommendation approved by the HPB of about \$1.5 million which has increased. An additional \$40,000 is needed for a seawall. A local general contractor confirmed the cost would probably be more because of the price of concrete. Considering the Board order, he thought it could be renovated or new construction altogether in a turn of the century, Key West look. He described measures taken to secure the property when he acquired it. With approval for demolition, he will proceed as soon as legally possible. Mayor Seiler asked for more clarity as to whether Mr. Strobel looked into the restoration cost. Mr. Strobel advised that he looked at the numbers of the expert who spent years with it. He did not want to spend money on more plans until he knew what could be done from the existing plans and other options for the project. His general contractor opined that the numbers seem reasonable but it was only cursory. He had CSW Structural Group, structural engineers, inspect the house and he agreed with the scope of work. CSW indicated that the structure would have to essentially be wrapped in steel and recoated. More work would likely have to be done to repair damage that has happened in the last eight years. This information is contained in a letter from CSW, dated May 2, 2013, that was made a part of the record.

Charles Jordan responded to questions of the City Manager as follows: He was the owner of the subject property on July 17, 2008 which he was told was the date of the Unsafe Structures Board hearing, although he was not notified. He did not appeal the Board's ruling as he did not find out about it until the appeal period was over according to the then City Manager, George Gretsas. He appeared before the HPB on December 1, 2008 and presented information about the house not being unsafe and how it would be restored. From reading minutes of the Unsafe Structures Board meeting, he concluded there was no

qualified structural engineer present. The Board concluded it was unsafe because it did not have a permit. He renewed the permit and then was stopped by the City. Mayor Seiler asked when Mr. Jordan found out that the Board had issued a ruling. Mr. Jordan believed it was about forty-five days after the hearing. He did not seek an opinion from an attorney at that time or seek relief from the City with respect to not being notified of the hearing. He got the permit renewed in November to solve the problem that the Board had with the house. Once the job was started, the property was not inhabitable. He was residing at that time at 1216 SW 4 Court. His wife was on the property title but was also not notified of the hearing. The notice was delivered to the property even though there was no mailbox. It was not posted on the property.

Matthew DeFelice responded to questions of the City Manager as follows: He is chair of the Historic Preservation Board (HPB) and is familiar with Section 47-24 of the Unified Land Development Regulations. He does not know specifically about issues having to do with unsafe structures or what is contained in the preservation ordinance regarding unsafe structures or about demolition based on a fire hazard. He would need to refer to the provisions themselves in order to comment. In response to Mayor Seiler, Mr. DeFelice advised that he was not serving on the HPB when Mr. Jordan sought permission to separate the structure. He believed his term began in December of 2009. Commissioner Rogers asked Mr. DeFelice's opinion as to whether neighbors in the district should have a say about what is contributing to the district. Mr. DeFelice felt any resident in the city should have an opportunity to speak. As to a contributing resource in a district, the criteria are passed down from the Secretary of Interior standards. In order for any opinion to have any merit, it must be grounded in that criteria which has been codified in the City's ordinances.

The City Manager advised it is his opinion that the Unsafe Structures Board took an action based upon the Florida Building Code. Procedure was followed. The structure today, based upon Mr. Augustin's testimony, remains unsafe and the Board's order is still valid. The reason that the HPB ordinance does not contain specific criteria with regard to the Unsafe Structures Board is the Florida Building Code, as general law, trumps the City's historic preservation ordinance. The mere fact that there is no specific criteria within the preservation ordinance dealing with unsafe structures does not mean that an Unsafe Structures Board action cannot be taken on historic property. This is a life safety issue. The City has an obligation to preserve the public's health, safety and welfare and this is the function of the appeal.

Mr. DeFelice referred to questions previously posed to him by the City Manager and commented that he could not reference in the historic preservation ordinance any language that speaks to unsafe structures, fire hazards and the like. However, there is flexibility in the building code for historic structures. The City Manager asked about weighing the balance between public safety and preservation. Mr. DeFelice did not know how that could be done. He did not think this site should be treated as anything other than a stopped in progress construction project.

