

City of Fort Lauderdale

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



Meeting Minutes - DRAFT

Tuesday, April 16, 2013

1:00 PM

Conference Meeting will begin at 2:00 PM
Executive Closed-Door Session
City Commission Conference Room

City Commission Conference 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 1:00 P.M. by Mayor Seiler.

ROLL CALL

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

Also Present: 5 – City Manager Lee R. Feldman, City Auditor John Herbst, City Clerk Jonda K. Joseph, City Attorney Harry A. Stewart, Sergeant At Arms Sergeant Edgar Cruz

EXECUTIVE CLOSED DOOR SESSION WAS HELD AT 1:00 P.M.

13-0608 THE CITY COMMISSION SHALL MEET PRIVATELY PURSUANT TO FLORIDA STATUTE 447.605 CONCERNING COLLECTIVE BARGAINING

CLOSED DOOR SESSION ENDED AT 2:20 P.M.

NOTE: The Commission reconvened at 2:28 p.m.

CITY COMMISSION REPORTS

Events and Matters of Interest

Members of the Commission announced recent and upcoming events and matters of interest.

Lauderdale Air Show

After yesterday's tragedy in Boston, Commissioner Rogers was concerned about security at this upcoming event. Mayor Seiler assured that security will be increased. The cost is being worked on.

Rock the Ocean Tortuga Music Festival

Mayor Seiler wanted to address the issue of access before the show for set-up which would apply to all beach events.

CONFERENCE REPORTS

CF-1 13-0612 BROWARD COUNTY RESOURCE RECOVERY BOARD - AUDIT OF SYSTEM ASSETS AND LIABILITIES

The City Auditor explained the chronology of how his office was selected to conduct this audit and went on to comment that a number of obstacles have occurred. Broward County's posture has changed to one of slowing the process down to a point that he was not able to complete the work in a professional manner. They decided that everything requested was a public records request and had to be funneled through one designated individual. It took several weeks for that individual to be designated. They proposed to charge for copies of minutes. The County Commission did not authorize funding for the

agreement (audit services). He questioned why it even went before the County Commission because the Resource Recovery Board (Board) voted, authorizing funding from already designated funds for the contract communities. The Board's attorney believes that the motion approving the agreement was with the details to be negotiated amongst the parties. This was done and the attorney is now of the opinion that it is substantially different than what was originally approved and therefore requires a subsequent approval by the Board. He therefore felt it best to withdraw from the engagement. He recommended that the contract communities issue a request for proposals (RFP) to retain a firm with extensive experience in forensic accounting and litigation support. It was discovered in the County's financial statements that they had set aside a reserve for post-closure costs and had a liability for the same cost. This was effectively reducing by \$25 million the amount of funds available for distribution to the contract communities. It is being corrected. His office also identified lease revenue of \$1 million per year coming from Wheelabrator that the County has been taking even though the property belongs to the Resource Recovery Board. When an explanation was requested, he was told that explaining is not a public records request.

The City Auditor advised that Fort Lauderdale is about twenty percent of the total. There is roughly \$100 million of assets, not including market value of properties. Mayor Seiler elaborated upon some of the challenges and circumstances relating to this topic, including the fact that there is a new County commissioner involved who has a different position than the commissioner who is no longer in office due to term-limits. The City Auditor indicated that Miramar was supposed to provide a legal determination as to ownership of the assets. However, Miramar did not move forward because they were also advised no contract was in place. In response to Commissioner Rogers, the City Auditor advised that the Resource Recovery System is a dependent special district established by ordinance by the County with its own board governed by the interlocal agreement. There are questions what happens when the interlocal agreement goes away. The district does not go away until the County Commission votes to dissolve it. Deeds for all of the properties are in the name of Broward County. He believed the real estate is an asset of the district. The City Attorney pointed out that the property was purchased prior to the district being created. The district paid the bonds that were issued to purchase the property. The City Auditor added that once the system was operating, the district issued its own bonds and refinanced out the County's obligation. The County is not necessarily certain that they actually purchased the land. Mayor Seiler indicated that the cities are all in agreement.