There being no other individuals wishing to speak on this matter, a **motion** was made by Commissioner Trantalis and seconded by Commissioner Rogers to close the public hearing. Roll call showed: AYES: Commissioner Trantalis, Commissioner DuBose, Commissioner Rogers, Vice Mayor Roberts, and Mayor Seiler. NAYS: None.

Vice Mayor Roberts introduced the resolution, which was read by title only.

Resolution adopted approving a certificate of appropriateness for demolition and authorizing proper City Officials to issue necessary permits was adopted.

Commissioner Rogers noted his previous involvement in historic matters, including Stranahan House, Bonnet House, Shippey House and served on the Historic Preservation Board. He believed the city's historic structures need to be saved and that position has been demonstrated by the Commission's monetary investment in South Side School. However, there comes a point where common sense has to

take control of a situation. In this case, the structure is unsafe. Evaluation has to include the question of how much money can be invested in something to make it economically feasible.

Mayor Seiler referred to the difficulty with this matter in that four of the top historic preservation people in the city have expressed their opposition. The problem is that this should have taken place years ago. He was frustrated with the ownership and that the house was cut in half. Now at the last minute the request is to rescue the property after it has been irresponsibly addressed for some nine years. He referred to the unanimous demolition support of area neighbors shown in Ms. Hughes' petition. The Commission has to balance. He felt the situation is so far down the road that there is only one option.

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

PH-6 13-0640 QUASI-JUDICIAL - DE NOVO HEARING - CERTIFICATES OF APPROPRIATENESS FOR ALTERATIONS TO LAUDERDALE BEACH HOTEL (Las Olas Beach Club) - Case 5-H-13

Applicant: Preferred Signs

Location: 101 South Fort Lauderdale Beach Boulevard

Zoning: Planned Resort Development (PRD)

Future Land Use: Regional Activity Center - Central Beach (RAC-CB)

In response to Mayor Seiler, the City Clerk indicated that the Applicant has requested this item be deferred.

Patricia Rathburn, Broward Trust for Historic Preservation (Broward Trust), opposed a deferral. Anthony Fajardo, Zoning Administrator, explained that staff received an email from the Applicant's attorney, Arie Mrejen, on May 3, 2013, requesting a deferral which he forwarded to the City Clerk on May 6. The City Clerk confirmed that she forwarded the email to the Commission that same day. Copies of the emails were made part of the record.

Neil Hamuy, owner of Sun Glasses & Swim by Stylin, indicated that a deferral was requested because his attorney was not available tonight. He explained to Mayor Seiler that his attorney made him aware of that on Friday, May 3, when he sent the email to the City. His attorney came tonight, but staff told him that his testimony could not be taken because he is not registered as a lobbyist.

In response to Mayor Seiler, the City Attorney advised that this item can be deferred to a date certain, but the Applicant's concurrence is needed if it is outside the 60-day window. Ms. Rathburn noted the Broward Trust owns the easement on which the signage and awnings is installed. The Applicant's attorney has been aware of this agenda item for a month which is sufficient time. She was not notified of the deferral request. She did not believe there are sufficient grounds for a deferral.

Mayor Seiler outlined the process and the options available to the Commission.

Mr. Hamuy noted he has operated a business in Fort Lauderdale for fifteen years. Last year he moved his business to Las Olas Beach Club. The sign for his business was just installed last week after one year of being open for business because of issues related to getting the sign and the awnings approved. The Broward Trust claims that he did not obtain a permit for the awnings, which is false. He presented a slide depicting the City building permit card that is displayed on the site. A copy of the permit card is attached to these minutes. The Las Olas Beach Club Condominium Association (Association) was provided detailed information about the awnings and approved them. The permit passed all inspections and was closed out. He submitted a copy of the permit status printout from the automated system which is attached to these minutes. The City and property owner approved the awnings. All requirements were met. However, he received a letter from the Broward Trust, dated February 25, 2013, indicating the

proposed signage was inconsistent with the building's architecture. A copy of the letter was made part of the record. He pointed out that H2O (Café) located in the same building has exactly the same type of backlit sign he proposes. He presented slides depicting H2O's façade as well as the Applicant's (Exhibit 6 of Commission Agenda Memorandum 13-0640). He referred to the memorandum from Merrillyn Rathbun of the Fort Lauderdale Historic Society and consultant to the City's Historic Preservation Board (HPB), (Exhibit 5) which indicates that the awnings and sign should be approved as they are consistent with the building's design guidelines. He presented slides depicting historic photographs of the proposed building, including some he believed dated back to the 1980's that were presented to the HPB. In response to Mayor Seiler, he advised that the HPB's vote on the awnings failed four to five. However, two members who voted no arrived late and did not hear the City consultant's testimony. Commissioner Trantalis clarified that the easement between the developer and the Broward Trust occurred subsequent to the time reflected in the historic photographs. The time period at issue is what took place subsequent to the time when the building was designated historic and construction of the Las Olas Beach Club. Mr. Hamuy reiterated that H2O has backlit signs and ten awnings. He noted that he has lost customers in the last year because of not having a sign.

Mr. Hamuy went on to explain to Mayor Seiler that the awnings were completed and the permit was closed out. He became aware of the easement when trying to get the sign approved. Commissioner Trantalis asked about the purpose of submitting this to the HPB. The City Attorney advised that his opinion was issued subsequent to the application being submitted. Commissioner Trantalis questioned whether the City's permit process has any safeguards in a case of this nature. The City Attorney believed the proposed building's façade is designated historic, and the agreement only pertains to the approval process for alterations. Anthony Fajardo, Zoning Administrator, indicated the entire site is not designated historic, only the façade that faces A-1-A and portions on the side. An error was made when Mr. Hamuy applied for the permit as the easement façade was not noted in the City's electronic permit filing system. It has since been corrected. Mayor Seiler and the City Attorney agreed that this was a mistake of fact.

Mr. Hamuy contended the (Broward Trust) falsely claimed at the HPB hearing that the awnings were rusting, torn and hiding architecture. They are brand new. Ms. Rathburn indicated the Broward Trust appeared at the HPB hearing about the proposed signage and awnings. She thought the City granting Mr. Hamuy a permit for the awnings was a mistake of law. The property is designated historic, so all permits related to the façade must go before the HPB. In addition, the Broward Trust owns the easement and the easement requires their approval. She contended the Assistant City Attorney told the HPB at the start of the hearing that the easement did not have to be considered because it is private, and the Broward Trust's remedy would be to sue Mr. Hamuy. She elaborated upon hypothetical scenarios in which she believed the City would enforce private easements. The Broward Trust owns the façade easement and nothing should be placed on the building that the Broward Trust does not agree with. The Broward Trust conveyed to the HPB that the awnings are rusting and the bolts are coming out.

In response to Mayor Seiler, Dave Baber, 1225 Coontie Court, indicated that he took photographs of the awnings but did not presently have them. He was not present at the HPB hearing. Ms. Rathburn pointed out that Mr. Hamuy has not produced photographs either. Commissioner Rogers questioned whether the awning issue relates to maintenance rather than appropriateness. Ms. Rathburn explained her comment was in response to Mr. Hamuy claiming she was not truthful at the HPB hearing. She noted the criteria utilized to determine whether something is inappropriate are the Secretary of Interior's guidelines as interpreted by the City's Historic Preservation (Design Guidelines). She contended the City consultant's conclusion that the awnings match others already installed is incorrect as the proposed awnings are vinyl and do not match H2O's fabric awnings. The consultant had no basis for the determination as she did not examine the awnings. Another incorrect conclusion was that there is no adverse effect on the historic structure as there is testimony related to rusting bolts, and the design guidelines indicate that nothing should be affixed to a historic structure that will impact its integrity. She referred to testimony from the HPB hearing set forth on page 6 of Exhibit 2 when Ms. Rathburn was asked if she considered the design guidelines, her response was that she looked at the ordinance but had not paid much attention to the