Mayor Seiler noted that he will report back to the Commission after the board's meeting on Thursday. The City Auditor added that there is some concern that his office is not truly independent. He was brought onboard in the interest of time because of the termination date and time required for an RFP process.

CF-2 13-0610 SOUTH SIDE SCHOOL UPDATE

The City Manager advised that the Historic Preservation Board approved a certificate of appropriateness (COA) for Nova Southeastern University's (Nova) proposal. Therefore staff is moving forward with Nova. He hopes to have an item for official action by the Commission on May 7.

Commissioner Rogers wanted to be certain that the City has complied with all grant requirements. He went on to refer to the City's consultant recommending the mold remediation not be completed without air conditioning. He wanted to obtain another opinion. He wanted to have it done now if possible. Concerning the issue of indemnity, the City Attorney advised his office had proposed Nova secure prior approval from the County that their contemplated programs met all conditions of the grant. Nova did not want to go back to the County. Therefore, his office requested the City be indemnified. If approval is secured from the County, Nova would have to get County approval for any programmatic changes. Commissioner Rogers thought regardless of who indemnifies who, the City needs to get an okay from the County in terms of the grant. The City Manager indicated in speaking with Nova today, they did not seem

opposed to taking responsibility for securing approval from the County and Florida Communities Trust. However, he believed they may need to check with higher authorities in the Nova organization. Commissioner Rogers felt the City should get that information regardless of who will be responsible. The City Manager did not think the City should be the applicant before the County. He explained that previously the City felt it could be approved administratively, but the County Administrator wanted the item to be presented to the County Commission and there was reluctance to schedule it. The County must figure out their process. He did not speak with Nova specifically about the mold issue, but about the concept of taking the property "as is" under a lease agreement with Nova being responsible for the build-out at South Side and construction of the additional building and parking lot. They have engaged an architect and contractor to determine the cost. The City Attorney believed the County Commission would be the only entity that could make a diminutive call on it unless it is specifically delegated to the administrator which has not been done. The City Manager pointed out that Nova does not want to be required to get approval for program changes year to year.

Commissioner Rogers requested the mold issue be brought to the forefront so the City knows the extent and who will be responsible for remediation.

In response to Mayor Seiler and Commissioner Rogers, the City Manager advised that the contract for the park improvements has been awarded but he was uncertain whether it has been executed yet. It is a standard construction contract and the contractor has been used previously. He agreed with Commissioner Rogers it is fair to estimate the contract would be executed within a thirty-day period and the 190-day term would ensue, give or take a day.

**CF-3 13-0481 PROPOSED LIEN SETTLEMENTS - SPECIAL MAGISTRATE AND
CODE ENFORCEMENT BOARD CASES**

In response to Commissioner Trantalis, the City Manager noted that the Commission approved a WaterWorks settlement matrix from which he does not vary. These are all WaterWorks liens having to do with people not connecting to the system. Once they hook up, they may apply for a lien reduction. Commissioner Trantalis was concerned about lack of incentive and environment pollution by not connecting. Commissioner Rogers offered some insight into logic used in arriving at the matrix. Commissioner Trantalis felt there should be an incentive. A general discussion followed about the program.

There was consensus approval as submitted.

OLD/NEW BUSINESS

**BUS-1 13-0552 CITY MANAGER'S REQUEST FOR LEGAL INTERPRETATION OF
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
LETTER OF MARCH 22, 2013 REGARDING CITY'S HOPWA
AGREEMENT WITH LEGAL AID OF BROWARD COUNTY, INC.**

The City Attorney explained that Legal Aid of Broward County, Inc. (Legal Aid) was recommended to provide legal services to participants in the HOPWA Program. The City had provided a participant's agreement to Legal Aid, requiring that they report anyone in the program fraudulently. Legal Aid received an opinion from the Florida Bar saying that they cannot report a client even if they are in the program fraudulently. Therefore, the City asked the U.S. Department of Housing and Urban Development (HUD) whether Legal Aid had to meet that requirement. He summarized HUD's reply that regardless of the

contract provisions, HUD's regulations apply and the regulations require the reporting of fraud. Commissioner Trantalis commented that if Legal Aid discovers fraud and brings it to the attention of their client prospectively, they could disclose it and even have a duty to do so from a lawyer's point of view. The City Attorney felt he would have to revisit the Florida Bar's opinion. If there is fraud and HUD finds out about it in the future, the City will have to repay the money.

Mayor Seiler opened the floor for public comment.

Tony Karrat, Executive Director for Legal Aid, agreed that if Legal Aid discovers a prospective act of fraud, they would be obligated to report it. Legal Aid cannot report something that has occurred in the past. Nothing in the HUD opinion indicates that Legal Aid would have to violate the attorney – client privilege. Therefore, Legal Aid does not object to the language remaining. HUD has also indicated that there is no conflict because of the prior or existing lawsuit. He believed all of the issues have been resolved. Legal Aid would like to move forward with the grant. Commissioner Rogers understood the grant would make the City responsible for expenditure of any money that is unauthorized because of fraud and the City would have to repay. Mr. Karrat did not see this scenario in the regulations. The City Auditor recalled a previous case that involved fraud and the City had to repay. Mr. Karrat pointed out that the problem was that the City could not produce documentation for all of the expenditures. Mayor Seiler indicated Mr. Karrat is recalled the most recent case, but there was another prior one.

Mr. Karrat pointed out that medical services and victims of domestic violence are funded with federal grants. They have the same issues. Legal Aid programs across the country are funded for HOPWA with similar contracts. He believed it is a non-issue. He did not think anything of this nature will occur. If the City becomes aware of fraud, it is divulged; there are hearings and the person is removed. If Legal Aid finds out a client will commit fraud prospectively, they will report it. Commissioner DuBose discussed the City's history with HUD, explaining why the City makes sure every provision is put in place. If there is an issue, it jeopardizes the program funding overall for the entire county. Moreover, the City is moving forward with knowledge of what it has dealt with in the past. Mayor Seiler went on to cite specific examples from the past.

In response to Mayor Seiler, the City Attorney explained if there is fraud in the program; it is discovered and revealed in a subsequent audit, the City will have to repay the money. Some discussion followed in an attempt to find a course of action. Mr. Karrat commented that the fraudulent activity in a previous matter occurred under the watch of another provider. The providers have the obligation to screen and take steps that would uncover fraud. He did not understand how the obligation then falls back on Legal Aid. Commissioner Rogers pointed out that Legal Aid could defend an individual against an allegation of fraud and prevail, which would cost the City. Mr. Karrat noted that Legal Aid would not represent anyone engaging in ongoing fraudulent activity. Legal Aid would not accept a case where fraud occurred. For cases referred to Legal Aid by providers, there is an assumption that the HOPWA providers have done background screening. In response to Commissioner DuBose, Mr. Karrat advised that Legal Aid has agreed it will not represent individuals against other providers.

Vice Mayor Roberts felt the lawsuit is a conflict. The City Attorney explained that the HUD opinion is about a non-participant suing the City and claiming the City is operating the HOPWA Program fraudulently. As long as Legal Aid is not a participant, there is no conflict. The question of whether there would be a conflict if Legal Aid had been a participant was not answered. Mr. Karrat thought it was clear that there was no conflict of interest; Legal Aid was not a party to the lawsuit, but rather the attorney for clients filing the lawsuit. It was then submitted to the Florida Bar to see if there were any ethical issues involved and the Bar said no. There are past situations where other HOPWA funded programs have sued the City and they are still being funded. He thought Broward House had filed suit but it was settled. The City Attorney was not aware of any lawsuit.