recommendations of the design guidelines. Rather, she was looking primarily to see how the proposed fit in with the awnings and signage already on the building. In response to Commissioner Trantalis, Ms. Rathburn verified that the awnings and signage already on the building are not historically appropriate either, although permission was granted in 2008 for their installation. However, it is nonsensical to install more inappropriate items now just because of a mistake in 2008. Commissioner Trantalis asked what happens when criteria are breached with respect to more of the same treatment being requested for the building. Ms. Rathburn explained the issue is really whether the proposed signs and awnings meet the Secretary of Interior's guidelines. She contended that they clearly do not. Additionally, there is signage on the awnings.

In further response to Commissioner Trantalis, Ms. Rathburn reasoned that this was a mistake of law, and there is no equitable estoppel argument because the City did not have the authority to issue a permit as this matter did not first go before the HPB as required. Commissioner Rogers thought it was a procedural mistake because the City facilitates online applications as Mr. Hamuy did, but the online program did not recognize the easement. Regardless of the reason, Ms. Rathburn maintained that the legal requirement to go before the HPB was not met. Commissioner Rogers noted the City led Mr. Hamuy to believe he was within the guise of the law. Ms. Rathburn believed that component may be a mistake of fact, but issuance of the permit was a mistake of law. She believed it was not a matter of the Applicant changing his position because Broward Trust believes the awnings are not new, but were moved from another location. Mr. Hamuy reiterated that the awnings are brand new. Ms. Rathburn explained that Broward Trust has offered to work with Mr. Hamuy on the signage and felt the HPB was correct in approving the signage, but has been consistent in their position concerning the awnings. There is no substantial, competent evidence to show that this application meets the criteria.

Charles Jordan advised that he was president of the Broward Trust for Historic Preservation when the façade easement was done. He believed the City is being adversarial in terms of enforcing this easement. The quality and angle of the awnings approved in 2008 are less inappropriate than Mr. Hamuy's which are affixed to the corner of the building, a more critical aspect of the architecture. Although the City may have erred in issuing the permit, he believed Mr. Hamuy made an error by not checking the public records where the easement is recorded. The Broward Trust owns this façade easement and has the right to enforce it. It is as if the Broward Trust is a property owner. The Broward Trust follows the same guidelines as the HPB. He urged the Commission to deny this application.

Dave Baber, 1225 Coontie Court, noted the design guidelines did not exist when H2O's awnings and signage were installed. An applicant is required to make necessary revisions after approved, permitted work is complete if it does not meet code requirements. In response to Commissioner Trantalis, he explained the awnings installed in 2008 face east. However, the proposed awnings are predominantly on the south side, covering windows that would have never had awnings because they are side windows. He believed the only reason for them is to provide a decorative element. Moreover they do not match the other awnings. Even if the proposed awnings matched the others, they would not be acceptable unless there was a rationale for placing them on the side of the building. They do not meet the criteria/guidelines. As for the sign, the guidelines clearly state that backlit signs are inappropriate; ambient lighting is recommended or a minimal amount of front lighting. In further response, he noted that H2O's signage is (backlit). Discussion ensued between Commissioner Trantalis and Mr. Baber about whether there is a basis to request H2O remove their signage. Commissioner Trantalis pointed out that Mr. Hamuy followed the procedures as instructed, received a permit and closed it out. Ms. Rathburn explained to Commissioner Trantalis that the Broward Trust would be satisfied if Mr. Hamuy changed the awnings to meet the design guidelines. The difference is that H2O's awnings were approved in 2008 and the design guidelines were adopted in 2012. The law changed. Commissioner Trantalis reasoned that the easement prevented anything from being attached to the front of the building, so, on that principle, no awnings should have been installed, regardless of the design guidelines. He and Mayor Seiler indicated that the Broward Trust has always had a basis to deny. Ms. Rathburn explained that now the Broward Trust can follow the design guidelines and have a standard to decide whether the awnings and signage are

appropriate. The easement does not prohibit awnings. Broward Trust has to approve what is put in the easement. Referring to approval of H2O's awnings, Mayor Seiler thought the Broward Trust's reasoning is inconsistent. Ms. Rathburn admitted that the Broward Trust made a mistake of fact in 2008 as relates to H2O, but does not wish to compound that error. Commissioner Trantalis questioned whether it would be acceptable for Mr. Hamuy to follow the design guidelines if the resulting appearance is inconsistent with H2O. Mr. Baber explained why the Broward Trust would not approve them, which is that there is no reason for awnings on the south side of the structure, among other features that he elaborated upon, including shape and material. Mayor Seiler wanted to know the Broward Trust's thinking in 2008 in approving H2O's awnings. Commissioner Trantalis asked what type of decorative feature would be appropriate under the design guidelines that could be applied to Mr. Hamuy's business-front. Mr. Baber offered to sit with Mr. Hamuy and work something out. In response to Commissioner Trantalis, Ms. Rathburn and Mr. Hamuy agreed to defer the item to May 21, 2013.

Matthew DeFelice, 411 SW 10 Street, remarked that this is a matter of balancing right and wrong, in terms of historic preservation. The façade easement is essentially a compromise, a mitigation action. The goal is to maintain the property's historic appearance. Commissioner Rogers agreed. Mr. DeFelice added that the Broward Trust and the property owner approved a façade easement in order to reach such a balance. Adding anything to the front of the building is not in the spirit of the easement. In response to Mayor Seiler, he did not believe H2O's awnings are consistent with preservation standards. Discussion ensued between Commissioner Rogers and Mr. DeFelice about the issue of balance in historic preservation as relates to symmetry in the building's overall appearance, as well as the role of precedent in such matters. Mr. DeFelice reasoned that two wrongs do not make a right. Commissioner Trantalis pointed out the fact that a building permit was issued has to be a consideration. In response to Mayor Seiler, Mr. DeFelice indicated that he voted in opposition to the awnings and signage. Mayor Seiler took issue that the Commission is being asked to reverse what the HPB approved, and uphold what the HPB did not approve. Mr. DeFelice thought the spirit of the easement is preservation. It was a legal compromise to preserve the integrity of portions of the building. He personally believed that HPB's decision was incorrect.

Commissioner Trantalis felt the parties should try to work out a solution.

Motion made by Commissioner Trantalis and seconded by Vice Mayor Roberts to defer the item to June 4, 2013.

Deferred to June 4, 2013

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis,
Commissioner DuBose and Commissioner Rogers

ORDINANCES

**O-1 13-0611 FIRST READING OF ORDINANCE CONSENTING TO BE INCLUDED
IN A MUNICIPAL SERVICE TAXING UNIT FOR A CONSOLIDATED
REGIONAL E911 COMMUNICATIONS SYSTEM CREATED BY
BROWARD COUNTY ORDINANCE**

Mayor Seiler announced that this item was removed from the agenda at the request of the City Manager.

REMOVED FROM AGENDA

**O-2 13-0670 FIRST READING OF ORDINANCE - CONVENIENCE AND LIQUOR
STORE MORATORIUM SIX MONTH EXTENSION - Northwest
Progresso Flagler Heights community redevelopment area**

Mayor Seiler opened the floor for public comment.

Charles King, 105 North Victoria Park Road, expressed support of the item.