Returning to more discussion in an attempt to find a course of action, Mr. Karrat commented that the City is in the same situation if Legal Aid was not involved because the client would have committed fraud and the City would not be aware of it. He went on to point out the need and that Legal Aid was the first ranked provider. Mayor Seiler did not feel it is a question of need, but the City has experienced two cases with HUD wherein this Commission did not do anything wrong. Commissioner Trantalis pointed out that the City would only find out about something if it was disclosed to the City that a particular client was no longer being serviced, but he did not know how HUD would find out. In response to Commissioner Rogers, the City Attorney advised that there is no indemnification in the contract, but they are required to report and they are monitored on a regular basis. Mr. Karrat advised that Legal Aid would be willing to follow any procedures and requirements of any other HOPWA funded programs. If it was found that Legal Aid was directly responsible for a fraud, they would return the funds received to serve that client. In response to Commissioner Rogers, the City Attorney explained that his office proposed a contract provision requiring Legal Aid to report fraud if they find it with the thinking that Legal Aid would be in a good position to discover fraud in that they provide tax advice, for example. Legal Aid does not want to report it and Florida Bar says they cannot report it. HUD said that regardless of whether it is in the contract their regulations are still a requirement and the regulations are that participants report fraud if they discover it. Commissioner Rogers reasoned that Legal Aid's position is one of representing an individual only until fraud is discovered which he believed differs from other program providers. The City Attorney pointed out the issue of time: when the fraud occurs and the opportunity to correct it. The City monitors HOPWA program providers on a regular basis; Legal Aid would be a new provider. He confirmed that the City would be obliged to pay back dollars that went to the client. Commissioner Rogers thought the City would notice in their monitoring process that Legal Aid has withdrawn representation of an individual. The City is responsible for the client and utilization of funds in an authorized manner. Mr. Karrat noted it would have nothing to do with Legal Aid but what the client did before Legal Aid came into the picture. There is a likelihood that the City will learn about more violations because clients will disclose future actions and Legal Aid will report it which the City would not otherwise find out about. Commissioner Rogers suggested perhaps the contract specify a higher standard with respect to reporting.

The City Attorney explained the purpose today is for the Commission to be comfortable with the fact that the City does not have an answer from HUD and decide whether to go forward or reallocate the funds. Commissioner Rogers did not expect an answer as HUD has not done so in the past, but he did not want them to advise the City if it proceeded, it would be a contract violation. His only issue has been with the conflict of interest. If an individual has committed fraud in the past, chances are that it will happen again. With Legal Aid disengaging, it may allow the process to work more in the City's favor in terms of detecting issues. He felt this would more likely be the case. The City Auditor noted a similar example in the case of Internal Revenue Service regulations. A mileage log is not required. However, a mileage log is required for mileage deduction. Commissioner Trantalis felt the issue is one of risk level. Commissioner Rogers thought the risk might be less with Legal Aid's presence. The City Attorney pointed out that Legal Aid has claimed in several lawsuits filed against the City that there is fraud in the program. The most recent of such lawsuits is the one on appeal at this time. Mr. Karrat outlined Legal Aid's role in representing low-income individuals and indicated the case is now in the hands of a private law firm. Vice Mayor Roberts was uncomfortable with proceeding until the case is resolved. Mayor Seiler requested Legal Aid furnish an affidavit from the assigned attorney, Sharon Bourassa, that she has no knowledge of fraud in the City's HOPWA Program. Along with the safeguards put forward by Commissioner Rogers, he would support the item. Discussion turned momentarily to the details and history of the pending case on appeal containing an allegation of fraud in the City's HOPWA Program. Vice Mayor Roberts indicated he would be open to this, but wanted to hear from the City Attorney. In response to the City Auditor, Mr. Karrat advised that Legal Aid has a hearing process in place for people who are denied assistance. The client's access to and disclosure of information to the program which includes their application is part of the attorney – client privilege. Notice that the individual has been afforded due process can be accomplished

without naming the individual. Identifying information is used for all federal and county grants. The City Auditor felt the City would have an obligation that due process was afforded as part of its monitoring and compliance requirements. Mayor Seiler thought this would prevent the use of any law firm which he did not think is the intent.