There being no other individuals wishing to speak on this matter, a **motion** was made by Commissioner Trantalis and seconded by Vice Mayor Roberts to close the public hearing. Roll call showed: AYES: Commissioner Trantalis, Commissioner DuBose, Commissioner Rogers, Vice Mayor Roberts, and Mayor Seiler. NAYS: None.

Commissioner DuBose introduced the ordinance, which was read by title only.

APPROVED ON FIRST READING

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis,
Commissioner DuBose and Commissioner Rogers

**O-3 13-0592 SECOND READING OF ORDINANCE ESTABLISHING
PROCEDURES AND STANDARDS FOR IMPOSITION OF
ASSESSMENTS TO FUND MASS TRANSPORTATION SYSTEMS**

Mayor Seiler opened the floor for public comment.

Brian Bagnall, 347 North New River Drive East, indicated that the Downtown Development Authority (DDA) made a presentation to residents on April 18 concerning this topic. Many downtown condominium residents have significant concerns about the proposed assessment. He wanted assurance there will be a full hearing. He supported the requested deferral. Mayor Seiler noted that most communications received from downtown residents have expressed support of this item. Mr. Bagnall mentioned that he was not aware of the assessment prior to the DDA's presentation. Commissioner Trantalis pointed out the proposed assessment is \$99 per residential unit annually. Mr. Bagnall noted that equates to about \$30,000 per year for his entire condominium which is significant. There was not enough details in the DDA's presentation. In further response, he indicated that his condominium's board recommended residents look into the issue, but the board cannot give a political opinion.

There being no other individuals wishing to speak on this matter, a **motion** was made by Vice Mayor Roberts and seconded by Commissioner DuBose to close the public comment. Roll call showed: AYES: Commissioner Trantalis, Commissioner DuBose, Commissioner Rogers, Vice Mayor Roberts, and Mayor Seiler. NAYS: None.

Motion made by Commissioner Rogers and seconded by Vice Mayor Roberts to defer the item to June 4, 2013 (request of Downtown Development Authority).

Commissioner Rogers referred to the letter from Chris Wren, Executive Director of the Downtown Development Authority, dated May 7, 2013, requesting this deferral due to some issues with residents. A copy of the letter was made part of the record. He was concerned that the Commission is not being kept informed of input the DDA is receiving. He asked the City Manager to alert Mr. Wren of his concern. There are items that need to be worked through before the hearing. The City Manager indicated that he has told Mr. Wren the City has an obligation under the interlocal agreement to put an assessment in place and to have bonds issued by the close of the calendar year, so the DDA needs to schedule outreach and bring matters to the City in a timely fashion.

Deferred to June 4, 2013 after the ordinance was read by title only.

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

O-4 13-0626 SECOND READING OF ORDINANCE AMENDING UNIFIED LAND DEVELOPMENT REGULATIONS, SECTION 47-20 - PARKING AND LOADING REQUIREMENTS - PARKING CALCULATIONS FOR SPECIFIC USES AND SHARED PARKING

The City Manager advised the proposed ordinance only relates to the shared parking element, and not the portion that was previously in question.

There being no individuals wishing to speak on this matter, a **motion** was made by Vice Mayor Roberts and seconded by Commissioner DuBose to close the public hearing. Roll call showed: AYES: Commissioner Trantalis, Commissioner DuBose, Commissioner Rogers, Vice Mayor Roberts, and Mayor Seiler. NAYS: None.

Vice Mayor Roberts introduced the ordinance which was read by title only.

ADOPTED ON SECOND READING

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

OB 13-0781 WALK-ON - RESOLUTIONS - CITIZENS COMMITTEE OF RECOGNITION HONOREES

Vice Mayor Roberts introduced the resolutions which were read by title only.

ADOPTED

Aye: 5 - Mayor Seiler, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Commissioner Rogers

Note: The City Commission adjourned the regular meeting at 12:49 a.m. and convened as the Community Redevelopment Agency Board of Directors.

John P. "Jack" Seiler
Mayor

ATTEST:

Jonda K. Joseph
City Clerk