Mayor Seiler reiterated that Legal Aid furnish a sworn affidavit from the assigned attorney, Sharon Bourassa, that she has no knowledge of fraud in the City's HOPWA Program as set forth in the pleadings.

Joey Wynn indicated that he is an employee of Minority Development and Empowerment, a HOPWA funded agency. Eligibility is an ongoing process. There are many factors that impact eligibility. Also, with the six-month lapse, he asked what will be done with the related funding. Mayor Seiler advised that the funding question will not be decided today.

Commissioner DuBose was not comfortable with some HOPWA funding going to Legal Aid in view of the program participant critical need in general.

BUS-2 13-0237 MARINE INDUSTRY STRATEGY REPORT

Mayor Seiler was concerned about there being a limited amount of time for this item.

Christine Hebert, president of Marine Industries of South Florida, indicated there are items that will warrant discussion but the proposal was to request another workshop. Commissioner Trantalis pointed out that a workshop should not be held much later than May because this will impact other Community Redevelopment Agency initiatives. Mayor Seiler suggested a workshop on a weekday in May at the International Swimming Hall of Fame or Beach Community Center.

Barry Flanigan, 2712 NE 21 Avenue, indicated that there is a request from the Marine Advisory Board under Agenda Item BD-1, requesting authorization for Sasaki Group to recalculate the Las Olas Marina pro forma based on 6,000 linear feet. This item could be considered at the workshop, but the information should not be totally assembled until the recalculation.

In response to Mayor Seiler, the City Manager advised that Sasaki has not been authorized to perform any additional work. Mayor Seiler concluded this item will need to be scheduled for the workshop. He suggested the week of May 13 be considered. He asked that the Central Beach Alliance also be notified.

BOARDS AND COMMITTEES

BD-1 13-0519 COMMUNICATIONS TO CITY COMMISSION AND MINUTES CIRCULATED - period ending April 11, 2013

This item was deferred to May 7, 2013.

BD-2 13-0520 BOARD AND COMMITTEE VACANCIES

See Regular Meeting Agenda Item R-4.

CITY MANAGER REPORTS – None

NOTE: The Commission recessed and convened as the Northwest Neighborhood Improvement District Board of Directors from 4:39 p.m. to 4:45 p.m. and then convened the Executive Closed Door Session.

EXECUTIVE CLOSED DOOR SESSION WAS HELD AT 4:45 P.M.

13-0498 THE CITY COMMISSION SHALL MEET PRIVATELY PURSUANT TO FLORIDA STATUTE 768.28(16) CONCERNING:

Russell Sweeney v. City of Fort Lauderdale (File PP L 09-1091)

Matthew Sandler v. City of Fort Lauderdale (File 10-697C)

CLOSED DOOR SESSION ENDED AT 5:00 P.M.

Note: The Commission recessed and reconvened the conference meeting at 12:51 a.m. with BUS-3.

BUS-3 13-0537 BROWARD LEAGUE OF CITIES - SELECTION OF DIRECTOR, ALTERNATE AND SECOND ALTERNATE

There was consensus for Commissioner Trantalis to serve as director, Commissioner Rogers as alternate and Vice Mayor Roberts as second alternate.

WALK-ON APPOINTMENT TO BROWARD COUNTY RESOURCE RECOVERY BOARD

There was consensus for Mayor Seiler to be reappointed to represent the City on the Broward County Resource Recovery Board.

The meeting adjourned at 12:54 a.m.

Note: The Commission convened as the Community Redevelopment Agency Board of Commissioners at 12:54 a.m.